Public Hearing – Cell Tower on Smokey Hollow Court

Robert Gaudioso, a partner of Schneider and Schneider on behalf of Homeland Towers said a submission was made today in response to the comments and submissions from last month. He wanted to go through that and answer any outstanding questions. He wants to talk about the facts, evidence and what they know about this particular project and not speculation and misrepresentations. He said, they made a significant project change which they believe will substantially improve the project. He presented a copy of the site plan up and demonstrated the original facility located in the area of the existing berm; the facility would require the removal of the berm and area disturbance greater than 5,000 square feet. Based on DEP stating the location was not existing impervious surface and would require a DEP variance, they have relocated the facility approximately 95 feet north and placed it on existing asphalt surface. They met with DEP to discuss it and DEP agreed this eliminated the need for the DEP variance. That is a significant improvement but goes further, the Towns regulated wetlands, is not on this property but on the adjoining property and were re-surveyed and flagged by the Town's consultants, Mr. Barber, and the new facility is outside the Town's 100 foot wetland buffer, therefore, there is no longer a need for a wetland permit. In addition, they have minimized the area of disturbance less than 5,000 square feet. That means they no longer have to prepare a stormwater pollution prevention plan. They no longer need a SPEDES permit because of this minimization of the compound area. By moving the facility, approximately 95 feet to the north, they have kept it on Lot 31, have minimized the size of the ground disturbance, eliminated the need for a DEP variance, a town wetland permit, the need for SPEDES permit and the need for stormwater pollution prevention plan. They revised the site plan to show that and the EAF based on these changes and the DEP comments. They submitted a letter, in the package, confirming there are no DEC wetlands or wetland buffer area on this particular piece of property, that wetland is not a DEC wetland there is no DEC jurisdiction as proposed. In response to the DEP comments, DEP indicated there were wetlands on this particular piece of property and our EAF was in error. He does not believe that it is correct. The wetlands are on the adjoining property. The DEP pointed out there was a stream on this property which is debatable. He believes there is an underground pipe connecting a portion of a stream to the north, to an outflow, that outflows into this wetland on the adjoining property. Depending on which definition you apply there may or may not be a stream. They have revised the EAF to show that particular piece of pipe is on this property and confirmed their engineers believe the original area was not on impervious surface. That is by the DEP watershed regulation definition whether something is substantially impervious to the infiltration of water. They disputed with the DEP about whether the stem from the reservoir, pointing to the site plan, starts here or by 301. If you know this area there is a mowed grass area. Their engineers believe that could not be a DEP watershed stem because there is not a visible path through the mowed grass area for there to be a stream. These disputes with DEP are moot by relocating the facility on the asphalt there is no longer DEP jurisdiction whether they're within the setback of the stream buffer or the wetland buffer. They have eliminated 4 different types of approvals and permit applications and materials they would have otherwise had to provide.

The 2nd issue he addressed concerned the opposition comments submitted regarding the zoning code. The zoning code is not applicable in this case this property is Town owned they are not seeking a special permit, variance or site plan approval they're seeking the Monroe Balancing Test because this is Town owned property. The provisions of the Zoning Code no longer apply assuming the Town Board issues in favor of the Monroe Balancing Test. The opposition comments this cannot be the Monroe Balance Test because there is no conflict between 2 jurisdictions. That is not true, it's not the law. He submitted a case from the Town of Amenia. A case about telecommunications tower on municipal property where the neighboring objectors, brought an Article 78 and the Court threw it out stating the Town Board properly applied the Monroe Balancing Test and the Zoning Code requirements were irrelevant, which he included in the package. He read the argument, "Petitioner's arguments which are based upon Respondent's Town telecommunication law are unpersuasive and irrelevant".

The 3rd issue was ice fall and structural design. The opposition's comments talked about significant dangers from ice fall. No evidence was provided regarding this facility, or a facility similar. They "encouraged the Board to look at 2 YouTube videos. He looked at those videos. They were both gigantic, lattice guide towers. One is a 1,600' lattice tower this is a 150' monopole not a lattice tower. He believes it is not relevant to this case. It's a scare tactic but they had their engineers look at the issue. A letter from Tectonic Engineering, signed by a NYS professional engineer, goes through the different reasons why ice fall on this particular tower, at this location is not a significant danger based on the design as a monopole, its location within a secured fenced compound at the Town owned Highway Garage and the minimal possibility of ice accumulation and fall, they believe there is not a significant risk to persons or property from ice fall. There were other issues about fall zone and design criteria, these are speculative arguments about towers at other place which no one knows anything about such as the circumstances about how the tower could fall. He said, houses fall, cars crash, planes crashes, trees fall things happen, whatever application comes before the Town, anyone can say similar type of facility fell/burnt/earthquake/natural disaster they are not denying that can happen. What are the potential dangers from this tower, not speculation but actual engineering studies? They submitted a letter from Tectonic Engineering, a professional engineer, confirming this facility will be designed and constructed to conform to ANSI/TIA-222-G-2005 Structural Standards for Antenna Supporting Structures and Antennas and the NYS Uniform Fire Prevention and Building Code. This tower will be designed in accordance with all the applicable codes in order to minimize any potential structural dangers not speculation.

The 4th issue is the opposition's comments which said that Homeland Towers submission were defective. The first issue was the wetlands and whether the EAF identified wetlands on this piece of property. Their EAF did not identify wetlands on this piece of property because there are no wetlands. The wetland delineated by the Town's Consultant on their Site Plan has shown wetland on the adjoining property. The 2nd issue was the stream; the DEP Watershed Regulations define a stream as a visible path through which surface water travels on a regular basis. They do not believe the underground pipe which is not visible is a stream and have included that in the new EAF to handle any type of dispute. They had a dispute with DEP whether the stream and the reservoir stem started by 301 or the southern end of the property. It is based on definitions and code, their engineer's interpretation they still believe their engineers were correct it's a reasonable dispute. Engineers and administrative agencies can dispute different things but they have mooted the issue by relocating the facility. It is no longer a relevant issue. The opposition comments erroneously the groundwater testing wells from 1997 were not on Lot 31. They are on Lot 31 and they were on Lot 31 in 1997. One of the neighboring property owners said 20 years ago he witnessed, sometime between 1992 and 1996, one day in a 4 year period 20 years, witnessed placement of debris underneath this piece of property including water boilers, 275 gallon oil tanks and other debris. That is the claim. Homeland performed a Phase I Environmental Site Assessment in 2012 based on the ASTM Standard the consultants concluded based on visits to the property, review of the records, all of the proper methodology under the ASTM Standard, concluded there were no recognized environmental conditions. After that Phase I they were presented a letter in 2012 that the neighbor had seen sometime in the 4 year span this placement of debris underground. They dug into it further and found a letter from DEC stating no further action was necessary because the Town in 1997, after this alleged placement of debris underground between 1992 and 1996, the Town removed underground storage tanks, installed monitoring wells, checked the water, confirmed it was cleaned, submitted it to DEC and obtained a no further action letter from DEC. There is reiteration of same including the due diligence and diagram, this is the IVI letter in the package. They overlaid the 1997 monitoring well plan to show the monitoring wells were, at least, partially on Lot 31 which is the property they are proposing to go, with the relocation of the facility they show the monitoring wells were actually down gradient from the propose facility was. In 1997 those monitoring wells showed the water was clean, they are proposing to go up gradient of those monitoring wells, they don't believe there are any environmental conditions. They performed ground penetrating radar survey on the property the results were inclusive their next step is they intend to perform test pits. They want to know what is in the ground. Phase I showed no recognized environmental

conditions and the monitoring wells show there was no pollution. The allegation there was debris from 20 years during a 4 year span from a neighbor which they found no record reported that to anyone. They performed ground penetrating radar they want to do test pits and they have put in the IVI letter they propose to test any soil or ground water they excavate and properly handle and dispose of it. They show on the Site Plan two things, they show stock pile area for the excavated soil to figure out how to dispose of it, if it is in fact contaminated they have also included notes throughout the Site Plan they will pump any ground water found into a tank or truck, test it and take it off site. They don't think the ground is contaminated but put in place the methodology to continue to test and if they do find contamination to properly handle and dispose of it.

