

**TOWN OF BETHLEHEM
BOARD OF APPEALS
January 21, 2004**

A regular meeting of the Board of Appeals, of the Town of Bethlehem, Albany County, New York was held on the above date at the Town Offices, 445 Delaware Avenue, Delmar, New York. Michael Hodom, Chairman, presiding.

PRESENT: Michael Hodom
Robert Wiggand
Gilbert Brookins
Marjory O'Brien
Leonard Micelli

Michael Moore Attorney to the Board

Mark Platel Building Inspector

Chairman Hodom called the meeting to order at 7:30 p.m.

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Good evening Ladies and Gentlemen. This is a regular meeting of the Board of Appeals for the Town of Bethlehem. The first order of business this evening is a continuation of a public hearing for an Area Variance under Article XII, Percentage of Lot Occupancy, Section 128-50, Single Family Dwellings, Section 128-49, Total Building Area, Article XVI, Front Yards, Section 128-66, Required Depths requested by Diane Fortier for property at 7 Rienemann Street, Albany, New York. The applicant wishes to construct an addition, which would exceed the allowable percentage of lot occupancy and also encroach into the front yard setback requirement at the premises of 7 Reinemann Street, Albany, New York.

CHAIRMAN HODOM: Mr. Platel, would you give us the reason for the hearing, please?

MR. PLATEL: Yes, Mr. Chairman. This is the reopening of a previously adjourned hearing for a one-story addition to the existing main structure. The proposed addition of 416.85-square feet along with the existing main structure of 1,089.99-square feet will create a total structure of 1,506.84-square feet, which is 381.84-square feet over the 1,125-square feet of allowable building area. The lot occupancy will be 20.09-percent, which is 5.09 over the 15-percent allowable of the lot occupancy for the main structure and .09 over the 20-percent allowable total building area. The addition will also create a front yard setback of 23.1-feet, which is 1.9-feet shy of the 25-foot setback required for the main structure.

For an official copy of the minutes, please visit the Town Hall, 445 Delaware Avenue, Delmar, NY or call 439-4955, extension 158.

The existing structure is a single-family dwelling and is located in an "A" Residence Zone.

CHAIRMAN HODOM: Thank you, Mark. Ms. Guastella, would you please read the official call of the meeting?

Notice of Public Hearing. Notice is hereby given that the Board of Appeals of the Town of Bethlehem, Albany County, New York will hold a public hearing on, Wednesday January 21, 2004 at 7:30 p.m. at the Town Offices 445 Delaware Avenue, Delmar, New York to take action on application of Diane Fortier, 7 Reinemann Street, Albany, New York for Variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings, Section 128-49, Total Building Area, Article XVI, Front Yards, Section 128-66, Required Depths, of the Code of the Town of Bethlehem for construction of an addition which will exceed the allowable percentage of lot occupancy and encroach into the Front Yard setback requirement at the premises of 7 Reinemann Street, Albany, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the January 14, 2004 edition of the Spotlight, official paper of the Town of Bethlehem. All persons listed in the petition as owning property within 200 feet of the premises in question were notified by mail at least five days prior to this hearing.

CHAIRMAN HODOM: Thank you, Karen. The procedure that we use this evening; we'll hear the Applicants presentation; we'll entertain any questions or comments from the audience; we'll hear anyone wishing to speak in favor of the Applicant and anyone desiring to speak in opposition. Any comments or questions should be directed to the Board. We also request that only individuals speak at one time, we don't pick up the recording properly if everybody talks at the same time so please wait to be acknowledged before you speak. Miss Fortier, again tell us what you plan on doing; tell us the changes your architect has made in the drawings and what you want to do and why you want to do it and how you want to do it.

MS. FORTIER: Okay. I want to do an addition onto the front of my house to add extra room. I have 2-little ones; I have an 800-square foot house so it's pretty small. And the changes the architect made were the depth of the basement, the front porch – I don't recall, but there was another one. I apologize.

CHAIRMAN HODOM: Probably the exterior staircase.

MS. FORTIER: The staircase, I apologize. That's the one, yup.

CHAIRMAN HODOM: If you would again, just go over the make-up of your family, how long have you owned the property.

MS. FORTIER: I've been there since 81', so about 22-years. I have 2-small children, 2-older children and I have a 2-bedroom, 1-family home. Like I said the living area is 800-

square feet, so it's pretty small. We wanted to make a larger living room and a third bedroom.

CHAIRMAN HODOM: And how many people currently will reside in the premises?

MS. FORTIER: Four.

CHAIRMAN HODOM: Okay, two adults and two children?

MS. FORTIER: Right.

CHAIRMAN HODOM: And as I understand it, you are currently not living in the residence?

MS. FORTIER: Right. We moved out so that the little ones wouldn't be around any construction and breathing any dangerous materials, you know when they start ripping down and - - the main living room is going to have the wall is going to be broken down to build forward. So we didn't want the debris of the kids breathing in the debris, so we moved out temporarily.

CHAIRMAN HODOM: Okay. And you currently living with family or are you renting?

MS. FORTIER: I'm renting.

CHAIRMAN HODOM: Okay. Do you have an updated work schedule of when, if the Board were to approve the application, when you would commence construction and complete construction?

MS. FORTIER: I believe when Alvin was here at the last Board meeting, he had said that you were asking if they could be done within 6-months and he said even before that time frame as long as they could start with the digging once everything was approved, considering the ground now freezing with our 30-below temperatures. So - - but they plan on being able to start shortly and tie up within 3 to 4-months he said.

CHAIRMAN HODOM: Do you currently have a basement under the existing home?

MS. FORTIER: Yes, but it's not a full basement. I don't know why, if you were over 6-foot tall you can't fit down there. If you're at 6-foot tall you hit your head. It's used to wash laundry; it's not used as the family area. We can't - it's not feasible.

CHAIRMAN HODOM: So the new basement area would be used for?

MS. FORTIER: Storage, basically I use my attic now. Basically storage, I have a lot of toys and, you know stuff that gets put away; decorations, stuff like that. I'd like to unload my attic, things store better in a dryer place. But, you know as far as finishing it and stuff now I wasn't planning on doing that.

CHAIRMAN HODOM: Are you, or do you intend to in the near future or at any time to request any future additions like the garage? And the reason I ask that is because you're over considerably for the percentage of lot occupancy for the residence, but for the total you're very close and I think the Board would consider that if everything was going to remain stasis quo for your purposes anyway.

MS. FORTIER: I wasn't intending on – cause I would've done it all at one time if I was going to do other things, yeah I don't really intend to. I mean my 2-older ones are in college, so it's not like they're there full time and so I really don't plan on having any more children, thank you and I - - you know so I wouldn't need more room as far as bedrooms go and like that. The living room space that we're applying for would be sufficient for, you know even as they grow older.

CHAIRMAN HODOM: I think we discussed this at the last hearing, you're proposing to reside a good portion of the existing west wall, and then of course the new addition and then on the east wall you would stop it at where the entrance way to the basement meets the existing house.

MS. FORTIER: Right.

CHAIRMAN HODOM: But you would then start the new siding at the garage and then go forward.

MS. FORTIER: Right.

CHAIRMAN HODOM: Okay.

MS. FORTIER: And then like he said, we were planning purchasing and letting my, you know - - instead of them doing it, just having it for a later date when it gets warmer for him to finish it off.

CHAIRMAN HODOM: For him meaning?

MS. FORTIER: Michael, my partner. In the back where, you know where you can't see.

CHAIRMAN HODOM: The – and I may be redundant as far as the last hearing, but just to reiterate the new siding and the window and the architecture and the roofing will match as closely as possible the existing structure?

MS. FORTIER: Yes.

CHAIRMAN HODOM: Any other questions from the Board?

MR. WIGGAND: Do you use that garage presently?

MS. FORTIER: Yes. There's a car stored in there.

MR. WIGGAND: So it's in good condition, or reasonably good condition?

MS. FORTIER: Oh yeah.

MR. WIGGAND: It looked like something was happening to it. Is there anything wrong with it?

MS. FORTIER: No. No, they took off the front of the siding on the front of the house.

MR. WIGGAND: Yes, I see that.

MS. FORTIER: Yeah, because we had - - that was something that we decided with the builder that we were going to do, you know take that off for him and that's when they had disconnected the gas and they came out with the water and then we were getting to the finalization and we ran into this problem.

MR. WIGGAND: I'll take a better look at it when I go there again. I looked at it from the car on the road and I didn't get a good look at it.

MS. FORTIER: No the garage actually is - actually it's a 3-wall carport, like the forth wall is the siding of the house and it was all fixed. Roger Griffiths had come out and looked that over and stuff for me and...

MR. WIGGAND: So it's a structurally sound garage on the building?

MS. FORTIER: Yes, the previous one had collapsed and that's why it was re-structured.

MR. WIGGAND: Okay, thank you.

MS. FORTIER: I didn't build the other one.

CHAIRMAN HODOM: I also see that your architect has added a footing drain around the perimeter of the new addition, which will apparently drain into the sump?

MS. FORTIER: Right, that's what we had discussed at the last meeting, correct.

CHAIRMAN HODOM: And from the sump where do you plan on pumping it to?

MS. FORTIER: That I don't have the answer to, I apologize. I'm not familiar with that.

CHAIRMAN HODOM: Okay. Whatever means that you use will certainly be in compliance with any of the Town Codes and regulations.

MS. FORTIER: Yes, I will inquire, I mean I'll make sure that Alvin and Howard from

Prime Concepts inquire with the inspectors on what procedures have to be followed on that.

CHAIRMAN HODOM: I think the last time we met there was discussion about letting it drain off on to the lower property. That won't be allowed so it's either you pump it into a dry well or you pump it into the storm sewer system.

MS. FORTIER: Yeah, and I thought we had mentioned - - I do have a well that's not being used in the back yard that they could direct it to because when I had bought the house they were using - - the previous owner was using that well, but I had a termite treatment and they suggested not to use that well because of the seepage of the chemicals they use. So we shut it off and we don't use it, so if they needed to drain it somewhere there's a well there accessible to them in the back yard.

CHAIRMAN HODOM: Previously that well was being used for potable water?

MS. FORTIER: Back in 19 - before 1986, right.

CHAIRMAN HODOM: Okay. I wouldn't recommend you draining it to there.

MS. FORTIER: No? Okay, I thought you said a well so I'm not....

CHAIRMAN HODOM: A dry well is something that would dissipate by itself over a period of time.

MS. FORTIER: Okay, I'm not that familiar with I apologize. I misunderstood.

CHAIRMAN HODOM: Any other questions?

MR. WIGGAND: I think we've covered it pretty good.

CHAIRMAN HODOM: Are there any questions or comments from the audience? Anyone wishing to speak in favor of the Applicant? Anyone desiring to speak in opposition? Hearing no further questions or comments, we'll declare the hearing closed and we'll notify you in a timely manner. Thank you very much.

MS. FORTIER: Thank you.

Hearing closed 7:45 p.m.

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The next order of business this evening is a public hearing for a Variance and a Special Exception under Chapter 113-3, and 113-9 (F) requested by Galaxy Communications (Applicant), and William Banahan (Owner) for property at Old Quarry Road, Selkirk, New York. The Applicant wishes to allow construction, operation and maintenance of an FM Radio Broadcasting Facility, which includes a +/- 300-foot Tower at the premises of Old Quarry Road, Selkirk, New York.

CHAIRMAN HODOM: Mr. Platel, please give us the reason for the hearing.

MR. PLATEL: Yes, Mr. Chairman. The Applicant is seeking a Special Exception for the installation of a new 300-foot FM Radio Tower and 15-foot by 25-foot equipment shelter. The height of the tower is in excess of the 190-foot height restriction as stated in section 113-9, F, by 110-feet and requires a Variance. There are no other structures located on this parcel, which is located in RNZ District.

CHAIRMAN HODOM: Thank you, Mark. Ms. Guastella, please read the official call of the hearing.

Notice of Public Hearing. Notice is hereby given that the Board of Appeals of the Town of Bethlehem, Albany County, New York will hold a public hearing on Wednesday January 21, 2004, at 7:45 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of Galaxy Communications, L.P. (Applicant), William Banahan (Owner) for Special Exception under Chapter 113-3, and 113-9(F) of the Code of the Town of Bethlehem to allow construction, operation and maintenance of a +/- 300-foot FM Radio Broadcasting Tower Facility at premises Old Quarry Road, Selkirk, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the January 14, 2004 edition of the Spotlight, official paper of the Town of Bethlehem. All persons listed in the petition as owning property within 500 feet of the premises in question were notified by mail at least five days prior to this hearing.

CHAIRMAN HODOM: Thank you, Karen. We'll use the same procedure that we used earlier, we'll hear the applicants presentation; we'll entertain any questions or comments from the audience; we'll hear anyone wishing to speak in favor of the applicant and anyone desiring to speak in opposition. All questions and comments should be directed to the Board and they should be individually stated. Please wait to be acknowledged before you make any comments. We just ask that you stand or sit close to the black microphone, it's for recording purposes only, they're not for amplification. Mr. Sweeney, you'll be representing Galaxy Communication's this evening?

MR. SWEENEY: Yes, I will.

CHAIRMAN HODOM: Introduce yourself if you would and your association with the Applicant. Tell us what you want to do and why you want to do it.

MR. SWEENEY: My name's Mark Sweeney, I'm the attorney representing Galaxy Communications tonight and with me is Ed Levine who is CEO of Galaxy Communications, Tim Backer, the Director of Engineering, Bud Williamson, a consulting engineer, and Ed Vopelak, the Environmental Consulting Engineer from CT Mail who's helping us put together the SEQRA documents, the visual impact assessment and the site plans. What I'd like to do for the Board's benefit is to explain the project briefly. We've given a large volume of information for the Board to consider, I'd like to help the Board digest that by walking you through the application, hopefully briefly, and I will have each of the gentlemen speak to their particular areas that they're contributing to the application and the materials that we submitted.

