

MAR 24 2015
CITY OF WALTHAM

FOR THE
CITY OF WALTHAM
ZONING BOARD OF APPEALS

GENERAL HEARING

March 10, 2015

7:00 P.M.

at

Public Meeting Room, First Floor
Arthur Clark Government Center
119 School Street
Waltham, Massachusetts 02451

Barbara Rando, Chair
Michael Cotton
Glenna Gelineau
Marc Rudnick
John Sergi
Michael Squillante

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Waltham Zoning Board of Appeals/3-10-15/2

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A T T A C H M E N T S

Legal Notices: Case No. 2015-04
Case No. 2015-05

Case No. 2015-04:
Brief

Case No. 2015-05:
Petition/Brief
Proposed Findings of Fact
Proposed Decision, as Amended

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P R O C E E D I N G S

BARBARA RANDO, CHAIR: Good evening.
The Zoning Board of Appeals for Tuesday, March 10,
2015 is called to order at 7:00 p.m.

Tonight we have two new cases before
us: Case 2015-04, Robert and Dovile Murray, 67
Knollwood Ave. (sic), and that's for a variance; Case
2015-05, Louis J. Antico and Anthony J. Antico,
Prospect Hill Road, and that's for a special permit.

The members sitting this evening on
the Murray case are Mr. Sergi, Mr. Rudnick, Mr.
Gelineau, Mr. Cotton, and I am Barbara Rando, Chair.

The members sitting on the Antico case
are Mr. Sergi, Mr. Squillante, Ms. Gelineau, Mr.
Cotton, and the Chair.

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1 **Case Number 2015-04: Robert and Dovile Murray, 67**
2 **Knollwood Drive.**

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4 BARBARA RANDO, CHAIR: Will the Clerk
5 please read the petition in Case 2015-04, Murray.

6 Would you mind being the Clerk? Our
7 Clerk is not here.

8 MICHAEL COTTON: (The Clerk reads the
9 notice for the above-mentioned Case into the record.
10 See Attached.)

11 BARBARA RANDO, CHAIR: Thank you.

12 May we hear from the Petitioner or the
13 Petitioner's representative please? Please give your
14 name and address for the record. And, I'm sorry, I
15 think I said Ave. and it's Drive, Knollwood Drive.

16 BOB MURRAY: Good evening. My name is
17 Bob Murray and this is my wife Dovile.

18 DOVILE MURRAY: Dovile Murray.

19 ROBERT MURRAY: And we are
20 representing ourselves this evening.

21 We've had the property since -- my
22 wife has had the property since 1955.

23 BARBARA RANDO, CHAIR: Do you have
24 something you want to pass out first?

1 DOVILE MURRAY: Yes, sure.

2 BARBARA RANDO, CHAIR: Thank you.

3 You may continue. I'm sorry.

4 ROBERT MURRAY: The house was
5 purchased originally with the intent of owning one
6 house and having a side lot next to us as a buildable
7 lot. And it was part of our investment and
8 retirement planning purposes all along.

9 My wife just retired from teaching in
10 the school system last year, and we're just thinking
11 more along the retirement thing, where do we go with
12 things, along that line. At that point in time, we
13 started looking at what could we do with the second
14 lot. And then we put in a small lot determination
15 request through the Building Department and the Law
16 Department. The results of that came back, and
17 that's in the next to the last page in the pamphlet
18 that came back. And that's the specific letter that
19 we received back.

20 It identified to us that the house was
21 not totally sitting on Lot 20. Well, it was totally
22 sitting on Lot 20. But, unfortunately, the side lot
23 line was only 3.3 feet on the front corner of the
24 house. It was situated at a corner of -- it was

1 situated at an angle. If the house had been slightly
2 turned, it would have been in full compliance. And
3 it's just the only thing that I can think of is that
4 we had zoning back then when it was originally built,
5 but at that point in time probably weren't precise
6 enough to be precisely sitting on that particular Lot
7 20.

8 So, what we're looking to do is get a
9 variance for that front corner. And we're looking
10 for a variance to going from five feet to going down
11 and getting approval to go on 3.3 feet. We are not
12 doing any existing construction whatsoever.

13 Now, during the discovery and when we
14 had a surveyor come out and actually find out the
15 precise location of the house, we also found out that
16 the rear of the house is also not in compliance with
17 the rear side line variance. So, in that request,
18 when they do the calculations because there are
19 different side lot lengths, the calculated value
20 needed to be 25.21 feet, and we actually have 21.56
21 feet. All dimensions on the house have been done by
22 survey.

23 I'm open for any questions, yes.

24 BARBARA RANDO, CHAIR: Does anyone

1 have any questions so far of Mr. Murray?

2 ROBERT MURRAY: I've also included a
3 picture in the brochure. It's on the very last page.

4 BARBARA RANDO, CHAIR: No questions
5 from Board members?

6 MARC RUDNICK: Not at this point,
7 Madam Chairman.

8 BARBARA RANDO, CHAIR: All right. You
9 may continue.

10 ROBERT MURRAY: Some of the matters
11 that we find in fact here are that it's located at 67
12 Knollwood Drive. Right now, the property has it in -
13 - is one parcel of land in two lots. And it's
14 located in a Residence A-3 District.

15 As I mentioned before, we're trying to
16 get a variance on the side yard, and we're also
17 trying to get a second variance on the rear yard
18 line.

19 These requested variances are
20 dimensional in nature. So, the Board does have that.

21 The lot was created in 1940, and the
22 house was constructed in 1955. And, of course, it
23 met all of the requirements at the time of building.

24 The side yard property lines are not

1 perpendicular to the street and are of varying
2 different lengths. It makes it a little bit
3 different. And I just wish they had just rotated the
4 house a little bit better when they made the
5 installation originally.

6 There has been no physical condition
7 changes to the outside exterior of the house in its
8 nearly 60 years of existence, and we're not proposing
9 any actual changes to the house right now.

10 We feel that it's in the capability of
11 the Zoning Board to approve this. It does have a --
12 it's just asking for a dimensional variance. We feel
13 it's minor in nature. We are the immediate abutters
14 in Lot 20, or Lot 21, and we would be the most
15 affected by it.

16 And the purpose of what we're trying
17 to do is to finalize the small lot determination
18 letter and get a clear separation of the two lots.

19 GLENNA GELINEAU: Did you speak with
20 the neighbors on the other side?

21 ROBERT MURRAY: We have spoken to most
22 of our neighbors and have not had a problem with the
23 immediate neighbors when talking to them.

24 GLENNA GELINEAU: So the neighbors to

1 the left of the lot?

2 ROBERT MURRAY: As you're looking at
3 the map from the street --

4 GLENNA GELINEAU: Yes.

5 ROBERT MURRAY: -- to the left, that's
6 a brand new construction. I don't -- did you talk to
7 them the other day?

8 DOVILE MURRAY: Mm hum. They have no
9 problem.

10 GLENNA GELINEAU: No problem.

11 DOVILE MURRAY: No problem.

12 BARBARA RANDO, CHAIR: So what are you
13 saying is your hardship, that the house was placed on
14 the lot at an angle? That is your hardship?

15 ROBERT MURRAY: I don't -- all I can
16 give you is an interpretation. And this is just the
17 amateur in me not the professional attorney coming up
18 before you. I don't think they paid attention to it
19 when they sited the houses back then because if that
20 existed -- and I'm sure the side yard variance was
21 there with the five feet -- if they had just rotated
22 the house a little bit, it would have been in full
23 compliance of the side yard line. It's just -- it's
24 just I'm stuck with that, what they did. And I'm

1 sure they didn't pay that much attention to the
2 actual siting of the building when they built it up.
3 And what it's doing is preventing us, 1.7 feet on
4 that side yard line is preventing us from using that
5 second lot.

6 BARBARA RANDO, CHAIR: Any other
7 questions for Mr. Murray?

8 MARC RUDNICK: Are you aware of there
9 ever having been a house on the empty --

10 ROBERT MURRAY: No, there has never
11 been a house.

12 MARC RUDNICK: Never. And this is --

13 ROBERT MURRAY: I know that for a
14 fact.

15 MARC RUDNICK: Is this the first house
16 built? Oh, this was built in the '50s?

17 DOVILE MURRAY: That's correct.
18 Fifties, yes.

19 ROBERT MURRAY: Yes.

20 MARC RUDNICK: So there's nothing on
21 this lot?

22 DOVILE MURRAY: No.

23 ROBERT MURRAY: There was nothing on
24 the lot prior.

1 MARC RUDNICK: Ever?

2 ROBERT MURRAY: That is correct. It
3 was probably one of the early houses on the street.

4 MARC RUDNICK: The house at 85 is the
5 one you're saying is new construction there?

6 DOVILE MURRAY: It's the new
7 construction, correct.

8 ROBERT MURRAY: That's actually, I
9 believe, the layout of that house, too, the new
10 construction house.

11 MARC RUDNICK: As drawn on this?

12 ROBERT MURRAY: Yeah, as drawn. I'm
13 familiar with the outline of the previous house, and
14 that would be the new construction.

15 MARC RUDNICK: So there was a
16 knockdown there?

17 ROBERT MURRAY: There was a knockdown
18 there. That's correct.

19 DOVILE MURRAY: That's correct.

20 ROBERT MURRAY: If you'll notice --

21 BARBARA RANDO, CHAIR: Is 85 a
22 completely new dwelling?

23 DOVILE MURRAY: Yes.

24 ROBERT MURRAY: Yes, that's correct.

1 BARBARA RANDO, CHAIR: I didn't notice
2 it today that it was new. It's completely up and
3 all?

4 DOVILE MURRAY: Yes, occupied as of
5 December.

6 ROBERT MURRAY: Late December it was
7 occupied. They probably got the occupancy permit
8 late December.

9 BARBARA RANDO, CHAIR: All right. Is
10 there anyone --

11 MARC RUDNICK: I have a --

12 BARBARA RANDO, CHAIR: Go right ahead.

13 MARC RUDNICK: Thank you. So, I
14 imagine maybe you looked into the question of
15 realigning the lots, moving the dividing line,
16 establishing a new line?

17 ROBERT MURRAY: Yes. If I move -- if
18 I move the line, then I lose the small lot on
19 determination.

20 MARC RUDNICK: On both sides?

21 ROBERT MURRAY: On both lots, yes.

22 DOVILE MURRAY: Yes.

23 ROBERT MURRAY: I cannot change the
24 lot dimensions. My only other alternative to get the

1 value of the two lots is to tear the one house down
2 and then put two new houses up.

3 DOVILE MURRAY: Which would be a
4 waste.

5 ROBERT MURRAY: We just don't feel
6 that's good ways of doing business. So, it's easier
7 for -- not easier, it's more convenient for us, more
8 convenient for the neighborhood, more convenient for
9 the City to keep a good house in the inventory, and
10 you ask for the variance on that, and still give us
11 the capability of building the other house.

12 MICHAEL COTTON: Did it allow for a
13 rear yard setback in the old lots?

14 ROBERT MURRAY: It's done by a
15 formula. The formula is outlined on the top of this
16 chart. The formula is up there. You take the 100-
17 foot, and then depending upon the length of the side
18 line you subtract a little bit. And so it cut back
19 down to a 25.21 is the minimum rear yard.

20 Now, the difference -- there's a
21 difference in the rear yard and the side yard setback
22 request. There's absolutely nothing I can do on the
23 rear yard. Now, we could not grant -- if you don't
24 grant me the side yard line, that means I just can't

1 use Lot 20. But the separation of Lot 20 and Lot 21
2 will not solve the rear yard whatsoever.

3 BARBARA RANDO, CHAIR: Right.

4 ROBERT MURRAY: Unless you do a tear
5 down.

6 MARC RUDNICK: Am I misunderstanding
7 it? You're planning to build a house on the other
8 lot and move into that one?

9 DOVILE MURRAY: No. No, we're just
10 planning to be able to sell it.

11 ROBERT MURRAY: We want the
12 capability.

13 DOVILE MURRAY: Yeah.

14 ROBERT MURRAY: Because that's part of
15 our investment package.

16 DOVILE MURRAY: Right.

17 ROBERT MURRAY: We thought we had a
18 buildable lot all along. And, suddenly, when we
19 finally start doing the legal paperwork on it, we
20 find out that we had problems. So, it's better to
21 bring the problems to its attention and address them.

22 MARC RUDNICK: And you can transfer
23 your old lot rights to a new owner of that property.

24 ROBERT MURRAY: That's correct.

1 MARC RUDNICK: And we expect that that
2 owner will come in with a conforming --

3 ROBERT MURRAY: If anybody were to
4 build on the Lot 20, whether it be me or any new
5 owner -- 21, I'm sorry -- would have to be in full
6 compliance with the building codes --

7 BARBARA RANDO, CHAIR: Of course.

8 ROBERT MURRAY: -- and of everything.

9 BARBARA RANDO, CHAIR: Of course.

10 ROBERT MURRAY: And, see, that's --
11 we're not addressing anything going on on lot 21 at
12 that point in time. That would have to come back
13 either with the building board. If they wanted a
14 variance, then they'd have to come back through this.
15 But I would assume if somebody would build, they
16 would build according to building code and would not
17 need to come back for a hearing at that point in
18 time.

19 BARBARA RANDO, CHAIR: Is there anyone
20 in the audience that is in favor of this petition?

21 Is there anyone in opposition?

22 Seeing none in favor, anyone in
23 opposition?

24 Seeing none in opposition.

1 Anyone seeking information, that would
2 like a little bit more information on it?

3 Seeing none.

4 All right. You can continue with your
5 proposed finding of fact. You can read those into
6 the record.

7 The findings of fact. Number 1, the
8 locus is known as and numbered 67 Knollwood Drive and
9 is located in Residence A-3 Zoning District.