The final issue the opposition had called deficient their Visual Analysis sited to a case Omnipoint vs. White Plains. The case is irrelevant. The opposition comments have you believe the Federal Court determined any visual resource evaluation has to have photographs for a neighboring property. That is not the law. The Omnipoint case does not apply. That was a zoning application, a case where an applicant is trying to seek approval from the Planning Commission in the City of White Plains. They did a visual resource evaluation as part of the SEQRA process as part of the Monroe Balancing Test. In the White Plains decision, the Omnipoint consultant said they did a crane test and other than one property outside the golf course where the tower was proposed you couldn't see the crane, the resident said that is not true they could see the crane from their houses and had a landscape architect show where else you could see the crane from. Omnipoint did not notify anyone of this crane test so no one was able to justify or verify their results. The Court said under the totality of the circumstances the Planning Board had the discretion to say they are going to discount Omnipoint's analysis where they say only one property outside of the golf course with the 150 foot tree tower be visible the Court said the Planning Board relied on that and used their discretion and chose which expert to believe and which not. The Court did not say every visual resource evaluation has to have photographs of the neighbors. He reminded what was done stating they did a visual resource evaluation and notified the Town Board of the days they were going to do the visual resource evaluation, they notified the Town Clerk who notified the public of the days they were going to do visual resource evaluation. To his knowledge not a single person asked for a photograph from their backyard or the neighboring property and it was publicly noticed. They provided the notice to the professional town planner and asked for advice, if we should take photographs and study the potential adverse environmental impact from and the planner gave a list of locations. They took that in consideration and included that in their extensive visual resource evaluation. They took photographs from the top of Smokey Hollow Court and the bottom of Smokey Hollow Court. They covered the entire neighborhood including visual renderings of multiple different colors of different monopoles from those locations. They included a photograph from the corner of Smokey Hollow Court and Route 301 approximately .08 miles away included in the package and previously submitted, providing the worst case scenario of the photograph in the neighborhood showing what the tower would look like. Just because a tower is visible does not make it an esthetic impact and DEC has been clear on their guidance. What they have provided they believe is a fair and accurate representation of what the tower would look like they have evidence to show there is no significant adverse environmental affect from tower based on esthetics and further believe that their report was thorough, the balloon test was publicly noticed and included all the proper methodology for preparing this type of visual resource evaluation.

The 5th item is alternative sites. The opposition comments regarding relevant case laws are just simply wrong. The opposition comment says "the wireless company must prove that there are no other possible less intrusive locations at which to install its antennas". He addressed the Board stating that statement is not the law. He stated if they were going for a variance, being a public utility facility this would be entitled to a deferential standard; meaning if we were going for a use variance, they wouldn't have to provide proof that the property could be used only for this purpose which is what a typical applicant would have to provide. NYS lowered the bar and created the public necessity standard there is a compelling reason why you should put this facility at this location and it's a public utility facility, the approval should be granted. Federal law took it a step further, stating if the town denies the application and the applicant proves the facility

necessary to remedy a gap in service and the facility is the least intrusive alternative the town must approve the application. These are different standards neither of which applies in this case. The opposition tells you standards apply and provide you the wrong standard then talks about no possible less intrusive location which is not the standard. They cite the White Plains decision, the Second Circuit in the White Plains decision specifically said that was the wrong standard because the lower court talked about that standard. They did look at alternative sites because it is important, under the Monroe Balancing Test one of the factors is can the facility be placed in a zoning area less restrictive. Under the Town's code the answer is no. This is a zone permitted by special permit. There is no zone where it is permitted by right so there is no less restrictive zoning area under the Town's code so they meet that standard. It is a simple standard under the Monroe Balancing Test. He said it was a 4 year process to arrive with the Wireless Infrastructure Plan with actual engineering data to confirm 4 areas, where the Town has significant need to improve infrastructure for wireless services. This was known as Area 4, the location this facility will service those 4 areas the Wireless Infrastructure Plan talked about 26 potential locations, 5 of which is in this general vicinity. They were potential locations, the Wireless Infrastructure Plan did not say these are the only 5 locations, the best locations it did not say we looked at each of the 5 locations and performed a SEQRA review and each is an appropriate location, it just talked about 5 different locations in Area 4. The opposition comments talks about 26 alternative sites that were not looked at for this area. There were never 26 alternative sites. There were 5; it talked about 30 alternative sites. The fact is there were 5 potential locations listed in the Wireless Infrastructure Plan and this is not one of them. After the Wireless Infrastructure Plan was approved, Homeland Towers performed an extensive evaluation of each of the 4 areas and found this location. They did not go directly to this location. First they had submitted a Supplemental Alternative Site Analysis by Mr. Xavier included in the package. He looked at large properties thinking that would be good location to put a tower. The large properties in the area were owned by New York State, Mt. Ninham is a park which you can't go to without a special active NYS legislature and DEP property. In the package are aerial photographs showing each of these locations he discounted each of these locations as not being feasible alternatives because they required incredible environmental impacts related to the constructions of access roads, utilities, compound, they are undeveloped properties. According to his discussions directly with DEP which was cited in the supplemental report, DEP has never allowed a facility on one of their properties. He discounted those large properties owned by the State as a state park and the others owned by DEP all which will require significant tree removal, grading, topography changes and real disturbance essentially and not the 3,750 square feet that we have on existing asphalt, a real disturbance through undeveloped areas. He then looks at the 5 sites in the original Infrastructure Plan and detailed is an explanation of why those 5 were not feasible alternatives. The first was Clearpool Camp, he sent certified letters, called, followed up all is detailed including a copy of the proposal and certified mailing receipt, and he was unable to reach them to negotiate a lease. The 2nd site was the Sedgewick Golf Course he conducted a site visit with the president picked one spot on the property where they might have allowed a tower but never got further than that. Homeland Towers and engineers studied it to see whether that site would cover this gap in service and found it would not cover the portion of 301 surrounding this site important for emergency services and for the travelling public. Verizon Wireless prepared a study included in Mr. Xavier report. The 3rd site was 8-26 Kashmere Court, it was assumed this was a large piece of property but actually is a number of lots and several homes on it so this property was discounted because it was being residentially used. The 4th site was 887 Golf Ridge Road and, upon further investigation determined it was an actual residential use. It is not out of the question to use a residential piece of property it is done all the time but a lower preference. You normally go to municipal property or industrial property or a manufacturing property; in this case there is an existing highway garage so the thought is a property with an existing highway garage is a better alternative than a property with a residential home. There is also a benefit to the Town not even talking financial. By having a tower on the Town property, the Town controls that property and doesn't have to worry about the property being sold, falling out of disrepair, someone not securing that tower, because the Town is the landlord it puts the Town in a unique position. Normally you would be the regulatory agency or the Town is the regulator, in this case you're also the landlord and important because your town's emergency services antennas are going to be on this tower. Numerous towns have done this; Pound Ridge allowed one on the Ambulance Corp. property, Lewisborough has one at a piece of property formerly park land now owned by the Town as non park land and put one on their property. In Lewisborough and Vista they have one at their fire department, the Town of Kent has one at the Fire Dept. on 301. This is not a unique it is pretty common. It makes good planning sense but it also makes good sense when a municipality is trying to control resources and able to have the facility on your property for security reasons. The 5th site was on Route 301 owned by CMF property and, upon further

investigation it was undeveloped and very difficult piece of topography. To get access to that property you would have to cross DEP property, those environmental impacts, had significant concerns in a watershed creating a little over 5,000 square feet of new disturbance in an area that has compacted gravel. Being on an asphalt area is a better alternative to being in a completely an undeveloped area where you have to clear trees, create topography, build an access road, build a compound and bring in utilities. That is all detailed in the report that includes aerial photographs, the proposal to Clearpool, certified mail receipt and all the evidence been submitted. They followed up with Verizon; wanting to confirm Verizon had an interest in this site. In the report there is coverage maps from Verizon, the original Infrastructure Plan had a third party engineer do drive testing and propagation maps, now the Town has it directly from Verizon. They did maps to show a significant gap in coverage this facility will remedy that. In addition, they submitted a letter from Verizon saying they have interest to co-locate on this site. The Town has a federally licensed wireless carrier interested. AT&T submitted a similar letter; they are also interested in co-locating here. The Police Dept. submitted a support letter they use Verizon for their cell phones and laptops so improving service will actually improve emergency services. They have revised plans that detail the Town's emergency antennas and equipment on this facility. They have submitted a support letter from NYCOMCO; the professional consultants representing the Police Dept., Fire Dept. and Highway Dept. They have confirmed the addition of this infrastructure will improve wireless communications for the emergency services. This is all very important.