First this project as described is for an FM Broadcasting station. It's going to be located in a Rural Not Zoned District in the southwest corner of Town as you are probably all aware. On this existing - - in this area there are existing 4-communications Towers within close proximity or basically on the adjacent premises varying in height from 180-feet to up to 300-feet. Some of the Tower's are lit and one of them I believe is painted red and white pursuant to FAA regulations.

What Galaxy is trying to do here is to comply with the terms of its FCC license as a Class A broadcast facility. In order to do that they have to have certain separation requirements from other - similar broadcasting stations with similar frequencies. These separation requirements mandate that the site that they're using currently on lands owned by Calahan Industries is not sufficient; will not comply with FCC regulations. Mr. Backer can speak more directly to the particular FCC requirements and engineering aspects of that issue for you. He prepared a report that's included in your package.

There's an inventory of Tower's in there and exhibit 4A, which shows on the colored photograph the locations of those existing Towers as well as their heights. The benefit, in our opinion of locating this Tower in terms of in this particular area is the existing Tower's that are there, and it's consistent with the Bethlehem Code for telecommunication tower's in terms of preferential area where tower's are to be located. Under the Code, Town property is the first choice for location, second is the Rural Not Zoned district. As you know the Town has more than one Rural Not Zoned district. This particular one has a ridge that is already occupied by several existing towers of similar nature and similar height. Now, by placing it here it lessens the visual impact of the tower in that location because it is part of the existing landscape.

There's also to the immediate west of the property and established Niagra Mohawk right of way with significant towers there approximately 100-feet, probably a little more than that. So the location of the tower is in a good area, these would be visual impact and in terms of mitigating that impact. One of the other adjacent properties is the Albany Water filtration plant. There is no adjacent residential properties in the immediate area. In essence what the NIMO right of way, the filtration plant and the topography, which is a steep ridge to the east of the site creates a large tower site where, according to

the Bethlehem Code, you want to condense, you know or keep your towers in a similar area. One of the requirements is to show that you're, you know that there are no tall structures or existing towers that will work or feasible for the applicant. Next is whether there's a - - if you need a new tower whether a tower site would suffice. This larger area is similar though, it's not the same parcel. It's similar in nature so it could be considered such as a tower site. Even if it's not, the adjacent parcels wouldn't be capable of supporting the tower and Galaxy only has the right to this particular area in any event.

Basically, what we're trying to do is promote – or establish a new tower and broadcasting facility that will enable Galaxy to upgrade it's broadcast capabilities, provide better public service especially in the case of emergencies, and also to address some of the problems that exist with the existing in terms of access, maintenance things of that nature. That would make it a difficult site to operate.

Now, in the application we provided you with a narrative description of the project is and I think we understand that. Second we provide a full environmental assessment form in your first tab there that has a visual addendum attached. The visual addendum was filled out by the engineers at CT Mail using the information to the best of their professional knowledge and experience and of course if the Board has other issues with that, we can address those as we go forward.

There's a conceptual site plan that's been prepared and submitted to the Board showing the tax map overlay on the aerial photographs of the area. They show where the towers going to be located. Clearly viable on that plan are the existing towers and the feasibility of the use of those towers is addressed, as I said later in the application.

Essentially, the rest of the application goes most significantly to the visual impact assessment. The visual impact assessments was prepared by CT Mails engineers. It has provided a zone of visibility map as required by the Bethlehem Code to show the locations where the tower will be visible. There's a series of photographic simulations. There's a couple of points I want to make about the photographic simulations. Due to the distance from which - - let me back up. The photographs were taken from locations as shown on the zone of visibility map. Given those locations, we're a significant distance from the site. It's very difficult to see the existing towers in those photographs. We've highlighted by arrows to show you where those are. The new proposed tower is shown a black line on those photographs. That is not what the tower is going to look like. That had to be put in that manner so that you would be able to see the location. The actual appearance is going to be much more similar to the existing towers that are shown in those photographs. I just wanted to point that out for the Board.

We've also included a copy of the FCC license, which sets forth the lighting requirements for the existing tower. That will be transferred to the new location and we will have to seek FAA approval of the new site when and if there's approval given by this Board for the project.

CHAIRMAN HODOM: Just ask you a question for a minute.

MR. SWEENEY: Sure.

CHAIRMAN HODOM: The licensee listed in that license is WRAV, Inc. It is not Galaxy Communications.

MR. SWEENEY: That is correct. That was issued to a predecessor to Galaxy when Galaxy actually purchased from another - - it was purchased from another company that had been transferred through to Galaxy, it's been assigned over.

CHAIRMAN HODOM: Do you have any documentation from the FCC stating that Galaxy Communication is now the license holder?

MR. SWEENEY: We can find out, we can certainly get that information for you.

CHAIRMAN HODOM: Would you please?

MR. SWEENEY: Absolutely, that's not a problem. Basically when a step station established, it's been sold one or two times since and now in the hands of Galaxy. As you know this application has been referred to the Albany County Planning Board. The Albany County Planning Board has provided a recommendation back to this Board highlighting several issues they wish to have addressed and stated that the re-submission without prejudice would be acceptable to them. What we would like to do is address this Board, tell you about the project, explain the materials that we have and how we preliminarily addressed the comments that are in that recommendation and answer any questions that you may have.

What we would then do is put together a supplement for the Application addressing comprehensively all the comments that were raised and this Board's consideration as well as the Albany County Planning Board to reconsider based upon their comments. That way there will be a single identifiable record for this Board to consider at that time. So what I'd like to do at this point is turn it over to Ed Levine. He's going to tell you about the nature of Galaxy Communications, the project and then we'll go into a little more detail with the particular aspects of the Application. Thank you.

CHAIRMAN HODOM: Thank you.

MR. LEVINE: Good evening. We started Galaxy 14-years ago this month with one radio station in Utica, New York. I own the company along with three other partners and we're kind of a dinosaur that a lot of the broadcasting outlets are and almost all of them have been kind of bought by the big giant public company's that are operated far flung places. I have a long broadcasting career in general and specifically in the Albany market starting back in 1986.

My career has been based in the Capitol District and the Syracuse Markets where I go back and forth every week. And we're really the last of the – friends call me

dinosaur, but we're the last of sort of the locally regionally owned operators. We just try to do good old fashioned public service and we have formats on that appeal to different audiences, different demographics. In fact we're going to switch one of them tomorrow to country music, so if anybody likes classic country music you might want to be listening tomorrow to 93.7, our other station.

We have talk shows on; we have music shows on; we do a lot of community affairs. The Albany Police Officer that was gunned down over the holidays, we did a benefit a couple of Saturday's ago, we raised a few thousand dollars for that man and his family. So we're a big believer in public service because we live in the communities that actually operate these businesses in.

Having said that, we're what's called a Class "A" radio station, those are lower power FM radio stations competing against stations that have 10 and 20 times the power. A Class "A" radio stations of the United States are allowed to broadcast in 6000 watts. The station that we're talking about WRCZ, 94.5 FM is only broadcasting currently at 3000-watts and let the engineers explain – there was some very technical FCC reasons why we haven't been able to do that.

We're here really tonight as a matter of last resort in that I have been trying quite diligently for about a year and a half to pursue other ways of - - with other radio stations of increasing power and tower height and have been unable to do that. So the little parcel of land that we're talking about, which is I think 7 or 800-feet away from the current tower really is the only place in the Capitol District we can move to, to effectively increase our power coverage from 3000 to 6000-watts, which will do two things.

It will give the people that are currently listening a clearer, more dependable signal. And it will also slightly enable our reach to go out further. In this day and age in the world we all live in now radio communications are more important than ever. God forbid in case of natural or man made tragedies to be able to have the emergency alert system on the - - system that we also participate in to. So we don't just pay lip service, the public service aspect of it – it's a main criteria of being a FCC license holder. My company is based here; we're a Syracuse/Albany company, the Capitol District is our focus. We own two stations right now; we hope to be able to own more but it is difficult competing against these companies with a lot more lots than we have. So our going to 3000 to 6000-watts, I think it would be a tremendous asset to the community at large and would also help us serve them in a better and more friendly manner. So that's who we are.

CHAIRMAN HODOM: Just let me ask you a question. How long have you been broadcasting from the current location?

MR. LEVINE: A little over 2-years.

MR. WILLIAMSON: Excuse me, if I may? That's how long Galaxy's been on the air.

CHAIRMAN HODOM: Give us your name if you would.

MR. WILLIAMSON: Bud Williamson. The station has been on the air since approximately 1990. The station first signed on the air in 1990. It has been owned by different parties, Galaxy being the current owner.

MR. LEVINE: I bought the station November of 2001. I have been broadcasting on that tower from that site since November 2001.

CHAIRMAN HODOM: And the tower has been in existence since 1990, okay. Is the tower owned by Galaxy Communications?

MR. LEVINE: No.

MR. SWEENEY: The tower is, but yes. It's a unique situation, Mr. Chairman. What it is Galaxy has a lease with the landowner, Calahan Industries for the tower site. When and if Galaxy terminates that lease under any circumstances, when a lease expires under the terms of the lease, the tower reverts to ownership of Calahan Industries. So as soon as we say no or we're going to move to a new site or something to that effect then we no longer have ownership of it, so that it's an unusual situation under the lease. The lease was not negotiated by Galaxy when they acquired the station. They took the tower with that, you know lease in place. So that's a little bit of an unusual situation, that's how it stands.

CHAIRMAN HODOM: Could you provide a copy of that lease from Calahan?

MR. SWEENEY: Sure, we can do that. I'll probably have it redacted for the - - just the rental values but...

CHAIRMAN HODOM: That's fine.

MR. SWEENEY: Just to show - just to substantiate that that's the situation.

CHAIRMAN HODOM: I think you know where we're coming from as far as our requirements in the Code.

MR. SWEENEY: Sure do, and again I think - - but one other point just to make with that is that the existing tower given the needs of the station to comply with it's license does not work. We cannot upgrade it; we cannot go to that higher level of service that we're required to do under our license at that location. Tim will explain in more detail the efforts we've made to try to make that work. It just hasn't been feasible and that's why we, you know really Ed made a very good point that the idea of coming for a new tower is one of last resort. Galaxy has made some very good and diligent efforts to try and use alternative scenarios, it means upgrading their service without the need for a new tower. In fact Ed had probably contacted me well over a year ago about inquiring as to how to go about this and in that intervening year they were out actively trying to upgrade the site without the use of a new tower. And only when that became a reality that it wasn't going

to happen and it couldn't happen then we decided – they decided that it was necessary to have a new tower and new location, but we'll let Tim Backer speak to that a little more directly.

CHAIRMAN HODOM: Thank you.

MR. BACKER: Good evening, I'm Tim Backer; I'm director of engineering for Galaxy. I've been involved with this project since it's inception. I wanted to go over the technical portion of the exhibit, I believe it's under tab B, 4-B. Without getting overly technical, I want to try to explain the reasoning behind the need for the move and the reason that we got to do the work we want to do from the existing tower structure. Let me preface this with a couple of explanations on how FM radio signals work. The primary thing to remember with an FM signal is they call it a propagation line of site which means the clearer your path between your radio is, the better the signal is.

Any kind of obstruction such as the rain, such as trees and foliage, buildings in a city situation, those all serve to degrade the signal to on the extent depending on how much of that is in the path between the antenna, which goes on this tower and the radio's that the public is using to receive it. So for that reason, the Federal Communications Commission licenses FM radio stations to different classes based on their height and based on a power level.

The other reason they licensed these based on classes is that so these radio stations - - the signals on radio stations that are close, for example if you had a 94.5 and a 94.3 they can't be close to each other because the people that are between those towers will get objectionable interference and the Federal Communications Commission is charged with preventing interference on the radio spectrum that they're responsible for. So they've set up this class system where you have different classes and different power levels and you have to have the radio stations spaced depending on that class so that you don't have that objectionable interference and overlay.

They're very specific and our example as previously stated is class "A" radio station which means that we have a maximum power of 6000-watts and the height is measured in height of above average terrain. How they figure that out is you say where you want the tower and they make you measure different terrain heights from that point out along each compass radio. So you figure out how high that tower is, compare it to the surrounding terrain is basically what they want to get at. Once again, because it's line of site, if you've got a lot of high terrain around you that's going to block the signal more and your effective – the height at that signal is considered lower because you have a lot of blockage. So the maximum for a class "A" is 100-meter's above average terrain, which at the site that we're proposing puts the center of the antenna at about 288-feet above the ground.

The antenna holds on to the tower structure and the antenna itself is approximately 14-feet long. It takes up 14-feet of vertical space on the tower, hence the need for the 300-foot tower at the location. It not only gets us up to the FCC required height and

power for our class, but it also insures that we're going to clear any terrain obstructions between our transmission tower and the public where the signal is intended to be received.

The other thing that comes into licensing an FM broadcast station is each station is licensed to a particular community they call community license. WRCZ is licensed to Ravenna, WKRD, which is our sister station is licensed to Scotia. There's a requirement that you obviously are serving the public interest of your communities license and in order to do that what the FCC has said is you need to provide a signal above a certain to all parts of that community of license. What it means for WRCZ is moving any farther to the west from where it already is will cause us to loose signal in Ravenna to the point where it will not serve the community's licenses. So that kind of forms a western border to where we could have potentially moved.

We have a spacing issue, which I referred to earlier. We have 3 other stations that are spaced fairly close to this radio station, which forms a barrier to the north and a barrier to the south. So, what we end up with is a map if you will, of – this is the only place that we can go and be a full class "A" station as required by our license. This triangle is very small in our case because we have to fit in there and serve Ravenna with a proper signal. Ravenna, going back to terrain is so deep, it's in a ravine for lack of a better term, that the signal has to go down into it and moving the tower would hurt that signal. So in order to alleviate the spacing issue and then serve Ravenna our only choice was to either attempt to upgrade from the current location, which would have required us to also upgrade other radio stations. The other radio stations that border us and we had significant conversations with the owners of all these companies, which fell through. Mr. Levine can speak more to the process that went on there.

