

## ZONING BOARD OF APPEALS

March 6, 2006

### MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, March 6, 2006, at the Philipstown Town Hall, 238 Main Street, Cold Spring, New York. The work session was opened by Vincent Cestone, Chairman, at 7:30 p.m.

<b>PRESENT:</b>	Vincent Cestone	-	Chairman
	Lenny Lim	-	Member
	Bill Flaherty	-	Member
	Tim Pagones	-	Counsel
<b>ABSENT:</b>	Joan Turner	-	Member
	Victor Carlson	-	Member

**Vincent Cestone** - Okay. First item on the agenda is a public hearing for Alburn Elvin and Janet Santoro. Is there someone to, come up and introduce yourself

**Janet Santoro** - I am here on behalf of myself and my husband Alburn Elvin and we are seeking a variance for 29.7 feet for a storage shed. We live on 27 Knollwood Lane.  
(cannot hear her)

**Tim Pagones** - You are going to have to speak nice and loud. Don't be nervous

**Vincent Cestone** - We won't beat you up

**Janet Santoro** - Our property is very steep and it is up on top (cannot hear her). The garage is a two car garage and part of it was converted to an office. So we only have a one car garage. So the only really flat area where we can put a storage shed is adjacent to the top of the driveway. I have photos of the property. Now our property as I said sits further back, our neighbor to our immediate right #31 and #15 are both closer to the road. So we are set up and the storage shed would be up here. #31 is here and #15 is here, so it's not as if someone would look out and see the storage shed because we are high up and they are closer to the road. The shed is about 150 feet back on Knollwood. And #15 and 31 appear to be about 70 feet. We are very high up. And they are close to the road. We selected an 8 by 10

**Vincent Cestone** - What's, these

**Janet Santoro** - These are the back of the home and the sides, I wanted you to see the steepness all around the property, that there really is no other area to put it. But the convenience of it being right next to the garage.

**Vincent Cestone** - What's this up here

**Janet Santoro** - That's Deer Hill

**Vincent Cestone** - Okay

**Janet Santoro** - We are the corner of Deer Hill and Knollwood

**Vincent Cestone** - And you are saying right up here where the garbage can is

**Janet Santoro** - Yes

**Lenny Lim** - There is a stone retaining wall where you are going to put the shed. Is it already there

**Janet Santoro** - You know they call it a retaining wall but it looks like it is little rocks. It is there now.

**Lenny Lim** - Okay

**Bill Flaherty** - You couldn't place this shed over here on the side of the driveway here

**Janet Santoro** - No because that would be, it would be right in the front of the house and it is very steep. You can see it here.

**Bill Flaherty** - And this is the back of your property

**Janet Santoro** - Yes. And it is sloping down

**Bill Flaherty** - Yes but you can still level it off if you had to

**Janet Santoro** - The problem is, I think we would still have the same problem with the

**Lenny Lim** - Hold on. I don't see the 40 foot problem back here. I really don't. Where is your septic system

**Janet Santoro** - The septic is

**Lenny Lim** - To the front

**Janet Santoro** - It is in the front. The well should be over here somewhere

**Lenny Lim** - So your septic is in the front

**Janet Santoro** - And the well is back here. This is all trees back here.

**Lenny Lim** - Yes but what is over here

**Janet Santoro** - This is, this would not be convenient to anything plus you can see how steep it is. So we have to go all the way around to get back here. And if I had to go back there to get something out of the shed, if my husband is not here because he travels a lot, it would be very difficult for me to go from back there to probably do some shoveling.

**Bill Flaherty** - Is this an R-80 zoning

**Lenny Lim** - I think so

**Tim Pagones** - R-40

**Bill Flaherty** - So if it is an R-40 you only need 20 feet.

**Janet Santoro** - This is what Mr. Monroe told me

**Bill Flaherty** - And you are asking for almost 30 feet

**Janet Santoro** - He told me I needed 40 feet

**Vincent Cestone** - Because it is on a corner

**Bill Flaherty** - It is a corner lot

**Vincent Cestone** - A corner requires a bigger set back

**Bill Flaherty** - Oh okay. Deer Hill Road is that

**Janet Santoro** - It's a private road

**Bill Flaherty** - That's a private road.

**Vincent Cestone** - Why couldn't you put it right back here where the wood planter is,

right here

**Janet Santoro** - In the gated area

**Vincent Cestone** - Yes

**Janet Santoro** - Well actually we are planning on putting a patio in there. Again, this is right by the pool area. So we have a shed right by the pool. We wanted to put a stone patio in there and it would be unattractive to have a shed right by the pool where we would be entertaining.

**Vincent Cestone** - And what are you going to store in the shed

**Janet Santoro** - Tools, shovels and stuff like that

**Vincent Cestone** - Lawn mowers

**Janet Santoro** - Yeah exactly. And we chose an 8 by 10 rather than 8 by 12 because we really didn't want it to be very large and intrusive. But we wanted the convenience so that if I had to get something out of it while my husband is away traveling, I have a respiratory condition and I am not, I don't have to walk all the way over

**Bill Flaherty** - And in your application it says that this is going to be prefab

**Janet Santoro** - Yes. It's

**Bill Flaherty** - Can I see pictures that you have

**Janet Santoro** - Something of this nature. Where the manufacturer actually comes in and installs it for you

**Bill Flaherty** - Is that the actual shed

**Janet Santoro** - This may not be the actual one, we may chose a different one, but it would probably be wood shingle

**Bill Flaherty** - Similar

**Janet Santoro** - Similar absolutely, a couple of windows

**Vincent Cestone** - How about right over here near your brick chimney and your air conditioner unit. Because I am looking at it here and it doesn't look like the land is too steeply sloped over there and you can definitely fit it within the setback without a

variance

**Janet Santoro** - It wouldn't be convenient for me

**Vincent Cestone** - It's right near your deck. Do you have stairs off your deck

**Janet Santoro** - No.

**Vincent Cestone** - I am looking at it right here

**Janet Santoro** - But there is no stairs off the front deck

**Vincent Cestone** - Do you have a walk out basement

**Janet Santoro** - It is in the back of the house

**Vincent Cestone** - Over here

**Janet Santoro** - By the pool

**Vincent Cestone** - Right here . Any questions? Bill?

**Bill Flaherty** - No

**Vincent Cestone** - Len? Do you want to think about it while I open it up

**Lenny Lim** - Yeah because there looks like there are other alternatives

**Vincent Cestone** - Anybody in the audience wish to speak on this? My yard is steep and I had to make a platform and a ramp off it.