The 6th issue he needs to address is the applicability of the Monroe Test. The opposition comments are wrong on the law. Their claim unsupported the Monroe Test doesn't apply because there is no conflict between governmental entities and the site is not essential to fulfill a public benefit. He mentioned the Amenia case which is right on point. It does not have to be a conflict; you can do it on your own property the Monroe Test applies and, the idea there is no public benefit is nonsense. Verizon and AT&T are planning to co-locate, the emergency services leveraging Verizon service and also putting their own equipment on the tower to improve their services. The highest court in NYS actually took this case up; it's the Crown case in the City of New Rochelle. Crown Communication is a tower company, not similar to Homeland Towers but they build towers. They built a tower on state property. The lower court said the tower falls under the Monroe Test and is not subject to local zoning. The court of appeals in addition the wireless carriers are not subject to local zoning. The case law from NYS highest court is right on point. The Monroe Balancing Test applies in this case. Since they added the emergency services antennas to this facility they updated the Pinnacle Report. The Pinnacle Report is the radio frequency exposure report. The Federal Telecommunications Act preempted local review of radio frequency emissions. You cannot regulate based on the environmental effects of radio frequency emissions provided the facility is in compliance. They did a report to show the facility is in compliance. In that report they included 6 potential co-locators. They also included the actually antennas for the emergency services when you add those up in an accumulative worst case scenario it comes out to 66 times below the federal standard. In other words, it's 1.4492% of the allowable 100% limitation, it's less than 1 ½ % of the allowable 100% limitation. The facility is safe from a radio frequency stand point. The 7th issue relates to the opposition comments regarding the Contract. The Contract between the Town and Homeland Towers is not relevant to the Monroe Balancing Test but it's been raised so he wanted to talk about it in particular the false comments. The opposition comments erroneously claim that under NY law, it's well settled that the Town Board powers are limited in that they cannot use certain powers of future Boards by executing discretionary contracts beyond the tenor of the current Board. That is not the case law with respect to leases. There is law on this called the term limit rule. In NYS unless the State authorizes the Town to enact a governmental contract beyond the term of the Board you are not allowed to do it. But, the case law says that does not apply to proprietary actions when you are dealing with your own property. Let's say the Town wanted to hire the Town Planner and you decided to give him a contract for 100 years, that would violate the term limit rule. But when you decide to lease your property, State law specifically says you can lease your property so the term limit rule doesn't apply. In addition, the case law "in business or proprietary matters by contrast a municipality is not necessarily bound by this standard and may conduct itself as any other private business under similar circumstances" that is the law and they cite this in their papers. If you think about it logically you cannot lease your own property for more than a couple of year term. Not all lease terms are coterminous so how would that work. Would it be the longest person he asked? There should be case law on this but there isn't all the cases cited in the opposition comments are irrelevant to leasing. It talks about other municipal contracts he had given an example of the town planner's contract for 100 years. NYS Town Law says you can sell the property. That binds not just some future boards that to him would bind every single future board if you sell property. NYS Town Law, Section §64(2) allows you to lease the property. The opposition comments you didn't get a good deal, didn't get enough money, that the Town of Brookhaven got a better deal. It is his understanding Mr. Campanelli represents a company called Beacon Wireless; Mr. Campanelli is suing the Town of Brookhaven his client, Beacon Wireless entered into a very similar agreement

with the Town of Brookhaven. They agreed to do a study to market existing towers, to build towers and get revenue. He said Mr. Campanelli stated the Town of Brookhaven gets 80% of the collocation revenue that is not the case. They reviewed the lease and it states the lease gives 20% to his client, or used to because it's in litigation, for existing town owned structures, existing town owned towers. The town doesn't get 80% for something that someone else puts the capital up and builds. He had you believe Brookhaven was getting 80% of collocation revenue and therefore you had a bad deal. What happens 10 years ago, in other municipalities, different markets, is not relevant to the issue here, not relevant to your lease; speculations are irrelevant, those statements were misrepresentations. Another company came into Brookhaven and signed a similar deal with Brookhaven; Mr. Campanelli is suing the other company saying Brookhaven violated its multi term agreement. Its multi term agreement which he says in this case you violated the term law and Mr. Campanelli said he was going to educate you on this. So, he's suing another company on behalf of client that has a similar lease as Homeland Towers with the Town of Kent and he's suing them in that case saying that lease is fine but he's telling you that the lease isn't. He asked that we give proper weight to those comments that they deserve.

The 8th issue is the title issue, the opposition comments erroneously there are restrictive covenants on Lot 32; Lot 32 is the lot to the north where the building is or on Lot 31 which is also the Highway Garage but it's a separate lot and all the facilities are on Lot 31; prohibit the placement of storage of machinery, equipment or materials of any kind except within a fully enclosed building. That restricted covenant was released in 1973 which is provided in the package received by the Board. That Release Covenant is on Lot 32 and does not apply to Lot 31 but the opposition comments will have you believe somehow the restricted covenants on Lot 32 miraculously expand onto Lot 31; and the basis for that position is §77-47 (C) of the Town Code "Any substandard plot owned by or acquired under any circumstances by an adjoining landowner shall for the purposes of this code be considered as having merged into one plot and the plots so merged shall be considered as one plot in its entirety." That is a Zoning Code provision. That has to do with Zoning Code issues. The Town of Kent's code specifically states for the purposes of this code. It does not have any relevance with respect to restrictive covenants. Restrictive covenants do not jump from one piece of property and expand onto another because in common ownership. It's not just the Law. Mr. Campanelli cites one case and it's a zoning code case. The restrictive covenant he quotes has been extinguished and they gave the Town of Kent the lifting of that document as recorded in the County Clerk's Office. He cites a section that specifically and expressly says that it applies only to zoning code. In fact, the lots have not merged. That §77-47 (C) was inactive in 2008. The Town obtained Lot 31, the property they proposing to go on, in 1973 and Lot 32 in 1937 so the ownership predates the code. In addition, they are still and remain separately assessed lots based on separate deeds and separate assessment records they have not merged even with respect to the code. They have performed their own title review and Homeland Tower obtained title insurance commitment from Fidelity National Title Insurance Company which title commitment includes a note that no covenants or restrictions of record were found pertaining to the property proposed. The restrictive covenant Mr. Campanelli references has been extinguished the basis for the merging of lot applies to zoning. The lots haven't merged and they have a title company that offered a title commitment which they will accept title insurance on.

The final issue (9th) is one of property values, there has been no evidence submitted with respect to the diminution of property values. There were speculative comments made at the last hearing and are willing to address it. They retained an MAI appraiser from Lane Appraisal. They had prepared a paired sales analysis for this particular piece of property to determine whether there would any impact on property values included in the package. The MAI Appraisal concluded the installation presence and/or operation of the proposed facility will not result in the diminution of property values or reduced the marketability of properties in the immediate area. They didn't just write that, they performed 15 studies throughout Putnam County, Westchester County and Rockland County over the past 12 years. This is not speculation, this is a paired sale analyses where they looked at home values for properties that have views of a tower in the same neighborhood and those that don't have views of a tower. This methodology has been upheld by the Federal Court. This appraisal report, similar to the report they submitted, went to the Federal Court in 2 separate cases, Sprint v. Cestone the other T-Mobile v.