MR. SWEENEY: Tim if I may?

MR. BACKER: Yes.

MR. SWEENEY: Mr. Chairman, what happened was is that was the first step that Galaxy undertook in trying to determine whether or not they could use the existing station, the existing tower to accomplish this upgrade. There's 2-stations, I believe one in Vermont or actually – are they both Vermont.

MR. LEVINE: Vermont public radio is one.

MR. SWEENEY: Right and then Pine Tree Broadcasting, correct?

MR. LEVINE: Yes.

MR. SWEENEY: They were on adjacent frequencies that required these separation requirements to be complied with. Significant contact was made with both and Galaxy actually agreed to upgrade both of those facilities at Galaxy's expense in order to allow them to upgrade. Doing so would have cost well in excess of 150,000-dollars, probably –

definitely for 1-station, probably each in terms of equipment and materials and things of that nature for Galaxy to pay in order for them to do that. Well those costs were significant, Galaxy was willing to proceed however it became apparent that due to concerns of the other broadcasting stations about competition and whether or not certain FCC approvals may actually be secured by them for whether they ever want to secure those extra FCC upgrades or license requirements that they decided the only way they would agree to it is to retain control over the decision of when Galaxy could actually upgrade.

So the scenario could be that Galaxy could spend the capitol to improve both stations with new antenna, new radio's, new everything. The other station would then say, well you cannot turn on Galaxy and go up to your new power at this location unless and until we decide that's what we want to do and it's going to be in our soul discretion. Now that's not an acceptable situation; it's not commercially feasible for that to occur. To make that kind of capitol expenditure, to improve the station and then relinquish control over whether you're ever able to utilize that to another entity that's your competitor is not a workable situation.

Once those talks were going down that road it became apparent that there was not going to be a sufficient avenue to accomplish the upgrade from its existing location. And in our response and at the request of the County Planning Board, we will be providing documentation of those negotiations to the Board to substantiate what we're telling you today. Again, it was a very serious consideration that was taken by Galaxy. Negotiations were ongoing for quite some time and unfortunately it was not feasible for Galaxy to do the costs, but most importantly due to the lack of control over that third party who wanted to control our operation.

So those are things that are, you know as Tim said, there's very specific, you know once that determination was made the spacing requirements and the specific FCC criteria had to be complied with. And as Tim explained, the box – search area if you will where that location could be for a new tower could be placed and comply with all the requirements is very small.

So I just wanted to make it clear to the Board that there was significant negotiations undertaken in good faith and in fact the other Board - - for the Boards knowledge, that was the preferred route for Galaxy to go in terms of time, expense and things of that nature. So it's actually going to be more expensive for them to go the route of a new tower in order to get up to speed and also there's the time issue of having to secure the FCC approvals, approvals from the Town and also the FAA approvals for the lighting and such. So that's - - I just wanted to make the Board aware of those issues.

CHAIRMAN HODOM: But you are going to provide the documentation the County Planning Board had asked for?

MR. SWEENEY: Correct.

CHAIRMAN HODOM: Just let me ask you a question and I don't know, maybe Tim is the one to answer it, but can Galaxy change their community license from Ravena to another community and maintain the existing tower that's there or comply with....

MR. WILLIAMSON: Bud Williamson. To answer the question is yes it can be done but it's a prolonged process and in this case there isn't much of a reason to do that and in many cases the FCC receives application for this purpose in order to move a station to a populated area. In this case here there's no sense in changing the city of license because it's not going to allow the station to cover more population.

Going north would be advantageous for WRCZ, going north is not limiting- - the city of license issue is not the limiting factor. In doing the study and looking at the contours – and the required contours to provide over the city of license, there's a limit as to how far west you can go in this case. And quite frankly the further west you go doesn't help this entire valley here including the entire Town of Bethlehem. The signal would be much more difficult. The answer and what the research shows us is to just move it to 700-feet to allow that spacing.

And part of this that Tim did not get to - just so you understand, there is a distance requirement that the station currently falls under and is not compliant to go to 6000-watts. If it moves 700-feet, it would be compliant at the 6000-watt power level. It has to do with rounding, I believe that's discussed in the explanation of the need to move. So changing the city of license often causes bad feelings within the township that it's licensed to, and very often broadcasters that are trying to locally serve the community do not like to do that. In the case of large publicly owned corporations, Fair Channel, Cumulis, companies like that; they do this often and there is a lot a bad press and negative comments and it's usually greed that's driving them to move.

MR. BACKER: If I may add, the spirit of the FCC rulings regarding city of license, they take that very seriously. The broadcast service was established by the commission in the public interest and therefore they determined that they wanted a radio station to be serving a particular community. What frequently happens that people will move and change their city of license in order to make a station that was serving a community serve a large city instead. It's frowned upon both by community leaders and by the commission, you know the commission is forced and most times to grant those based on, you know a new city of license and based on the existing rules. As Mr. Williamson referred to, Ravena isn't limiting us as much as the 700-foot move which would allow us to continue to serve them as good or better than we already are, but also serve our existing audience and a slightly increased audience. Moving anywhere else; we've done multiple studies with very sophisticated computer software that predicts the signal coverage and this hilltop is optimal from any standpoint I could calculate as far as serving the most people in the public with this signal.

MR. SWEENEY: I think one other point just to keep in mind is that the elevation of this area is – speaks volumes as to why there's 4-towers there right now. The higher the elevation the less above ground elevation you're going to need. Moving the tower off of

that ridge in any direction is going to require a taller tower whether it be in the Town of Bethlehem or just over the border in the Town of New Scotland. It's going to require a larger tower in an area that's not currently accommodating towers, creating greater visual impacts, greater issues of that nature. So I think there's a combination of factors that work there in determining, you know the location – appropriate location for both the technical FCC standpoint as well as the environmental SEQRA review aesthetic values standpoint.

CHAIRMAN HODOM: But was that option looked at as far as changing...

MR. LEVINE: The goal is to raise the power and better serve the current coverage and increasing slightly coverage out. The community license change doesn't accomplish anything.

CHAIRMAN HODOM: Is there – I don't mean to stop your train of comments, but is there any location in that vicinity that the existing towers are in where a 190-foot tower will provide you with the abilities you need to cover the areas that you cover?

MR. WILLIAMSON: The FCC allows 6000-watts and 100-meters above average terrain, 328-feet above average terrain. In the case of the existing structure and the proposed structure on that ridge we need approximately 280-feet, the antenna needs to be 280-feet; the center of radiation of the antenna needs to be at 280-feet. If we drop below 280-feet to let's say 170-feet as would be the case on one of the 190-foot towers, the power cannot increase above 6000-watts and therefore the actual coverage of the station will decrease.

The other factor that was looked at here in even considering re-locating on a tower with lesser elevation is that there is already antennas on the towers. So that means the next available location may be below 150-feet, at that point you're above the tree line but not by much so the coverage area and the service area of the station would be less.

MR. SWEENEY: And I think what he's also getting - - just to be clear is that 100-meters standard is set by the FCC for this type of station, and obviously the FCC is facing not just what happens with Galaxy in the way it performs but how it arranges all of the stations and using the similar frequencies and other frequencies in the area. So it's part of the FCC regulatory process that determines what this height is going to be. So the 190-foot height, and I think what Bud is saying is that if we went down that low it would basically diminish the signal and shrink it right down to where it's ineffectually would not be able to comply with the terms of our license. That license authorizes and requires us to provide coverage to a certain geographic area. If we can't do that, that 190-feet, we're not in compliance with the license. We need to find a way that we can do that. That's why we're here before this Board because we found that we could not do that at 190-feet. We needed the additional height in order to comply with terms of the license and provide the service that we're authorized and required to do.

CHAIRMAN HODOM: Thank you. Tim go ahead.

MR. BACKER: There aren't a lot more details to cover. The distance separation issue and you'll have to bear with us; the commission does everything in kilometers. WBTV in Burlington is the station that we have to keep away from. The second station we referred to would be affected if Burlington were upgraded, it's sort of a domino effect and that's why the FCC had to keep such control over power levels and separation. If we went into an agreement with the Burlington station for them to upgrade at the same time we do, well now when they upgrade they're over running a station that's neighboring them. And so that station would also be forced to upgrade. So we've got this separation issue, the commission says 72-kilometers from WBTV in Burlington. The existing facility is 71.37 kilometers so as you see it is just short of complying.

CHAIRMAN HODOM: How is that measured? How do you arrive at the 71.37?

MR. BACKER: Using mapping software. Mapping software and coordinates for each tower determined from satellite positioning, you get a pretty good accurate reading.

CHAIRMAN HODOM: And is that dimension as the crow fly's?

MR. BACKER: Yes.

CHAIRMAN HODOM: Or is that ground coverage?

MR. BACKER: No, as the crow fly's point to point. The commission rounds your applied distance to the nearest kilometer, so the move we're proposing in order to minimize going to far away from the existing structure is then minimized how far we actually have to move is we're moving to a distance of about 71.6-kilometers, which would be rounded to 72 and we therefore comply with minimal moving and minimal complication from moving to far from the existing base of operation. So that is the reason why Galaxy is going through all this trouble just to move a structure or move a transmission facility, you know 7 or 800-feet is because, you know the change needs to be so small to comply with regulations.

CHAIRMAN HODOM: Is there any buffer that could be constructed to prevent your transmission at the higher wattage from interfering with the Rutland Vermont facility?

MR. BACKER: On a limited basis, the commission will issue what's called a directional antenna from it, which basically allows - - if you think of the antenna bolted to the side of the top of the tower, the signal that that puts out is roughly circular, but the commission will let you do under certain circumstances is directionalize that antenna. In other words, make it put out less power essentially squashing that circle; then in a direction where you might interfere with another station.

In a lot of cases that is very - - that will work in a situation, in this case we run into a problem where the prime coverage of the radio station would have to be dramatically reduce in order to accommodate this spacing. There's a little bit of a disjuncture in the

commission's thinking on these circles from these 2-stations not overlapping, but if the distance between the 2-stations is such they don't worry about those circles if they overlap slightly. If we're short to that station and we have to put a directional antenna, we would have to significantly reduce our coverage. It would be northeast towards the prime area that most public is served in that area negating the improvement in all. The directional antennas are usually in the case where the primary that your trying to reach is on the opposite or different direction from the station that you need to protect so in our case it becomes very difficult to see the feasibility in doing that as it hurt the overall cause for the improvements.

MR. WILLIAMSON: If I may add on the directional antenna, while the FCC is looking to in this case make sure the contours do not overlap by using a directional antenna you're not just pulling in that contour and reducing the signal on the soul radio towards the other station, but rather it's fairly broad pattern. It may go upwards of 30-degrees on each side depending how deep and how much you would have to pull the signal back. There's no way to just reduce the signal on a 10-degree path, a window that may be this wide towards that station. It needs to be much broader because of how they manufacture directional antennas. Directional intent is also - are more costly and they are more costly to build and they're more costly to maintain. There's more metal and there's more elements up on the tower itself and generally better engineering practice to keep as minimal amount of material up on the tower. And that's why we're proposing a non-directional antenna here that will serve the entire area in a circular fashion.

MR. LEVINE: And having said all of that, with the directional antenna our main goal here is to do a better job of serving our community, our public. With the actual population we would serve adequately, it would go down and it would absolutely be counter to the whole, you know you might have a higher power but if you have to pull it in to where the population base is - the best place to use it they said directional intent is - - are in sparsely populated areas that you're pulling back from or over water. That works very well if it's over a body of water. The objective here is to do a better job of serving the public of their convenience, interest and necessity and, you know we lean towards the population base, you know to pull it back towards population base is totally counter productive to the whole process.

MR. BACKER: If I can, just a quick analogy that I've used before to explain the way this works is to think of the FM signal. You've got an antenna up on a tower, think of the FM signal as a big balloon around - - we said with the center being that antenna. What a directional antenna will do is you basically are squeezing that balloon in. Whatever power increase you get is going to go off to the sides, but it's going to go away from if you're squashing the balloon in - - you know towards the area you're trying to serve. You're pushing all that power increase off into areas that aren't going to serve that - most people. So it becomes an oval instead of a circle, so, you know I just wanted to make it clear that yes we would be getting 6000-watts directional, but 6000-watts doesn't help you if you're pulling all of that 6000-watts back from the area you're trying to serve in order to protect another station.

CHAIRMAN HODOM: If you continue to operate at your 3000-watt level, you don't face any of these problems that you're talking about. You want to go to 6000-watts to pick up additional coverage; more patrons primarily?

MR. LEVINE: At a drop of - - I was in staying at the Best Western tonight on Western Avenue, which is in our prime coverage area and I can't get the radio station on a clock radio.

MR. SWEENEY: One of the things to keep in mind is that the terms of the FCC license require us to comply. The terms of the FCC license say that we're a class "A" facility and they want us to operate at the optimum level of 6000-watts. The 3000-watt level hasn't been feasible to pursue, what we want to do is - and what we have to do is comply with those FCC regulations. This isn't a matter of just thinking; gee it'd be nice to turn the power up. This is, you know when the license was purchased there's, you know it comes with a set of parameters in which we have to operate. So that is what we're trying to do here and so matter of - - remaining at the existing level, we're already noncompliant in the separation distance that we're at. So we have to try, you know come into compliance with that. So like I said there was 2-main avenues we could pursue. One was the mutual upgrades, the other was the new tower. So we tried unsuccessfully to do the mutual upgrades, however that leaves us with option of the new tower.

MR. LEVINE: The commission wants all facilities operating at full maximum power all the time; we're not doing that.

CHAIRMAN HODOM: Do we have that somewhere in the documentation that that's a requirement or a mandate from FCC that you should...

MR. SWEENEY: It's the terms of the license. If you look at the license itself, it says we have a duty to comply with that license; in the terms in there.

MR. WILLIAMSON: If I may, that license instrument that you have is dated approximately 1991. That license will indicate the lesser power level.