**Lenny Lim** - You know what, let's hold it open. Let me go down there and take a look at this so I am sure. Because as of right now it looks like she has alternatives.

**Vincent Cestone** - No one wishes to speak, we are going to continue this public hearing on to the next meeting so that board members can pay a visit

**Janet Santoro** - Okay

**Lenny Lim** - I want to really make sure that I know what I am doing

**Janet Santoro** - Sure absolutely

**Tim Pagones** - So you are giving them permission to go to the property

**Janet Santoro** - Absolutely

**Tim Pagones** - Do you want them to call so you can show them around or is there a better time, I mean don't shoot anybody if you see these guys on your property

**Janet Santoro** - What would you prefer

**Vincent Cestone** - Generally I just like to drive by and take a look. Generally you don't even see me

**Janet Santoro** - Okay

**Lenny Lim** - That's how we normally do it because we are all volunteers and it is when we've got a chance

**Janet Santoro** - That's fine. So you would like me back here

**Vincent Cestone** - Next meeting which is

**Tim Pagones** - The 20<sup>th</sup>. If you want to maybe flag where you are going to put it so they know exactly where it is

**Janet Santoro** - It is flagged now. It was flagged for the surveyor

**Tim Pagones** - Okay. See you on the 20<sup>th</sup>.

**Vincent Cestone** - I am going to keep these pictures and give them to the clerk for the file

**Janet Santoro** - Sure. That's fine. Thank you

**Vincent Cestone** - You're welcome. Next item on the agenda is Joann Darby. Are you Ms. Darby

**Joann Darby** - I certainly am

**Vincent Cestone** - Tell us what

**Joann Darby** - I am seeking a variance for an already built shed that is on my property and a gazebo that needs variance setbacks.

**Vincent Cestone** - Okay. Were these, how long were the shed and the gazebo been there

**Joann Darby** - The shed has been there since 1964. Not this shed. There was a metal shed that sits on a foundation and underneath the foundation is the well pump, holding tank and electrical.

**Vincent Cestone** - And the

**Joann Darby** - And the gazebo has been there probably since (cannot hear her with shuffling papers). I didn't bring any pictures

**Vincent Cestone** - That's okay. You don't have to bring pictures. This is the shed and this is the gazebo

**Joann Darby** - No this is the gazebo and this is the shed

**Vincent Cestone** - Oh okay

**Joann Darby** - This is where my well is. The well is underneath the

**Vincent Cestone** - So this is covering your well head

**Joann Darby** - The well and the holding tank and the electrical

**Lenny Lim** - How many sheds are on your property

**Joann Darby** - Three

**Lenny Lim** - Three sheds

**Joann Darby** - Yes. This one here was at 1957.

**Vincent Cestone** - And this one

**Joann Darby** - Late 70's

**Vincent Cestone** - And that one is not in violation

**Joann Darby** - No sir it's not

**Vincent Cestone** - This gazebo, when did you build that again

**Joann Darby** - Probably around 1986

**Vincent Cestone** - Okay. And this is on what? On foundation or is it

**Joann Darby** - No I think there are 12 posts and they are all down set into concrete and there are no sides on it, just a roof.

**Vincent Cestone** - Okay

**Lenny Lim** - And what platform is it sitting on

**Joann Darby** - It is a cement foundation, block foundation

**Lenny Lim** - And the well is underneath the cement

**Joann Darby** - Yes there is like a little room down there. There are stairs going down in there

**Vincent Cestone** - You mean like there is a hole

**Joann Darby** - A big hole. We used to use it for like vegetables and stuff

**Lenny Lim** - A root cellar

**Joann Darby** - A root cellar yeah

**Bill Flaherty** - Is there electric

**Joann Darby** - Yes. It's my well

**Vincent Cestone** - Who lives over here

**Joann Darby** - Oh that's Mr. Lauch

**Vincent Cestone** - And how close are the gazebo and the shed to his house

**Joann Darby** - His house

**Vincent Cestone** - Where he lives

**Joann Darby** - he can help me. How far is this from your house?

**William Lauch** - I can give you a rough idea

**Tim Pagonos** - Can you introduce yourself for the record

**William Lauch** - Oh sure. My name is William Lauch. I am the adjacent property owner. My road comes up here and curves around here and my house would sit in this vicinity.

**Vincent Cestone** - How far are you from the property line

**William Lauch** - Maybe a thousand feet

**Vincent Cestone** - And this area is all wooded. So this whole piece of land is yours over here

**William Lauch** - Yes. All the way around the property

**Vincent Cestone** - Tell me about the land. Is this land wooded

**William Lauch** - Yes. Wooded and undeveloped. Other than the paved road which comes in right around here there is a gravel car park in this vicinity and then the road continues up hill and my house sits up in this area.

**Vincent Cestone** - So from your house you really can't see this property. Is that correct?

**William Lauch** - In the winter and we have planted evergreens in this area. But you know, what I see is pretty much just the roof tops of these structures here

**Vincent Cestone** - And what is your feeling towards this application

**William Lauch** - My only concern is if there would be any impact on the sale of my property in the future. But I have none personally. I mean you know, the distance to my property line doesn't bother me and any of the things that have been built have no impact to me visually or, my house is very remote from Joann's backyard area here and it is sort of centered in the property and doesn't impose any kind of visual impact on my view. And there is also a change in elevation here where my house is up on another \_\_\_\_\_ above hers.