10 Number 2, the requested variance is
11 from the provisions of Article 4.2181(a), which
12 requires that no side yard shall be less than five
13 feet and the existing and proposed side yard setback
14 is 3.3 feet on the southeasterly side yard.

15 The second requested variance is from
16 the provision of Article 4.2181(b), which requires
17 that the rear yard setback shall not be less than
18 25.21 feet and the existing and proposed rear yard
19 setback is 21.56 feet.

20 The requested variance is dimensional
21 in nature and, as such, this Board has both the power
22 and authority under Mass. General Law 40A, Sections
23 10 and 14, and under the Zoning Ordinance of the City
24 of Waltham, Article 7, Section 7.2 and 7.3, to grant

1 it.

2 The lot was created in 1940 and the
3 house was constructed in 1955.

4 At the time of construction, the
5 property met all applicable requirements as evidenced
6 by the issuance of a building permit.

7 Lot 20 and 21 have both qualified as
8 an old or small lot under Section 4.218 of the
9 ordinance.

10 The property has side yard property
11 lines that are not perpendicular to the street and
12 are of different lengths.

13 BARBARA RANDO, CHAIR: Do we know that
14 -- excuse me -- do we know that to be a fact, number
15 eight?

16 MARC RUDNICK: Well, we have a plan
17 that shows, you know, it's not --

18 BARBARA RANDO, CHAIR: So, it is.

19 MARC RUDNICK: It's not perpendicular.
20 Yeah, they're certainly of different lengths.
21 They're certainly not perpendicular to the street.

22 BARBARA RANDO, CHAIR: Go ahead. I'm
23 sorry. Continue.

24 ROBERT MURRAY: Number nine, in

1 addition to these physical conditions, there is a
2 structure built into the property which has existed
3 in its location for almost 60 years. No change in
4 existing building is proposed.

5 Number 10, these combined conditions
6 are not common in the Zoning District.

7 And, number 11, because it is an
8 existing structure, no changes can be made on the
9 rear yard setback or side yard setback without
10 demolishing the house or lifting the entire house and
11 move it slightly at considerable financial hardship.

12 BARBARA RANDO, CHAIR: All right.

13 MICHAEL COTTON: So your hardship is
14 the structure, is that what you're saying?

15 ROBERT MURRAY: The financial hardship
16 would be that we could not use Lot 21.

17 MICHAEL COTTON: Oh, I understand that
18 part. Okay.

19 BARBARA RANDO, CHAIR: Go ahead.

20 MICHAEL COTTON: All right. I'm
21 sorry. Go ahead.

22 ROBERT MURRAY: The financial hardship
23 would be we would lose the use of Lot 21 as a
24 separate lot, or to change Lot 20.

1 GLENNA GELINEAU: Tear the house down.

2 ROBERT MURRAY: It would be the cost
3 to bring that one into compliance, which may be a
4 more applicable way of phrasing it.

5 GLENNA GELINEAU: Yeah, or you can
6 tear the house down.

7 ROBERT MURRAY: Or we could tear the
8 house down, yes. But there's no physical way of
9 actually changing that house. I mean you can't cut
10 corners off and sides of houses off. It would have
11 to be a total demolition.

12 MICHAEL COTTON: Who's building that?

13 ROBERT MURRAY: That's my
14 interpretation.

15 MICHAEL COTTON: Are you building
16 that?

17 ROBERT MURRAY: No, I am not.

18 BARBARA RANDO, CHAIR: All right. You
19 may continue with your proposed decision.

20 ROBERT MURRAY: Therefore, the Board
21 of Appeals of the City of Waltham, having met all
22 legal requirements by proper publication and posting
23 and after public hearing and due deliberation, voted
24 to grant the variance requested in Case No. 2015-04,

1 and, based upon the adopted findings of fact, which
2 are attached hereto as part of this decision, and
3 incorporated herein by reference, cites as reasons
4 the following:

5 That there are circumstances
6 especially affecting this locus, but not generally
7 affecting the Residence A-3 Zoning District in which
8 it is located in that the side lot lines are not
9 perpendicular to the street and an existing structure
10 that was built 60 years ago was placed at an angle on
11 the lot, creating the need for side and rear lot
12 variance. The parcel of two lots was purchased with
13 the intent of one house being on one lot and the
14 second lot being available for future consideration.
15 The current structure on Lot 20 would have to be
16 demolished and rebuilt to bring it into compliance
17 with the rear yard and side yard setback
18 requirements, which would cause both a practical and
19 a financial hardship.

20 The petition may be granted without
21 substantial detriment to the public good because the
22 existing house is in keeping with the single-story
23 layout of other houses in the neighborhood.

24 BARBARA RANDO, CHAIR: Any other

1 questions of Mr. Murray?

2 MICHAEL COTTON: Yes.

3 BARBARA RANDO, CHAIR: Go right ahead.

4 MICHAEL COTTON: When you bought this
5 property, were you aware that there were two separate
6 lots on the parcel?

7 DOVILE MURRAY: Yes.

8 MICHAEL COTTON: Did you have some
9 sense that they were both buildable lots at that
10 point?

11 DOVILE MURRAY: Correct, yeah.

12 MICHAEL COTTON: That wasn't correct
13 though, right?

14 GLENNA GELINEAU: Well, they are
15 buildable.

16 DOVILE MURRAY: That's what I was
17 told.

18 MICHAEL COTTON: They were buildable
19 until you got an old lots opinion from the City.

20 DOVILE MURRAY: Correct.

21 MICHAEL COTTON: Right. But you
22 bought the house expecting to be able, someday
23 perhaps, to develop the other side of the property?

24 DOVILE MURRAY: That is correct, yeah.

1 ROBERT MURRAY: For clarification, the
2 house was purchased by my wife and her first husband
3 who is now deceased. And then when we married a
4 second time, then I became the joint -- joint
5 possessor, for clarification.

6 MARC RUDNICK: So, you did all your
7 notifications? I'm assuming that the Commonwealth
8 was notified?

9 ROBERT MURRAY: Yes, that's correct.

10 MARC RUDNICK: And you've been to the
11 Conservation Commission already?

12 ROBERT MURRAY: No, there was no issue
13 for Conservation.

14 MARC RUDNICK: Yeah, it will come up
15 when you want to build the other house.

16 ROBERT MURRAY: Oh, absolutely, 100
17 percent.

18 MARC RUDNICK: So, we don't really
19 know that Conservation will allow a house to be built
20 on that site.

21 ROBERT MURRAY: That would be correct.

22 MARC RUDNICK: You're just hoping for
23 that.

24 DOVILE MURRAY: That's correct.

1 MARC RUDNICK: Thank you. That's all,
2 Madam Chair.

3 BARBARA RANDO, CHAIR: Any other
4 questions? Mr. Cotton, do you have any questions?

5 MICHAEL COTTON: No.

6 BARBARA RANDO, CHAIR: Ms. Gelineau?

7 GLENN A GELINEAU: No.

8 BARBARA RANDO, CHAIR: Mr. Sergi, any
9 other questions?

10 JOHN SERGI: No.

11 BARBARA RANDO, CHAIR: All right. I
12 am ready to entertain a motion on the proposed
13 finding of facts.

14 MICHAEL COTTON: I would like to make
15 a motion that we accept the finding of facts of the
16 Petitioner as being the finding of facts of the
17 Board.

18 BARBARA RANDO, CHAIR: Motion by Mr.
19 Cotton. Do I have a second? Second on the proposed
20 finding of facts?

21 JOHN SERGI: Madam Chair, I think I'm
22 really not comfortable here with this presentation.
23 I think that's what I'm having difficulty with is the
24 finding of facts and the decision. I'm a little

1 unclear.

2 I think this case has merit. I'm just
3 thinking maybe you need to do a little bit more
4 research as far as presentation of your hardship and
5 the reasons for it. I just -- I think it's a little
6 unclear to me right now. I think what you're asking
7 for is, in my opinion, is not a lot. I mean you're
8 not asking for us to cut, you know, the requirements
9 in half. It's a few feet on one and a few feet on
10 the other. So, I think it does have some merit from
11 that standpoint. I just I think the presentation
12 needs a little work. And, you know, my advice would
13 be to consult a zoning attorney and maybe get some
14 advice on that part of it.

15 BARBARA RANDO, CHAIR: I agree
16 completely with Mr. Sergi. The hardship is a little
17 choppy. It really is. We've had other cases come
18 before us when people had saved a piece of land for
19 their future and found out it was not buildable for
20 whatever reason. And I think that maybe if you did
21 speak to an attorney they could help you. That's my
22 opinion.

23 So, you have the right to withdraw
24 without prejudice tonight and then seek some help and

1 come back to us if you would like to do that. We
2 didn't get a second on the finding of facts, so we're
3 being generous by letting you withdraw and seek some
4 assistance and come back.

5 DOVILE MURRAY: I'm just not clear how
6 else you describe this hardship. It's a financial
7 hardship.

8 BARBARA RANDO, CHAIR: Well, it
9 doesn't actually mean financial as to loss of money.

10 DOVILE MURRAY: Well, financial in the
11 sense that I can't sell the second lot, so I can't
12 use it as my retirement money.

13 BARBARA RANDO, CHAIR: Right.

14 DOVILE MURRAY: I was always depending
15 on having that land for money for the future. And
16 now I have to sell the house with the lot, and that's
17 not going to give me much compared to what I could do
18 if I had two lots.

19 GLENN GELINEAU: But you do have two
20 lots.

21 ROBERT MURRAY: The second physical
22 hardship on this thing is taking Lot 20, because
23 that's what we're asking the variance on to free up
24 the second lot, is that there is -- it would cost --

1 well, number one, I don't believe you could actually
2 lift up that house and rotate it because of the
3 structure, of what it is. The second aspect of it is
4 to tear it down. And, to tear it down, it's going to
5 cost anywhere from \$50,000 to \$100,000 to tear it
6 down. Now, that's a pure estimate on my part. I'm
7 not an engineer or a consultant. But there's no
8 physical way that I can actually correct that house.
9 If I slice off -- I'd have to slice off two corners
10 of the house. I'd have to slice off that front
11 corner of the house to bring it into compliance.
12 That's major construction. It's not just a minor
13 construction work that we have here.

14 MARC RUDNICK: Mr. Murray, the Board
15 is giving you advice. And part of what's involved in
16 that advice is that deeper presentation of how you
17 won't be able to profit is generally not what the
18 hardship is about. It's a part of the hardship is
19 the finance. It's not to be ignored. But something
20 that is making your use of the property more
21 difficult other than the fact that you can't split
22 this up and have a nice place to live for yourself
23 and make some money on the parcel, generally being
24 able to subdivide your parcel and make money doing it

1 is not a hardship that zoning board are particularly
2 interested in granting variances on.

3 ROBERT MURRAY: That I recognize, yes.

4 MARC RUDNICK: So, I think the Board
5 is giving you good advice to deepen or actually
6 broaden the hardships. I think, you know, talking to
7 an attorney you can probably discover other hardships
8 here.

9 I have to say for myself that I rarely
10 am interested in granting variances on a small lots
11 opinion. I feel like the City has already given you
12 a spectacular gift compared to other homeowners in
13 saying that you can build to the standards that we
14 had at the turn of the previous century in this
15 community. Nobody else gets to build to five feet of
16 the property line. Nobody else gets to have
17 properties that small under current zoning. So,
18 you're getting a generous gift from the City. So I'm
19 usually, you know, not that interested in granting
20 further variances from a condition that the
21 neighborhood is going to wind up living with.

22 My other advice to you would be to
23 strengthen your case by bringing us testimony from
24 your neighbors that they're okay with this happening

1 because really what you're asking us to do is okay
2 putting another house along this waterfront street.
3 And maybe the neighbors like that and, you know,
4 maybe they love you and will stand up for you. But
5 your case is not impossible for me to agree to, but I
6 think you do need to strengthen it some. And I think
7 that's good advice from the Board when you haven't
8 been able to get a second. I think you have an
9 opportunity here but you need a stronger case.

10 ROBERT MURRAY: Okay. Thank you.

11 BARBARA RANDO, CHAIR: There's
12 criteria that you have to be able to pass, and
13 hardship is one of the criteria.

14 ROBERT MURRAY: Yes.

15 BARBARA RANDO, CHAIR: So, is that
16 your wish? I mean --

17 ROBERT MURRAY: Yes.

18 BARBARA RANDO, CHAIR: How would you
19 like to direct the Board?

20 ROBERT MURRAY: We thank you for your
21 recommendation. And, if I'm correct, it would be in
22 withdrawing a case. Is that the correct procedure?

23 BARBARA RANDO, CHAIR: Withdraw
24 without prejudice.

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1 ROBERT MURRAY: Well, withdraw --

2 BARBARA RANDO, CHAIR: Or continue.

3 ROBERT MURRAY: Can we continue the
4 case?

5 BARBARA RANDO, CHAIR: We would
6 continue the case if you like.

7 ROBERT MURRAY: We would like to
8 continue the case then if possible.

9 MARC RUDNICK: Can they continue the
10 case and bring in new hardships?

11 BARBARA RANDO, CHAIR: Oh, no, no.

12 GLENN GELINEAU: No.

13 BARBARA RANDO, CHAIR: No.

14 MARC RUDNICK: No, they need to
15 withdraw.

16 BARBARA RANDO, CHAIR: Thank you. No,
17 you would have to withdraw without prejudice.

18 MARC RUDNICK: If you withdraw without
19 prejudice, you can come back at your own speed.

20 ROBERT MURRAY: Okay.

21 BARBARA RANDO, CHAIR: And you'll
22 change the case.

23 MARC RUDNICK: You don't have to wait a
24 couple of years to come back.

1 BARBARA RANDO, CHAIR: Right.

2 MARC RUDNICK: But you're changing the
3 case substantially enough where you're introducing
4 new stuff. And I would certainly recommend you also
5 get petitions from the neighbors and other support.
6 Bring some neighbors here that night, especially your
7 abutters.