Town of Ramapo. In both cases, in the face of actual opposition evidence which doesn't exist in this case, the Federal Court upheld there would be no impact on property values based on the Lane Appraisal Report, based on the same study submitted. They visited the site, reviewed it and under the circumstances of it being a highway garage he reviewed the paired sales analyses includes analyses in Putnam, Westchester and Rockland Counties, other studies he references in his report and based on the evidence attached to his report including his qualifications he concluded there would be no diminution in property value.

He hoped he cleared up the misrepresentations on the facts and the law presented to the Town and would be happy to answer any questions the Board has.

Councilwoman Osborn asked the report shows there is no devaluation, is there a chance of an upgraded valuation. Mr. Guadioso said he found cases where the houses that had a view of the tower were selling for more than the houses without the view. But, expressly says he does not have enough evidence to say the tower is increasing property values but there is certainly no evidence they are decreasing property values. He stated he will not give anecdotes because that is not evidence. Anecdotal comments would be "people want better service so therefore they'd pay more for a house" it might be true he has heard people say that as one of the driving factors in communities that have embraced wireless infrastructure. The fact is, he looked at the data the sales records, compared the size of the house, type of the house, square footage, number of bedrooms and he compiled it over a 12 year period in 15 different studies and every time came up with the fact there was no evidence of diminution of property value even though in some cases there was an increase.

Councilman Greene asked if there would be a fee to emergency services. Mr. Gaudioso said no there would be none. Councilman Greene asked the approximate proposed width and depth of the property being used. Mr. Gaudioso replied it's an odd shape property; the area of disturbance which includes the staging area is approximately 3,750 square feet. Councilman Tartaro said seeing the tower is being moved roughly 100 feet he feels it relevant to the question the fact that some of these homes were potentially within 300 feet of the proposed tower. In the Lane Report he didn't see the distance from the view. You can have a view looking across the lake a quarter mile away or something literally right there. Mr. Gaudioso mentioned some home properties where in very close proximity to the facilities. Councilman Tartaro stated two of the exhibits were of monopoles on top of buildings. Mr. Gaudioso explained he was trying to demonstrate a variety of different types of facilities at different locations.

Mr. Campanelli, the attorney representing multiple homeowners, within closest proximity, to the proposed installation said he'd like to address each point raised by the applicant's attorney in the same order, with one exception, during the presentation he represented no evidence has been submitted, reported to the foundation of the property which is the subject of this application. They have made a substantial change to the application. He said they have employed their best records to keep apprised of the process and have made formal requests to the town. The last response where documents were released was yesterday which did not include any of the submissions being discussed tonight, he requested the hearing remain open so they can review the documents and respond. Town Counsel Curtiss explained the documents were received at 3:00 p.m. this afternoon they will be posted to the web site, the board received them this evening and the hearing will remain open. Mr. Campanelli stated a number of documents were given to his client by a previous owner of an adjacent property, Terry Intrary. He provided photographs and reports of the contamination of buried items on the lot subject to this application. Images of engines, tires, pressure treated wood, debris, as well as fill material and leaking oil. He heard for the second time testing was done by the applicant. His client observed testing done recently and submits the wrong lot was tested so to the extent there are any reports about testing done on the lot which is a subject of this application is false. He also heard represented there is no stream on the property, is not true. He has confirmed with DEP there is a stream and the Town knows it.
He suggested we go to the property you'll see the stream open on Lots 31 and 32. The fact it flows underground through Lots 31 and 32 does not mean there is no stream on

the property. It is also a stem within the definition of DEP regulations he will be appearing before DEP to oppose the application and is still in the position the Town needs a variance from DEP. Notwithstanding the fact they've relocated the facility to patch pave asphalt, asphalt is an impervious surface to the extent it's permanent asphalt but it's been patched pave for years. It's not a proper application of asphalt that's why you keep repaving it. With regard to the presentation regarding ice, the danger of ice and fall zones, there is a reason local government across the country requires these providers to maintain safe fall zones; ice forms on these towers and when it melts it comes down. He referred to an image of an ice fall because it was the only way you can actually watch the ice coming down from a 1,600 foot tower. This tower will be 15 stories high if ice comes down it is silent you don't hear it coming if it comes from a height of 15 stories a chunk of ice lands on anybody it is going to injure them or kill them and they can be within the fall zone. The Town of Kent was smart enough to enact set back requirements for this reason; the Town's own code Section 77-7 requires any tower maintains a setback equal to twice the height of the tower. Why do you think they did that, it is to maintain a safe fall zone around the tower. These towers can and do fail. There are all types of failures documented. If you take the position the Town is exempt from its own zoning code, you are not exempt from the Town's obligations to protect its constituents. The Town has an obligation to carry out the Town's code which is to protect your constituents. That is what a safe fall zone is required for and the Town does not have one here. This will be endangering the people that work at the Highway Garage, the children that walk the bus stop and the neighbors.

It has been represented to the Board a phase 1 environmental assessment was conducted they walked on the property look around and say I don't see anything. He suggested these photographs demand a further investigation into the site.

You will also see in this package a reference to the restrictive covenants which are on the property in the memo. His clients went to the town clerk records and found no release of those restrictive covenants. The Town's code has a merger provision the reason cited is under NYS law the question of whether or not a merger has occurred is defined by the local zoning code. NYS Courts said if under the zoning code a merger occurs when a property owner acquires a substandard lot right next to their regular lot, a merger occurs by operation of law. Though it is in your zoning code by affect under NYS law there has been a merger and so you have restrictive covenants. There are many potential claims that could be brought against the Town if this were approved he assures the Board that a violation of restrictive covenants action could be brought by anyone.

As far as a public need, he heard discussion of other sites considered it was explained they cannot use the other sites because they're undeveloped properties. He stated it may be more expensive to go somewhere else so he has to go here. The code requires the Town to consider the adverse esthetic impact upon the neighbors this will stick out like a sore thumb; a 15 stories structure in an area where no other structures stands above 2 stories in height.

As far as the nonsensical report it's not going to adversely affect property values, ask yourselves would you rather buy a home within view of 150 foot structure such as this or one that doesn't have that view. He gets calls all the time people can't sell their homes because they're in fall zone of a tower, under HUD regulations if someone wants to buy your home and get a federally guaranteed loan they cannot qualify if your home is within the fall zone of the tower. Any claim that this does not adversely affect property values; he asked that common sense be applied.