CHAIRMAN HODOM: 1992. Right, it does; it says 3000.

MR. WILLIAMSON: What happened was at approximately that time the FCC changed their rules to allow stations to increase to 6000-watts. Not all stations have gone to 6000-watts so the license instrument won't reflect that at this moment, however the FCC rules state and govern where we should be operating at.

CHAIRMAN HODOM: Can you provide us with that kind of documentation that the FCC is mandating you to operate at the maximum power.

MR. WILLIAMSON: Sure.

CHAIRMAN HODOM: Okay.

MRS. O'BRIEN: But it's saying the 6000-watts if you're a class "A" station.

MR. LEVINE: Right.

MRS. O'BRIEN: What are you currently?

MR. LEVINE: Class "A".

MRS. O'BRIEN: And you were licensed at class "A" right from the get go?

MR. LEVINE: Yes.

MRS. O'BRIEN: It's not an upgrade?

MR. SWEENEY: What happened was, as he was saying the rules changed from the time the license was issued. At the time the license was issued, and correct me if I'm wrong, but was 3000.

MRS. O'BRIEN: So the original license was a class "A"?

MR. SWEENEY: Then the FCC changed the rules and the way they handled the planning and the regulation and handing out licenses for the various stations based on 6000-watts. That's where we are trying to come into compliance with rules.

MR. BACKER: As a matter of fact, when the FCC is granting licenses at this point they treat 3000-watt class "A" with the same distance requirements as a 6000-watt class "A". The thought there being that that 3000-watt class "A" would be upgraded to 6000 at some point, so they've gone through a lot of work to maintain those separations in addition to changing the rules so that they can, you know make all class "A" 6000-watts.

MR. MICELLI: Now is the 6000-watts, that's the maximum you can't go beyond that? Now, how much would that increase your listening population to?

MR. BACKER: 25-percent generally. The nature of the physics of radio propagation is when you double the power; you get 25-percent additional signal strength. I want to go back to something that Mr. Levine said earlier in that while we will increase the total area covered, that's really icing on the cake to the fact that the existing area we do cover we'll have a much stronger signal. At this point we have some – actually quite a bit of difficulty with anybody that's listening inside a building, inside a house because it takes a certain amount of signal to get through the walls where if you're in a car or outside you don't have those blockages; once again the line of site. So one of the primary improvements that this will do is allow this radio station to be audible inside the building as well as outside, which will dramatically increase the service we provide to the public and to our listeners.

MR. MICELLI: So now with that 6000-watts, you would be able to pick that up in a hotel with probably no problem at all?

MR. LEVINE: I hope so.

MR. MICELLI: Now when you're in the car, how far west would you be able to carry that station? Would it be before Utica?

MR. BACKER: Well I guess once again to the line of site. The current location is great until you get to about Amsterdam then it starts to go away.

MR. MICELLI: This is under the 3000 right now?

MR. BACKER: Yes.

MR. MICELLI: Okay. I was trying to get a geographic of how far beyond that's going to push you, you know when you're in the vehicle.

MR. BACKER: When you run into train blockages you can't - - even an increase in power is going to push beyond that train.

MR. WILLIAMSON: If I may, the contours are utilized like a certain signal level and the signal - the contour may only go out about 2 or 3-miles with this increase in power. While there is a 25-percent increase and that's approximant depending on terrain. That 25-percent increase in coverage area, it doesn't necessarily mean that the signal is going twice as - or three times as far. It's only pushing the contour out a little bit further and what it's really serving to do is increase the signal close in, in areas that are within that line of site that we talked about. It does not mean that this station is going to be picked up in Utica. We don't need to have this station in Utica.

MR. MICELLI: You just want more clearance, like for example in the hotel to be able to pick that up with a stronger signal?

MR. LEVINE: Exactly. Where there are 5-service areas where we're trying to serve the public and the community now it will significantly impact it hopefully - Best Western.

ATTORNEY MOORE: I had a question. I've heard a couple times Mark from others, something about non-compliance. I'm not quite following what is in non-compliance that requires this move, if you can explain that again.

MR. SWEENEY: I think what Tim was getting at is that the same in distance separation apply from the 3000-feet - - 3000-watts as they do for the 6000. I mean the 72-kilometers, which can be rounded. We're on 71.3 roughly, which was compliant at the time the license is issued. Now it's no longer compliant because of the change and that's what we're trying to, you know we have to - - if we want to comply with the terms of our

license, the new rules. It just says it went from 3000 to 6000, that's one of the requirements we need to deal with.

CHAIRMAN HODOM: The FCC then, you're saying does not grandfather previous licenses? You're mandated to make changes as they direct you to make changes?

MR. SWEENEY: Generally, yes we would be because they're – correct me if I'm wrong, but the way the FCC does this is their not just looking at it from this particular station and what we want one station to do. It's the whole scheme of how they're putting the stations together. It's just like the DEC, if the DEC – I have a gas station and the DEC imposes new tank requirement to require double walls, I have to put a new tank in by a certain deadline and that's the kind of thing that we're dealing with where you have a regulation in place. The regulation changes, then we have to deal with it and then what happens is the other ways with the separation issue are to do the mutual upgrade so that you have the ability to overcome that. We can't do that in this case because we need the consent of a third party that we cannot obtain, and that we've tried to obtain. So it's not a matter of, you know well, oh you can't comply you have to turn your station off. It's a matter of; you have basically some options in trying to do that in coming into compliance. We've tried to pursue those avenues and unfortunately we're left with the only situation of needing a new station.

MR. LEVINE: And having said that, FCC licenses are not owned by a company. I do not own the FCC license. The FCC licenses are owned by the Government, by the Country, by the people, and I have to come and reapply for renewal every period of time. And if you're only at half the allotted power that your class allows you to have – I don't imagine that's a positive and the reason why they would take a look at that is, sounds ridiculous, but frankly it's less expensive to operate 3000-watts then it is 6000-watts and theoretically if you have an owner that was trying to save some money and he was licensed for 50000-watts, but he only broadcast 5000-watts because he wanted to save on the power bill but even though the public is not being served properly, so that's why they want you at that full power and that's a criteria at license renewal time. If you're not at – operating at your full power, that's something that certainly can be a factor.

MR. SWEENEY: For example Mr. Chairman, in terms of as an analogy in the cellular industry when radio spectrum goes up for sale it's an auction and the FCC sells off that spectrum to the highest bidder and I think that's what Ed alluding to is the same kind of thing. If he comes up for renewal and someone else puts in a bid to say I'm going to operate at 6000-watts and I'm going to pay twice what Ed Levine's going – and Galaxy Communications going to pay you. The FCC is going to award that license to them and then we no longer have a license to operate. Then you have that applicant coming here asking you the same thing that we're asking you because they need to comply with the same rules we need to comply with.

MRS. O'BRIEN: Do you have an actual deadline for upgrading?

MR. WILLIAMSON: When is your license?

MR. LEVINE: Well 06' for the next - - 06' I believe.

MRS. O'BRIEN: And if you are under FCC requirements to upgrade, aren't the Vermont stations also?

MR. LEVINE: One of them is a - what's called a non-commercial radio station, so I'm not sure...

MRS. O'BRIEN: But the one that...

MR. LEVINE: Yeah, I'm not sure of the rules on that. That's a rural, that's a station license to wipe all New York. It's a rural station; I'm not exactly sure what the rules are. I can't speak to that, but what I can tell you is that in the past there have been operators that have operated at less than full power for economic reasons. And that has not been looked on favorably. The other thing I can tell you is when you're operating for the public, you know interest and necessity it's important that you be at that full power because the difference between 6000 and 3000-watts may not sound like a big deal, but it makes a tremendous deal within the community you're in as far as the coverage in that particular community.

MRS. O'BRIEN: My question really has to do with, you know the ability of the FCC to say you've got to go to 6000 by such and such a date and yet the Vermont station probably isn't moving to that because they didn't come under your plan here, which would have allowed them to.

MR. SWEENEY: If I may, it's not that the FCC would come in a mandate you move by such and such a date. It's if you elect to pursue to continue to operate your station, you're going to have to comply with the regulations that are applicable to you at that time. If they continue to do that then they would likely have to do it, but as to when they're renewals are - everybody's on a - - it's not a single every 5-years every radio station needs to get a renewal, it varies. And so I can't speak to exactly when they would need to have their renewals in place. So it's a matter of again being held somewhat hostage by - well if I have to wait, you know they don't have to do it until 2007, they can wait me out and then their options are different, then they can upgrade and not worry about my station and do things - - so it is a business that has to operate within the perimeters of the law.

MR. LEVINE: I think a good example that the FCC has done is that the commissioner has mandated that all local television signals be digital by, the year keeps moving but I think it was 2006/2007. Now having known a lot the television operators in this and other markets, that is a 7-figure investment by the - - for really no immediate benefit to them there is no financial return and some have done it, some of them have done it in this market, but they've done it kicking and screaming but they're all are going to have to do it eventually because again the thing about broadcasting and people don't understand; I may be the licensee; I do not own that license. The Federal Government owns that license and I'm granted the use of the license for a period of time, but what the Government

grants, the Government can also take away to, you know and while I certainly would not ever want to contemplate the situation where that could happen. I don't even want to go down that road; I just want to comply.

CHAIRMAN HODOM: Okay, but you're going to provide us with documentation that they're mandating you to...

MR. SWEENEY: What we'll do is provide you with the documentation, the FCC rules that we're complying with to show you that, you know the change from the 3000 to the 6000 and that we have to, you know under the terms of our license we're required to comply with applicable regulations. I think it'll likely be covered when we provide you with the cover document assigning the FCC license to Galaxy.

CHAIRMAN HODOM: Okay.

MRS. O'BRIEN: And that will also have the renewal date on it?

MR. SWEENEY: It should, yes. It may be subject to this, I haven't seen the documents yet myself so I can't speak to it exactly, but we can find out that information for you.

CHAIRMAN HODOM: And just one other question while we're on the tower itself, if I'm reading the existing license correctly the antenna structure shall be painted throughout their height with alternating bands of aviation surface orange and white. Is the tower going to be painted in orange and white?

MR. BACKER: There are two possibilities. With every application for a station move or upgrade or a new station, the FCC requires us to go to FAA channels. We file a notice with the FAA saying we like to construct this tower and it'll be this height, you know in this location. The FAA studies that location to make sure it's not in the path of any airports, not causing an aviation hazard and they also will come back and recommend a painting/lighting, which is adopted by the commission to put on the license. That is there for any, I believe anything above 200-feet – 200-feet and above either has to have orange and white paint with red lighting or the structure has to have a strobe on top during the day and a red light on the top at night in order not pose as an aviation hazard.

MR. SWEENEY: The answer is that if we get the new tower, we can work with them but we would agree to do with – no, ask for what the Board would prefer. Would you prefer a grey tower with a pulse during the day and a red light at night or a red and white tower with a red light? So that's something that – we at least have the ability to request that they give us the authority to do that. It is an option under the regulations. Unfortunately it's up to them what they choose, but we would certainly agree to request it and really since it's an alternate procedure generally it's not a problem. If I understand I think right now at least one of the towers up there is painted and two of them are lit so I think similar to the existing condition that's there now.

CHAIRMAN HODOM: But actually both conditions are stated here in the license, both

the painting and the lighting, is that either or?

MR. BACKER: Yeah, and if you use the red lighting you would have to have the tower painted because the red lighting would only function at night. The purpose of painting the tower is for daytime visibility. If you elected to go the route of a strobe light during the day, that is in place of painting the tower structure and then at night it switches to a red light system, so that, you know you don't have a blinding strobe – you know blinding pilot.

MR. WILLIAMSON: If I may add to this, the strobe, they're often towers that have strobes at night also at a lower intensity instead of going to red lights. So the options are red lights at night and a red and white tower, a painted tower or strobes usually day and night with the tower unpainted, which many communities find is more pleasing, less noticeable. And there are other towers that may even have a strobe during the day and red lights at night, but in our case we'd probably go red lights at night with a painted tower or strobes day and night with an unpainted tower. Just because the tower is unpainted, you can still see it, it's galvanized steel.

MR. SWEENEY: Well, what we would do is work with the Board and know that standards in the code are preferenced for a galvanized finish with minimal - - subject to the requirements of the Federal Government. So in this case, you know we would certainly agree that, to at least request the galvanized tower with appropriate lighting so it may not need to be painted if that's what this Board would so choose.

CHAIRMAN HODOM: Well, but I think you also have contradiction in your documents. In the license it says that it is supposed to be painted, at the way I interpret it and in another section you're proposing a galvanized tower with lights that will turn into grey after a period of time so I guess we need clarification as to what you're proposing.

MR. SWEENEY: If I can explain, what it is we're proposing the galvanized with a light that would comply with the regulations to do our best to comply with the requirements of the Bethlehem Code. The reason that says what it says, is that's a license for the tower in that location. When we apply to the FAA for approval of the new tower then we are going to have to come into compliance with FAA regulations. We can do so in the means that Mr. Williamson suggested by having a galvanized tower with a light of two types on the top. Does that clarify for you Mr. Chairman?

CHAIRMAN HODOM: Is the current tower that you're using painted?

MR. BACKER: The existing tower is painted with red lights at night. That was a choice that was made at the time of construction.

CHAIRMAN HODOM: Okay.

MR. WILLIAMSON: The license you see is for the existing facility.

CHAIRMAN HODOM: Yes.

MR. WILLIAMSON: We have yet to file with the FCC or what's called a construction permit, permission to build a facility 700-feet away. It's really a formality that we go through so that it gets into the database or every other station knows what's going on in Ravena, New York at this station. Simultaneous with that we will file with the FAA and advise them of our desire to construct this tower on the location, the new location. The FAA will go through their procedure of notifying nearby airports and we'll see comment.