**Bill Flaherty** - Is there landscaping anywhere along this line

**Joann Darby** - On his side

**Bill Flaherty** - On your side

**Joann Darby** - Well, there are some plants back in here, there are some plants here, trees

**Bill Flaherty** - In your mind do you think that this shields from your property these sheds

**William Lauch** - Yes. When I built my house I did some installation of evergreens to shield the view from this corner to provide some privacy for their backyard and for also my view. There is probably 6 to 8 big evergreens

**Joann Darby** - 40 footers

**Bill Flaherty** - in other words, it is not unattractive

**William Lauch** - no

**Bill Flaherty** – okay

**Joann Darby** - It's really a nice piece of property.

**William Lauch** - I have one other question. It's regarding the notification of adjacent property owners and I thought there was usually a notice sent out regarding these things. It's only because I am friends with Joann did I know about this hearing.

**Tim Pagones** - Well what happened was, there was a notice in the paper and there wasn't enough time so the hearing has to stay open. Rather than just canceling your hearing, we will keep it open until the 20<sup>th</sup> so that anyone else and I don't know if Kim mails out the notices, I know she has a list of the nearby

**William Lauch** - So they do get sent out

**Tim Pagones** - Yes

**William Lauch** - Because I've gotten one in the past with other kind of variance issues but I didn't get one on this. So as you can see this has a much more direct impact than some of the other things that I might have gotten. But I don't have any objections

**Lenny Lim** - Excuse me. When was the gazebo built

**Joann Darby** - Probably 1986 or 1984

**Lenny Lim** - So mid -80's

**Joann Darby - Yes**

**Lenny Lim - And the shed**

**Joann Darby - We drilled the well in 1964 so I would say 1964**

**Vincent Cestone - We have to keep this open anyway.**

**Lenny Lim - I think they may want to until we get a full board anyway**

**Vincent Cestone - Any more questions?**

**Bill Flaherty - I have no questions**

**Vincent Cestone - Anymore questions from the audience? We have to keep it open because it wasn't properly noticed so we will keep it open to the next meeting and we should be able to close this**

**Tim Pagones - And do your site visits. So they may walk on the property**

**Joann Darby - Oh any time**

**Lenny Lim - I thought once they put a variance in we automatically have the right to walk the property**

**Tim Pagones - You automatically what**

**Lenny Lim - We automatically have the right to walk the property**

**Tim Pagones - Yeah but sometimes they can say no**

**Lenny Lim - I thought they couldn't say no by law**

**Tim Pagones - No**

**Vincent Cestone - You know what happens if they say no, we say no**

**Lenny Lim - Really I thought once they put a variance in that we automatically have the right**

**Tim Pagones - What if it is a contract vendee**

**Vincent Cestone - Okay**

**Tim Pagonos -** I guess for the record Hird is adjourned. He requested that he be adjourned. Number 4

**Vincent Cestone -** Because he had

**Tim Pagonos -** He couldn't get the survey done

**Vincent Cestone -** He couldn't get it done in that time

**Tim Pagonos -** He couldn't get it done by tonight

**Vincent Cestone - Okay**

**Tim Pagonos -** So you want to put him on for the 20<sup>th</sup>

**Vincent Cestone -** Yeah we are going to have a full agenda on the 20<sup>th</sup>

**Lenny Lim -** Put him on for next month

**Tim Pagonos -** You want to put him on for April

**Vincent Cestone -** It will only take 5 minutes. No

**Tim Pagonos -** All right

**Vincent Cestone -** Mastrantone

**David Brower -** Hird is on for the 20<sup>th</sup>

**Vincent Cestone –** Yes

**Matthew Mastrantone -** Hi. Good evening

**Vincent Cestone –** There was only a few things left that we had to talk about

**Matthew Mastrantone –** yes. One of the items that was requested was the square footage. Which was on the original application and survey which is now the last page on this new document. I also incorporated on the first page the construction narrative. On the elevation detail there is the elevation.

**Lenny Lim -** I'm trying to find the square footage. Did you say it was on the back page?

**Matthew Mastrantone** – It is on the site plan which was originally

**(board members looking over material)**

**Matthew Mastrantone** – I spoke to Mrs. Tuttle over the weekend to discuss the wall

**Vincent Cestone** - And we've got total height, maximum height

**Lenny Lim** - How high is it from this point

**Matthew Mastrantone** – It starts from the top of the foundation to the bottom of the garage door to the top of the foundation up.

**Bill Flaherty** - The overall height is what?

**Lenny Lim** - 31.9?

**Matthew Mastrantone** – Yes

**Lenny Lim** - Okay so it is 31.9 from the lowest point up.

**Vincent Cestone** - So it will be 21.9 from the top of the foundation to the peak of the roof

**Lenny Lim** - Yeah but you have to go by the lowest point

**Vincent Cestone** - I think that was about it

**Lenny Lim** - I think that was all that we asked him for

**Matthew Mastrantone** – Just to clarify from one of the other meetings that there was some discussion about the building of some type of dormer in the attic. On the cross section detail it shows it is a truss system. And which you know you can't do anything up there

**Vincent Cestone** - Unless you get room trusses

**Matthew Mastrantone** – Yeah but it is specified on the plan all work to be done in accordance with the plans submitted and approved.

**Vincent Cestone** - Any other questions from the board? Any comments from the audience?

**(cannot hear audience member)**

**Vincent Cestone** - I'm sorry

**Mr. Mordhorst** - Can I ask how these plans correspond to the proposal that was submitted. Is it the same size

**Vincent Cestone** - You mean has there been any changes?

**Mr. Mordhorst** - Yes in size

**Vincent Cestone** - I really couldn't tell you because I just got the plans tonight.

**Mr. Mordhorst** - The reason I ask is that on the proposal on the proposed addition I think it extends into on my side the setback. It indicates that it is 39 feet. And on a private road, the setback is 40 feet.