Because he only received the documents he asked the Board look at the documents and judge whether or not there is contamination on the property. He handed it to the clerk requesting they be part of the official record. There was a discussion of the Omnipoint case and the position that his argument was every single aesthetic impact study has to have photographs from every property owners' property. That is not what Omnipoint says and that is not what he submitting. He is submitting if the applicant truly wanted to give you an accurate visual aesthetic impact analysis they would give images taken from properties of the property owners that would have the most significant

adverse aesthetic impact to give you the most accurate information but they didn't do it because it is going to show you the substantial adverse aesthetic impact. The reason he pointed to the Omnipoint cases is Federal Court have said adverse aesthetic impact is a perfect legal and proper grounds to deny an application such as this and is a primary example because this thing is going to stick out like a sore thumb. The Town's own code talks about screening and considering the reduction of property values, adverse aesthetic impact and even if you could, apply the Monroe Balancing Test, our code does not apply. The Town's obligation as public servants to protect your constituents governs. The Town is not bound by anything to stop you from considering that because as opposing counsel pointed out you are acting as proprietary capacity and as such you can even consider the RF radiation if the Town wanted to because any landlord has that power. He asked to look carefully at the FCC Compliance Report if he had $1000 for every false FCC compliance report submitted to a local board he would have a couple of new cars. Mr. Campanelli stated that the Board would hear from his client Mr. Bruen that the images depicted in those photographs are of the items buried on the lot, the engines, tires, car parts, oil, pressure treated plywood. He personally watched the testing last time and this time. This time they tested the wrong parcel again. In regard to the location he has seen Mr. Gaudioso in venues such as this he hears everybody from AT&T, T-Mobile, Verizon whomever say that they're a public utility this serves a public benefit and there's a public necessity. He respectfully submitted nonsense. If there was a desperate need for this site the only site that could be used, Homeland Towers would not be talking to you because Verizon, T-Mobile and AT&T would be talking to you. This is a convenience site not a necessary site. He said under the Omnipoint Test, if they want to build a new tower they're suppose to establish that they have a significant gap in coverage and that this is the least intrusive means of remedying that gap, meaning that among various alternatives this is the one that would have the least adverse impact upon the neighbors. They haven't even come close to establishing that, they said "you know if you go to the other undisturbed parcels we got a clear more property". That is not the standard and the Omnipoint case reviewed decisions of the NYS Court of Appeals and embraced the Court of Appeals' decision saying "okay, you wireless companies, you want to call yourself public utilities the public utilities standard under the NYS law applies to you and that's the standard and Mr. Gaudioso can tell you that is wrong all he want but it's not. Finally, he stated simply appealing to the Board the Memo he submitted to please look at the Town's own zoning code requirements. There is a reason each were enacted and it is not hard to find the reason. Look at the specifically stated intent of your own code, it says you have to have a non-substandard lot, you have to have a setback equals twice the height of the tower. That is the same standard being applied by local government in New York, New Jersey, Arkansas, Tennessee, and California. Mr. Campanelli stated all of these local governments say you must maintain a safe fall zone of at least 150% of the height of the tower, because if you have that fall zone you are maintaining an area where it exclude anybody from getting access to that area so if chunk of ice comes down from 15 stories high nobody is getting killed, nobody has a chunk of ice going through the windshield of their car and no child walking to the bus stop is going to be of danger of life, liberty from injury. There is no setback here, there are going to be people walking 15-20 feet from this thing. Anything fails, any ice comes down, you've been warned there is a reason local governments afford the same protections that your own code was adopted to give you that protection and if the members of the Board can't see that he does not know how to make anybody else think about it, your job is to protect your constituents including the property owners in closest proximity. He thanked the Board.

Peter Bruen spoke and lives at 3212 Route 301 he said John Deerman who attended last month is not available tonight because he's a Carmel Police Officer who needs to work. He was told by Mrs. Doherty his questions will be answered tonight. He asked for the answers. Supervisor Doherty replied they will be answered on April 16th when the meeting will be closed. Mr. Bruen stated Supervisor Doherty stated they would be answered tonight. Supervisor Doherty said originally the meeting was being closed tonight but they're not. Mr. Bruen stated he was the one who witnessed between and Mr. Gaudioso seems to have an issue with him not remembering the exact date from 1992 to 1995 when the Town agreed they had illegally dumped and filled their property next to Ed Herman's and his house. That created a 2-3 foot flood every time it rained because the water coming off their driveways had no place to go. It took 2 years with

Mr. Belvedere to get the Town to understand they had made a mistake. They came in the entire Kent Highway Dept. was there for a whole day. Why a whole day he asked because when they dug it out, the 16 inch trench they found, and he witnessed, crushed 275 gallon oil tanks, oil furnaces, oil burners when they opened that trench all you can smell was oil. Every neighbor could smell the oil. He had to go back to his house and came back later in the afternoon and asked where all the stuff was and was told they reburied it. He went to Mr. Belvedere, Mr. Gaudioso seems to think he didn't care he absolutely did care and had many meeting with Mr. Belvedere finding out where is the stuff and told it was reburied. He told them the DEP is not going to like that, he did whatever he did and got back to him and said DEP said as long as it's buried and remains buried and undisturbed it was okay. He had no issue then to think otherwise. One thing nobody is talking about including Mr. Gaudioso is your going to put a cell tower next to basically a construction site, you have dump trucks, back loaders, front loaders, backhoes, road graders, every time those trucks come back after their salt and sand runs and they have to empty out the dump trucks they have to go forward and stop real fast so that the back tailgate hits it. You can feel the ground vibrate he said as well as when you do the front loader is doing the sand and salt and not one of you, referring to the Board, has ever been there during a storm to feel that ground vibrate. The ground vibration doesn't affect foundations, he thinks it has to physics has to apply. Mr. Gaudioso reports about no devaluation of homes, he wants to know how close they were. Not, again, has one of you had asked is across the lake, a mile away he has no issue with that. But when it is 150 feet from your property there's an issue. He guarantees it no one on the Board would buy a house that close to a cell tower whether or not you believe there electromagnetic radiation is immaterial. He said the Board knows as he does and if the Board read the letter from Robert Morini who know has been a real estate broker for 40 years in this Town; he tried submitting the letter to Mr. Doherty she pushed it away and wouldn't accept it. Supervisor Doherty said it wasn't proper time he hands it over to the Town Clerk not to her. She did not say she wasn't taking it. She said it has to go to the Town Clerk. He said in the letter there's a terrible push back nobody wants to buy a house there would definitely be devaluation and doesn't care what studies were done. Those studies were not done in a situation we have right here. He doesn't know how to reiterate the Town Board is here to protect and not hurt them this will hurt them. How can the Board think this would not hurt them physically and financially? This is absurd if the Board votes for this cell tower you will be saying in essence the 28 people who live in these 7 homes are persona gratis; they don't exist the Board does not care and can do whatever they want. He begged the Board use common sense, this is not the location.

Dennis Rogers spoke stating he lives at 30 Smokey Hollow Court and talked about himself since it is relevant to what he has to say. He is a Physicist and received his Ph.D. at the University of California, Davis. He worked for 27 years for IBM doing electrical engineering. He wanted to speak about the physics of this ice fall. After seeing the YouTube videos it showed a piece of ice coming down and hitting a car windshield going through the windshield and tearing part of the metal of the car, it was bent in. He was curious and made a calculation of the forces involved and tested it on a sample object of 40 pounds falling from the top of the tower and believes everyone knows, for those who shovel snow here how big chunks of ice can develop and the force of gravity pulling it down and wind resistance trying to affect that and first it was falling straight down and one thing he found out the ice would reach its term of velocity which means that when an object falls it falls faster and faster until it gets to a certain point where the wind resistance equals the force through the gravity and doesn't go any faster. So the assertion that a taller tower than 150 feet would cause more damage, he doesn't believe is true. Any ice that falls from the top of the tower is going to becoming at term of velocity whether it falls 150 feet or whether it falls 10 times that height. He also calculated the velocity of the 40 pound chunk of ice would be approximately 70 miles an hour. He tried to calculate the effect of the lateral wind forces to determine how far away from the tower the ice could go and at the time he did the calculations he had heard the tower is 300 feet from the highway department but this new position of the tower would be probably 150 feet. His calculation that a wind of, he was curious about Hurricane Sandy because we had 50 mile an hour wind gusts during that time, with a 50 mile and hour wind gust could cause a chunk of ice that size to actually fall that far away from the tower so these fall zone requirements spoken of are fairly accurate. He feels there is a

serious danger to anybody sitting under the tower and with a new position of the tower there may be danger to the people who are in the highway department. He offered to write-up his findings if the Board like. He believes there is a concern with the ice fall zone.