8 ROBERT MURRAY: Thank you. I
9 appreciate the advice.

10 MARC RUDNICK: But ask us to withdraw
11 the case without prejudice.

12 ROBERT MURRAY: Yes.

13 BARBARA RANDO, CHAIR: All right. Do
14 I have a motion to allow the Murrays to withdraw
15 without prejudice?

16 JOHN SERGI: So moved, Madam Chair.

17 BARBARA RANDO, CHAIR: Motion by Mr.
18 Sergi.

19 MARC RUDNICK: I'll second it.

20 BARBARA RANDO, CHAIR: And seconded by
21 Mr. Rudnick.

22 How do you vote, Mr. Sergi?

23 JOHN SERGI: Yes.

24 BARBARA RANDO, CHAIR: Mr. Rudnick?

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1 MARC RUDNICK: Yes.

2 BARBARA RANDO, CHAIR: Ms. Gelineau?

3 GLENN GELINEAU: Yes.

4 BARBARA RANDO, CHAIR: Mr. Cotton?

5 MICHAEL COTTON: Yes.

6 BARBARA RANDO, CHAIR: And the Chair

7 votes yes. So, you are granted. Good luck.

8 ROBERT MURRAY: Thank you.

9 DOVILE MURRAY: Thank you. We

10 appreciate all your time.

11 BARBARA RANDO, CHAIR: And seek some

12 information, some help. Thank you.

13 Motion for a five-minute recess.

14 JOHN SERGI: Yes.

15 BARBARA RANDO, CHAIR: Second by Mr.

16 Cotton.

17 MICHAEL COTTON: Second.

18 BARBARA RANDO, CHAIR: All in favor?

19 ALL BOARD MEMBERS: Aye.

20 BARBARA RANDO, CHAIR: Opposed?

21 (No Board members opposed.)

22 BARBARA RANDO, CHAIR: Ayes have it.

23 (Five minute recess off the record.)

24 //

1 **Case Number 2015-05: Louis J. Antico and Anthony J.**
2 **Antico, Prospect Hill Road**

3

4 BARBARA RANDO, CHAIR: Will the Clerk
5 please read the petition in Case 2015-05, Louis J.
6 and Anthony J. Antico.

7 JOHN SERGI: (The Clerk reads the
8 notice for the above-mentioned Case into the record.
9 See Attached.)

10 BARBARA RANDO, CHAIR: Thank you.

11 May we hear from the Petitioner or the
12 Petitioner's representative please?

13 ATTORNEY EDWARD BIGHAM: Madam
14 Chairman, members of the Board, for the record, my
15 name is Edward T. Bigham, Jr., attorney at law, 564
16 Main Street in Waltham. And I represent the
17 Petitioner Louis J. and Anthony J. Antico in this
18 petition.

19 What I'd like to do, Madam Chairman,
20 if you don't mind, I know that you know the
21 background and so do some of the others, but since
22 Mr. Squillante and Mr. Cotton were not here on June
23 4th of 2013, I thought I might give them a little
24 background information relative to the petition.

1 BARBARA RANDO, CHAIR: Go right ahead.

2 ATTORNEY EDWARD BIGHAM: In 1962, the
3 Anticos entered into an agreement with the City of
4 Waltham to erect a tower on their property. At that
5 time it was 75 feet. And the tower was constructed
6 per a permit that was issued by the then building
7 inspector.

8 The agreement consisted of two things.
9 First of all, the Anticos were required under the
10 agreement to provide space for the transmitters for
11 the City of Waltham police, fire, and public works.
12 In addition, or in addition thereto, the City of
13 Waltham was going to allow the Petitioners in the
14 construction of the tower to put anchors within the
15 perimeter of the Prospect Hill property. And to
16 those anchors were the guide wires to support the
17 tower.

18 In addition thereto, there was an
19 agreement to allow the Petitioners to construct a
20 small road going from part of the road of Prospect
21 Hill over to their property. And, in fact, they did
22 this. And so they put the antennas for the City of
23 Waltham on the tower.

24 The extended the tower in the '70s to

1 additional height. And then in 1982, they extended
2 to another height of 293 feet, which is the height of
3 it today.

4 And I want to explain that this is a
5 nonconforming tower. It's not noncomplying; it's
6 nonconforming. That is, it was legitimately
7 constructed on that property pursuant to the building
8 permit. So, there's no question as to its authority
9 to be there.

10 Subsequent to that, the Petitioners
11 then decided, because the present tower was in
12 somewhat disrepair, although not crucial, they wanted
13 to substitute it for a new tower eight feet from the
14 original location of the original tower. And they
15 did this per decision of this Board. That tower is
16 293 feet and it has guide wires in the property of
17 the Prospect Hill.

18 The petition tonight is to have the
19 Board allow the Petitioners to remove that tower that
20 was allowed in 2013 over to another part of the
21 property which is beyond the buildings that are on
22 that property and make it self-supporting. Now, if
23 it were to be self-supporting, it's much stronger
24 than the towers that they had. The other towers that

1 they built had hollow parts in them and they rusted
2 inside. And that's why this tower is much much
3 safer. The integrity of this tower is much greater.

4 You may question whether or not this
5 Board has the right to grant a special permit to do
6 such a thing. And I suggest that you look at the
7 case law that -- the cases that I enumerated in my
8 brief, and you will find there are three of them.

9 The first one, I believe, is the *Board*
10 *of Selectmen of Wrentham v. Monson*. And in that
11 case, I believe that case states that there is no
12 violation of the zoning ordinance, that the special
13 permit that was issued to the defendants in that case
14 was legitimate in all respects and had the protection
15 of 40A Section 6. I suggest that this Board -- that
16 the Section -- 40A Section 6, also gives protection
17 to the present tower. It is a nonconforming use.

18 Therefore, why are we looking for a
19 tower that's going to cost more money and to remove
20 from one place to another and build it in a more
21 solid fashion? Well, it's simple. When the
22 Petitioners sought permission to construct the guide
23 wires, they found out they had to go 75 feet more
24 into land of the City of Waltham. And that would

1 take approval from not only the City of Waltham,
2 which they could get, but also approval from the
3 state and the federal government. That presented a
4 problem in terms of time. It may take a long time to
5 accomplish that. So, they found out from other
6 people in the neighborhood that perhaps the guide
7 wires created more of a nuisance than anything else.
8 And the people that live around that area really
9 would like the guide wires that are presently there
10 to vanish. This is the only way it can be done.

11 So, I suggest to you that the petition
12 deserves merit. It's not anything that is different
13 than what was there. The only difference is that
14 it's going to be self-supporting, stronger, and yet
15 not have any guide wires.

16 Now, there may be an issue raised
17 relative to the access to the property, to the
18 Prospect Hill property. And I suggest to you if that
19 is an issue it doesn't belong here. That issue is to
20 another forum, either the City Council, Park and
21 Recreations Agency, but not before the Board of
22 Appeals. So, I want it clearly understood that we're
23 only here to allow you people to approve a removal of
24 one tower to a distant -- to a different area on its

1 own property, same property, but on the other side of
2 that building.

3 I might add at this time and give to
4 you a report from the professional engineer that
5 designed this tower. And he so states that it is --

6 BARBARA RANDO, CHAIR: Thank you.

7 ATTORNEY EDWARD BIGHAM: It so states,
8 as you can see on several pages, that this tower is
9 going to be constructed in such a fashion that it's
10 going to have steel and concrete to support it. And
11 it's going to go down around seven feet deep. And it
12 will sustain winds of over 100 miles an hour. Well,
13 you may say, well, that's not much. But, in their
14 opinion, the engineer states in their opinion that
15 this is more than enough to keep that tower in an
16 upright position and not have any chance of it
17 falling.

18 You might also look at the second page
19 of that document and it says, "All bolts shall be
20 galvanized according to standard specifications for
21 zinc coating of iron and steel hardware." All of
22 these things are in compliance with the recognized
23 Society of Tower Builders.

24 May I just have a moment to take a

1 glass of water?

2 Although this is a change of a tower,
3 it's not a -- it's not a change that would be
4 detrimental to any area or any of the people that
5 live in that area, but rather an improvement in that
6 you're going to get rid of the tower that's closest
7 to the houses, you're going to get rid of the guide
8 wires that are presently on that tower, and you're
9 going to have a self-supporting tower on the other
10 side of the building.

11 The other argument I'd like to put to
12 you is under the case law it's obvious that this is a
13 nonconforming use. It always has been. So there's
14 no problem relative to the ability of this Board to
15 act on it relative to Article 3, Section 3.722. And
16 it gets protection as to the height under Chapter
17 40A, Section 10. And it gets protection under the
18 zoning ordinance under Chapter 40A, Section 6.

19 Other than that, Madam Chairman and
20 members of the Board, I think that most of you
21 realize or have learned what I've said before in 2003
22 -- 2013. Those facts haven't changed an awful lot.
23 If anything, the only difference we have here is we'd
24 like this tower to be moved to another position on

1 the property and make it freestanding.

2 BARBARA RANDO, CHAIR: I have one
3 question right now.

4 ATTORNEY EDWARD BIGHAM: Yes, Madam.

5 BARBARA RANDO, CHAIR: Did you not
6 lose your nonconforming?

7 ATTORNEY EDWARD BIGHAM: Pardon me?

8 BARBARA RANDO, CHAIR: Did you not
9 lose your nonconforming on this property when you
10 changed it?

11 ATTORNEY EDWARD BIGHAM: It's
12 nonconforming.

13 BARBARA RANDO, CHAIR: Did you say it
14 was noncomplying?

15 ATTORNEY EDWARD BIGHAM: No, not
16 noncomplying. If it were noncomplying, it would have
17 meant that we didn't have a permit to build it
18 initially, okay, and it would be illegal right from
19 the start. But if you look at the exhibits and you
20 look at the affidavit of Ohnemus, one of the building
21 inspectors that were there at ht time that the permit
22 was issued, the original permission was issued for
23 them to build a tower of 75 feet. As they extended
24 it, there was no prohibition against extending the

1 tower.

2 BARBARA RANDO, CHAIR: Was a permit
3 taken out at that time?

4 ATTORNEY EDWARD BIGHAM: And you
5 didn't have to have a permit to extend.

6 BARBARA RANDO, CHAIR: And that was in
7 what year, '60?

8 ATTORNEY EDWARD BIGHAM: That was back
9 in I think it's '64, '65.

10 BARBARA RANDO, CHAIR: Okay. And then
11 what about in --

12 ATTORNEY EDWARD BIGHAM: And, I might
13 add, Madam Chairman --

14 BARBARA RANDO, CHAIR: 1982.

15 ATTORNEY EDWARD BIGHAM: -- again,
16 there is no prohibition against -- there was no
17 prohibition, if you look at the -- there is a section
18 of the brief that I gave you that shows the zoning
19 ordinance. I think it's 3.7.1, or 21.7, 21.10, and
20 that says that these kind of towers are exempt from
21 the zoning ordinance.

22 Now, there is one thing I must tell
23 you, that as far as the tower is concerned, they had
24 no problems building it. When he starts to put the

1 transmitters on for the various activities that are
2 going, such as the medical and City of Waltham and so
3 forth, then of course he -- now -- now, he has to get
4 a permit for putting an addition -- any additional
5 transmitters on there. But as far as the tower is
6 concerned, the zoning ordinance didn't preclude them
7 from extending it.

8 Does that answer your question, Madam
9 Chairman? I hope it does.

10 BARBARA RANDO, CHAIR: I'm not sure,
11 Attorney Bigham.

12 ATTORNEY EDWARD BIGHAM: Under 40A,
13 Section 6, Madam Chairman, that allows them the
14 alteration or extension of a nonconforming use when
15 such use proposed extension is not substantially more
16 detrimental or hazardous to the surrounding
17 neighborhoods than the existing nonconforming tower.

18 BARBARA RANDO, CHAIR: So, are you
19 telling me that in 1982 when he extended it without a
20 permit higher that he did not -- still did not lose
21 his nonconforming?

22 ATTORNEY EDWARD BIGHAM: Oh, no, no,
23 no, because he didn't change it. All he did is
24 extend it. And he had the right to extend it.

1 I would suggest you look at the
2 affidavit of Walter Ohnemus, who was the building
3 inspector at the time. I think it's N in the
4 exhibits. It's number N. It says in paragraph four
5 --

6 BARBARA RANDO, CHAIR: I was just going
7 to ask if anyone had questions while I'm looking it
8 up.

9 ATTORNEY EDWARD BIGHAM: It says in
10 paragraph four that the extension to the tower in '61
11 and '82, in his opinion, did not require any
12 additional building permit since Section 21.10
13 excludes wireless radio and telecommunication towers
14 from any height restrictions and the extension did
15 not constitute a material change to the original
16 tower, but merely added additional height, which was
17 however subject to approval of the FAA, which he got.
18 I can't think of any better evidence to your question
19 than his affidavit. He was the building inspector at
20 the time.