**Vincent Cestone** - I am not certain if that is the case, let me look

**Lenny Lim** - I'm trying to find the proposal

**Vincent Cestone** - Do you have the original plans

**Lenny Lim** - I have everything

**Vincent Cestone** - Mine is in the car. Do you have the original survey

**Matthew Mastrantone** – It is the last page and it shows the setbacks

**Lenny Lim** - Here we go.

**Vincent Cestone** - And your house is located where on this

**Mr. Mordhorst** - My house doesn't show up here but my road shows up. My house is over here

**Vincent Cestone** - Because this doesn't encroach on the setback

**Mr. Mordhorst** - No but on a private road the setback is 40 feet. And this says 30 feet

**Vincent Cestone** - 40 feet from the road

**Mr. Mordhorst** - this is a road. This is a private road

**Vincent Cestone** - is that correct?

**Tim Pagones** - Let's see. R-80 requires a setback of 40 feet from any other road. So is there a road there?

**Mr. Mordhorst** - Yes

**Matthew Mastrantone** – This is Route 9 and this is the

**Mr. Mordhorst** - So you would need an extra variance for that

**Lenny Lim** - You need a variance for both these sides.

**Mr. Mordhorst** - I know there is a lot of talk of making it smaller so I thought that maybe was addressed in making it smaller

**Vincent Cestone** - There was, but that was on the other side

**Mr. Mordhorst** - Oh

**Lenny Lim** - So there is a 40 foot setback

**Vincent Cestone** - That's right

**Lenny Lim** - So he has to amend his thing then

**Vincent Cestone** - He doesn't have to amend this because he has his actual measurements.

**Tim Pagones** - Well he needs a variance all around. He needs 1 foot on one thing, 9 foot, 10 foot

**Lenny Lim** - Well the closest point is 30 feet

**Tim Pagones** - So he needs a 10 foot variance

**Lenny Lim** - On that one

**Tim Pagones** - Do you understand what we are saying

**Matthew Mastrantone** – Yeah

**Tim Pagones** - You need 30 from here or 40, and 40

**Matthew Mastrantone** – I was told I needed 100 from here and 30 from here

**Tim Pagones** - From Route 9 you need 100. You are in an R-80 right? From Route 9 and other street is 40 feet. You need 30 from a side or rear. But you have a street. If that was just a house and property, it would be 30. It is 40 feet from a road. 30 feet from a side property line. So you need variances all around.

**Matthew Mastrantone** – This is not the first time we looked at this.

**Vincent Cestone** - I know. Okay. Any more comments from the audience? Any more comments from the board? I will make a motion to close the public hearing

**Bill Flaherty** - I so move

**Vincent Cestone** - All in favor

**All Board Members** – aye

**Vincent Cestone** - I am not going to do a straw poll

**Tim Pagones** - Okay

**Vincent Cestone** - So your public hearing is closed. We have 62 days to issue a ruling and what we want to do is have the other board members here so that we can have a full board on the vote.

**Tim Pagones** - When do you want to put him on for discussion? April?

**Vincent Cestone** - Yes.

**Tim Pagones** - What is the first Monday in April

**Kim Shewmaker** - 3<sup>rd</sup>

**Tim Pagones** - April 3<sup>rd</sup>.

**Vincent Cestone** - We will have a discussion on April 3<sup>rd</sup>. You don't need to be here, it is up to you. And then we will give instructions to the attorney on how we want him to draw the resolution and then we will go from there

**Matthew Mastrantone** – Thank you

**Tim Pagones** - Take care

**Vincent Cestone** - Okay review of minutes of January 23<sup>rd</sup>. Are there any revisions or corrections?

**Bill Flaherty** - I have none

**Vincent Cestone** - Len?

**Lenny Lim** - No

**Vincent Cestone** - I make a motion to accept the minutes as submitted

**Lenny Lim** - I'll second

**Vincent Cestone** - All in favor

**All Board Members** – aye

**Vincent Cestone** - Minutes of February 13<sup>th</sup>, any corrections?

**Bill Flaherty** - I don't have any

**Lenny Lim** - I don't have any

**Vincent Cestone** - I'll make a motion to accept them as submitted. All in favor

**Bill Flaherty** - I'll second

**All Board Members** – aye

**Vincent Cestone** - Do we want to do the minutes of February 27<sup>th</sup>?

**Kim Shewmaker** - Sure. They are three-quarters done.

**Vincent Cestone** - It would be magic

**Kim Shewmaker** - I wish they were done.

**Vincent Cestone** - Okay. Do you want to do the resolution

**Tim Pagones** - Why don't we do American Tower since it is all three of them and they are together

**Vincent Cestone** - Okay

**Tim Pagones** - And I think there is someone here for them so

**Vincent Cestone** - We still haven't gotten completeness from Municipal Solutions

**Chris Fisher** - Good evening

**Tim Pagones** - Do you have a card

**Chris Fisher** - Not handy. Chris Fisher from Cuddy and Feder. I really have two objectives tonight. You're right you did receive some correspondence from the Center for Municipal Solutions. I can go through the reasons why I feel this way in response to that correspondence but the bottom line is we need to get this referred to the Planning Board and we need to start having the public hearing process. We, and you may look at me and say geez how is he saying that, we've got this correspondence from Mr. Comi and says there are a couple of additional issues. Let me just say this is what we gave you back in April. Big meaty application. Probably five times the size of most applications you get.

**Lenny Lim** - Not for a tower it ain't

**Vincent Cestone** - We don't make decisions by the pound

**Chris Fisher** - But let me just talk about what we did. So we submitted the application. Chairman, you and I and Mr. Comi and a whole bunch of people went to the site. A lot of comments about you know this is a difficult site in some ways and in other maybe not so bad. A request was made for us to really come back with a meaningful change to the plan on berming, landscaping, trying to incorporate the fire department's antennas into the tower facility. Also knowing what the public reaction will be is, we want to know about alternatives. We want to know what other places in the community might we be able to put a tower facility in order to meet the coverage objectives in this area. And at the end of the day it is all about serving the public from my clients. They don't enjoy coming in here going through years of process to build facilities that \_\_\_\_\_ people who use cell phones. But that is the process. We did all that. We worked for several months in response to a very lengthy memo from Mr. Comi's office to produce this in December which is as big or bigger than our initial application. With all kinds of exhibits, RF statements of need, why the post office would work, why some other sites wouldn't work. A very fair and good faith effort on our part to say here putting all the cards on the table. This is why I need it, these are the alternatives that may or may not be viable.