Dawn Groundwater spoke stating she lives at 22 Smokey Hollow Court. She hasn't heard from Homeland Towers any rebuttal to what many of the residence said last month about outside of the fall zone ice the concerns about the health impact to the current residence who are about 40 years and older but to their children but what the health impact will be and the safeguards and if anyone can say with any confidence that they will not be affected not only we talked about of qualitative things of life, aesthetics, views she is about 100-150 feet from Mr. Bruen's property right across the parking lot so she can only imagine a tower right in between them. She has not seen evidence there will not be adverse health impact. She asked the Board considers that and do a cost benefit analysis of what the impact will be to the people who live there.

Mr. Gaudioso stated as he started out speculation, comments about "if I had a $1000 for a false report I'd have new cars" that is simply not evidence. Comments from someone about ice fall that is not a professional engineer specializing in this particularly when they're an attorney, it's not evidence. They've tried to submit evidence. The last comment about adverse health impact, they have submitted reports from Pinnacle. It is based on a federal standard which is based on the scientific community which is set in federal law. They have submitted an ice fall report, he noted Mr. Roger's intent as far as his calculations might possibly be correct but he's starting with a premise there is a 40 pound chunk of ice when you read the Tectonic letter this is not a 1600 foot tower, it's not about the terminal velocity, it's about the type of tower a 1600 foot tower is 1600 feet in the air it's a different opportunity accumulating ice. It's a different type of lattice tower that accumulates ice because it has a greater surface area because it's a lattice tower as oppose to 150 foot thin profile monopole. It's not a 15 story building, that type of misrepresentation is incorrect. It's a thin profile monopole with a small platform on top with small antennas. It's not a 1600 foot lattice tower with guy wires, with an open cage for ice to accumulate. The premise of a 40 foot chunk of ice is just simply unsupported. The comments that the Town records didn't have the restrictive covenant release, it's at the County Clerk's Office, where these are recorded a copy was given to you with a page and liber stamp, it talks to the credibility of those types of statements. The fact about where they were testing the property with the ground penetrating radar survey, he doesn't know what Mr. Bruen saw but they sent professionals to test the location of the facility but there's a pipe that runs under the property. They wanted to see where the pipe was they started at one end and tried snake it. He doesn't know what Mr. Bruen visualized in his mind and what he thought they were doing incorrectly but of course they were on other parts of the property because they were trying to snake the pipe to find where the pipe location was and you do that in different locations. He asked the Board to look at the evidence, at the submitted. Their report was called nonsensical and came 5 minutes after he said he didn't even see the report It's a similar report that 2 federal courts upheld based on the same methodology and same standards and same type of data. On the contamination issue, they've never said that there's no contamination. They said their due diligence is they haven't found evidence of contamination. The statement by Mr. Campanelli lacks credibility to say the ASTM Phase 1 standard is you just walk around the property and everything looks well. That's not the standard, that's not what they did, that's not how you do a Phase 1 report. He shouldn't make that type of misrepresentation. They did a full Phase 1 report and it includes a record search. They found the record search as mentioned, DEC Report and Water Wells Monitoring Report. They did not find any contamination but never said there's no contamination. They said they want to keep studying it, they want to stock pile the soil, they want to put the groundwater in a tank or truck and test it and properly dispose of it, they are not hiding not burying their head on the issue. They're dealing with the issue like any professional company, like any municipality, doing it properly according to the proper standards steps and methodologies, and confirmed they're going to properly handle and dispose of the soil if it's contaminated which is in writing. The last thing is the fear of unknown and speculations the things that could happen. Mr. Campanelli has raised these issues in the Town of Pound Ridge where the Town Board approved the site at the Ambulance Corps right behind the building on a mall parcel,

same with the Town of Lewisboro where the Town approved a similar facility on a piece of alienated park land. He called up Mr. Vicente of Homeland Towers because he said this is not evidence for this particular facility and not other facilities. He wanted to talk about facts such as facilities that Homeland Towers has built in this region at similar properties and setbacks, like firehouses and railroad stations.

Mr. Manny Vicente, President of Homeland Towers spoke stating he cannot speak about other towers and what other companies have done but he can share their experiences related to ice fall which is a good question and concern. He has done very similar facilities in high traffic areas and areas similar to the proposed tower. He pointed to the letter from the engineer about concerning ice fall; the one thing really important is the design of the structure. A lattice structure is a lot of open spaces a lot of steel for ice to form on in particular 1,600 foot one. There are also guides with lattice towers that tall and can stretch for hundreds of feet and made of metal. He said it's hard to compare situations like that with what they are proposing. A monopole is essentially one solid piece of steel and if ice forms on it, it forms on the actually steel. The top where the antennas are, those antennas have electric currents through them and tend not to have ice form on them and accumulate to the point where it would be a real concern, that information is specified in the letter. It is a good question, they have addressed many times. They have built similar facilities that DPW (Department of Public Works) yards where they have within the tower about 25 feet away from the actual tower to 35 feet, in Blooming Grove DPW, there is a functioning garage with a police substation that tower is similarly situated to this case, actually closer to an office building with trucks going in and out the distance from the tower to fence is probably 10-15 feet, also in Blooming Grove developed a tower at a water treatment facility in that case the tower is about 15 feet away from the building that supported equipment and also offices for the persons working there; they have also done very active fire departments like parking, parties, events and a lot of movements. This does come up and have never had a problem. The most interesting example is the Croton Harmon Train Station, they built the site on Village property in the parking lot adjacent to their DPW garage what's interesting about that site they have very limited space an active parking lot where every parking space is extremely valuable and the site is surrounded by cars, there is no setback between the fence and the cars it's extremely tight compound, 24 to 25 hundred square feet. The access to the platform is through their facility, a 6 foot walkway between the tracks and their facility and the tower is about 10 feet away from that walkway. That site has 5 carriers operating on it there's a lot of equipment on it. It is a similar height, and thousands of people park and walk through that pathway everyday and have never had a problem. He asked them to think about ice and anything tall, ice is on trees, power lines, telephone poles; he doesn't see anybody overly concern about the telephone poles in this location or those lines or the trees so if ice can build up on a tower and be dangerous on the tower there are other things that ice builds up on and can fall off of. They had experience with this, it is a good question but it has never been a problem in any of their facilities that they have developed and they have been very similar facilities.

Mr. Gaudioso had no objections to the Town Board leaving the public hearing open giving everyone the opportunity to review the materials and would be happy to come back next month. Lynda Davis a resident of Smokey Hollow stated the position of the Town Board is to protect them because they were elected by them. Some of the Board members clearly are not respecting them to hear what they have to say and the little hand gestures by Robert Gaudioso, motioning something. She asked the Board to be objective and respectful. Town Counsel Curtiss said the record will remain open and resume next month. Everybody will get a chance to look at all the documents, plans and make whatever comments they want so that the Board can take that into the determination when ultimately the Board makes a decision.

Alexandra Vaughn stated she understands the motivations but the Board also needs to understand them they want the Board to care about them because they are the ones that votes for them. She stated although they may not be the Board's family they must still think of their best interest as if they're family. She feels the Board is becoming more hostile to them all they want is for the Board to care and realize they don't want to sell their house they want to live and have their kids grown up there. She asked the Board

to think about what they may want for their own family to go deep in their hearts get the politics out and think like human beings about what the Board is doing.

Resolution #135 – Adjourn Public Hearing to April 16, 2013
On a motion by Supervisor Doherty
Seconded by Councilman Tartaro
Resolved: The Public Hearing on Cell Towers at Smokey Hollow Court is adjourned to April 16th at 7:oo pm.
Motion carried unanimously

She noted that the public hearing on the amended lease is on April 2, 2013 at 7:00 p.m.

Public Hearing – Fire Protection Contract with Lake Carmel Fire Department
Town Clerk Cappelli read the Legal Public Notice, see attached hereto. Town Attorney Curtiss clarified for the Board when they passed the Budget in November the wrong figure was put in that they didn't put in the increase during the transition between the old and new accountant a $10,000 error was picked up and wanted to make sure the public was aware the contract was going to be $10,000 higher which is a 1% increase they get and that the new figure will be that increased figure is just changing that to reflect from 2013 to 2014. Supervisor Doherty asked for questions or comments. There were none.