21 BARBARA RANDO, CHAIR: Does anyone have
22 any questions while I'm reading this? Mr. Sergi?

23 JOHN SERGI: Not at this time.

24 BARBARA RANDO, CHAIR: Mr. Squillante?

1 MICHAEL SQUILLANTE: Yes, I have just
2 some clarification. Is the present tower in the same
3 place it's always been?

4 ATTORNEY EDWARD BIGHAM: Pardon me?

5 MICHAEL SQUILLANTE: The tower there
6 now --

7 ATTORNEY EDWARD BIGHAM: Yes.

8 MICHAEL SQUILLANTE: -- it's in the
9 exact same place it's always been?

10 ATTORNEY EDWARD BIGHAM: I can't hear
11 you very well.

12 MICHAEL SQUILLANTE: Has it always
13 been in the same location?

14 ATTORNEY EDWARD BIGHAM: The present
15 tower?

16 MICHAEL SQUILLANTE: Yeah.

17 ATTORNEY EDWARD BIGHAM: Yeah.

18 MICHAEL SQUILLANTE: It hasn't moved.

19 ATTORNEY EDWARD BIGHAM: But, the
20 Board in 2013 allowed that tower to be removed,
21 replaced, to a different location.

22 MICHAEL SQUILLANTE: But it didn't
23 happen?

24 ATTORNEY EDWARD BIGHAM: Pardon me?

1 MICHAEL SQUILLANTE: But it wasn't
2 done?

3 ATTORNEY EDWARD BIGHAM: Well, there
4 is -- we got an extension because now we want to try
5 and -- because of the problems we had relative to the
6 guide wires and the anchors, we want to move it to a
7 different location and eliminate those things and
8 make it self-supporting.

9 MICHAEL SQUILLANTE: Well, will the
10 new tower be able to hold more antennas?

11 ATTORNEY EDWARD BIGHAM: Oh, yeah.
12 They'd have to go to the Council to get them, but
13 they can do it. The old towers, the braces and all
14 of the material, was not solid steel. They're
15 hollow. That's what they are.

16 MICHAEL SQUILLANTE: Now, this opinion
17 from Walter Ohnemus is May of 2013.

18 ATTORNEY EDWARD BIGHAM: Pardon me?

19 MICHAEL SQUILLANTE: The opinion from
20 Ohnemus --

21 ATTORNEY EDWARD BIGHAM: Yes.

22 MICHAEL SQUILLANTE: -- is in 2013.

23 ATTORNEY EDWARD BIGHAM: Yeah.

24 MICHAEL SQUILLANTE: Construction of

1 the new tower was in 1986 or something. So, Section
2 21.10, is that the ordinance that was in effect the
3 time the tower was built?

4 ATTORNEY EDWARD BIGHAM: Yes, that's
5 correct, 21.10. And 21.10 is still in existence. I
6 think what you're getting at is how many -- whether
7 or not he can put any more --

8 MICHAEL SQUILLANTE: No, it's a
9 different question.

10 ATTORNEY EDWARD BIGHAM: Oh, all
11 right.

12 MICHAEL SQUILLANTE: Do you know what
13 was the reason for wanting to move it eight feet?

14 ATTORNEY EDWARD BIGHAM: Well, the
15 engineers that he has inspecting the tower on every
16 five years decided that the tower could, you know,
17 sooner or later it's going to have to be removed or
18 replaced or repaired. It can't be repaired. The
19 only other thing he could do is move it, put a new
20 tower up and move it to a different location. He
21 didn't have to do it, but he felt, well, that was
22 probably the prudent thing to do. So, he came before
23 this board on June 4, 2013, and asked the Board to
24 allow him to construct a new tower, remove the old

1 one, and put it eight feet further from the original
2 tower, but the same guidelines, except that when he
3 spoke -- after he spoke to the engineers after all
4 the material was done, the preparation, he found out
5 that the better part of that tower would be to move
6 the guide wires 75 -- the anchors 75 feet further
7 into the property of the City of Waltham.

8 Having said that, they decided, you
9 know, this is just going to create more problems.
10 So, with that in mind, they decided to build -- to
11 ask this Board to allow them to build a self-
12 supporting tower. Is it more costly? Oh,
13 absolutely. Absolutely. Much more costly.

14 MICHAEL SQUILLANTE: Thank you.

15 BARBARA RANDO, CHAIR: Ms. Gelineau,
16 any questions at this time?

17 GLENNA GELINEAU: Excuse me, no.

18 BARBARA RANDO, CHAIR: Mr. Cotton, do
19 you have any questions at this time?

20 MICHAEL COTTON: No, I don't.

21 BARBARA RANDO, CHAIR: I'm still a
22 little confused about the current use, whether it
23 represents a change from the original nonconforming
24 use that renders the structure noncomplying. The

1 original use is described on the building permit from
2 1962, to wit, permission to erect a shortwave radio
3 connection for future dwellings to be erected. That
4 was when it was just for his own personal use. And
5 then he must have gotten the okay because he was
6 going to include the fire and police and whatever --

7 ATTORNEY EDWARD BIGHAM: Yeah. Yeah.

8 BARBARA RANDO, CHAIR: -- which would
9 help the City. And now it's a tower that's marketed
10 and it's a business and managed by a management
11 company. And I'm not sure whether it's a
12 nonconforming, or noncomplying, or --

13 ATTORNEY EDWARD BIGHAM: Well, I can
14 tell you right now it's nonconforming. That's what
15 it is. It's not noncomplying. And the cases hold
16 that argument. If it were noncomplying it would be
17 illegally totally. That's it. When he got the
18 permit in 1962 to build that that would be -- before
19 he got the -- if he didn't get the permit, the tower
20 is illegal. Having got the permit, it's
21 nonconforming. The extensions are not -- he doesn't
22 have to get a permit to do them under Section 21.10.
23 That extension -- those extensions were allowed. So,
24 I'm not sure -- I don't know quite what you're asking

1 me to tell you. I know there's some arguments I put
2 forth in the brief in terms of the -- whether it's
3 nonconforming or noncomplying, but I explained it as
4 best I can.

5 I think if you look at page four,
6 Madam Chairman, the second paragraph is discussing
7 that issue, that question you raised.

8 BARBARA RANDO, CHAIR: The Derby case,
9 how it affects the petition --

10 ATTORNEY EDWARD BIGHAM: Page five,
11 also, Madam Chairman.

12 BARBARA RANDO, CHAIR: The City doesn't
13 have any use for that tower now, does it?

14 ATTORNEY EDWARD BIGHAM: Pardon me?

15 BARBARA RANDO, CHAIR: The City of
16 Waltham doesn't have any use for that tower right
17 now?

18 ATTORNEY EDWARD BIGHAM: Well, their
19 antennas are still there.

20 BARBARA RANDO, CHAIR: So it's backup?

21 ATTORNEY EDWARD BIGHAM: If the small
22 tower that they built, for whatever reason, if that
23 small tower or any of those antennas cannot be used,
24 then they revert back to the tower and use the

1 antennas they have there. They're still operational.
2 They just don't use them, but they can use them.

3 I think one of the cases I really --
4 that's direct on point, in addition to the Monson
5 case or the Selectmen of Wrentham, is there's a case
6 that involves the City of Chelsea where it's *Derby*
7 *Refining Company v. City of Chelsea*. And, in that
8 case, they say that the operation of liquid asphalt
9 storage on the property is a nonconforming activity.
10 And even though the zone change, there was a zone
11 change, doesn't make any difference.

12 I think one thing the Board has to
13 recognize is that this is really not an extension to
14 the effect that it's bigger than or much greater than
15 what's presently there. What's presently there is a
16 tower that has guide wires and same height. But what
17 we're trying to do is remove it and put it on the
18 other side of the building and make it self-
19 supporting, stronger, built better, and guaranteed
20 that it's not going to fall. And I'm sure that the
21 people that live in that area would be happy to get
22 rid of it and so would the City of Waltham.

23 BARBARA RANDO, CHAIR: Any questions,
24 Mr. Sergi?

1 JOHN SERGI: Not at this time, Madam
2 Chairman.

3 BARBARA RANDO, CHAIR: Mr. Squillante?

4 MICHAEL SQUILLANTE: No, I don't think
5 so. I think I'm all set.

6 BARBARA RANDO, CHAIR: Is there anyone
7 in the audience that is in favor of this petition
8 that would like to stand and be recognized? Anyone
9 in favor?

10 ATTORNEY EDWARD BIGHAM: Are you in
11 favor? Are you in favor?

12 JOHN DECOLA: In favor of a new tower?

13 ATTORNEY EDWARD BIGHAM: Yeah.

14 BARBARA RANDO, CHAIR: Please, if
15 you're going to speak come up so that we can hear
16 you.

17 ATTORNEY EDWARD BIGHAM: You've got to
18 come up.

19 JOHN DECOLA: Oh, you've got to be in
20 favor?

21 ATTORNEY EDWARD BIGHAM: Yeah, in
22 favor.

23 JOHN DECOLA: I don't want to be
24 opposed. I don't want to be in favor. What's the

1 other one?

2 BARBARA RANDO, CHAIR: Seeking
3 information.

4 JOHN DECOLA: I want to seek
5 information.

6 BARBARA RANDO, CHAIR: Okay. We'll
7 get to you in one second.

8 Is there anyone in favor? Seeing
9 none.

10 Is there anyone in opposition that
11 would like to be counted? One, two. Two people not
12 in favor. Two not in favor.

13 ATTORNEY EDWARD BIGHAM: I think he's
14 looking for information, Madam Chairman.

15 BARBARA RANDO, CHAIR: Yes, I'll get
16 to him.

17 All right. Anyone --

18 GLENNA GELINEAU: I think he wants to
19 say something.

20 BARBARA RANDO, CHAIR: Oh, come right
21 up please, sir.

22 DAVID KEHS: Is he all set? I think
23 he --

24 BARBARA RANDO, CHAIR: Well, he's

1 seeking -- he wants information. He's not in favor.
2 He's seeking information. So, if you're in
3 opposition, you may come up and give yours. And he
4 may change his mind and be in favor after his
5 information is clear.

6 DAVID KEHS: Okay. My name is David
7 Kehs, K-e-h-s. I live at 76 Midland Drive in
8 Waltham. And I am a frequent visitor of Prospect
9 Hill, Park. And I'm concerned about the impact of
10 this tower on the park and some of the zoning issues.

11 And I've been following this case for
12 a while and spoke at the last hearing two years ago.
13 So, I have several points.

14 First of all, for the construction of
15 this new tower, it appears that the applicant has
16 already done considerable bulldozing and asphaltting
17 within Prospect Hill Park. And there has been no
18 permission from the City to do that. And my
19 assumption is that this is done to produce a staging
20 area for the construction of this tower. And I've
21 brought some photographs.

22 BARBARA RANDO, CHAIR: When was this
23 work done? When was this road --

24 DAVID KEHS: Not the road, an

1 extension of the road.

2 BARBARA RANDO, CHAIR: An extension,
3 when was that done?

4 DAVID KEHS: I believe last fall.

5 BARBARA RANDO, CHAIR: And in all that
6 time the City hasn't done anything or the City
7 Council or Parks, Sandra Place in the --

8 DAVID KEHS: My understanding is that
9 some people have complained to the Recreation Board
10 and that they have referred it to the Law Department.

11 BARBARA RANDO, CHAIR: And no one has
12 done anything.

13 DAVID KEHS: And no one has done
14 anything yet.

15 BARBARA RANDO, CHAIR: Really?

16 DAVID KEHS: But, I have seen -- I was
17 up there around the first of the year and noticed
18 that there are some survey markers so that someone
19 has tried to delineate the exact location of the
20 City's property versus the applicant's property. And
21 now those are sort of covered in snow.

22 BARBARA RANDO, CHAIR: Have you
23 mentioned it to the Law Department yourself? Have
24 you mentioned it to someone --

1 DAVID KEHS: No, I have not.

2 BARBARA RANDO, CHAIR: Are you sure
3 that there are people aware of this that have done
4 nothing?

5 DAVID KEHS: I mentioned it to several
6 Councilors and I think other people may have spoken
7 with the Recreation Department.

8 BARBARA RANDO, CHAIR: Well, that's
9 sufficient. Yeah.

10 DAVID KEHS: And the answer I got from
11 the Ward Councilor was it was in the Law Department.
12 He told me he would get back to me when he heard
13 more, but that was like two months ago.

14 GLENN GELINEAU: Your Ward Councilor
15 or the Ward Councilor for Prospect Hill?

16 DAVID KEHS: The Ward Councilor for
17 Prospect Hill.

18 GLENN GELINEAU: Okay.

19 BARBARA RANDO, CHAIR: I'm sorry.
20 Continue.

21 DAVID KEHS: Okay. So, this work,
22 since it's not approved, nobody knows officially why
23 it's done there. But I assume that the idea is to
24 use that land for staging the construction so that

1 the materials, all the steel for the tower, the new
2 tower, will be brought up there and put on that land.
3 The construction equipment would be stored there.
4 The vehicles driven by the construction workers would
5 be parked in that area. I mean there is some room on
6 the applicant's property but not really enough. And
7 so the whole area would turn into a hardhat area.
8 And the question is how would they ensure the safety
9 of normal park visitors who are walking on the trail.

10 And if you look at those pictures, one
11 of them you can see the little red diamond, which
12 shows -- which indicates a trailhead. But instead of
13 seeing a trailhead, what you see is this big expanse
14 of bulldozed area. So, there will be a conflict
15 between people using the park and the construction of
16 this tower if it goes through.

17 BARBARA RANDO, CHAIR: Well, actually,
18 the road isn't what I was discussing tonight. It's
19 the tower. And I'm shocked to find out that no one
20 has done anything about some extension that shouldn't
21 have been there in the first place. But, go ahead.
22 Continue.

23 DAVID KEHS: Okay. Do you mind if I
24 use the --

1 BARBARA RANDO, CHAIR: No, please do.

2 DAVID KEHS: That's one thing. That's
3 this area up in here, which would probably be used
4 for the construction staging.