We don't know that from the public's input. In fact we know nothing about the public's perspective on this proposal. It has been about 11 months now and we just got this last month's review memo on this material. And there were three main points. There was a disagreement with how some of the OmniPoint's material were presented. It is form over substance. I mean you know we could have Mr. Comi here, we could have OmniPoint's RF engineers and they can talk about all the technology. For you and for me honestly at the end of the day, it is probably irrelevant. It is what the infrastructure, what is the planning and zoning issues, they could debate till the cows come home what the standards are for in-vehicle, on street, it is not going to make a difference

**Vincent Cestone** - It is only with Cingular we have this issue

**Chris Fisher** - Omnipoint, I really don't think you have an issue with OmniPoint. I think it is formatting. Robert Gaudioso who you probably know from Snyder and Snyder represents them is here as well and he is going to represent them on that aspect of this application. The other issue was an issue that was never raised in a prior memo it was this \_\_\_\_\_ technology. We sent our RF engineers out to look at this. I am more than happy it is part of the process to explain why that is not going to be a viable technology here.

**Vincent Cestone** - Say again

**Chris Fisher** - Gas Distributed Antenna systems. The last point that Mr. Comi had made.

**Vincent Cestone** - Okay

**Chris Fisher** - And we can do that. We can do that as part of this entire process to explain to you why it is really not a viable technology and solution here as an alternative but at the end of the day, we don't know what the public's feelings are about our project. We have a right to know what their feelings are. We don't think any of these comments \_\_\_\_\_ the level of is this application ready for public consumption. Is it ready for the people who elect the government here, run government here, who appoint those who sit on boards, is it ready for those people to come here and say I don't like it, I do like it, or did anyone surprise you. Hey we need service in the community. This is a problem

**Vincent Cestone** - I don't think that is an issue. I agree with you 100 percent

**Chris Fisher** - Yeah so they may say sooner is better than later and this proposal with the fire department, we may get surprised and people may say this is not a problem I don't see why it should be an issue for the community. We don't know that. You don't know that. And in Mr. Comi's memo what he even says is what we do not know is whether or not a new tower at any alternative sites would be more acceptable to

residents of the area. That is the one thing I take away from his memo that had a legitimacy for our purposes. Is this complete? And for my purposes yeah I can sit up here with plans and take you through the project and I'd be happy to do that for the public so we have a meaningful dialogue. And that is the end of the day that we are trying to get to.

**Tim Pagones** - So I have one question. Which appeal are you on?

**Vincent Cestone** - Are you on American

**Tim Pagones** - Are you on American Tower and Omnipoint?

**Chris Fisher** - American Tower and Cingular and Mr. Gaudio is representing Omnipoint. And as I said they are really all linked so there is no reason to separate them out.

**Tim Pagones** - Well. But they are going to be. I guess you are going to write letters about certain things right? And I guess for the sanity of the secretary any correspondence from your firm can you include your appeal numbers?

**Chris Fisher** - Oh sure

**Tim Pagones** - Just so we know. And then if Mr. Gaudio is representing Omnipoint, same thing. Mr. Gaudio any correspondence just put your on #789, just so we know who is doing what that's all.

**Robert Gaudio** - Absolutely.

**Tim Pagones** - I think it is going to be a joint but there might be separate correspondence for different issues.

**Chris Fisher** - They may be overlapping

**Tim Pagones** – right. Okay sorry. Didn't mean to interrupt you.

**Chris Fisher** - No I was done. I think, what I am trying to be is practical and say look, it's been a lot of months since we submitted. Some of it has been our own timing in trying to respond. But there is no reason why not to refer us to the Planning Board. There is no reason why not to have the public involved.

**Vincent Cestone** - So as far as the Cingular application, what issues

**Chris Fisher** - None as far as I know

**Vincent Cestone** - And the issue with the American Tower is only

**Chris Fisher** - Not as far as I know. Other than \_\_\_\_\_ for us to do more information on this \_\_\_\_\_ alternative. And I honestly, if Mr. Comi thinks it is exciting and new and something that is viable here, then he should have the ability to explain why. I mean we are happy to explain why not. That is something we can do as part of the public process.

**Vincent Cestone** - What is your feeling

**Lenny Lim** - I definitely want to know why whip antennae can't be used. But I am not against moving it along

**Vincent Cestone** - Bill?

**Bill Flaherty** - The only comment I have is that you mentioned the fire department as being part of the process

**Tim Pagonis** - It is on their property

**Bill Flaherty** - And are they going to be using the tower

**Chris Fisher** - We have talked with them. They have an antennae on the roof of the building and one of the comments we received when we were at the site visit and we tried to work through was getting them relocated on the new structure and have that come off. That is something I think they are willing to do. \_\_\_\_\_, she spoke with them. So that is something that we can incorporate in to the plans.

**Tim Pagonis** - I don't see a problem moving it forward but what I guess is going to happen is eventually when they get back here, if there was, you are always supposed to look at other sites. So I don't know if all those tests are done because they are going to sit there and someone from the audience is going to say well what about this site. So hopefully you have all your data because otherwise it is just going to languish here in the public hearing for months. So if all your sites have been investigated fine we can move it forward and when it comes back here for public hearing when they ask you about it, you already have your answer. The planning board is going to look at it, what's the fencing, the screening and stuff like that. As far as the need and their other sites, that's going to come back to you. So you can move it forward.

**Lenny Lim** - It's going to be hard to screen a roof

**Chris Fisher** - It is but what we did do is we came back with a huge berm and a double

row of evergreens to try. But you are right. You can't make these things invisible. It's impossible.

**Vincent Cestone** - I don't have a problem with it

**Tim Pagonis** - Well I guess for purposes for tonight you can find all three complete. Complete enough to refer it to the planning board.

**Vincent Cestone** - Right

**Tim Pagonis** - And if there is more stuff Mr. Comi wants, when they come back to you and set it down for a public hearing, they have to provide it. But I don't see a problem. I mean it has been here a while. I don't see a problem shipping it off to the planning board.

**Vincent Cestone** - The issue with Omnipoint is still unresolved from the previous application.

**Tim Pagonis** - Well that is a separate thing though. Whether that issue comes up here or not, I am sure they agree that the lower the neg dec is the more towers you need right? If you have a high neg dec you don't need as many towers or something. That is one of the concerns with the Town.