Resolution #136 - Close Public Hearing – Fire Protection Contract
On a motion by Supervisor Doherty
Seconded by Councilwoman Osborn
Resolved: The Public Hearing on the Fire Protection Contract with Lake Carmel Fire Department was closed.
Motion carried unanimously

Salute to the Flag – At 8:35 p.m. Supervisor Doherty called the meeting to order with the Salute to the Flag.

Roll Call
Supervisor Katherine Doherty – present Councilwoman Penny Osborn – present
Councilman Lou Tartaro – present Councilman Mike Tierney – present
Councilman John Greene – present

Also Present – Town Counsel Tim Curtiss, Police Chief DiVernieri.

Resolution #137 - Approval of Vouchers & Claims
On a motion by Councilman Tartaro
Seconded by Councilman Greene
Resolved: All Vouchers #200123419 - # 200123614 and claims submitted by:

1. Actuarial & Technical Solutions, Inc. $2,000.00 GASB
2. Cargill, Inc. $6,224.67 Salt
3. Cornerstone Appraisal $4,512.50 Stormwater
4. Global Montello Group $6,456.81 Diesel
5. Insite Engineering $9,425.20 Rt. 52 Sewer District
6. Medicare Reimbursement $15,944.80 1st Quarter Reimbursement
7. NYCOMCO $2,520.00 2-Way Radio: Police
8. Patterson Auto Body $2,275.27 Chevy Pick-up
9. PCSB $30,712.50 Loan
10. Robison Oil $4,579.70 Heating Oil: Highway
11. Roemer Wallens Gold & Mineaux $4,450.50 Discipline: Highway
12. Royal Carting $3,676.59 Recycling Garbage
13. Somers Sanitation $4,607.03 Lake Carmel Garbage

14. Sprague Operating Resources $7,254.43 Gasoline
15. State Comptroller & Fees $24,454.00 Justice Court Fines
16. Timothy J. Curtiss P.C. $8,618.75 February 2013: Traffic
    $4,781.25 February 2013 General
17. Town of Kent Municipal Repairs $2,520.48 Chargebacks: Police
    $2,255.22 Chargebacks:Recreation
18. Trust & Agency Ins. $157,110.33 March 2013: Health Ins.
    $158,459.57 April 2013: Health Ins.

In the amount of $506,715.31 may be paid
The board took a poll vote as follows:
Councilman Greene – aye Councilwoman Osborn – aye
Councilman Tartaro – aye Councilman Tierney – aye
Supervisor Doherty - aye
Motion carried unanimously

Resolution #138- Acceptance of Fire Protection Contract with Lake Carmel Fire Department
On a motion by Councilman Tierney
Seconded by Councilman Tartaro

WHEREAS, there has been duly established in the Town of Kent a fire protection district known as the Lake Carmel Fire Protection District No. 1, which encompasses a portion of the Town and is on file in the Town Clerk's office; and

WHEREAS Lake Carmel Fire Department, Inc. has proposed to provide fire protection services to said District for the term and for the compensation set forth in the attached Contract; and

WHEREAS, the Town Board of the Town of Kent wishes to enter into the attached Fire Protection Contract with Lake Carmel Fire Department, Inc.;

NOW, THEREFORE BE IT RESOLVED, that the Town Board of the Town of Kent hereby approves the Fire Protection Contract with Lake Carmel Fire Department, Inc.; and

BE IT FURTHER RESOLVED, that the Town Board of the Town of Kent hereby authorizes the Supervisor to execute the Fire Protection Contract and any and all other documents necessary to give effect to this resolution.

The board took a poll vote as follows:
Councilman Greene – aye Councilwoman Osborn – aye
Councilman Tartaro – aye Councilman Tierney – aye
Supervisor Doherty - aye
Motion carried unanimously

Resolution #139 - Final Order Establishing the Route 52 Sewer District
On a motion by Supervisor Doherty
Seconded by Councilpersons Osborn & Tartaro

WHEREAS, the Town Board of the Town of Kent accepted the Map, Plan and Report prepared by Insite Engineering, Surveying & Landscape Architecture, P.C. for the establishment of a sewer district along the Route 52 corridor; and

WHEREAS, the Town Board of the Town of Kent duly published a notice of public hearing to discuss the possible formation of the Route 52 Sewer District; and

WHEREAS, on December 11, 2012, the Town Board of the Town of Kent held a public hearing to discuss whether the establishment of the Route 52 Sewer District along the Route 52 commercial corridor was in the public interest; and

WHEREAS, the Town Board of the Town of Kent has conducted the public hearing and having taken public comments and written comments concerning the establishment of the Route 52 Sewer District; and

WHEREAS, on January 29, 2013, the Town Board of the Town of Kent duly adopted a resolution establishing the Route 52 Sewer District making the following findings, subject to permissive referendum:

A. The notice of public hearing was published and posted as required by law and is otherwise sufficient.

B.All of the properties and property owners within the proposed district are benefitted thereby.

C. All of the properties and property owners benefitted are included within the limits of the proposed district.

D.The establishment of such a district is in the public interest; and

WHEREAS, on February 6, 2013, the Town Clerk of the Town of Kent duly published the resolution, along with the information concerning the permissive referendum, in the official newspaper and posted the same on the Town's notice board; and

WHEREAS, thirty (30) days have elapsed since the publication of the resolution approving the Route 52 Sewer District subject to permissive referendum; and

WHEREAS, no petition had been filed with the Town Clerk requesting a permissive referendum;

NOW, THEREFORE, BE IT RESOLVED that the Town Board of the Town of Kent adopts this final order establishing the Route 52 Sewer District; and

BE IT FURTHER RESOLVED that a description of the Route 52 Sewer District is attached hereto and made a part hereof as Exhibit "A;" and

BE IT FURTHER RESOLVED, that the Town Board of the Town of Kent hereby authorizes the Supervisor to execute any and all documents necessary to give effect to this resolution.

The board took a poll vote as follows:
Councilman Greene – aye Councilwoman Osborn – aye
Councilman Tartaro – aye Councilman Tierney – aye
Supervisor Doherty - aye
Motion carried unanimously

Resolution #140 - Transfer of Funds within Budget Lines to Reflect Actual 2012 Town Budget

On a motion by Supervisor Doherty
Seconded by Councilman Tartaro

WHEREAS, the Town of Kent enacted a proposed budget for the 2012 calendar year; and

WHEREAS, the Town of Kent has expended funds and received income during the 2012 calendar year; and

WHEREAS, the Town Accountant of the Town of Kent has prepared the actual 2012 budget reflecting the actual expenditures made and the income received during the 2012 calendar year; and

WHEREAS, the Town Board of the Town of Kent wishes to made certain transfers within the various budget lines in order to balance the actual expenditures and income with the proposed 2012 budget;

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Kent hereby authorizes the Town Accountant to make the budget transfers within the budget lines as set forth in the Exhibit A, which is attached hereto and made a part hereof; and

BE IT FURTHER RESOLVED, that the Supervisor and/or the Town Accountant are hereby authorized to take whatever steps necessary to effectuate the balancing of the actual 2012 budget with the proposed 2012 budget; and

The board took a poll vote as follows:
Councilman Greene – aye Councilwoman Osborn – aye
Councilman Tartaro – aye Councilman Tierney – aye
Supervisor Doherty - aye
Motion carried unanimously

Resolution #141 - Transfer Bank Accounts

On a motion by Supervisor Doherty
Seconded by Councilman Tierney

Resolved: Mahopac National Bank shall be designated as the official depository for the following accounts:
Primary Checking, Trust and Agency Checking), Money Market, Town Clerk Checking, Tax Collector-Carmel School Tax Checking, Tax Collector, Town of Kent Checking.
The board took a poll vote as follows:
Councilman Greene – aye Councilwoman Osborn – aye
Councilman Tartaro – aye Councilman Tierney – aye
Supervisor Doherty - aye
Motion carried unanimously

Resolution #142 - Investment Policy
On a motion by Supervisor Doherty
Seconded by Councilman Tierney
Resolved: The revised March 2013 Investment Policy was adopted as submitted. (attached)
The board took a poll vote as follows:
Councilman Greene – aye Councilwoman Osborn – aye
Councilman Tartaro – aye Councilman Tierney – aye
Supervisor Doherty - aye
Motion carried unanimously

Resolution #143- Permission to Attend Seminar – Dog Control Officer
On a motion by Councilwoman Osborn
Seconded by Supervisor Doherty
Resolved: The Dog Control Officer is authorized to attend the ACO/DCO Conference in May, 2013 not to exceed $350.00.
Motion carried unanimously

Resolution #143 - Kent Police Department – Purchase Vehicle
On a motion by Councilman Tierney
Seconded by Councilman Greene, who asked which budget is funds coming from. Councilman Tierney replied it is in the 2013 budget. He commended and thanked Chief DiVernieri, Sergeant Owens, Nick Mancuso and Ed Buehler who inspected and researched the new vehicles.