5 I noticed in this diagram there's a
6 question of the setback. And the setback for the new
7 tower, which is here, is setback 21 feet from the
8 property line. And I think somewhere on the diagram
9 it said that that was within the proper side yard
10 setback for that residence zone. But it's my
11 understanding that a side yard setback applies only
12 to a residence. Hence, if you build a house, it can
13 be 20 feet from the property line. But there's a
14 separate provision in the zoning code, I have Section
15 10.542 that says that a tower is supposed to be 125
16 feet setback from the property line.

17 Now, you might argue that, well, it's
18 existing and nonconforming and doesn't have to apply
19 to that, but the existing one is more like 60 or 70
20 feet from the property line, and the new one would be
21 pushed closer. So, the new tower is proposed to be
22 more nonconforming than the existing one.

23 BARBARA RANDO, CHAIR: Because it's
24 closer.

1 DAVID KEHS: Because it's closer. And
2 so the reason for the setback is what's called the
3 fall zone where if the tower falls down, or equipment
4 falls off of the tower, or ice builds up on the tower
5 and then melts and falls off, where is it going to
6 fall? And if it's only 20 feet from the property
7 line, it could fall in the park and be a danger to
8 people who are visiting.

9 I think Mr. Squillante touched on the
10 issue of the intensity of use. So, the current tower
11 has a certain amount of -- a certain capacity for a
12 certain number of antennas. The new one will be
13 bigger and stronger and will be able to hold a lot
14 more. And so the question is is that intensity --
15 increase in intensity of use allowed under whatever
16 the zoning provisions are he's asking to use.

17 I also have a question about the road,
18 which is used to access the property from -- through
19 Prospect Hill Park. And the initial purpose of the
20 road was just for the applicant to get there to
21 access this 75-foot tower, which was permitted in
22 1962. Now, there are commercial customers. So, in
23 addition to the applicant, his customers are allowed
24 to use that road. And that would seem to be an

1 overburdening of the easement or the license or
2 whatever that agreement. We don't really know what
3 it is because it was never written down and never
4 signed or approved by the City Council. But, it's
5 more intense now than it was in 1962.

6 BARBARA RANDO, CHAIR: Again, never
7 mentioned by the City Council or by anyone. I mean
8 they knew that tower was there. They knew that there
9 were vehicles going in fixing it. And no one ever
10 did anything.

11 DAVID KEHS: That's right. And I have
12 been to complain to the city councilors. And the
13 answer I get is, well, it's not on the top of our
14 priority list. We'll need to wait until he needs to
15 put a new tower. One councilor told me that he would
16 have to come before the City Council for a special
17 permit even if there was one from the Zoning Board,
18 but then Mr. Bigham tells me that's not the case.
19 So, it's not clear to me when I would get to appear
20 before a public hearing before the City Council to
21 present these issues.

22 I'd also like to bring up aesthetic
23 considerations. There is a -- Mr. Bigham tells us
24 that this will not be any -- that this will be better

1 than what's there now. And, back in the fall, I
2 visited 1265 Main and took a picture of Bear Hill,
3 which has several towers already. One of is a guide
4 wire supported tower and three of them are
5 freestanding towers. And, to me, well, it's all very
6 ugly, but the guide wire tower is actually the least
7 ugly of the bunch.

8 BARBARA RANDO, CHAIR: In your
9 opinion.

10 DAVID KEHS: The three freestanding
11 towers, especially when you put all those antennas on
12 it and dishes and everything, they have a much
13 greater visual impact. And this is a tower that you
14 can see not just from the immediate 300 feet of the
15 abutters, but you can see it from all over the City.

16 And this will make an even bigger impact. I mean I
17 can see it from -- I go around the reservoir and I
18 can see it from Lincoln because it's just so
19 prominent. So, I think that this would be worse than
20 what we have now.

21 ATTORNEY EDWARD BIGHAM: Excuse me.
22 Are you going to show it to me first or --

23 DAVID KEHS: Oh, I'll give you a copy.
24 Of course, this is an opinion.

1 ATTORNEY EDWARD BIGHAM: Madam
2 Chairman, these pictures that this gentleman just
3 presented to the Board are not germane to the issue
4 that's before this Board. And I object to him making
5 this any part of the consideration of the Board. It
6 has nothing to do with the tower that I'm proposing.
7 It shows a tower over in Bear Hill. It has nothing
8 to do with Prospect Hill. And I'd just object to
9 this whole argument relative to these pictures.

10 DAVID KEHS: Well, certainly the
11 proponent would be able to produce a simulation
12 showing what it would look like in that setting and
13 we could evaluate that. But this is the closest
14 approximation that I was able to find. But it
15 definitely is a judgment call as to what you think
16 will be intrusive and what you think will not be.

17 MICHAEL COTTON: But that would be
18 controlled by the City Council if he were to put on
19 additional antennas. That has nothing to do with
20 this case.

21 DAVID KEHS: Well, in this case, he's
22 proposing to widen the base of the tower. So, that's
23 why he's before the Council now, this Board now,
24 because the existing tower is much -- has a much

1 narrower footprint than what he's proposing to add.
2 And so he's going to raise it by more than 10
3 percent, which is why he's before you for this
4 special permit. But, in addition to that, the extra
5 antennas that would be added to it would have to be
6 approved by the City Council.

7 And, finally, I'd like to bring up the
8 point of commercial use in the residential zone. So,
9 what's happening there, not starting in 1962, but
10 sometime later, he started renting out space on this
11 tower so it's now a commercial operation where it
12 wasn't before. And even when the City of Waltham was
13 using it, they were not paying -- he was not
14 receiving money for it.

15 And it's my understanding that the
16 only -- that that has never been approved in a
17 residential zone, even back in 1962. And I looked at
18 the tower on Sachem Street, Jericho Hill, in the
19 Lakeview area, and for that one it's a similar thing.
20 It's a commercial tower in a residential zone. And
21 for that tower, the owners came to this Board, or
22 predecessors to this Board, and requested a use
23 variance to allow commercial operation within a
24 residential zone. And that was granted to them in

1 the 1960s. So, for that tower they're allowed to
2 have commercial use. For this tower, no such
3 variance was ever requested or approved. And so I
4 believe that as soon as he started putting this to
5 commercial use, it became noncomplying and illegal.

6 I'd also point out that this case was
7 actually brought for the first time in 2009 with a
8 hearing that was withdrawn. And, at the time, this
9 Board came up with a number of questions for the Law
10 Department, the same issues. And some of these
11 questions were sent to the Law Department. But,
12 because the case was withdrawn, the answers never
13 came back.

14 BARBARA RANDO, CHAIR: True.

15 DAVID KEHS: But perhaps the Board
16 should send the same questions back again. And I
17 have a copy of the letter if you'd like to look at
18 it.

19 BARBARA RANDO, CHAIR: I have a copy
20 of it, too.

21 DAVID KEHS: Good. Thank you.

22 BARBARA RANDO, CHAIR: Thank you. Is
23 there anyone else in opposition that would like to
24 speak? Please come up. Give your name and address

1 for the record, please.

2 CHRIS LEARY: Good evening. My name
3 is Chris Leary. I live at 13 Sterling Road in
4 Waltham Highlands. And I am a frequent park user at
5 Prospect Hill Park.

6 I'm here tonight because I'm a little
7 concerned about this arrangement with the tower up
8 there in the park because it appears as part of the
9 park when visitors are up there. And when you're
10 walking through the park there are trails that come
11 very close to the tower up there beyond the gate
12 that's been improperly marked "No Trespassing -
13 Antico," that's on City land which is being reviewed
14 by the City. But it is documented in the Prospect
15 Hill Park master plan that that gate was put there to
16 try to prevent dumping in that area where there had
17 been dumping and they were trying to remediate it.
18 And, at some point, the committee that created that
19 plan said that that gate should be removed and
20 another gate should be created at the property line
21 so there's no confusion about what land belongs to
22 the park and what land is private.

23 And regarding the tower, I have some
24 concerns about if this goes forward what's going to

1 happen at Prospect Hill Park. There are going to be
2 contractors going in and out. And I'm wondering if
3 this Board is going to set conditions for how that
4 process works, the staging area. Antico has very
5 little property that is useful. It's pretty much all
6 downhill and not cleared. So, most of the area that
7 was cleared this fall was to prepare for this project
8 in advance. And, in doing so, they widened the
9 roadway by placing some crushed asphalt and such to
10 build up the base and widen the roadway and, in doing
11 so, damaged some of the landscape in the park.

12 So, I'm not here to go on about that,
13 but I have some concerns, and I believe it starts
14 here with the Board deciding whether or not this
15 tower is appropriate being that things have changed
16 at the park over, you know, decades. Decades ago the
17 Air Force was up there and they had a lease. And now
18 the City uses that Air Force tower because it's
19 beneficial for the radio tower. And that's no
20 longer, you know, an issue. The Air Force is not up
21 there.

22 The water tower issue has been
23 corrected with the easement there. And we're trying
24 to make Prospect Hill Park a better place. And I

1 don't feel that this construction project is going to
2 be beneficial to the park. Park users are going to
3 be affected by it. You know, some area of the park
4 would definitely have to be quarantined so that
5 people wouldn't be able to use the park trails, such
6 as the Pine Ledges Trail that comes up from the
7 lanes. And there are people who use it. If they
8 come up there, it's going to have to be blocked off
9 because that's on the Whitney Trail, which is that
10 roadway that leads to the tower. And, basically,
11 when you take that Whitney Trail, the City land, the
12 property line is within feet of the park. I mean
13 there's virtually no frontage there. So, when people
14 are using those trails, they are in very close
15 proximity and they would definitely be affected by
16 the contractors that would be working up there.

17 I'm open for any questions.

18 BARBARA RANDO, CHAIR: Any questions
19 for Mr. Leary?

20 JOHN SERGI: No, thank you.

21 BARBARA RANDO, CHAIR: Seeing none,
22 thank you.

23 GLENNA GELINEAU: Thank you.

24 CHRIS LEARY: You're welcome.

1 BARBARA RANDO, CHAIR: Is there anyone
2 seeking information? You may come to the microphone.

3 JOHN DECOLA: There may be somebody in
4 opposition, or do I go now?

5 BARBARA RANDO, CHAIR: No, you go now.

6 JOHN DECOLA: I go now.

7 BARBARA RANDO, CHAIR: Name and
8 address for the record, please.

9 JOHN DECOLA: My name is DeCola, John
10 A., 28 Willard Street, Waltham, Mass. I said it this
11 way, I used to say it when I was in the Army.

12 I've been -- this is the third time
13 I'm here. The first time I was against the tower.
14 Then I found out that it could fall down and, you
15 know, see that line, it goes into my bedroom. So,
16 what would a normal person do? They change their
17 mind and say if you're going to keep the tower there,
18 and the City's not going to make you change it, or
19 you can put a new tower, what would you do? You'd
20 put a new tower. So, Mr. Bigham, I'm for a new
21 tower. That makes sense.

22 Now, my question is this. If the
23 engineers said they could go down seven feet and the
24 tower could take a 100-mile per hour wind, why don't

1 they go down eight feet and the wind can go 114 miles
2 an hour? That makes sense. Or go down nine feet and
3 we're up to 130 miles an hour.

4 So, John DeCola at 28 Willard Street
5 would like them to go down a little further in case
6 there's a hurricane with a 130-mile an hour winds.

7 Thank you very much.

8 BARBARA RANDO, CHAIR: So you're
9 saying you're in favor of the tower and it being
10 moved as long as it goes down deeper into the ground?
11 Is that what you're saying?

12 JOHN DECOLA: Yeah, I'd like it
13 stronger. I'd like the existing tower taken down
14 because it's weak. And, like I said, it would go
15 into my bedroom if it fell because it's like this. A
16 new tower would be stronger. So, if the engineers
17 can go down a little lower, we could have a hurricane
18 and I wouldn't have to worry. I'd have to worry
19 about my house going but not the tower.

20 BARBARA RANDO, CHAIR: All right.

21 JOHN DECOLA: Thank you.

22 BARBARA RANDO, CHAIR: Thank you.
23 Anyone else? Come up to the microphone.

24 JULIA DECOLA: Hi. I'm Julia DeCola.

1 I live at 28 Willard Street. I also own property at
2 15 Willard Street. Both parcels are, like Mr. DeCola
3 said, downwind from the -- or downhill, sharply
4 downhill from the tower.

5 I guess my question would be -- and I
6 appreciate all the other questions that were raised,
7 and I probably -- I did have all those questions
8 myself, and myself have been here for these prior
9 meetings. I guess I would hope that the Board would
10 be satisfied that they were all answered.

11 I understand that the tower will be
12 bigger. I'm not so sure I know anything about
13 engineering to know how deep they should go. I'm not
14 looking forward to the -- certainly not looking
15 forward to the construction. But, in essence, I
16 would like to be reassured by any City entity,
17 whether it be this Board, legal, the City Council,
18 that this fall zone business of saying four feet for
19 every foot of tower, which I don't even have two feet
20 for every foot of tower from my property to the
21 tower. And we both do worry about it because it is
22 in my backyard, and it's uphill, and it's threatening
23 and looming. Mr. Bigham knows my family, my fear, my
24 tower fear. So, I would like to be assured that some

1 entity in the City has made a site visit and has made
2 really sure that it's in compliance with the fall
3 zone. I don't know what entity that is, whether it
4 be this or another. That's my major concern.
5 Safety, in a word, safety.

