

The meeting was called to order by Chairman Paul Boisvert and the opening statement was read by the Board Secretary.

ROLL CALL: Showed the following members were present: Joseph Cristiano, Brian Greenfield, Nicholas Huszar, Robert Seaman, Megan Talente, Brian Tannenhaus, Councilman Fred Gasior, Matthew Kyle, Christopher Mercer and Chairman Paul Boisvert.

Also in attendance were Ron Cucchiaro, Board Attorney, Laura Neumann, Board Engineer, Christine Bell, Board Planner, Shari Spero, Board Licensed Tree Expert and Eileen Rubano, Board Secretary.

PLEDGE OF ALLEGIANCE:

APPROVAL OF MINUTES: There were no minutes to approve.

VOUCHERS: None

CORRESPONDENCE: The Board Secretary had a letter from Robert F. Simon, Attorney asking that the application AASTHW Property LLC which is scheduled to be heard tonight, be carried to March 2, 2023 with no further notice. The Board Attorney made an announcement for members of the public that the application for Case No. SP-1102 AASTHW Property LLC would be carried to the Board's March 2, 2023 meeting with no further notice and it would be a virtual meeting.

The Board Secretary also sent out an email with a copy of Ordinance 23-5, An Ordinance of the Township of Howell Clarifying Implementing Ordinance O-22-24. The Board needs to comment on whether this ordinance is consistent with the master plan.

Ms. Talente made a motion that the ordinance was substantially consistent with the Master Plan. Motion was seconded by Councilman Gasior and carried with Mr. Cristiano, Mr. Greenfield, Mr. Huszar, Mr. Seaman, Ms. Talente, Mr. Tannenhaus, Councilman Gasior, Mr. Kyle and Chairman Boisvert voting for the motion.

RESOLUTIONS: There were no resolutions to memorialize at this meeting.

SUBMISSION WAIVERS BEFORE THE BOARD:

a. **Case No. SP-1111 / Kmetz Inc.**

Dante Alfieri, Attorney for the Applicant, appeared for the applicant and said they will provide items I and Q in Ms. Neumann's review so they are no longer seeking those waivers. Ms. Neumann testified that the waivers are listed in her January 12, 2023 report and the engineer has provided her with a memo that they will also be providing items J through P on a subsequent plan revision along with the Woodlands Management. He also informed her that the Natural Resource Inventory is included in the Environmental Impact Statement. Since they are now providing items I through Q she takes no exception to the granting of the remaining items for the purposes of deeming the application complete.

**HOWELL TOWNSHIP PLANNING BOARD
REGULAR MEETING**

2

FEBRUARY 16, 2023

Mr. Cristiano made a motion to grant the submission waivers for Kmetz Inc. Motion was seconded by Mr. Tannenhaus and carried with Mr. Cristiano, Mr. Greenfield, Mr. Huszar, Mr. Seaman, Ms. Talente, Mr. Tannenhaus, Councilman Gasior, Mr. Mercer and Chairman Boisvert voting for the motion.

APPLICATIONS BEFORE THE BOARD:

Prior to the start of the first application Mr. Huszar informed the Chairman that he had to recuse himself from this application and left the meeting.

- a. **Case No SP-1085/AAFFHW Property, LLC-Forman – Whispering Woods Settlement Hearing**

SEE TRANSCRIPT ATTACHED

- b. **Case No. SD-3005 / Stanley Domin**

Before this application began, Chairman Boisvert left the meeting. Mr. Huszar returned and as Vice-Chairman he took over chairing this portion of the meeting. Mr. Cristiano recused himself from this application.

Dennis Galvin, Attorney for the Applicant appeared and said this was a simple matter. The applicant received approval for a subdivision for 2 residential lots and a farm lot which was 5 acres in size. They have an easement that looks like a road and both houses face that road. This creates technical issues since it isn't a roadway. The street along the roadway is being treated as a front yard and they need clarification. There is also a farmland/conservation easement that needs to be clarified and they are looking to put up a deer fence as the deer eat all the plants. They are looking to treat the front yard as a side yard.