**Vincent Cestone** - Has Cingular agreed to the signal strength that the Center for Municipal Solutions

**Chris Fisher** - Yes. I don't think there has ever been a disagreement. I don't even know that there is a disagreement between Center for Municipal Solutions and Omnipoint. I think what Mr. Comi has been trying to determine is what is the design objective and what are we saying we are going to be build our network infrastructure to. We basically said we are looking to serve the community as a whole and the objective here is \_\_\_\_\_. And he has even agreed with us on that.

**Vincent Cestone** - And you have your, the corporation has an objective and we have had many representatives of carriers come in and say this is the last we are going to need. We are never going to be here again and that is until they submit another application. It would be nice for this board to know what your design really is so that we can present to the public this is what's proposed, fight the fight once and get it done.

**Chris Fisher** - We've tried to be very up front and fair about that and I think Mr. Comi's looked at that and understands.

**Vincent Cestone** - From where I am sitting it looks like you are going to have to put in

additional applications along 9D. Even though you haven't said it, it seems obvious to me. You are putting in one. That is not going to get you all the way to Cold Spring.

**Chris Fisher** - No and I think we readily acknowledge that. We'll tell you how far it is going to go and how far it is not going to go as a technical matter. And where there is likelihood for future applications. One of the things I've tried to avoid at least myself and how we come into the town is never say this is it, we will never be back.

**Vincent Cestone** - Well you've never had. But I've had at least three people come in and say that. Well with that we are not going to argue this point here.

**Bill Flaherty** - How many towers do we have? 5 or 6 towers in the town

**Tim Pagones** - 85

**Bill Flaherty** - how many

**Tim Pagones** - I don't know. You've got a beautiful tree up at the Stonehouse. That looks good. Then you've got a tree that looks like a toilet brush.

**Lenny Lim** - Who's branches are those? Can't we get them to take them off?

**Tim Pagones** - We have to get in touch with Mr. Siebert again. Judge is going to look into that.

**Bill Flaherty** - Well I think at last count we had 6. That I am aware of.

**(talking among themselves)**

**Bill Flaherty** - Could we prohibit the number of towers that are to be built in the town

**Tim Pagones** - No

**Bill Flaherty** - Why not

**Tim Pagones** - You can try and do what you want but they are mandated to provide service. If they can justify that they need service and that this tower or whatever co-location will provide it

**Vincent Cestone** - That actually might change. There are some Bills in Congress to change that

**Tim Pagones** - Well until it does

**Vincent Cestone** - With that I will make a motion to move this into the Planning Board.  
Do I have a second?

**Lenny Lim** - I'll second

**Vincent Cestone** - All in favor

**All Board Members** – Aye

**Tim Pagonis** - All right so #6, #8 and #9 are going to be sent to the Planning Board.

**Chris Fisher** - Appreciate it. Thanks very much

**Vincent Cestone** - You're on

**Tim Pagonis** - Okay last thing on the agenda is the interpretation

**RE: DECISION AND FINDINGS OF THE  
PHILIPSTOWN ZONING BOARD OF APPEALS  
Appeal #779; Applicant: Alvin Friedman-Kien  
INTERPRETATION**

Date: March 6, 2006

The Philipstown Zoning Board of Appeals conducted a Public Hearing on November 21, 2005 and January 23, 2006 to hear the appeal of Alvin Friedman-Kien for an interpretation concerning whether the revocation of building permit #6371 due to lack of access to the property was proper. The property is located on Cloud Bank Road in the Town of Philipstown, Putnam County, New York.

At a public meeting of the Board on March 6, 2006, upon all the discussion that preceded it, including the public hearings on November 21, 2005 and January 23, 2006, various public meetings, site visits undertaken by individual Board Members, and a review of Applicant's submissions and other evidence in the record, \_\_\_\_\_ made the following motion, seconded by \_\_\_\_\_:

**BE IT RESOLVED** by the Zoning Board of Appeals of the Town of Philipstown, Putnam County, New York, as follows:

THAT THE APPEAL OF ALVIN FRIEDMAN-KIEN, FOR AN INTERPRETATION THAT THE REVOCATION OF BUILDING PERMIT #6371 BASED ON LACK OF ACCESS TO HIS PROPERTY LOCATED ON CLOUD BANK ROAD WAS INCORRECT AND THAT THE PERMIT SHOULD BE REINSTATED, IS HEREBY GRANTED, FOR THE REASONS HEREIN STATED, WHICH REASONS ALSO CONSTITUTE THE FINDINGS AND DECISION OF THE BOARD.

**(Turning Tape Over)**

**Section One            FINDINGS OF FACT:**

1. The Applicant made this appeal (#779), dated June 17, 2005, to the Philipstown Zoning Board for an interpretation based upon the revocation of a building permit to Alvin Friedman-Kien due to lack of access to his property located on Cloud Bank Road. Applicants' exhibits, including those filed with the Appeal or offered at the public hearings were reviewed by the Zoning Board. A composite list of the Exhibits is attached as **Schedule "A"**.

And Kim will attach that.

2. The property, on Cloud Bank Road, is located in a R-80 District in the Town of Philipstown, New York.
3. The Applicant made an appeal to the Zoning Board of Appeals for an "Interpretation". At its meeting on September 12, 2005, the Board reviewed the application for completeness prior to scheduling the requisite hearing. The Board determined that the application was complete and the matter was set down for a public hearing on October 17, 2005.
4. On October 11, 2005 the Board received a letter from the Applicants' Legal Counsel Geraldine N. Tortorella, of Hocherman Tortorella & Wekstein, LLP advising the Board that the applicant was still in the process of assembling and compiling material and would not be ready for the hearing on October 17, 2005. The Applicant requested that the hearing be adjourned and the Board set the next date for November 21, 2005.
5. On November 21, 2005 the Applicant appeared along with his Attorney John H. Hersh and Co-Counsel, Geraldine N. Tortorella of the law firm Hocherman Tortorella & Wekstein LLP. At the beginning of the hearing the Attorneys supplied the Board with a packet containing information that

they would be discussing during the hearing.