They will also check to see if this tower will violate airspace in a negative fashion and they will come back to issue either a determination of low hazard air navigation, which I believe would be issued given the other towers on that ridge at the same height or they may come back and say you can have a tower at a lesser elevation, in which case we can escalate that to further study, but I believe it will not go that far. In this case, I believe is grantable by the FAA considering that they've already issued a low hazard on this structure here.

The new structure would have a – and can have the same lighting requirements as you see there or it can be different. The way the FAA is issuing the lighting gives us a little bit more lead way in choosing in what we would like to have. Years ago, the only way to mark a tower was with paint and red lights, strobe lights are relatively new. Some like strobe lights some don't. Some communities don't mind them, some communities do. It's important to note they flash brighter during the day and they do dim at night. It's like a flashing white light, like a night-light in the distance.

CHAIRMAN HODOM: My night-lights don't flash though.

MR. WILLIAMSON: That's good.

MR. SWEENEY: I thought about doing that but my daughter acted up.

CHAIRMAN HODOM: Okay, so we'll get clarification on that?

MR. SWEENEY: Yes.

CHAIRMAN HODOM: Ultimately we won't know the final decision should the Board grant your approval until you get FAA approval. Is that correct?

MR. SWEENEY: One of things that we're doing is we're going to be - - we don't have to wait until this Board makes a decision in order to file for that determination. Given the information we have about the site, it's location, it's elevation above sea level, we can make a filing and intend to do so, so that hopefully by the time this Board makes a decision we will have the information from the FAA saying that what we can - - authorizing us to proceed in the manner in which we propose, which is galvanized with the other type of light, which the Board would give us it's preference.

MR. WILLIAMSON: If I may add the FAA and the FCC work together so if there were any issues with the FAA and with the lighting of tower, the FAA will communicate to the FCC if they are aware and approve of the tower. The FCC will not grant a construction permit if they do not have this concurrence from the FAA. They work hand in hand in that regard in order to help cross check each other. And there's enforcement to, they are out checking towers to make sure they comply. The FAA and the FCC work together to assure compliance with the lighting and markings so usually local Boards and local communities do not have to police that, it's done at the Federal level.

CHAIRMAN HODOM: Okay. Tim were you finished with your portion?

MR. BACKER: Yeah unless the Board has any questions, that's fine.

MR. SWEENEY: Mr. Chairman, if I may I think now we can move on to Mr. Vopelak and if the Board doesn't have any other questions in that area, he can speak to the environmental issues and the visual impact assessment that was performed.

CHAIRMAN HODOM: Thank you.

MR. WIGGAND: Could you give us your name again please?

MR. VOPELAK: My name is Ed Vopelak. I'll talk a little bit about the issues with the site and the environment, then I'll talk about the visual assessment that we did and there were two particular comments raised by the County Planning Board that I can address or show you how we've been addressing those as well.

CHAIRMAN HODOM: Before you get started, if you're referred to certain parts of the package, just tell us ahead which one it is.

MR. VOPELAK: Sure, the first thing I'm going to do is refer to the site plan map here, give you an idea of how you get to the tower. The existing tower is accessed...

MR. SWEENEY: That's exhibit two.

MR. VOPELAK: Sorry about that. The existing tower is accessed actually through the property of the Albany Water Board with their new security procedures, we have to sign in to get through the gate and that's how the existing towers are accessed. There's an existing gravel road that goes back to the Albany telephone tower site. The existing Grand Castle and American tower corporation sites are also off of that gravel road. Our proposed access is that same gravel road. Similarly power and power and communications comes in to those towers that way we are going to use those same facilities.

The tower that is proposed is a self-supporting lattice tower; it's not a guy tower. The existing tower is a guy tower, the other three towers – or two of the other towers back there are I believe are lattice towers and I think one tower is a monopole. What we

propose is a 300-foot tall lattice tower; would be about 26 – equilateral triangle, about 26-feet in diameter at the base and when you got to the top the tower is an equilateral triangle about 4-feet on either side. And there is actually the upper part of the tower is more of a straight tube, if you will, it's sort of like an Eiffel tower but not quite as exotic.

At the ground there would be minimal amount of clearing basically to build the tower and for a small communications building, probably a pre-engineered metal building. Some of the other buildings down there are pre-engineered concrete buildings. The building that is proposed would be somewhere around 15 by 25-feet, enough space in there for the electronics and the transmitter equipment. The applicant would build the tower so it could accommodate co-location if so desired by the Board.

They propose to be at - - the top of the tower has been talked about, other potential co-locators would probably be cellular communication facilities, which would probably go a lot lower on the tower.

CHAIRMAN HODOM: The building you're proposing to use is a Morton building?

MR. VOPELAK: The Morton building – it could be a - - the Morton building is a wood frame and the metal building, there are other brands, you know nothing has been picked out but it would be...

MR. SWEENEY: Mr. Chairman, if I may? We submitted just at the request of Mr. Platel just to give the Board an idea of what we're thinking about. We have not come to a final conclusion on what type of a building it would be as believe that would be handled during the site plan. I'm advised now that the Board here will handle the site plan. In our subsequent submission we will have more detailed plans for the Board to consider for the building. The approximant size won't change. As to the color, things of that nature, we're glad to work with the Board in order to make it, you know blend into the surrounding as much as possible. As Ed said it's going to be inside a wooded area that's not adjacent to any residential properties at all.

MR. VOPELAK: Pretty much the site is inaccessible to the general public because you have to go through a locked gate to get there and it's going to be in the woods and the applicant is only going to clear what trees he has to, to put the tower and the building in. There would be a fence around the tower itself to prevent people from climbing the tower and then the building would be adjacent to the tower base, that's basically the improvements that I proposed.

MR. SWEENEY: One point if I may with the site plan, you'll see a blue circle around the site. That's a 150-foot set back requirement of your Code. As you can see it over laps the parcel to the south. Our lease agreement with Mr. Banahan includes both of those parcels that he owns and we've requested the Board under these particular circumstances given the location of the NYMO right of way, the other properties in the area that that 150-foot requirement be waived.

MR. LEVINE: I think it's approximately 40-feet that goes over at the highest point.

MR. SWEENEY: And in this case since it's owned by the same landowner, we have the rights and nature of the other uses that that particular requirement be waived for that. It's not technically a Variance that's required under your code for a showing of cause there's an ability of this Board when considering these applications to waive that requirement and we've requested that.

CHAIRMAN HODOM: Has there been any discussion with Mr. Banahan about enlarging the one parcel so that you are using a single parcel?

MR. SWEENEY: To this date I do not believe so. He only recently acquired the parcel on which the tower would be located so it was a matter of - - it wasn't even an option for us initially until he acquired that parcel.

CHAIRMAN HODOM: I would ask you to discuss that with him. The reasoning for that is that because it is a separate parcel and it could be sold off as a separate parcel.

MR. SWEENEY: I understand.

CHAIRMAN HODOM: Okay. It would be better if you comply with the Code 100-percent if the opportunity is there. And my thinking here to separate the 2-parcels if it's only 40-feet, it probably could be done fairly easily.

MR. SWEENEY: We'll inquire.

MR. VOPELAK: And then the only other thing I would point out is who the adjacent property owners are. This parcel here is the Calahan parcel that is where the existing tower is here. This is the Albany Water Board parcel. This is the lands of Niagra Mohawk, they actually own that right a way in fee it's their property. And then this property down here is owned by Mr. Banahan, this parcel here is owned by Mr. Banahan, this parcel here is owned by Mr. Banahan and then this parcel here is also owned by Mr. Banahan. Some of - - I think this parcel was the last one that was recently acquired. The other existing towers which are all cellular towers are on property owned by Mr. Banahan. That pretty much covers what I wanted to talk about the site plan, I think the rest of my discussion will focus on visual assessment that we did. I'll talk a little about the methodology, there's a, I think a second report that was submitted and this map was submitted as well.

Basically the visual assessment, we basically – what we're trying to do is give visual representation from areas in the Town that you can see the tower and then put those – insert the tower in photograph. The methodology that's used is we took weather balloons and the report discusses all this stuff in detail. I'll sort of paraphrase it.

MR. SWEENEY: That in a separate package submitted by CT Mail.

MR. VOPELAK: We had 4-foot weather balloons on a tether, 3-different colors. One at 300-feet, I think one at 250 and another at 200 that were raised at the site. The point of the tower was surveyed in the field so we had the tether at the right location. The reason for using 3-balloons, when you go up 300-feet and it's windy you want to know how things are moving. The work was done early in the morning when the winds are at their lowest, so that was done. Then 2-people drove around in a car, one guy driving, one fellow with a pair of binoculars trying to see the balloons, which are very difficult to see.

The advantage we have with our site is we could see the existing generally from where we could see the balloons, so we sort of focused on the existing towers to find the balloons because our tower site for most instances is in between the other 4-towers on top of the hill. Then we take photos with a 35-millimeter camera with a 50-millimeter lens, which most approximates the human eye and we took pictures around Town from locations where you could see the balloons, then we went back into our shop, put this map together which is, you know is climacteric map of the area.

We did a digital train model, which we overlaid on the map. The digital train model using information about where we were and what we're trying to look at. We eliminated areas where terrain eliminates the possibility of seeing the tower and then you overlay vegetation because vegetation also minimizes the viewing. Basically on this map the areas in blue are areas where you can see the tower from. It's not perfect because it's a simulation but generally the tower and the tower's can be seen from the areas in blue on this map.

The second question is how good they can be seen. You've got photographs from a number of locations where you can see the tower. It's that scene, I think in photo one, that is the tower – that's the location that's closest to the tower. Again we did not draw the tower in, as it would be seen in real life because if we put that grey color in the photo you won't see it. And you can see in the photo that the other towers on the hill while visible are very faint from allowing locations that we looked at. It's very difficult to see, you know basically the towers are painted gray; it's a lattice tower. There's a lot of mass there for our tower. You can't hardly see the one monopole that's there, it's difficult to even see the painted tower which is red and white. So that was what was done.

We sent a photo simulation to SHIPO; we contacted SHIPO when we were doing our site work to see if there were any archeological concerns. The only concerns they had when we sent them this was they would like some additional photos taken from structures that went over a certain age. So we are going to go back and take photographs from those locations and put the tower in the view. Realistically anyplace where you can see our tower, you're probably going to be able to see the existing tower so from our prospective we don't think that's going to be a very big concern, but we will take additional photos from additional photos from additional locations to meet the requirements of SHIPO.

Also as part of our environmental assessment work, we contacted other agencies the DEC and also US Fish and Wildlife. There are no endangered species issues so those kinds of issues with the site – US Fish and Wildlife did have a question with a regard to

the impact of this tower on migratory birds. Again they have some recommended guidelines, which are recommendations, they're not cast in stone. We intend to comply with those as best we can. The concern about migratory birds is generally with guy towers and towers that are very tall. Migratory bird patterns generally fly 1000-feet. The high definition T.V. towers that have been posed with, as Ed talked about, are in the 1000-foot range – 500 to 2000-foot actually and there all guyed towers. Those are of a very big concern with the migratory birds. This tower is 300-foot tall. It is proposed to be a lattice tower, not a guyed tower. They prefer a lattice tower, a monopole or – because they're not as problematic with birds. They also like towers located in areas where there are other towers where there is already an existing problem. Our tower is in the middle of four other towers so we've done about everything we can do and still meet the needs of the project, which is a 300-foot tall tower. Those issues we'll follow up with additional correspondence to those agencies.

MR. SWEENEY: One of the things, just for the Boards information, as we submit all these request for a confirmation from these agencies they will submit back to us documentation either commenting or approving or whatever. When that is all complete it will be compiled and be part of our submission to this Board.

MR. VOPELAK: We have gotten some correspondence back from all these agencies already about our preliminary submissions. We will follow up and we will give all those responses to you so you can follow the train that we did.

CHAIRMAN HODOM: In your analysis of the visual impact assessment, did you follow requirements of 113-8?

MR. VOPELAK: Yes.

CHAIRMAN HODOM: A through D?

MR. VOPELAK: Yes.

CHAIRMAN HODOM: And you didn't find any local parks or other public lands because they're historic sites.

MR. VOPELAK: Well there are local parks in here. The only State that is nearby is Thatcher Park, that's the closest State Park. That's well over 5-miles away, we didn't bother to take photos there because you can see from the photos by the time you get 3 and 4-miles away you can't even pick up the towers, so we did not do that. There are a couple of wildlife refuges within about 3-miles, one down here in Knox and then the one over here. We did not take photos of those, we can take photos from more locations but our thought process was there's already existing towers up there. It doesn't make a lot of sense to do a photo-simulation of the tower in between those other one's when you can already see the other ones. We can do that if you like.

CHAIRMAN HODOM: I think what I would like you to do is to follow the requirements

and procedures of the Code. That way we'll have a total picture of what you're proposing and what can be seen visually.

MR. VOPELAK: I think we have done that. It's just a question of how many pictures do you want us to take and willing to take more, but basically this map says you're going to see it from the areas in blue and we can pick out more pictures from those locations.

CHAIRMAN HODOM: Are you then saying that the way it is that you view is which I believe was 4-miles is the maximum distance you can see the towers from?

MR. VOPELAK: On a clear day – the photos really speak for themselves. Once you start to get 3 and 4-miles away it's very difficult to see the tower. That's why in all of the photos the tower appears as a very dark line because if we simulated the tower as it would look in the field, you would look at the towers that are there. You would hardly see it. We enhanced the photos so you could know where it is and it looks a lot worse in our simulations that it would look like in real life and the proof is the existing towers that are there, I mean where you can see those from is where you're going to see the new tower from. Like I said the closer you get the more they stand out. The farther away they sort of blend into the background, you don't even notice they're there. And the other thing you have to remember, unless you're looking for these towers they're very difficult to see, you know we had someone looking for them with binoculars so we could take pictures. If you're driving along, the possibility of noticing these towers out here is pretty remote; I mean you don't have enough time to do that. If you're outside walking around that's the concern – that was the concern of SHIPO from some of these historic sites. I don't think they realized until we sent them our photo simulation that there are already existing towers out there, but they got that information and then we'll show them what the simulation looks like with the additional tower.