6 BARBARA RANDO, CHAIR: Thank you.
7 Anyone else seeking information? Seeing none.

8 Do you want to address some of these
9 issues?

10 ATTORNEY EDWARD BIGHAM: Well, I'd
11 like to address a few of the comments that were made.

12 Initially, as far as the first
13 gentleman that got up and spoke, I believe he lives
14 on the other side of Trapelo Road -- the other side
15 of Trapelo Road, the other side of 128. And I
16 question -- I see the line here. It's 300 feet. And
17 I question whether or not his comments have as much -
18 - should have as much impact as Mrs. DeCola and Mr.
19 DeCola who live on Willard Street right here.

20 So, all of the things that he has
21 said, or most of the things he said, do not address
22 the authority of this Board.

23 As far as the road is concerned, as
24 far as what Mr. Antico may or may not have done

1 relative to some of the property doesn't concern this
2 Board. The issue before the Board is whether or not
3 you're going to allow a new tower to be put up in
4 place of the one you approved in June 4th of 2013.

5 I just object to the pictures that
6 were taken and presented to the Board because to me
7 he's not addressing the issue. And so I would like
8 those things to be cast aside.

9 He talks about the work that's going
10 to be done and how they're going to get there. That
11 is not the concern of this Board. Again, the concern
12 of the Board is the question of the tower. If he
13 wants to go to the Council, if he wants to go to the
14 Planning Board, if he wants to go to the Law
15 Department that's his prerogative. Whether or not
16 they'd entertain his objections is questionable. I
17 think they understand that for 50-some-odd years the
18 tower has been there and they've used that road.
19 Well, why hasn't something been done? Nothing's been
20 done because all of those people that are in public
21 office, including the mayor, know what the situation
22 is, that the tower is there legitimately. It's a
23 nonconforming situation. And he has a right to use
24 the road.

1 The other item that the young fellow
2 got up here and talked -- and I respect these people.
3 They have a right to say whatever they want. I don't
4 give them too much credence, but they have a right to
5 say, I think you've got to understand their
6 objections certainly don't count as much as the
7 comments that were made by Julia and John DeCola.
8 They live there. They're the ones that would be
9 mostly affected if this tower was not properly
10 constructed. The other people are talking, again,
11 about Prospect Hill, and the roads, and this and
12 that. There's ways to do, to correct whatever the --
13 or address whatever issue they have. It's not here.
14 It's with the City Council or the Parks and
15 Recreation. And nothing's been done. Nothing's been
16 said. There's been no complaints made. If Mr.
17 Antico has done something wrong, I'm sure that you
18 can go to the proper authorities and correct it.

19 I'd suggest that we limit the
20 discussion, limit the consideration only for the
21 petition.

22 Thank you very much.

23 BARBARA RANDO, CHAIR: Attorney
24 Bigham, first of all, I'd like to say that the

1 DeColas are very concerned about the safety of their
2 home. And I understand that.

3 ATTORNEY EDWARD BIGHAM: And I
4 understand that.

5 BARBARA RANDO, CHAIR: But, Mr. Kehs,
6 like many Waltham residents, uses the parks and
7 enjoys the beauty of it. And his opinion is as
8 important as the DeColas.

9 ATTORNEY EDWARD BIGHAM: I have no
10 problem with -- as I said, I don't have any problem
11 with the objections and what their concerns are.

12 BARBARA RANDO, CHAIR: Right.

13 ATTORNEY EDWARD BIGHAM: But this is
14 not the forum for it. As far as the DeColas are
15 concerned, I'm very friendly with them. I know them
16 very well. As a matter of fact, Mrs. DeCola used to
17 chum around with my oldest daughter. And I
18 understand her concern. And I will address that
19 concern with Mr. Antico and tell him as far as we're
20 concerned, as far as they're concerned, their
21 concerns should be addressed and the tower should
22 probably be dug further down and probably eight, or
23 10, or 15 feet down, and make sure that it's stable.
24 I guarantee that I will talk to them. And, John

1 knows that I'll talk to them.

2 BARBARA RANDO, CHAIR: Does anyone
3 have an questions for Attorney Bigham? Mr. Sergi, do
4 you?

5 JOHN SERGI: No, not at this time.

6 BARBARA RANDO, CHAIR: Mr. Squillante?

7 MICHAEL SQUILLANTE: I don't think so,
8 no.

9 BARBARA RANDO, CHAIR: Ms. Gelineau?

10 GLENNA GELINEAU: Attorney Bigham,
11 we've already agreed in theory to -- well, in
12 practicality to constructing the tower. You're just
13 asking to put it someplace else?

14 ATTORNEY EDWARD BIGHAM: All I'm
15 asking --

16 GLENNA GELINEAU: And how many feet
17 exactly are you asking to move it? I can't quite
18 tell.

19 ATTORNEY EDWARD BIGHAM: The tower
20 that's presently there is right up against the
21 building. All we're going to do is move it over so
22 that the side yard is -- so we can comply with the
23 side yard, which is --

24 GLENNA GELINEAU: So, are you talking

1 20 feet or --

2 ATTORNEY EDWARD BIGHAM: It's not far.

3 GLENNA GELINEAU: It's not far. We've
4 already agreed to allow the construction of the
5 tower. It's just a modest you want to move it.
6 Okay.

7 ATTORNEY EDWARD BIGHAM: That's right.

8 GLENNA GELINEAU: Which I guess in all
9 that acreage it's going to exist. So, to move it a
10 few feet, or 10 feet, or eight, seems like semantics
11 to me.

12 ATTORNEY EDWARD BIGHAM: It's not far.

13 GLENNA GELINEAU: And I just want to
14 stress that for me the whole -- the whole tower issue
15 right from the start since back in 2009 is a safety
16 issue. People are climbing this tower. And it's the
17 way of the future. We're going to have these towers.
18 The tower is not going to go away. So, my opinion is
19 that if it's going to be there, it should be
20 absolutely safe. And that should be our paramount
21 concern. I understand there's legalities and
22 logistics, but even back in 2009 they said people are
23 going up and down this tower. And I guess even now
24 it's probably less safe with all this weather and

1 everything else.

2 So, I mean I understand it's sort of a
3 -- it's new territory. Things are different today
4 than they were back in 1962. It's technology. And
5 it's not going to go away. So, we have to sort of
6 make some compromises with each other.

7 ATTORNEY EDWARD BIGHAM: The use of
8 the tower was initially for the Anticos.

9 GLENNA GELINEAU: Right. I
10 understand.

11 ATTORNEY EDWARD BIGHAM: But, since
12 that time, other people, such as the City of Waltham,
13 the Salvation Army, medical people, they all want to
14 have --

15 GLENNA GELINEAU: Yeah.

16 ATTORNEY EDWARD BIGHAM: --
17 transmitters on there. And I don't blame them.

18 GLENNA GELINEAU: And we don't want a
19 tower on every corner.

20 ATTORNEY EDWARD BIGHAM: That's right.

21 GLENNA GELINEAU: So we have to make
22 this work somehow.

23 ATTORNEY EDWARD BIGHAM: So, even
24 though his transmitter is there, he is serving -- he

1 is providing a service to a lot of people that need
2 it. I can guarantee you one thing, Ms. Gelineau,
3 that if the Board grants this, the further request of
4 the petitioner, that the question of safety, the
5 question of stability, will be addressed quickly.
6 Mr. Antico listens to me. And I can talk to him and
7 tell him exactly how I feel and how the Board feels
8 and how other people feel about the structure and
9 whether or not, you know, he should make it deeper
10 and stronger. And I'm sure he will. I don't think
11 it's a question of money because I'm sure that he's
12 going to spend the money to do what's necessary to
13 provide safety for all concerned.

14 MICHAEL COTTON: And he wants it to be
15 safe for the people around there and for his own
16 construction.

17 ATTORNEY EDWARD BIGHAM: Pardon me?

18 MICHAEL COTTON: He himself, Mr.
19 Antico, I'm almost positive would want it to be, you
20 know, structurally sound for everybody in that area
21 and for himself included so it wouldn't be falling
22 down on him. And I've witnessed him doing other
23 things in the City. I'm sure any advice that you
24 give him with that he'll take and just run with it.

1 And if you ask him to dig it down deeper, I'm sure
2 they'll say yes.

3 ATTORNEY EDWARD BIGHAM: Oh, he'll say
4 yes.

5 MICHAEL COTTON: I know he will.

6 ATTORNEY EDWARD BIGHAM: There's no
7 question about it.

8 MICHAEL COTTON: We've asked him a lot
9 of things in the City, he's done for the City. He
10 always complies, you know, "Sure, whatever you want."
11 You know, I know that firsthand. When I was involved
12 with lighting up the commons, different things I
13 always did, I always called him for information.
14 "Whatever you want," he'd say, you know.

15 ATTORNEY EDWARD BIGHAM: Well, that's
16 all the attitude he's shown to me

17 JOHN SERGI: Mr. Bigham, would it be
18 agreeable to throw some -- I think that what I heard
19 was that some of the vegetation was removed. I mean
20 would he be adverse to putting some of that back or -
21 -

22 ATTORNEY EDWARD BIGHAM: Well, let me
23 tell you what he's going to do. When I saw what he
24 had done, I saw what happened, and I was not pleased.

1 But I told him he's got to restore everything that
2 may have been damaged. He's got to put trees up
3 there.

4 JOHN SERGI: Okay.

5 ATTORNEY EDWARD BIGHAM: He's got to
6 do it. And he said he would.

7 JOHN SERGI: Okay.

8 ATTORNEY EDWARD BIGHAM: And he's
9 going to address the concerns of those people that
10 raised questions to the work he did on the road. All
11 he did was pave it. He didn't do anything else. He
12 didn't dig it up. But what happened was people were
13 dumping all kinds of materials on that particular
14 side road. The road sets off to the left. If you're
15 using the roads to go to the tower or you're going to
16 the rest of it, you don't see -- you can't get to his
17 place. It's a side road. It's off to the side.

18 JOHN SERGI: Thank you.

19 BARBARA RANDO, CHAIR: Mr. Squillante,
20 any questions?

21 MICHAEL SQUILLANTE: No questions.

22 BARBARA RANDO, CHAIR: Ms. Gelineau?

23 GLENNA GELINEAU: No.

24 BARBARA RANDO, CHAIR: Mr. Cotton?

1 MICHAEL COTTON: No, thank you.

2 BARBARA RANDO, CHAIR: Go ahead.

3 JULIA DECOLA: I didn't want my
4 comments to be construed to be for or against. My
5 comments, I want to be very clear, were to make sure
6 that the City is reassuring me that it complies with
7 the fall zone. I mean it doesn't.

8 GLENNA GELINEAU: It doesn't. But it
9 doesn't.

10 JULIA DECOLA: It doesn't.

11 GLENNA GELINEAU: Okay.

12 JULIA DECOLA: That I am protected
13 safely. And I don't know if digging deeper is going
14 to do it or not doing it. I don't know. But that's
15 my major concern. And I also don't want it to be
16 construed that I disagree with any of the -- I see a
17 lot of merit in all the comments that people talked
18 before me had, but I didn't repeat them because
19 they've already said them. And I've said them before
20 in person. I mean I think I told my husband that, so
21 and I agree with them. So, there you have it. I'm
22 not advocating for or --

23 BARBARA RANDO, CHAIR: Seeking
24 information.

1 JULIA DECOLA: -- or painfully not
2 against because I'm very concerned about the tower.

3 BARBARA RANDO, CHAIR: She's seeking
4 information.

5 JULIA DECOLA: I'm concerned about the
6 way the new one is going to look, but I don't think
7 I'm the one that's going to be able to decide that.

8 BARBARA RANDO, CHAIR: Okay. All
9 right.

10 GLENN GELINEAU: He has a question.

11 BARBARA RANDO, CHAIR: Yes?

12 CHRIS LEARY: I was curious to know if
13 it's possible for the Board to set certain conditions
14 as to how this project goes because it seems like,
15 especially if City land is going to be used for
16 staging and they're going to be using the road for
17 access and contractors going forward, like Verizon,
18 they're going to be driving in and out of the park
19 frequently, that it seems like there should be
20 conditions, at least in the construction phase of it.

21 BARBARA RANDO, CHAIR: Excellent
22 question.

23 CHRIS LEARY: I think there should be
24 maybe some conditions considered and deliberated on.

1 BARBARA RANDO, CHAIR: We can do that.

2 All right.

3 ATTORNEY EDWARD BIGHAM: Any further
4 questions, Madam?

5 BARBARA RANDO, CHAIR: No, you can
6 continue with your proposed finding of facts. Has
7 everybody read the proposed finding of facts? Are
8 they the same, Attorney Bigham? The finding of facts
9 are the same as the last?

10 ATTORNEY EDWARD BIGHAM: Yes. Yes.
11 Yes, Madam Chairman.

12 JOHN SERGI: As such, I'd make a
13 motion that we waive the reading of the finding of
14 facts.

15 BARBARA RANDO, CHAIR: Motion by Mr.
16 Sergi to waive the reading.

17 MICHAEL COTTON: I would second that.

18 BARBARA RANDO, CHAIR: I'm sorry.

19 MICHAEL COTTON: I would second that.

20 BARBARA RANDO, CHAIR: Second by Mr.
21 Cotton to waive the reading.

22 All in favor?

23 ALL BOARD MEMBERS: Aye.

24 BARBARA RANDO, CHAIR: Opposed?

1 (No Board members opposed.

2 BARBARA RANDO, CHAIR: The ayes have
3 it.

4 The proposed finding of fact --

5 JOHN SERGI: The proposed decision?

6 ATTORNEY EDWARD BIGHAM: The proposed
7 decision.

8 BARBARA RANDO, CHAIR: Did I say that?
9 Proposed decision. I'm sorry.

10 JOHN SERGI: I'll make a motion that
11 we waive the reading of the proposed decision.

12 BARBARA RANDO, CHAIR: Go ahead.

13 MICHAEL SQUILLANTE: On that motion, I
14 guess I'd want to know if anyone in the audience
15 would want to have it read, wants to hear it, the
16 proposed decision.