6. The Applicants' representatives presented evidence to the Board that the property owned by the Applicant originally belonged to Jean Dickley. In 1970, Ms. Dickley entered into contract to sell the property to Urith Dillon. Ms. Dillon, as a contract vendee, applied to the Philipstown Planning Board to obtain access to the property. A copy of the Planning Board resolution dated February 18, 1970 granting access to the property to Ms. Dillon was provided to the Zoning Board (Exhibit "A" in material supplied to the Board on November 18, 2005). The transaction to Ms. Dillon was never completed and the property was sold to the Applicant on December 22, 1978.
7. The applicant applied for a building permit in 1982 but a question about the access was raised by the Building Department. The Applicant made inquiry to the Philipstown Planning Board and was advised that the access granted to the property never expired. There was discussion by the Board about having some type of time limit on access but no change to the Code was ever enacted. A copy of the Planning Board minutes was supplied (Exhibit "B" of materials dated November 18, 2005). Based upon the minutes of the Planning Board a building permit was issued to the applicant.
8. The applicants' representatives presented evidence that the issued building permit was extended up until 2004 at which time due to design changes to the septic system, the septic permit was suspended. Based upon the Putnam County Health Dept. suspending the septic permit, the Philipstown Building Dept. issued a stop work order dated May 14, 2004. On July 30, 2004, before a new septic permit could be obtained, another letter from the Town Building Dept. was sent to the applicant stating that before work could start again a current Health Department permit and Planning Board approval of access had to be obtained.
9. The applicant obtained another Health Department permit in March of 2005 and applied to the Philipstown Planning Board for access approval. During the Planning Board process the applicant made application the ZBA for an interpretation that the revocation of the building permit based on access was incorrect. It was the applicants position that the previous access granted to Ms. Dillon ran with the land and as such no Planning Board approval is required. Additionally, the applicants' representatives brought up the fact that although the Planning Board noted back in 1980 that the Town Code should be amended to provide some type of time limitation for access, the Town Code has in fact never been change

Board.

Changed. Take out Board

10. Throughout the public hearing process several of the applicants' neighbors spoke out against the appeal. Margaret and Pat O'Sullivan both felt that it was wrong that the applicant has been able to build over the last 20 +/- years. They expressed their concern over "clear cutting" that has occurred and the fact that the applicant has caused drainage problems to the road and surrounding properties. Ultimately, they wished that the applicant would just complete the construction since the way he has been going about it for 20 years has in their mind, negatively impacted the area. They felt that once the house was completed it would actually increase the property values but were concerned that the applicant could just drag out the construction to the property. Due the fact that the Board just received the material that was presented the public hearing was adjourned until January 23, 2006.
11. The public hearing was continued on January 23, 2006 and the O'Sullivans again expressed their concern about how long the applicant has had to complete the construction. They reiterated the fact that they had no real objection to the applicant building a house but that it needed to be finished. Chris Marrison spoke out about his concerns that the applicant had caused water drainage problems to his property. He was also concerned that other problems could occur during the construction of the Applicants home. The Zoning Board advised Mr. Marrison to contact the Building Dept. or the Highway Superintendent if problems continue.
12. When the public had finished speaking, the applicants' representatives summarized their position to the Board. It was their position that the property had received access approval back in the 70s which was re-affirmed again by the Philipstown Planning Board in the 1980s. That this access ran with the land and did not expire since no time limit is imposed by the Town Code. Therefore, once the applicant received the new County Health Dept. permit the stop work order should have been lifted. Following the Representatives presentation the Board voted to close the public hearing.

**Section Two: FINDINGS AND CONCLUSIONS:**

The Board hereby finds that:

1. The weight of evidence presented at the public hearings, as discussed in the "Findings of Fact" above, supports the findings that the lot for which the building permit was issued to received access approval on February 18, 1970.
2. The weight of the evidence presented at the public hearings as discussed in the "Findings of Fact" above, supports a finding that the lot for which the building permit was issued continues to have access approval by the Applicant as evidenced by the minutes of the Town of Philipstown Planning Board and the fact that the Town Code does not contain any time limitation for the revocation of any access approval.

**Section Three: SUMMARY OF FINDINGS:**

Based upon the above findings, and taking into consideration the evidence produced for the hearings, including testimony by witnesses and sworn affidavits, the Board finds that the lot for which the building permit was issued to received and continued to have access approval and that the revocation of Building Permit #6371 based on lack of access was in error. Therefore, any permit revocation and any stop work orders issued due to lack of access should be lifted and the permit re-issued.

**THE ROLL CALL VOTE:**

The question of the foregoing resolution calling for granting the Appeal of Alvin Friedman-Kien was put to a vote on roll call on the 6th day of March, 2006, the results were as follows:

Vincent Cestone, Chair	Voting for/against
Victor Carlson, Member	Voting for/against
Leonard Lim, Member	Voting for/against
Joan Turner, Member	Voting for/against
Bill Flaherty, Member	Voting for/against

**ATTENTION APPLICANTS**

**FURTHER COMPLIANCE WITH THE PHILIPSTOWN ZONING CODE REMAINS ENTIRELY YOUR RESPONSIBILITY. A FAVORABLE VOTE ON THIS INTERPRETATION IS NOT THE EQUIVALENT OF A BUILDING**

**PERMIT/CERTIFICATE OF OCCUPANCY, SITE PLAN OR VARIANCE FROM OTHER CODE PROVISIONS OR REQUIREMENTS. ALL NECESSARY INSPECTIONS AND PERMITS MUST BE ARRANGED AND/OR SECURED THROUGH THE PHILIPSTOWN BUILDING DEPARTMENT. PLEASE SEEK THE ADVICE OF THE BUILDING DEPARTMENT CONCERNING YOUR PARTICULAR CIRCUMSTANCES.**

**Tim Pagones** – Take in mind that there are only three of you and you all have to vote one way or the other.

**Vincent Cestone** - Okay. I'll make a motion that we accept the resolution as read. Do I have a second?

**Bill Flaherty** - I second

**Vincent Cestone** - All in favor?

**All Board Members** - Aye

**Vincent Cestone** - Roll call vote. I'll vote in favor of the resolution

**Bill Flaherty** - So do I

**Vincent Cestone** - Len?

**Lenny Lim** - I vote for

**Tim Pagones** – okay. It carries.

**Vincent Cestone** - Old business.

**Tim Pagones** – Any old business

**Vincent Cestone** - Yes. I have a letter from Tom Monroe asking if we need any additional information in the Tuana file to proceed with the public hearing.