MR. SWEENEY: I think that there's also – there's 2-points that Ed brings up. One is shown on the map, if you drew a line would you actually be able to, you know is it a physical possibility to see it or is there something in the way that's going to block your view of that tower. Now, just because there's the physical possibility that that can happen due to distance and atmospheric conditions; things like that, you may not physically be able to see the tower or your view of it is so degraded due to distance that what you're actually seeing – the object and the aesthetics and the impact that you're seeing is minimal. And in this case it's very unusual because you have 4-towers already there so the change in the landscape and the change in what you're going to see is actually very minimal because usually a tower's going up in an area were there's nothing, so it goes from smooth landscape to something standing up. Here you already have towers and people in the area driving by or seeing things probably at the distances we're talking about aren't going to be able to say, one, two, three and then add the new – one, two, three, four. It's just - - well there's a physical possibility of seeing it that's what the photo simulation comes in to show you the quality of the view that you're going to have.

CHAIRMAN HODOM: Just for the benefit of the Board if you would, if you have to take more photos then take more photos based on the locations that were stated...

MR. VOPELAK: Sure, what we can do it, there is a couple of Town parks – we can certainly take them from the Town parks if it's visible from the Town Parks. It's not visible from all of them; it may be visible from some. I don't think it's visible from the site in Knox because the site in Knox I believe is on the backside of Coeymans. I believe it's right around here is the site, there's a large hill and you can see the tower from the front side of the hill. You can't see it from behind the hill.

MS. ELLIOT: That's down here are the....

CHAIRMAN HODOM: Ma'am, if you're going to make some comments please introduce yourself for us so we can get it on the record.

MS. ELLIOT: Cindy Elliot. Sorry I just thought I tell you...

MR. VOPELAK: But we can do that, we'll take pictures from the locations that were requested by SHIPO and we can certainly take photos from the parks that are within probably 3 or 4-miles. They're visible based on the simulation that we did.

CHAIRMAN HODOM: If they're not visible by the simulation then so state it in you narrative, okay?

MR. VOPELAK: Right well, you know if we get out there and take a picture and, you know we can't see the existing towers; you're not going to see the proposed tower.

MR. SWEENEY: What we'll do is we'll list what's in the radius and if there is something visible, we'll provide you with the simulation. If it's not, we'll mark it as not visible.

CHAIRMAN HODOM: That's fine. And again at the – you view as a 4-mile radius because that was determined to be the farther distance away where you really could make out the existing towers?

MR. VOPELAK: Yeah, we had difficulty locating the balloons at 4- miles. It was very difficult. If you saw the photos with the balloons, I mean literally some of them was on the photos with a magnifying glass to get enough of the balloon to put – to draw that line in which would simulate the tower. And like I said the photos that are there sort of speak for themselves, if you look at the photos from the different where we put the tower in you'll see that we tried to point out in those photos the existing towers and they're pretty faint. They're difficult to see, they show up the best on the original photos but they still don't show up very well.

MR. SWEENEY: Mr. Chairman, I think that kind of covers all of the information in the application. We touched on numerous topics and questions concerning FCC regulations, spacing requirements, things of that nature, which we'll respond to for you. We've also – you had stated a question regarding the lighting proposal; we'll address that as well to

clarify that for you and explain what we're doing in terms of FAA approval for that. And also we'll address the photographs and visual assessment for you. So what we'd like to do is obviously the public has its opportunity to comment, what we'd like to do as I said is have a comprehensive package to present to you – to the Board for referral, back to the County.

CHAIRMAN HODOM: And you're also going to address the issues that the Albany County Planning Board has raised?

MR. SWEENEY: Correct. I think we've hit on a lot of them here today in terms of the analysis regarding whether the upgrade for the other stations will be feasible for Galaxy. The waiver for the FCC is again, that's just a - - there really is no provision in the FCC for such a waiver so, I mean in FCC regulations for such a waiver from this requirement, but we'll address that. As Ed said, he has looked at the migratory bird issue; we will address that. The other issue in the County Planning I believe was historical structures and parks that are from which the tower may be visible. That will be covered in the context of the photographs that we'll be adding and the other analysis that we'll be doing. So I think that the package will cover the County as well as what was raised here tonight.

CHAIRMAN HODOM: Okay and regarding the service guidance on the site and construction, operation and decommissioning of the communication tower. The existing one you're going to have some comments on that as well?

MR. SWEENEY: Yes, we will.

CHAIRMAN HODOM: You're going to give us a copy of the lease from Banahan?

MR. SWEENEY: Yes, I have that on my list for you. We will do that so that, you know we can all understand where we stand with that. The other thing with that existing tower is there is also another provider on there. There's I believe Cingular Wireless has an antenna right on that tower so they have the right, you know again that's a limiting factor on what we were able to do with it. Obviously our tower can accommodate co-locations if they'd like to come over, more power to them, but unfortunately they're there and that – I don't know what we can do.

CHAIRMAN HODOM: You're also going to prepare the site plan in compliance with 113-6?

MR. SWEENEY: Yes.

CHAIRMAN HODOM: Okay.

MR. SWEENEY: Yes we will and that will more than likely address one more detail that the actual equipment shelter issue for the Board and again we're available to answer questions from the attorney of the Board, secretary, what ever you need. You have our numbers so we'll be glad to hear the comments.

MRS. O'BRIEN: Mike?

CHAIRMAN HODOM: Yes.

MRS. O'BRIEN: Can I ask a couple of questions about the existing tower?

CHAIRMAN HODOM: Sure.

MRS. O'BRIEN: The existing tower is also 300-feet?

MR. SWEENEY: Correct.

MRS. O'BRIEN: Was that built – when was that erected first of all?

MR. SWEENEY: I believe 1990.

MRS. O'BRIEN: For the purpose of putting the FM station that was then licensed that you are now...

MR. SWEENEY: I'd have to look into that; my expectation is yes it was. It was a FM station, FM antenna – tower that was built. The co-location came later.

MRS. O'BRIEN: Okay. And now you're saying you will no longer be using that tower?

MR. SWEENEY: We cannot – if we get approved, we will not be able to use that tower.

MRS. O'BRIEN: However the tower will continue to exist?

MR. SWEENEY: If it were owned by us and we had the ability to it, we would probably remove that tower to the extent that we could. One limiting factor is there is the existing co-location that's there, however because of the lease that we inherited that's - -

MRS. O'BRIEN: I understand, you have to go back to the beginning right. However, the original construction of the tower when that was approved, was there a recommendation as far as dismantling the tower when the FM station is no longer using it?

MR. SWEENEY: I believe that we would have to look to the FCC approval that was given for that. My understanding given the historical nature of the way the Rural Not Zoned District operated prior to the recent ruling of the court was that lack their word no approvals. If it were not listed on the list, there were no approvals that were required. My estimation or best guess if you will, is that given the time frame in which this occurred, it probably was not subject to any town approval other than a building permit at that time. If it is I would happily sit down and go through records to find out what it might have been, but my guess is that's the way it probably operated. So that is...

MRS. O'BRIEN: But the current – the proposed tower...

MR. SWEENEY: Yes.

MRS. O'BRIEN: That does specify dismantling or....

MR. SWEENEY: The provisions of the Bethlehem Code have removal provisions in there, which we would fully comply with in the event of a discontinuance.

MRS. O'BRIEN: Would that also include relocation or whatever of any existing co-locators? I mean if you got people to co-locate with you, and you lost your license or you decide to give it up or whatever and you were no longer using the tower, your responsibility would be to remove the tower. What would be your responsibility toward the co-locators?

MR. SWEENEY: I think that under the Bethlehem Code it would be the terms under the code are if the tower is abandoned – if the tower is continuing to be used by those co-locations as a viable telecommunication facility, it would not be abandoned. That is the terms of the Code.

MRS. O'BRIEN: But if your ownership would lapse?

MR. SWEENEY: Not necessarily. Our right to use it as an FM Broadcasting station pursuant to FCC rules, under your scenario we lapse. However we would have purchased and owned that physical structure and we would still have legal obligations to those tenants to give them the right to do that. Galaxy has no intention of giving up its rights to use this facility, in fact why were here is to upgrade so we can continue to be operating and competitive and use that facility. We would have legal obligations to those tenants in order to continue and also, as I said under the Code the term is abandonment and that has a specific legal meaning as to no intention to use the facility any longer. So I think that that would - - but we would gladly comply with the terms of the Code, provide whatever notice is necessary under the Code in the event the abandonment was done which would trigger a time frame under code for us to remove that facility.

MRS. O'BRIEN: Thank you.

CHAIRMAN HODOM: Also Mark under 113-6 is that it requires that the Town receive a certified letter or a letter certifying that the proposed tower is structurally sound and will not cause harmful emissions. We would require that letter as well.

MR. SWEENEY: That's fine.

CHAIRMAN HODOM: You're also were going to talk to Mr. Banahan about making it one parcel instead of two parcels?

MR. SWEENEY: Yes we are.

CHAIRMAN HODOM: Has any work been performed on the site to date, any clearing or anything?

MR. SWEENEY: On this project?

CHAIRMAN HODOM: Yes.

MR. SWEENEY: The only thing that has been done is the balloon has flown from the location.

CHAIRMAN HODOM: Okay. I notice in exhibit 5, paragraph 7 (E), you have an item for fencing, which says it's a 7-foot tall chain link fence, 6-feet of fence and 1-foot of barbed wire. I don't think the Town allows barbed wire anymore.

MR. SWEENEY: We can remove that. That's just the standard design that's typically done. It's not anything for us to allow, we will make an adjustment in our submission for you.

CHAIRMAN HODOM: Is that correct?

MR. PLATEL: Correct, 6-foot in height is the tallest you can go on something like that.

MR. SWEENEY: Okay.

CHAIRMAN HODOM: Also in that same exhibit, paragraph 8, it goes along with that discontinuance of the telecommunication tower within 30-days prior to the schedule date of discontinuance. It refers to the tower being removed within 4-months but it says nothing about any of the accessory structures and of the fences.

MR. SWEENEY: That's consistent with what your Code says. Your Code speaks of removal of the tower...

CHAIRMAN HODOM: And accessory structures.

MR. SWEENEY: If it does then we comply, okay? I fully intend to comply with the provisions of your Code in that regard.

CHAIRMAN HODOM: Okay.

MR. WIGGAND: Are you referring to the footings, Mike, is that what you're saying?

CHAIRMAN HODOM: Anything that is part of the – it's 113-11, obsolete or unused towers and accessory structures shall be removed from any site within 4-months of such a location.

MR. SWEENEY: Certainly. We would comply with that.

CHAIRMAN HODOM: Okay. It's just that you didn't list it here.

MR. SWEENEY: Understood. Thank you for pointing that out.

MRS. O'BRIEN: The question – I'm not sure you can address it or not when you're talking about the requirement for the separation and that - - moving it 700-feet would accomplish that. Have you addressed the FCC as far as whether that is, you know an insignificant enough distance that you could get a waiver to continue where you are?

MR. SWEENEY: That was one of the questions raised by the County, whether there's a waiver. We are going to provide a response to that question in our submission, but generally no there is not.

MRS. O'BRIEN: But you haven't asked them yet?

MR. SWEENEY: There's no provision for us to do that. In order to get a waiver from a regulation that regulation has to authorize it. There isn't such a thing in this instance. What the FCC does is they have rules that say we round, you know that's essentially the wiggle room that they'll give you is that they'll consider it 72 if you're 71.51. So that is kind of where it sits, but there's really no provision, and again this all goes back again, and I hope this Board can appreciate that this proposal for the new tower is really one of last resort. We are spending a significant amount of time and money in order to make this proposal, in order to do what we need to do. We really would have - - we have looked at and tried to find any way to use that new tower or the existing tower or tower site in order to accomplish our goal. It would be quicker, it would be cheaper, it would be much more direct. So there's – really what we want to do is, you know....

MRS. O'BRIEN: My purpose in asking the question is that we have no way of knowing that unless we ask the question.

MR. SWEENEY: No, I appreciate your question and I'm just trying to give you the best response we can. But I want the Board just to understand that this is not a situation where we're just going trying to expand, you know add on another site doing something like that. This is the meat and potatoes of what we're doing.

CHAIRMAN HODOM: Did you have something Bob?

MR. WIGGAND: No, I just said - - I had a nice list of questions here one time, but you've answered every one of them. That's quite a Board you've got.

CHAIRMAN HODOM: In your option in the land lease agreement with Mr. Banahan, exhibit A, you're going to provide which is a current sketch survey of the lease space within the premises.

MR. SWEENEY: Yeah, it's essentially – all it is at this point is a sketch on a tax map and we will gladly provide that. What happens is because it's an option and land lease, the final site is not chosen until after the approvals from FCC, from the Town are secured. Once that's done the actual site will be surveyed and a legal description for that leased area will be prepared. Once those are done those are inserted as exhibits A and B in that option land lease.

CHAIRMAN HODOM: But the dimensional information provided of the leased that you're talking about is not going to change?

MR. SWEENEY: No, it's not. The space we need isn't going to change, but it's not finalized and put into a formal legal description...

CHAIRMAN HODOM: Okay.

MR. SWEENEY: Until the actual location position. Sometimes as - - my experience with cellular sites is sometimes they move a little bit within a parcel to take advantage of a comment or concern or something like that and that's generally why they're set up the way they are so that they're not locked into a survey and other, you know expense of the survey and legal description unless and until you get that approval. Once the lease becomes operable you need that specificity in order to have the legal documents be correct. So that's why we do it the way we do it. .

CHAIRMAN HODOM: That's fine. One final item that I have is that the Board will be discussing whether or not we want to consider hiring a consultant. There's a lot of grey areas in this application and we may very well decide to hire a consultant – in that part of the Code as you well know.

MR. SWEENEY: And I think we addressed that within the application.

CHAIRMAN HODOM: Yes you did, that's not a problem.

MR. SWEENEY: Acknowledging that that's part of our application.