Whereas, the Town of Kent wishes to purchase two (2) Ford Interceptor's for the Kent Police Department in the amount of $62,141.75 from Beyer-Warnock Ford,

Resolved, The Supervisor is authorized to purchase two (2) Ford Interceptor's itemized below for the Police Department.

One (1) 2013 Ford Police Interceptor Utility Vehicle for the state bid price $34,305.50 and

One (1) 2013 Ford Police Interceptor All Wheel Drive Sedan for the state bid price of $27,836.25

Be It Further Resolved, payment for these vehicles the 2013 Ford Police Interceptor's itemized above in the amount of $62,141.75 be made to Beyer-Warnock Ford on receipt and acceptance of the above named vehicles.
The board took a poll vote as follows:
Councilman Greene – aye Councilwoman Osborn – aye
Councilman Tartaro – aye Councilman Tierney – aye
Supervisor Doherty - aye
Motion carried unanimously

Resolution #144 - Permission to Attend Seminar - Assessor
On a motion by Councilwoman Osborn
Seconded by Councilman Tartaro
Resolved: Gary Link, Assessor may attend the one day seminar offered at the Institute of Assessing Officers on Agricultural Exemptions on March 21, 2013 not to exceed $150.00.
Motion carried unanimously

Resolution #145 - Municipal Repairs – Hire Mechanic
On a motion by Councilman Tierney
Seconded by Councilman Greene

Resolved: David J. Bereznak Jr., is hired as a Mechanic, effective April 1, 2013 at a salary set forth in the Collecting Bargaining Agreement and the 2013 Adopted Budget. Mr. Bereznak's employment is probationary for six months in accordance with the Collective Bargaining Agreement and pursuant to Putnam County Civil Service Rules and Regulations.
Motion carried unanimously

Resolution #146 - Lake Carmel Fire Department Accept New Members
On a motion by Councilman Greene
Seconded by Councilman Tierney
Resolved: On the recommendation of the Lake Carmel Fire Department President Ed Schaeffler, Jr. the follow were accepted as new members to the Fire Department: Rocco Mele, Jason Jones, Mathew Bidwell, Bryan Pratt and Nicole Wahlers.
Motion carried unanimously

Resolution #147 - Lake Carmel Fire Department Accept Service Award
On a motion by Councilman Greene
Seconded by Councilwoman Osborn
Resolved: On the recommendation of President Schaefler Jr., Chief Madsen and Secretary Bachmann, the list of members (attached) who have qualified for the Service Awards Program for the year 2012 were approved and accepted.
Motion carried unanimously

Resolution #148 - Lake Carmel Park District – Hire Supervisor of Lifeguards
On a motion by Supervisor Doherty
Seconded by Councilwoman Osborn
Resolved: Andrea McKinley is hired as Supervisor of Lifeguards at $7,500 for the 2013 summer season.
Motion carried unanimously

Resolution #149 - Lake Carmel Park District – Hire Head Lifeguards
On a motion by Supervisor Doherty
Seconded by Councilwoman Osborn
Resolved: Albert Mercado is hired as Head Lifeguard at $14.00/hour for the 2013 summer season.
Motion carried unanimously

Resolution #150 - Lake Carmel Park District – Hire Instructor
On a motion by Supervisor Doherty
Seconded by Councilwoman Osborn
Resolved: Michael O'Brien is hired as an Independent Contractor to train and certify Lake Carmel Lifeguards and other non-residents wishing to be certified lifeguards. Mr. O'Brien's service is at no cost to the Town and is based on the payment that the Town receives from the participants.
Motion carried unanimously

Resolution #151 - Property Maintenance Code Enforcement
On a motion by Supervisor Doherty
Seconded by Councilman Greene
Resolved: Pursuant to the Property Maintenance Code the Supervisor is authorized to obtain a Request for Proposals for the cleanup of property owned by Mr. Jarzebiak, TM#33.56-1-20, 24 Chauncey Road, in the Town of Kent.
Motion carried unanimously

Resolution #152 - Advertise for Cemetery Maintenance Bids
On a motion by Councilwoman Osborn
Seconded by Supervisor Doherty
Resolved: The Town Clerk is authorized to advertise for bids for Cemetery Maintenance to be received Friday, April 12, 2013 at noon.
Motion carried unanimously

Resolution #153 - Advertise for Porta-John Bid

On a motion by Councilwoman Osborn
Seconded by Councilman Tartaro
Resolved: The Town Clerk is authorized to advertise for bids for Porta-Johns to be received Friday, April 12, 2013 at noon.
Motion carried unanimously

Resolution #154 - Actuarial Consultant GASB
On a motion by Councilman Tartaro
Seconded by Councilwoman Osborn

WHEREAS, the Government Accounting Standards Board (GASB) has required in GASB-45 that governments annually calculate their Other Post Employment Benefits for reporting purposes, and

WHEREAS, the Town Board of the Town of Kent wishes to renew the appointment of Actuarial and Technical Solutions, Inc., in regards to the GASB-45 calculation and preparation of reports,

BE IT RESOLVED, that the Town Board of the Town of Kent agrees to renew the appointment of Actuarial & Technical Solutions, Inc. as the consultant in regards to the GASB-45 calculation and preparation of reports,

BE IT RESOLVED, that the Town Board of the Town of Kent hereby authorizes and directs the Supervisor to execute any and all documents and take any actions necessary to give effect to this resolution.

BE IT FURTHER RESOLVED, payment in the amount of Two Thousand Dollars will be made to Actuarial & Technical Solution, Inc. in accord with the Town procurement policy.
Motion carried unanimously

Resolution #155- Recycling – Rescind Resolution #125
On a motion by Councilman Tartaro
Seconded by Supervisor Doherty
Resolved: Resolution # 125 adopted on February 26, 2013 was rescinded.
Motion carried unanimously

Resolution #156 - Recycling – Budget Transfer
On a motion by Councilman Tartaro
Seconded by Councilwoman Osborn

Whereas, the Town of Kent Town Board wishes to transfer General Fund monies to the Recycling Account Passbook. This does not involve utilization of taxpayer money. These monies represent the expense and revenue net balance in the recycling department transactions for the years 2012.

Income:	94,607
Expense	71,770
Net	22,837

Resolved, the Town of Kent Town Board may transfer $22,837 to the Recycling Account Passbook to cover the recycling.
Motion carried unanimously

Agenda Items & Correspondence
Supervisor Doherty asked if there were any questions on the Agenda Items or Correspondence. There were none.

Resolution #157 - Adjournment
On a motion by Supervisor Doherty
Seconded by Councilman Tartaro
Resolved: The Town Board meeting of March 19, 2013 adjourned at 9:00 p.m.
Motion carried unanimously
Respectfully submitted:

Yolanda D. Cappelli
Town Clerk