17 BARBARA RANDO, CHAIR: All right. The
18 proposed decision. Do you think the Clerk would like
19 to read it or --

20 JOHN SERGI: Oh, I'll be happy to read
21 it, sure. I'll read the proposed decision.

22 (The Clerk reads the proposed decision
23 into the record.)

24 That's pretty much the decision. If

1 we'd like to add any conditions, we can do that.

2 BARBARA RANDO, CHAIR: We are. We
3 wrote a couple down. Mr. Squillante, will you read
4 them. And then if you'd like to add any more or
5 suggest.

6 MICHAEL SQUILLANTE: I'd like to --
7 whether it's officially before us or not, it bothers
8 me that the property was modified and bulldozed and
9 cleared. It bothers me. So, I would like to add a
10 restriction. And the restriction, this would be
11 restriction number three, no work will be performed
12 on public property, no modifications will be made to
13 public property, and no vehicles or materials will be
14 stored on public property.

15 ATTORNEY EDWARD BIGHAM: Excuse me.
16 I'm not sure -- what section is that?

17 MICHAEL SQUILLANTE: I'm adding a
18 restriction.

19 BARBARA RANDO, CHAIR: He's putting
20 restrictions on the decision.

21 JOHN SERGI: He's adding a condition
22 to the --

23 ATTORNEY EDWARD BIGHAM: What is it
24 you want to do?

1 JOHN SERGI: He wants to add a
2 condition to the decision.

3 MICHAEL SQUILLANTE: So, I want a
4 condition to the special permit that says that no
5 work will be done on public property.

6 ATTORNEY EDWARD BIGHAM: Well, wait a
7 minute. You've got a road that they can use. I mean
8 I don't want you to start -- I don't think this Board
9 has the right to encroach on Mr. --

10 MICHAEL SQUILLANTE: Okay. So, no
11 construction. No construction. I'm not saying they
12 can't use the road. I'm saying they can't work on
13 public property. That's what I'm saying.

14 ATTORNEY EDWARD BIGHAM: I'm not --
15 you know, I really don't know, are you talking about
16 the road?

17 MICHAEL SQUILLANTE: No.

18 ATTORNEY EDWARD BIGHAM: Are you
19 talking about any part of the road?

20 MICHAEL SQUILLANTE: No, I'm talking
21 about the City property adjacent to the site.

22 ATTORNEY EDWARD BIGHAM: Well, what --
23 okay. I'm not sure I understand what you're doing.

24 MICHAEL SQUILLANTE: And then I also

1 want to say that there will be no modifications made
2 to public property.

3 ATTORNEY EDWARD BIGHAM: To what?

4 MICHAEL SQUILLANTE: Clearing, paving.

5 ATTORNEY EDWARD BIGHAM: Oh, I don't
6 think that's your prerogative. I think --

7 MICHAEL SQUILLANTE: No, I can do it.
8 Of course it is.

9 ATTORNEY EDWARD BIGHAM: Excuse me. I
10 think that Mr. Antico has already contacted the Park
11 and Recreations and they are going to dictate what he
12 has to do in order to put it back where they want it,
13 not this Board.

14 MICHAEL SQUILLANTE: I'm not talking
15 about the previous work. I'm talking about new
16 modifications.

17 ATTORNEY EDWARD BIGHAM: Yeah, but see
18 he's got to go up there and he has to repair whatever
19 they tell him to repair.

20 MICHAEL SQUILLANTE: Okay.

21 ATTORNEY EDWARD BIGHAM: So, if you do
22 that, then the question becomes, you know, if he's
23 going to repair it, he's going to say, "Well, the
24 Board of Appeals says I can't." And they're going to

1 get -- now we're going to have a real problem. I
2 think if you say he can't do anything on public
3 property in terms of construction, you know, that's a
4 different ball game. Do you understand what I'm
5 talking about, Mr. Squillante?

6 MICHAEL SQUILLANTE: I understand what
7 you're saying. I understand, yes.

8 ATTORNEY EDWARD BIGHAM: I'm not
9 trying to -- please don't misunderstand me. I'm not
10 trying to --

11 JOHN SERGI: Well, tell him, counsel,
12 why don't you phrase it? Why don't you try
13 furthering it?

14 MICHAEL SQUILLANTE: I understand what
15 he's saying. He doesn't want us to prevent them from
16 fixing the problem.

17 ATTORNEY EDWARD BIGHAM: Fixing it.

18 JOHN SERGI: Well, how do we keep this
19 from getting worse? I mean you don't want to make it
20 any worse.

21 ATTORNEY EDWARD BIGHAM: Well, I don't
22 know. I mean, you know, he has a right to go on the
23 property. He has a right to go on Prospect Hill. He
24 has a right to use that road.

1 MICHAEL SQUILLANTE: Right.

2 ATTORNEY EDWARD BIGHAM: He's been
3 using it for 50-some-odd years and there's been no
4 complaints and no activity against him from using it.
5 So, if you're trying to tell me that you want to put
6 in this decision some kind of a provision that
7 precludes him from using those facilities --

8 JOHN SERGI: Not from using it, but
9 from not altering the state of the park.

10 ATTORNEY EDWARD BIGHAM: Well, yeah,
11 but, see, the road itself that he -- believe me when
12 I say this -- he went up there and did something to
13 the road. He should have gone to the Park and
14 Recreations and had them approve it. He didn't. Now
15 he's got to file a plan showing them what he's going
16 to do pursuant to their directions to put it back in
17 the way it was.

18 JOHN SERGI: That was my concern. If
19 the attorney, in fact, is able to state that it --

20 ATTORNEY EDWARD BIGHAM: If you say to
21 me that he can't do that, I've got a problem, because
22 I've got a problem with Parks and Recreation anyway.

23 JOHN SERGI: I'd rather rephrase it to
24 return it to the original state after --

1 MICHAEL COTTON: Mr. Sergi, what if
2 the construction in the future that goes on is under
3 the supervision of the Parks and Recreation.

4 MICHAEL SQUILLANTE: Oh, that's a
5 possibility.

6 JOHN SERGI: Okay. All right.

7 MICHAEL COTTON: That would cover it
8 all.

9 JOHN SERGI: Yeah, construction will
10 be -- the construction will be supervised by the Park
11 and Recreation Department.

12 ATTORNEY EDWARD BIGHAM: Oh, I would
13 think so.

14 MICHAEL COTTON: So they wouldn't do
15 any further damage is the bigger --

16 JOHN SERGI: Okay. Maybe we phrase it
17 that way.

18 ATTORNEY EDWARD BIGHAM: Yeah. Yeah.

19 MICHAEL SQUILLANTE: They wouldn't do
20 any further damage to the park.

21 ATTORNEY EDWARD BIGHAM: When he's
22 going to get the permit, you can rest assured that
23 the Building Department and Parks and Recreation are
24 going to get together and say this is what you've got

1 to do.

2 MICHAEL SQUILLANTE: That's what we
3 want.

4 JOHN SERGI: All right. So, any
5 further construction will be under the guidance and
6 supervision of the Park and Recreation.

7 ATTORNEY EDWARD BIGHAM: That's all
8 right. I have no problem with that.

9 BARBARA RANDO, CHAIR: And the
10 Building Inspector.

11 JOHN SERGI: And the Building
12 Inspector.

13 ATTORNEY EDWARD BIGHAM: I have no
14 problem with that. That's --

15 JOHN SERGI: Any further construction
16 will be under the supervision --

17 ATTORNEY EDWARD BIGHAM: I just don't
18 want him to be limited to what he wants to do
19 pursuant to this Board's decision.

20 JOHN SERGI: Right.

21 ATTORNEY EDWARD BIGHAM: You know, he
22 has a right -- if you grant him the right to build a
23 tower, then obviously he's got to build it. He can
24 only build it by going through those roads. I mean

1 that's the only way he can go.

2 JOHN SERGI: Well, why don't we say
3 all construction will be under the supervision --

4 ATTORNEY EDWARD BIGHAM: I have no
5 problem with that.

6 JOHN SERGI: Okay. Okay. Why don't
7 we phrase it that way then?

8 BARBARA RANDO, CHAIR: Phrase it what
9 way? I'm sorry.

10 JOHN SERGI: All further construction
11 will be under the supervision of the Department --

12 ATTORNEY EDWARD BIGHAM: Yeah, see,
13 they'd have to do it under a building permit anyway.
14 They'd have to comply with the building permit.

15 JOHN SERGI: Okay. Under the Park and
16 Recreation Department in addition to the Building
17 Inspector.

18 ATTORNEY EDWARD BIGHAM: Yeah. I
19 would say this to you. I think it should be limited
20 to the Building Inspector, the Building Department,
21 because they're the ones that are going to issue the
22 permit and they're the ones that are going to have to
23 follow him in whatever he does. They approve
24 everything he does. And they can preclude anything

1 that he does that's not --

2 MICHAEL COTTON: I think what they're
3 trying to say is that Parks and Recreation will stop
4 any further damage to Prospect Hill that is going on.
5 We don't want it to go any further than that. Just
6 keep it right in that area that he's building.

7 ATTORNEY EDWARD BIGHAM: Yeah, I have
8 no problem.

9 BARBARA RANDO, CHAIR: We want all the
10 foliage and trees or anything to be put back exactly
11 the way they were.

12 JOHN SERGI: Yeah, we've got that
13 condition in..

14 BARBARA RANDO, CHAIR: That would be
15 under the --

16 MICHAEL SQUILLANTE: There's also --
17 the third part of that is not using public property
18 for storage of materials or vehicles.

19 BARBARA RANDO, CHAIR: Pipes,
20 whatever, trucks.

21 ATTORNEY EDWARD BIGHAM: Well, I
22 understand what you're telling me. You don't want
23 him to park his trucks on public property.

24 MICHAEL SQUILLANTE: Right.

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1 ATTORNEY EDWARD BIGHAM: I have no
2 problem with that.

3 BARBARA RANDO, CHAIR: Unload it and
4 leave, you know --

5 ATTORNEY EDWARD BIGHAM: But the road
6 has -- you've got to stay away from the road.

7 MICHAEL COTTON: The road is fine.

8 BARBARA RANDO, CHAIR: We're talking
9 about --

10 MICHAEL SQUILLANTE: We're not talking
11 about the road.

12 ATTORNEY EDWARD BIGHAM: Okay. Fine.

13 BARBARA RANDO, CHAIR: It's leaving
14 stuff there.

15 ATTORNEY EDWARD BIGHAM: I don't know
16 where he's parking, but that's all right.

17 MICHAEL SQUILLANTE: He's got a lot of
18 property up there.

19 ATTORNEY EDWARD BIGHAM: I don't know
20 where he's parking. He has area up there where he
21 can park his vehicles on the road and on his own
22 property in the parking area.

23 BARBARA RANDO, CHAIR: What is he
24 expecting the hours of operation to be up there?

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1 ATTORNEY EDWARD BIGHAM: Pardon me?

2 BARBARA RANDO, CHAIR: The hours of
3 operation.

4 ATTORNEY EDWARD BIGHAM: Well, I
5 really don't know, but I would assume that they --

6 GLENNA GELINEAU: He'd have to conform
7 to the City ordinance, yeah.

8 ATTORNEY EDWARD BIGHAM: You know, no
9 earlier than 7:00, and no later than 6:00, 6:30,
10 7:00, or whatever.

11 GLENNA GELINEAU: But he would just
12 have to conform to the City ordinance.

13 BARBARA RANDO, CHAIR: It's just too
14 bad that it's --

15 ATTORNEY EDWARD BIGHAM: But in the
16 summer, if he does it in the summer, it's going to be
17 late. You know, it's going to be further than 6:00
18 or 7:00. I think he's going to try to get the damn
19 thing --

20 MICHAEL COTTON: He'll still be under
21 the guidance of the Parks and Recreation.

22 BARBARA RANDO, CHAIR: Right.

23 MICHAEL COTTON: They won't let him up
24 there at midnight.

1 ATTORNEY EDWARD BIGHAM: He will try
2 to conform with whatever you people suggest.

3 BARBARA RANDO, CHAIR: Now, what are
4 we going to do as far as the owners of the antennas
5 themselves coming in and out of the park?

6 ATTORNEY EDWARD BIGHAM: Well, I would
7 think that -- you mean vehicles to do the --

8 BARBARA RANDO, CHAIR: Fixing it,
9 vehicles.

10 ATTORNEY EDWARD BIGHAM: His
11 construction vehicles and so forth, is what what
12 you're telling me?

13 BARBARA RANDO, CHAIR: Well, I'm
14 talking about repair vehicles, all the owners of
15 these antennas.

16 ATTORNEY EDWARD BIGHAM: Well --

17 BARBARA RANDO, CHAIR: Do they all
18 have keys? They can come and go as they want?

19 ATTORNEY EDWARD BIGHAM: Oh, no, no,
20 no, no, no. He's the only one that has a key, nobody
21 else. So, if they want to -- if they have to be on
22 the -- get to the tower, they have to go to him.
23 Then he goes up there or sends somebody up there to
24 open it, you know, to open the place. I'm not sure

1 that it's going to happen anyway. He may take the
2 damn -- the only reason he put the gate there is to
3 protect his property and preclude people from dumping
4 stuff on that road. But he may just eliminate the
5 gate. In that case, God help -- everybody would go
6 down there. But he's the only one that has a key.

7 BARBARA RANDO, CHAIR: Did you have
8 any other suggestions?

9 CHRIS LEARY: Just a clarity about the
10 gate. Are you talking about the Whitney Trail gate
11 that leads to the tower or are you talking about the
12 main north gate at Totten Pond Road?