ATTORNEY MOORE: I have one question and one perhaps point of clarification. Mark or whoever, did County Board when they provided their recommendation specify what significant sites or parks they were referring to?

MR. SWEENEY: The best information we have is what's before in that recommendation.

ATTORNEY MOORE: Okay. I guess I would recommend then that someone should contact the Board just to see – to make sure that you've included whatever sites or you understand whatever sites they were referring to.

MR. SWEENEY: Okay. And I think that's part of their concern was mainly about

historic site and since we're working with SHIPO in taking photographs from locations specified by SHPIO for that purpose. What I would propose, we advise the Board this is what we're doing in response – is that all right, because we're going to have to go back to them anyway probably.

ATTORNEY MOORE: And then a point of clarification, the application indicates that the Planning Board would be issuing site plan approval and I believe it's actually this Board.

MR. SWEENEY: I was advised of that and that's fine and part of our submission will therefore be site plan's complying with the Code. We just believed it was a 2-step process, so we're happy to submit that to this Board. Sorry, but it's going to be a lot more paper for you to look at.

CHAIRMAN HODOM: Well in the long run, it will probably save you some time. We have a very diligent Planning Board.

MR. SWEENEY: Yes you do, I'm familiar.

CHAIRMAN HODOM: Okay. So just to clarify it Mark, somebody from your group is going to contacting Andrew Labruzzo from Albany County Planning Board?

MR. SWEENEY: Yes we will. As I said, we'll propose to contact him and tell him what we're doing and to address his comments. If he has other issues or concerns we'll take care of them.

CHAIRMAN HODOM: Are there any other questions from the Board at this time? Then we'll open it up to the audience, is there anyone with any questions or comments? Yes sir, just introduce yourself to us.

MR. MCMILLEN: Kermit McMillen, South Albany Airport – associated with them. Of course we're concerned about the geographical location of another tower and I would like to know from the Board if they can tell me how large this antenna field is supposed to be – is supposed to be allotted here in the Town of Bethlehem over on that ridge? If I had remembered or if I said previously that this location was set up as an antenna field location and who set that up? Can anybody answer me that?

CHAIRMAN HODOM: I'm not aware that anybody on this Board told you that that was an antenna location.

MR. MCMILLEN: Well it was mentioned here earlier that that location was selected as an antenna location for antennas if I remember correctly.

CHAIRMAN HODOM: Somebody on this panel may have said that but I don't think anybody on this Board said that.

MR. MCMILLEN: In other words there's been no location set aside by the Town of Bethlehem for an antenna field adjacent to the airport?

CHAIRMAN HODOM: Not that I'm aware of sir.

MR. MCMILLEN: Okay.

MR. PLATEL: The only thing that the Town has is that there are guide lines where they're preferred and I can give you a copy of that which starts really with like the Town water towers and places like that, that's where they start with existing structures. And then after it goes to Rural Not Zoned industrial areas and Commercial Zones.

MR. MCMILLEN: Okay. So there is a preferred location by the Town?

MR. PLATEL: There are preferred locations, but there are not specific locations.

MR. MCMILLEN: Okay.

CHAIRMAN HODOM: And they're all in the Code. This area happens to be a Rural Not Zoned location.

MR. MCMILLEN: There are – in that location next to you, you're the highest output 6000-watts at the present time? I understand you have communication antennas, you're the only 3000-watt, but you're going to 6 and you're the only one that has 6000-watts at this time – or going to apply for? Is that correct?

MR. WILLIAMSON: That's correct.

MR. MCMILLEN: Okay. With that in mind can anybody here tell me what the time frame for the FAA survey or approval would be for this site? Does anybody know what the time frame is for this study is?

MR. WILLIAMSON: Generally it's a 60-day period. It can be longer if there are more complicated issues. In other words if we locating this tower adjacent to Albany International Airport there would be more study. The FAA will look at flight paths in the area, they'll look at near by airports such as yours, and they will probably seek comment from you. And they also look at this from a frequency standpoint to ascertain that it will interfere with your radios. 6000-watts on 94.5 megahertz should not interfere with your radios if they're operating correctly.

MR. MCMILLEN: Okay. Well about how many harmonics or anything like this or phantom frequencies that would come up and jam – we have 2-instrument approaches to this airport now.

MR. WILLIAMSON: Oh okay, and what frequencies are they on?

MR. MCMILLEN: We're on – well that's an GPS approach but also Albany comes in on runway one on 109.5, and you know I don't know what this added power output would have to the main runway to runway one.

MR. WILLIAMSON: The transmitters as they are authorized and there is a procedure where they get certified by the FCC, which requires attenuation of harmonics on these spurious submissions. In general the transmitters will shut themselves off if they go off frequency they will not transmit. That's something that they would do automatically not even with human intervention. It is possible that there could be mixing on other – with other frequencies that can create an omission, however if you're not hearing that now I do not believe that a 3DB increase in the 94.5 signal will cause that.

MR. SWEENEY: That's something the FAA is going to control.

MR. WILLIAMSON: Well the FCC, if there is interference they condition of the construction permit that we will receive would dictate us for 1-year to solve any complaints of interference. So that's something that we would quickly solve if we're notified of that. Your first step would be to call us for quickest notification. If you were to call the FAA or the FCC it could take a month for them to get around to contact us. And all they're going to do is say we got this complaint can you look into it? So I'll be more than happy to provide you my card, Tim's card so that if you feel that you're ever getting interference, we'll be more than happy to help you look at that.

MR. MCMILLEN: My other concern is...

CHAIRMAN HODOM: Before you go on any further, do you currently have interference?

MR. MCMILLEN: No, well with the 6000-watt with a 3000-watt increase, I don't know. I can't say that we have - - Mr. File can address that. I haven't myself known any interference yet. But the other concern I have, previously we have never been told about any FAA checks or anything else even with the antenna that's up there or any of the antennas. Of course if there's only 1-transmitter, okay. I mean if there's only one 3000-watt. But this airport has never been notified of any of the results and who can we get to address – to give us a report? If you're going to receive a report from the FAA, I would appreciate it if you would let us at the airport know.

MR. WILLIAMSON: Okay. As a function of our application with the FAA, they go through a procedure and I can't tell you exactly how they work the procedure. I can put you in touch with people in New York City that would perform the study. They have their procedure that they go through and seek comment as necessary. Unfortunately there are some people that have grass fields in their back yard and they have considered themselves an active airport. It's difficult for us to know that so a broadcaster cannot necessarily always go and tell every airport. The other problem we run into there is where does it stop? Did we advise anybody that has a tall building or something like that, I mean respectfully stating that it's difficult for a broadcaster to advise. What you may

want to do is notify the FAA of your intention or your desire I should say to be notified of any type of tower activity in the area. I respect what you're trying to look for so you avoid hazards, but that's not something that us broadcasters regulate and it's not even the FCC. It's typically the Federal Aviation Administration.

MR. MCMILLEN: Okay. Do you have any contact with the Federal Aviation Administration?

MR. WILLIAMSON: If you give me a card and I'll give you my card or if you'll give me your number, I'll be more than happy to give that to you.

MR. MCMILLEN: Very good. Thank you.

MR. FILE: I'm Jim File, president of South Albany Corporation and I'm also a flight instructor. As far as interference, any time you're in the traffic pattern on our local frequency 123.0, when you fly over the cogon, the squelch on the radios break and you have a lot of noise for 20-30-seconds while you're flying over. I've never had a case where that interfered with hearing communications but it is an annoyance and a lot of the people turn the radios down so that every time they go around the pattern they don't hear that noise. I've never heard your broadcast, but I have – play WGY and WROW, if you go by there and almost any frequency you can hear all kinds of music and noise interference. So I don't believe that or at least I hope that the frequency that they're transmitting on – and they're transmitting on it now right? Is your tower the tallest one there?

MR. SWEENEY: Yes.

MR. FILE: Yes, okay. On the approach plate they show a tower at 750-feet and the elevation near that point is 617-feet. You're telling me your tower is not on the highest point of the ground there because you said it was 300-feet?

MR. SWEENEY: Yes.

MR. FILE: And I was under the impression that the tower that was over there was less than 200-feet above that highest elevation of the 616-feet. Just to give you a little bit of information, on our meeting prior to this – our last meeting, Larry Sutliff who was in the broadcasting business sold the radio station in the Albany area and now lives in New Jersey, and also is a member of the airport corporation, came up and noticed the towers over on the hill. That particular night the lights were especially bright and he asked how long those towers have been there. I said they've been there for a while. Previously, the FAA had sent us letters notifying us proposed towers. The railroad yard wanted to put up a 150-foot tower and the railroad yard – the GE wanted to build a smoke stack on the new co-gen and we were notified about those. We didn't receive and notification to my knowledge of any of the towers that are on that location up at the top of the hill. Possibly because, I think according to Larry Sutliff, that there's – and I wish I could have gotten Larry here because he's much more knowledgeable than I am. But I talked to Larry that

one day when he came up to our meeting in November, he brought some FCC books with specifications and regulations. We tried to guesstimate how much the top of that tower was above the airport elevation and it looked to be it was right close to the - - to being in the airspace that tower shouldn't be in, and then there were rules as I remember that said if a tower is less than 200-foot above the highest elevation, which in that case would have been 615-feet, that the tower as long as it wasn't more than 200-feet above that, and I'm not even sure about that part, but there was some elevation. In other words, the tower could be a 300-foot tower could be here in the valley next to the tower, but as long as it wasn't above X-height above the top of that highest elevation then the FCC could approve it, otherwise they wouldn't.

CHAIRMAN HODOM: But I think what you're saying is you have to or you're organization has to contact either the FAA or the FCC. These folk are going to do it on their own for their own tower.

MR. FILE: The reason I'm here tonight is because, Larry after we looked at it in November, said I'm going to go back and find out, but he said it looks like the towers that are there are very close and if they're going to propose a tower that's higher than the one that's there, then maybe....

CHAIRMAN HODOM: There is one 300-foot tower there.

MR. SWEENEY: We're not going any higher than the one that's there.

MR. FILE: You said you're going to be 900-feet of MSL with the top of the tower?

MR. SWEENEY: No, we're not going any higher than what is there.

CHAIRMAN HODOM: There's already an existing 300-foot tower there.

MR. FILE: No, there's a tower that's 750-feet above MSL there.

MR. SWEENEY: I don't know about that, but...

MR. FILE: I have approach plates that show that tower that's 750-feet.

CHAIRMAN HODOM: That's fine, but all I'm saying to you is that we can't help you here as a Board.

MR. FILE: I understand. I just want you consider that - - make sure - and personally as long as they comply with the FCC and the FAA regulations I'm completely happy with that.

CHAIRMAN HODOM: And they must.

MR. SWEENEY: Right.

CHAIRMAN HODOM: They must do that.

MR. SWEENEY: And we will do that.

MR. FILE: Okay. The only other thing I wanted to say was - is that the towers, the pattern altitude at South Albany Airport for VFR-airplanes is 800-feet above the ground or 1000-foot MSL. The tower that's there is 750, so that's about 250-feet below the airplanes that fly on the downwind of that side and so if a tower is any higher than that - the one that's there then, you know it's going to be closer for airplanes trying to fly through. I'm really here about aircraft safety and the safety for the airplanes. Our airport does have instrument approaches and the instrument approaches brings you down to 700-feet, which is lower than obstruction that's there. It's just outside of that limit anyway, so it's there, its legal. I don't have a problem with it. I'd just would hate to see anything that was going to be high enough that it does impede on the safety of the airport.

CHAIRMAN HODOM: Okay. Thank you very much.

MR. VOPELAK: The highest point on the ridge, ground elevation is about elevation 615 on the north side of the Calahan - - as you go this way, the ground slopes down so the existing tower will be - is a 300-foot tower. We're proposing a 300-foot tower. Our 300-foot tower above sea level will be - -

MR. FILE: Okay, because I have a copy of the contour map that has the elevations. That's what I say is - I'm just here because I heard that it was going to be 900-foot MSL. And 900-foot MSL is going to be 200-feet or 150-foot higher than what's there.

MR. VOPELAK: Okay. The only way you can get 900-feet MSL was...

MR. FILE: If it right on top of that.

MR. VOPELAK: If it was over, yeah.

MR. FILE: Right on that high point.

CHAIRMAN HODOM: Is there anyone else with any questions or comments. Ma'am, please.

MS. ELLIOT: Yes, my name is Cindy Elliot and please don't hold this against me but I live in the Town of New Scotland.

CHAIRMAN HODOM: Great Town.

MS. ELLIOT: I know, and I'm on the New Scotland Planning Board so we have a great deal of towers that come through our Town. I'd like to follow up on a couple of issues. First, Mrs. O'Brien had a good point and that our Galaxy CEO here and said he's a

dinosaur by his own admission and that he does have a hard time or their group has a harder time competing with larger organizations. So there is a thought that the tower could go belly-up and you do have provisions – I didn't say that, nor do I mean you to do that, but you do have provisions for tower removals. In New Scotland we also require an escrow amount do you do that also?

CHAIRMAN HODOM: I don't believe we do.

MR. WIGGAND: No, we don't do that.

MS. ELLIOT: Okay. Then I have another question of course. You stated that the access to this is a gravel roadway. It appears to me, I'm a land surveyor so I have to look at it in terms of surveying. It appears to me that the parcel in question that Mr. Banahan owns since Niagra Mowhawk, which owns in fee, bisects it has no actual road frontage. Is that true?

MR. SWEENEY: No, it is not. There's road frontage, you can't see it on that map. The parcel continues.

MS. ELLIOT: It's on the other side so which they then have crossing rights from Niagra Mohawk.

MR. SWEENEY: Correct.

MS. ELLIOT: But you want to utilize an existing roadway. Do you have a deeded right of way that allows you to do that? And my question being you said that we have to go through a gate on the Water Board, which is now much more restrictive because of 911. Without a deeded right of way, is there any possibility that they could or would shut you down?