**Lenny Lim** - Tuana

**Kim Shewmaker** - It is on for a public hearing April 3<sup>rd</sup>. The thing is I keep asking him for my files back. They take the files out of the drawer and when I go in to make copies or file or get information for public hearing notices, the file is gone. And I am always writing a note that I need the file, where is it? So I guess he is responding back do I need anything in the file.

**Lenny Lim** - No. You need the file.

**Kim Shewmaker** - Thank you. That's my concern.

**Vincent Cestone** - So do you want me to call Tina?

**Kim Shewmaker** - No. I just wanted you to see the note, I'll talk to Tina

**Tim Pagones** – We've had this problem with other files, Vrooman was one, Cooper, what happens is, it is almost getting to the point where the secretary needs to have two files. One that she keeps somewhere and one that is available for the public because unless the Town starts enacting some kind of thing that there is 15 exhibits, you are signing out, if Joe Blow comes to Town Hall and okay you are signing for that file, and when it comes back, there better be 15 exhibits. So unless the Town is really going to start

**Lenny Lim** - Why can't we get it back from Tom?

**Kim Shewmaker** - Well I guess maybe he is working on it. But I have had this problem with the files. If he is working on it,

**Lenny Lim** - Shouldn't the zoning board be able to get their files back if we need them

**Kim Shewmaker** - Well I have a file drawer down there so if there are any problems or issues, Tina can get to it, Tom can get to it, but they are supposed to put it back. I don't always get it back

**Lenny Lim** - You don't always get it back

**Kim Shewmaker** - It's around. I'm sure Tom probably has it among his stuff

**Lenny Lim** - But you have to go looking for your own file

**Kim Shewmaker** - Right and that's why I always leave a note, I need to file could I please have the file back

**Vincent Cestone** - I'll make a phone call tomorrow. Also, I don't know if you've seen the letter from the Center for Municipal Solutions on the Omnipoint application that has been postponed while we are waiting for the information. They basically, they didn't refuse, but they put voluminous arguments to not do a call test. And they haven't done it. And as far as a drive test where they drive with the equipment in the car, they provided only information at the decibel level that they want approved. And basically, the bottom line on this the Center for Municipal Solutions has once again asked them for this information and if they refuse to give it to them, they are going to recommend to us that they haven't proved their need.

**Lenny Lim** - Is there anything that we've asked for that we haven't asked other carriers?

**Vincent Cestone** - No. You saw here when Cingular was here, they already provided that information

**Lenny Lim** - That's what I am saying. I want it on the record nobody else has failed to provide us with this information when asked for it

**Vincent Cestone** - That's correct

**Lenny Lim** - Okay

**Tim Pagones** – Well let me just say this. I guess one firm is saying the code doesn't require it.

**Vincent Cestone** - Well a special use permit does require

**Tim Pagones** – But what happens is your requirements are not the 175.53 for special use permit specifically says towers are governed by this section not special use permits. So you just don't have a free for all to ask for anything. So I mean, I am not saying you are wrong in asking for what you are saying, you aren't doing anything illegal. But they are raising the argument the code doesn't require it.

**Vincent Cestone** - I have a feeling

**Tim Pagones** – So what I am saying is if it turns out that they are right, then the fact that everybody else did what you wanted doesn't mean anything. They just did it. I mean like I had said to the Chairman once before, you can say you know what as part of the application I want you to wax the town car. And if everyone does it, the first one that says no the town code doesn't require it

**Lenny Lim** - I am not asking for something so outrageous

**Tim Pagones** – Well I am just saying, right now this is the first one that's really challenging it. What I will do is I am going to put a call into Mr. Gaudio, I've got that letter from Mr. Comi from the Center for Municipal whatever and

**Vincent Cestone** - This board is prepared to test it in court

**Tim Pagones** – Okay

**Bill Flaherty** - Isn't there something about the validity of the information that we obtain as a result of the drive test

**Tim Pagones** – I think their argument is that an actual call test is not a scientific way of proving it. They are saying that during the spring when the leaves on

**Vincent Cestone** - But that's not true because it is the same no matter what

**Tim Pagones** – That's what they are just alleging. They are just saying that this actual, we'll do a drive test but now I think Mr. Comi is saying well they did a drive test but all they did was use the one frequency they want. They didn't do a drive test at neg 95 or neg 90. They did it at neg 84 which is what they are looking for. So I think to better evaluate it, they should at the very least do like Mr. Comi is saying do a drive test at neg 95 and a neg 90 and then go to neg 84 which is what you want and maybe one lower at neg 80. So give us a whole range don't just say here is what we want and here is our test. Now their other argument is Mr. Comi is looking to have them do an actual fall test

**Vincent Cestone** - And that's what this board has requested

**Tim Pagones** – Right. And they right now they are skirting the issue I'm speaking to my client about it. But I guess the gist of it is I don't believe his client really wants to do an actual call test.

**Bill Flaherty** - Isn't that cost prohibitive as well from what I have read and from what I have heard here

**Vincent Cestone** - They are spending hundreds of thousands of dollars to put this application through and build and what we are asking to do would only cost a thousand dollars.

**Bill Flaherty** - Well doesn't the equipment itself cost that much

**Vincent Cestone** - You mean for the actual

**(cannot hear)**

**Vincent Cestone** - I'll make a motion, if there is not any more old business, I will make a motion to close the public hearing, I mean the meeting

**Lenny Lim** - Second.

**Vincent Cestone** - All in favor

**All Board members** - aye

**NOTE:** These Minutes were prepared for the Zoning Board of Appeals and are subject to review, comment, emendation and approval thereupon.

**DATE APPROVED:** 3/20/06

Respectfully submitted,

Kim Shewmaker  
Secretary