13 ATTORNEY EDWARD BIGHAM: I don't -- I
14 don't hear what he's saying.

15 CHRIS LEARY: There's a gate at Totten
16 Pond Road.

17 BARBARA RANDO, CHAIR: Are you talking
18 about the Whitney Trail gate that you're --

19 MICHAEL COTTON: He's talking about
20 the gate that goes to the tower.

21 CHRIS LEARY: Well, there's two gates.

22 BARBARA RANDO, CHAIR: There's two
23 gates.

24 ATTORNEY EDWARD BIGHAM: There are two

1 gates?

2 BARBARA RANDO, CHAIR: There are two
3 gates.

4 ATTORNEY EDWARD BIGHAM: I didn't know
5 there were two.

6 BARBARA RANDO, CHAIR: Where is the
7 first one, sir?

8 CHRIS LEARY: The main entrance where
9 the playground is, the main entrance to the park.

10 BARBARA RANDO, CHAIR: To get into the
11 park.

12 ATTORNEY EDWARD BIGHAM: A playground?

13 BARBARA RANDO, CHAIR: No, to get into
14 the park. There's a key, a gate that has a key, to
15 get into the park.

16 CHRIS LEARY: During certain hours.

17 ATTORNEY EDWARD BIGHAM: Well, I don't
18 think -- I don't know if he's got a key, but I think
19 he should be allowed to go in the --

20 BARBARA RANDO, CHAIR: Oh, he must
21 have a key because he did the work up there. So he
22 must have gotten in to do the work up there, right?

23 ATTORNEY EDWARD BIGHAM: Well, there's
24 a gate where the road is, where his, you know, he has

1 a key to that. Where's the other gate?

2 CHRIS LEARY: He has the key to the
3 gate that the City uses to access the park. Then he
4 has a gate at the Whitney Trail, which I would think
5 maybe someone in the City would have a key to that as
6 well since it's on City property.

7 BARBARA RANDO, CHAIR: There are two
8 gates, one that the City has to get into the park
9 itself. Now, Mr. Antico apparently has a key to
10 that.

11 ATTORNEY EDWARD BIGHAM: Well, fine.

12 BARBARA RANDO, CHAIR: Well, I'm not
13 saying that. I'm asking does he give that key out to
14 the other people that are --

15 ATTORNEY EDWARD BIGHAM: Oh, no, no,
16 no. He doesn't give any keys he has -- and I
17 specifically asked him this -- any keys he has he
18 keeps. If people are doing work for him or
19 repairing, they have to go to him first. Some one of
20 his workers goes up there and opens and stays there.

21 BARBARA RANDO, CHAIR: Well, there's
22 the other gate to get onto his tower.

23 ATTORNEY EDWARD BIGHAM: Well, he
24 won't let anybody -- if they're going to his

1 property, somebody's got to be with him. He doesn't
2 just open the -- he doesn't just let anybody go up
3 there because there's too -- you've got too much to
4 lose.

5 Do you see Mr. Antico at all or do you
6 know him?

7 CHRIS LEARY: I've met with his son up
8 there.

9 ATTORNEY EDWARD BIGHAM: Well, then
10 talk to him and maybe you can make arrangements or
11 whatever agreements you want to make.

12 BARBARA RANDO, CHAIR: You might get a
13 key.

14 CHRIS LEARY: I think as far as the
15 parking situation where it's clear that the
16 contractors normally park on park property on the
17 roadway there, and Anticos property line where you
18 can see that it's marked now with spray paint,
19 there's some land on the right. Maybe there could be
20 some improvements to that land to make it a better
21 parking area and it could be designated, or at least
22 the contractors could be informed that they should be
23 using his land not the parkland when they're doing
24 services and, of course, with the construction, you

1 know, that --

2 BARBARA RANDO, CHAIR: Well, we asked
3 that they do not park on City land, that they park on
4 Antico land.

5 CHRIS LEARY: There's very limited
6 space though as far as when they're doing the
7 construction. There may have to be some --

8 ATTORNEY EDWARD BIGHAM: I'd suggest
9 perhaps that this gentleman who is speaking, if so
10 concerned, he'd be up there when they're building the
11 tower and make damn sure they're doing what they're
12 supposed to do.

13 JOHN SERGI: I think we have that
14 covered, sir.

15 CHRIS LEARY: Okay. Very good.

16 BARBARA RANDO, CHAIR: And this
17 gentleman mentioned there's a piece of property that
18 maybe it could be made for parking while they're
19 working so that the vehicles would be out of the way,
20 is that correct?

21 CHRIS LEARY: Yes, it would be more
22 suitable for parking.

23 BARBARA RANDO, CHAIR: And that area
24 is exactly where?

1 ATTORNEY EDWARD BIGHAM: Oh, that
2 piece of property --

3 CHRIS LEARY: If you're looking at the
4 tower, to the right.

5 BARBARA RANDO, CHAIR: To the right of
6 the tower.

7 CHRIS LEARY: I believe some of his
8 land goes off to the right there.

9 BARBARA RANDO, CHAIR: No, it's on --
10 is that City or Anticos?

11 ATTORNEY EDWARD BIGHAM: That's kind
12 of a parking area.

13 CHRIS LEARY: I believe it's Antico's
14 property.

15 BARBARA RANDO, CHAIR: It's Anticos.
16 There's a piece of property to the right of the tower
17 that's Mr. Anticos. And he was suggesting that if he
18 made it more appropriate for parking for some
19 vehicles that would be appreciated, too.

20 ATTORNEY EDWARD BIGHAM: I would
21 suggest that to him. I will suggest that to him.

22 BARBARA RANDO, CHAIR: That would be
23 one of the conditions. You could add that, too, that
24 the land to the right of the --

1 ATTORNEY EDWARD BIGHAM: I don't know
2 exactly where that -- whereabouts is that piece of
3 property he's talking about?

4 BARBARA RANDO, CHAIR: To the right of
5 the tower he said.

6 ATTORNEY EDWARD BIGHAM: To the right
7 of the tower? Over here?

8 BARBARA RANDO, CHAIR: Land, it's
9 Antico's. It's on Antico's land.

10 CHRIS LEARY: To the right of the
11 building if you're looking at the structure that he
12 has.

13 JOHN SERGI: Why don't we just say
14 that he'd do that? Isn't that what we're saying
15 though?

16 BARBARA RANDO, CHAIR: Yeah, but this
17 land is imparkable right now. Imparkable?

18 JOHN SERGI: But we don't know that.
19 Do we know that?

20 CHRIS LEARY: He just told me.

21 BARBARA RANDO, CHAIR: So, if you made
22 it --

23 JOHN SERGI: Are you going to dictate
24 that he needs to make it a parking area?

1 BARBARA RANDO, CHAIR: Yeah, if he's
2 doing that. You're giving him more than --

3 JOHN SERGI: I don't think we can do
4 that. I think we can just say that he shouldn't use
5 the public area. I don't think we should add that.
6 We don't want to dictate to him what to do.

7 BARBARA RANDO, CHAIR: Well, I think
8 it makes -- he's going to suggest it to him.

9 ATTORNEY EDWARD BIGHAM: Madam
10 Chairman, I pointed out the location. He's talking
11 about where the tower is.

12 BARBARA RANDO, CHAIR: To the right of
13 the tower.

14 ATTORNEY EDWARD BIGHAM: So, he's
15 going to talk to Mr. Antico, see what he can do in
16 terms of parking some -- there's plenty of room up
17 here.

18 CHRIS LEARY: There's land up there.
19 So, I think that they could probably make it a little
20 bit more accommodating.

21 ATTORNEY EDWARD BIGHAM: There's room
22 up here to park, but I don't want a restriction on
23 where he can park.

24 Could I -- could somebody tell me what

1 the restrictions are before we --

2 JOHN SERGI: Sure, I'll read it to
3 you. This is what we've been talking about.

4 Any modification to public property or
5 construction on public property shall require the
6 permission of the Park and Recreation Department and
7 the Building Inspector.

8 ATTORNEY EDWARD BIGHAM: Yeah, I
9 understand that one. I understand that.

10 JOHN SERGI: And the fourth condition
11 would be no vehicles or materials will be stored on
12 public property.

13 ATTORNEY EDWARD BIGHAM: Yeah, that's
14 fine.

15 JOHN SERGI: Okay.

16 ATTORNEY EDWARD BIGHAM: That's fine.
17 I have no problem with that.

18 JOHN SERGI: That will be all.

19 BARBARA RANDO, CHAIR: All right. Any
20 other questions, suggestions, additions?

21 ATTORNEY EDWARD BIGHAM: I'd like to
22 go home.

23 BARBARA RANDO, CHAIR: All right. Do
24 I have a motion on the proposed finding of facts as

1 amended?

2 GLENNA GELINEAU: The decision is
3 amended.

4 BARBARA RANDO, CHAIR: I mean the
5 decision, the decision as amended.

6 JOHN SERGI: Yeah, I make a motion
7 that the proposed decision as amended be adopted as
8 the Board's decision.

9 BARBARA RANDO, CHAIR: Motion by Mr.
10 Sergi.

11 Do I have a second?

12 MICHAEL COTTON: Second.

13 BARBARA RANDO, CHAIR: Motion by Mr.
14 Cotton.

15 How do you vote on the decision as
16 amended, Mr. Sergi?

17 JOHN SERGI: Yes.

18 BARBARA RANDO, CHAIR: Mr.
19 Squillante?

20 MICHAEL SQUILLANTE: Yes.

21 BARBARA RANDO, CHAIR: Ms. Gelineau?

22 GLENNA GELINEAU: So you're voting on
23 the decision before the finding of facts?

24 BARBARA RANDO, CHAIR: Because we

1 already looked at the finding of facts and we added
2 some. We didn't change it.

3 GLENNA GELINEAU: But we didn't vote
4 on it.

5 BARBARA RANDO, CHAIR: I started to
6 and someone said decision. So, I assumed that we
7 had.

8 All right. Do I have a motion on the
9 proposed findings of fact?

10 JOHN SERGI: I make a motion that the
11 finding of facts be adopted as the Board's finding of
12 facts, Madam Chairman.

13 BARBARA RANDO, CHAIR: Motion by Mr.
14 Sergi.

15 Do I have a second?

16 MICHAEL COTTON: I'll second that.

17 BARBARA RANDO, CHAIR: Second by Mr.
18 Cotton.

19 How do you vote, Mr. Sergi?

20 JOHN SERGI: Yes.

21 BARBARA RANDO, CHAIR: Mr. Squillante?

22 MICHAEL SQUILLANTE: Yes.

23 BARBARA RANDO, CHAIR: Ms. Gelineau?

24 GLENNA GELINEAU: Yes.

1 BARBARA RANDO, CHAIR: Mr. Cotton?

2 MICHAEL COTTON: Yes.

3 BARBARA RANDO, CHAIR: And the Chair
4 votes no.

5 On the decision as amended, and I
6 believe we have five conditions that we added besides
7 what the Petitioner has in his decision, do I have a
8 motion? Do you want to make it again?

9 JOHN SERGI: Oh, yes, I'm sorry, Madam
10 Chair. I make a motion that the proposed decision as
11 amended be adopted by the Board as its decision.

12 MICHAEL COTTON: I'll second that.

13 BARBARA RANDO, CHAIR: Second by Mr.
14 Cotton.

15 How do you vote on the decision as
16 amended, Mr. Sergi?

17 JOHN SERGI: Yes.

18 BARBARA RANDO, CHAIR: Mr. Squillante?

19 MICHAEL SQUILLANTE: Yes.

20 BARBARA RANDO, CHAIR: Ms. Gelineau?

21 GLENNA GELINEAU: Yes.

22 BARBARA RANDO, CHAIR: Mr. Cotton?

23 MICHAEL COTTON: Yes.

24 BARBARA RANDO, CHAIR: And the Chair

1 votes no. And it is granted. Good luck. And now
2 you can go home.

3 ATTORNEY EDWARD BIGHAM: I hope so.

4 BARBARA RANDO, CHAIR: One more motion
5 is in order.

6 JOHN SERGI: Motion to adjourn.

7 BARBARA RANDO, CHAIR: I have a motion
8 to adjourn.

9 Do I have a second?

10 GLENNA GELINEAU: Second.

11 BARBARA RANDO, CHAIR: Second by Ms.
12 Gelineau.

13 All in favor?

14 ALL BOARD MEMBERS: Aye.

15 BARBARA RANDO, CHAIR: Opposed?

16 (No Board Members opposed.)

17 BARBARA RANDO, CHAIR: The ayes have
18 it. And it's -- I can't see, is it 8:10?

19 GLENNA GELINEAU: 9:10.

20 BARBARA RANDO, CHAIR: 9:10. It's
21 9:10. Thank you very much.

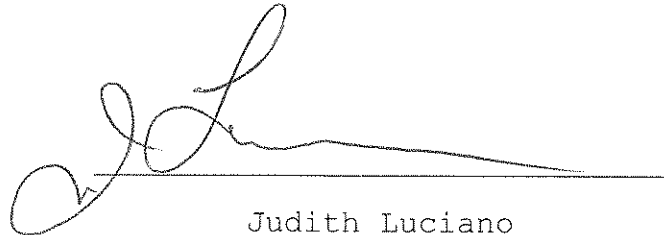
22 (Whereupon, the public hearing was
23 concluded at 9:10 p.m.)

24 //

Barbara Rando, Chair
3/3/15

C E R T I F I C A T E

I, Judith Luciano, do hereby certify that the foregoing record is a true and accurate transcription of the proceedings in the above-captioned matter to the best of my skill and ability.



Judith Luciano