MR. SWEENEY: No, in essence what it is – Mr. Banahan owns that property. His existing properties have access – rights of access via this way. In terms of our lease with him, we get an access easement from him over his property, which includes his rights of access to Old Quarry Road via Albany Water Plant.

MS. ELLIOT: Okay, another quick question.

CHAIRMAN HODOM: Certainly go ahead.

MS. ELLIOT: You haven't done any real tree removal. You've done some balloon sites and so forth. The soil conditions there are similar to many of the tower sites that we have, I assume, which is bedrock and if we do do a clearing, is there an area where that will then influence other trees to then come down because the soil is not great. It doesn't have a lot of great root structure. By clearing out an area what that tends to do is allow more wind and then we have a toppling effect. We've had that on a couple of sites. Also we had a tower fall down, I know that's rather embarrassing but on Dunbar Hollow Road,

the Town of New Scotland had one bite the dust. It was built without a building permit and probably not properly engineered to which I know that you're going to get a certification as – we don't have pictures on the public as to what it is you're going to construct.

CHAIRMAN HODOM: Not yet.

MS. ELLIOT: And when it did topple down, our concern in New Scotland was that if in fact one does topple, does it topple on it's own property?

MR. SWEENEY: Yes.

MS. ELLIOT: And it seems, I mean they tend to kind of - - and not go like this.

CHAIRMAN HODOM: The requirement of our Code...

MS. ELLIOT: It goes like this, we end up – we have a possibility that you could be on the lines of Niagra Mowhawk.

CHAIRMAN HODOM: No. The requirement in our Code, setback requirements, is adequate that if the tower should topple it will stay on the property.

MS. ELLIOT: Okay, good.

CHAIRMAN HODOM: We don't believe this tower is going to topple though.

MS. ELLIOT: I don't either, but we said that and we had one that...

MR. WIGGAND: Why is you finger crossed?

MR. SWEENEY: My toes too.

CHAIRMAN HODOM: But that's a valid point.

MS. ELLIOT: Test boring's been done?

MR. SWEENEY: No, that will be done as part as the foundation design.

MS. ELLIOT: Okay, one other quick question. If you allow co-locators, which is something we really like since we have so many towers and we prefer to not have to many more. When that does come up, we found that we then look at them as a Board. Will this Board look at any that then would want to come on the co-location?

CHAIRMAN HODOM: Anyone...

MS. ELLIOT: Any other antennas with microwaves and so forth.

MR. SWEENEY: What would happen is if someone wanted to co-locate on their tower, they would have to make their own application to the Board to do that.

MS. ELLIOT: Okay and you own the facility – Galaxy will own the facility as in the hardware, the structure.

MR. SWEENEY: Yes.

MS. ELLIOT: Which they do not own now?

MR. SWEENEY: Essentially yes,

MS. ELLIOT: We also found that in terms of assessment that our assessor found one that was not, how shall we say, legal. It didn't have a building permit and we raked in a few more bucks because of the assessment. The parcel of ground that the Banahans would then have, does that get looked at again in terms of assessment and then does it then get looked at in terms when other co-locations or microwaves go on there, how much – I know you said that you want to see the lease, we look at all the leases to and we do have you cross off the amount, but is it then looked at in terms of it's value by the lease agreement?

MR. PLATEL: They will get a building permit for each installment that goes on there and a copy of the permit does go down to the assessor's office. How they assess it, I don't know.

MS. ELLIOT: It's not my concern; it's just a question because we found that we made out pretty well.

MR. PLATEL: I'm not sure how the assessor does it, but it does go down there.

CHAIRMAN HODOM: We're going to make out good too.

MS. ELLIOT: Which is a plus factor because there is a visual impact; I mean my house and then one of the blue ones.

MR. SWEENEY: We're actually obligated under our lease any increase in assessment; we're responsible for it, not the landowner.

MR. MCMILLEN: How close is that antenna going to be to the power line? There are 2-power lines there.

MR. SWEENEY: To the actual power line, I don't know. To the right of way, it's probably 150/160-feet from the boundary of the property. The lines are inside that and the way the tower, as we said is designed it's going to fall in on itself if it ever did that.

MR. MICELLI: Are those transmission lines that will run to the right of way to Niagra Mohawk?

MR. SWEENEY: Yeah, they're pretty substantial.

MR. MICELLI: Is that a transmission gas line running through there also?

MR. SWEENEY: I don't recall, I don't think...

MR. MICELLI: That you're aware of.

MR. SWEENEY: Yeah, I don't think there is.

MR. PLATEL: The gas line was down by Waldenmair Road.

CHAIRMAN HODOM: Ms. Elliot, any other questions?

MS. ELLIOT: Okay one more, my client has asked for one more. You're quite close to the Town of New Scotland line and I'm hopeful that you then look at some of the parks and recreation that are in New Scotland. You're closer to that than any that we have in Bethlehem. We have the Hollyhock group over on Rarrick, we have a Feura Bush park and of course then we have 5-Rivers. And I think the one down here, I did a survey next to it, I think that's Louisa Kear environmental something. That's in the Town of Coeymans. I don't know if you'll be looking at those sites. It would be nice even though they're in New Scotland. I think that you're only – how far from the line?

CHAIRMAN HODOM: But if they're doing a 4-mile radius and if it falls into New Scotland and the areas that you're referring then I would imagine that they would take photos from there. Anyone else have any questions? Yes sir?

MR. SCHOOLS: My name is Tim Schools and I guess I'm concerned...

CHAIRMAN HODOM: Could you come up here a little bit?

MR. SCHOOLS: Well I just only have 1-question. Your site distance analysis is on a 400 – or a 4-mile radius on a site that hasn't been cleared yet so you can only see the balloons above the trees. How much more of the tower would be visible if the trees were cleared, and how far is your site distance on a strobe light compared to balloons in the day time, a strobe light a night? Can you see for 10-miles or 15-miles or how far can you see that light?

MR. SWEENEY: Well to basically...

CHAIRMAN HODOM: Will you just give us your name again?

MR. SCHOOLS: Tim Schools, S-C-H-O-O-L-S.

CHAIRMAN HODOM: Okay, thank you.

MR. SWEENEY: Basically the issue of the clearing, there's only going to be a minimal area cleared so that the tower can essentially be inserted in the woods there. So the tree line essentially is going to remain the same. The minimal amount of clearing is going to be done only to accommodate that tower. We don't have to clear for guy wires, we don't really even have to clear for a road, because we're using an existing road and just a short driveway will come off of it. So to answer your question, very little of that additional tower – because of clearing there will be no additional visibility of the site. As to how far the strobe would be seen, I'd have to look into that and, you know we can take a look at that. But generally the strength of the strobe is not so you can see it very, very far away because the size of the light is small, but it's to give you the perception when you nearby.

MR. WILLIAMSON: The other thing on strobe lights, first off I'd want to be able to see it at night because I'd want our pilots to see it.

MR. SWEENEY: That's what it's for.

MR. WILLIAMSON: The strobes are built in a way that they radiate more light straight out and upward as opposed to towards the ground, so you will see less of the light. The light is a flashing white light; it's not very bright. You may see it from a distance as you can probably go out and walk around now and see flashing strobe lights. Usually if they flash very brightly and very quickly they may be defective or in the process of being repaired. Generally it's a much dimmer white light at night.

MR. SCHOOL: Well that's my concern because you're not going to take down 1-existing tower, well we're going to add another one and now we're going to go from 3-strobe lights to 4, possibly 5 and at some point we're going to have an awful lot of strobe lights up there. I'm further away and I'm on a hill and I have a view of that area and strobe lights – true I won't see them from the ground under the tower, but I will see them on hillsides from further away and it's getting to be all the hillsides are strobe lights in every direction you look out and that's a concern to me. I mean it really is, it's getting to be really a problem with more and more towers. You're adding a tower and not taking down one that you're not going to use anymore so we're going to add another strobe light. I mean it would be different if you were going to remove one and then put this one up, there would be no net gain, but we've got a net gain here of another strobe light.

CHAIRMAN HODOM: The Board would take that under advisement; you're concerns.

MR. SCHOOLS: And nobody has done a study as to how far we were going to see them on hill sides. We could be up 10-miles where they could be a real problem on hillsides.

CHAIRMAN HODOM: Does the FAA mandate that they be visible within a certain distance?

MR. VOPELAK: They mandate the intensity for visibility from aircrafts and they'e built right to that specification.

CHAIRMAN HODOM: I mean there's very little we can do about it, Mr. Schools if it's mandated by the FAA or FCC. They're primarily for safety.

MR. VOPELAK: The only choice you have is whether to have a strobe or whether to have a red light.

CHAIRMAN HODOM: Right. Did you have another question?

MR. SCHOOLS: No thanks.

CHAIRMAN HODOM: They brought up another point and I think in your documents, you're going to have a 20-foot wide utility right of way. Where's that going to be located?

MR. VOPELAK: The right of way is basically the existing - - you can see the existing gravel road. The existing utilities to the tower run up the gravel road, ours would run up the same...

MR. SWEENEY: Above ground, there's existing poles so right up it.

CHAIRMAN HODOM: So it's not a separate area for the...

MR. SWEENEY: We have got a separate right to use them and, you know if we needed to install them, basically all we're going to do is hitch a line along our little driveway that comes off that road.

CHAIRMAN HODOM: Then all you need is power.

MR. SWEENEY: Correct, power and telephone.

CHAIRMAN HODOM: Yes?

MS. ELLIOT: Quick question on that. If the tower goes out is there a back up generator system and how is that going to be run? Is it going to be diesel and will there be buried tank?

MR. SWEENEY: I'm guessing that there's not going to be a buried tank.

MR. BACKER: At this point we haven't specified a generator for that location. If we do it pretty much becomes standard policy to employ a propane type generator, which is clean and it'll alleviate the hazard of having a diesel fuel tank on the site. As well as the winter time, maintenance probably would have one.

CHAIRMAN HODOM: Is there a back up requirement mandated by FAA or FCC?

MR. BACKER: No, there's nothing mandated. Year's ago there was for EAS stations but at this time I believe they still require that. We would be doing it in order to ensure that there is adequate power there...

CHAIRMAN HODOM: To at least operate the lighting.

MR. MCMILLEN: Would that propane tank possibly be outside or in the building?

MR. SWEENEY: It would be outside.

MR. BACKER: Yeah, it would be outside.

MR. MCMILLEN: It's a high hunting area, you know. It's a very high hunting area right there, along that right of way all the way up through. That whole area is hunted heavily for deer. If the hunters don't see the deer, they could pop that tank.

MR. VOPELAK: I believe there are colors that dictate where the generator can be located and the propane tank.

MR. MCMILLEN: Well if it's outside it doesn't make deference, it's visible to the hunter.

MR. VOPELAK: Well we can paint it orange.

MR. SWEENEY: Well we can address that.

MR. MCMILLEN: That only makes it a bigger target.

CHAIRMAN HODOM: We're getting a little astray here. Any other questions from the audience? Mr. Banahan, anything? We're going to adjourn the hearing; we'll adjourn it to a date uncertain until you provide us with the documentation.

MR. SWEENEY: Our general plan would be to get you the materials so that it can be referred to the County for it's February meeting. That's our general expectation, and hopefully at that time given the set schedule for we'd be able to maybe establish a date when that occurs. I can work that out with Karen or yourself.

CHAIRMAN HODOM: Well once you get the documentation, Karen will bring it before the Board and then we'll set a new date for it.

MR. SWEENEY: That would be great.

CHAIRMAN HODOM: Any other questions from the Board?

On a motion made by Mr. Wiggand, seconded by Mrs. O'Brien, and unanimously carried by the Board the meeting was adjourned to a date uncertain.

Hearing Adjourned 10:05

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The next order of business was to consider the application of Maria Candido, 21 Federick Place, Delmar, New York. The application was found to be in order and Mrs. O'Brien made the following motion:

An appeal having been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by Maria Candido for Variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwelling for construction of a roof over an existing deck, which will exceed the allowable percentage of lot occupancy at the premises 21 Federick Place, Delmar, New York 12054, it is hereby ordered that a public hearing on this matter be held February 4, 2004 at 7:30 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

Mr. Micelli seconded the motion and it was unanimously carried by the Board.

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The next order of business was to re-schedule a previously public hearing of US Mart, Applicant, Amna Enterprises, Owner, 414 Route 9W, Glenmont, New York 12077. The application was found to be in order and Mrs. O'Brien made the following motion:

An appeal having been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by US Mart for Special Exception under Article VI, Permitted Uses, Section 128-17 C (3), CC Retail Commercial District for an alteration to an existing structure to allow the sale of items not listed under the previously granted Special Exception at premises 414 Route 9W, Glenmont, New York 12077, it is hereby ordered that a public hearing on this matter be held February 4, 2004 at 7:45 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

Mr. Wiggand seconded the motion and it was unanimously carried by the Board.

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The next order of business was a discussion of the previous public hearing held in the matter of Bethlehem Auto Laundry for a Special Exception under Article VI, Permitted Uses Section 128-17 B (15), CC Retail Commercial District for lot line revision giving Bethlehem Auto additional land for additional parking and modification to ingress/egress at premises 462 Route 9W, Glenmont, New York 12077. The following points were brought up by the Board members: The proposed change in the property would be an improvement to the overall layout. There is more room for people to come in and leave the premises; the traffic flow would be better. On a motion made by Mr. Wiggand, seconded by Mrs. O'Brien, and unanimously carried by the Board, the Board directed Attorney Moore to prepare a proposed resolution granting the Special Exception for presentation at the next Board meeting on February 4, 2004.

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On a motion made by Mr. Wiggand, seconded by Mrs. O'Brien, and unanimously carried by the Board, the minutes of the January 7, 2004, meeting were approved.

The meeting was adjourned on a motion made by Mr. Wiggand, seconded by Mrs. O'Brien and unanimously carried by the Board.

Meeting Adjourned: 10:40 p.m.

Respectfully submitted,

Secretary