Stanley Domin, Applicant, was duly sworn and testified on the orientation of the homes and said the lot functions as a corner lot. He also said there is a shed in the front yard which was approved with a variance at the last subdivision approval. They would like the front yard treated as a practical side yard. He further stated that there is a fence around the entire perimeter of the three lots instead of just the farm. During the original application for the subdivision the farmland buffer was transitioned into a conservation easement. With the second subdivision application the two residential lots were made smaller and the farm lot larger. The Township recognized the error with the buffer and repealed the one on the farm lot. They are now looking to remove the conservation easement on the residential properties.

Mr. Cucchiaro made a comment that if the Board is agreeable to the farmland buffer they cannot compel the state to give up their rights and Mr. Galvin agreed and said he just need to get through the planning board process then they will work with the state.

When the question of whether the roadway in front of the two homes was an access easement or a right of way Ms. Neumann said the stem of the farmland property is a 50' wide access easement and right of way and acts like a street. Mr. Cucchiaro said it is an easement.

Jeffrey Carr, PE was duly sworn, gave his credentials to the Board and was accepted as an expert. He gave a little history of the project and said no one at the time of the original plot plan design thought that the orientation of the homes would have this impact with regards to the front yard

setback for a fence especially since the homes are set back 205' off Newtons Corner Road. Mr. Carr also agreed to all the technical comments in Ms. Neumann's review letter.

Chairman Huszar opened the hearing up to members of the public and the following appeared:

Marc Parisi, 2 Castle Court, who did not have his hand raised for this application.

Christopher Catalfano, 485 Newtons Corner Road, who is an adjacent property owner. Mr. Catalfano said he opposed the orientation of the homes during the original application and said it was a mistake. He now has a house looking into his backyard. He also said the back property was supposed to be a farm and it should have a 50' buffer to his residence and from the very beginning this has been a nightmare for him. During the amended application to the Board he asked for a privacy fence and the applicant tried to put up a chicken wire fence. He said the front yard should be treated like a front yard as he treats his as a front yard and their mistake does not constitute an approval and he should have to pay for their mistakes. Mr. Catalfano said he was also supposed to get a 50 foot wide buffer along the farm and his property and they have a greenhouse on the property line. He said Mr. Domin cleared the property right up to the property line and he believes there may even be wetlands there. He was further concerned with the deer fence being 7 feet tall and right on the property line. He feels that if it is damaged they will have to trespass on his property to fix it.

Mr. Galvin said if the neighbor has concerns it is up to the Board to weigh them when making their decision. He also asked Mr. Carr about the wetlands and Mr. Carr said he was not aware of any wetlands on the property. Mr. Galvin said they would provide an absence presence letter as a condition of approval.

Michael Catalfano, 485 Newtons Corner Road, appeared and asked why there were no trees in the farmland buffer. He said the buffer was for privacy from the farm and even the natural vegetation would have been 4 or 5 feet tall if it was left alone. He also thought it was poor planning with the house orientation as it faces a 50 foot utility easement instead of the road.

Mr. Cucchiaro asked if they were proposing any changes to the buffer from the prior application and Mr. Galvin stated that they are not. Mr. Galvin said they are ratifying an 8 foot high deer fence and any buffer required from the prior approval will remain. They would like the conservation easement changed to a farmland buffer and whatever those requirements were they remain.

Seeing no other members of the public wishing to ask questions or comment on this application Chairman Boisvert closed the public portion of the hearing.

Mr. Seaman asked if we were reclassifying the easement on the north and Mr. Cucchiaro said we don't see the need for it to be a conservation easement it is a farmland buffer.

Mr. Huszar asked the applicant if the Board acted favorably on the application would they be willing to put more effort into a larger buffer for a sense of privacy and Ms. Bird answered that she originally wanted to do a living fence instead of a six foot fence but she spent \$5000 for the fence and can't do anything more.

**HOWELL TOWNSHIP PLANNING BOARD
REGULAR MEETING**

4

FEBRUARY 16, 2023

Mr. Galvin said he thought this was a simple matter and they are at the mercy of the board. There are two houses and a farm and they want to make better utilization of the property. They will work on the easement. The deer fencing is necessary and is wire so you can see right through it. They also want the front yard setback seen as a side yard setback.

Ms. Talente asked if this was a corner lot and Mr. Galvin said in reality it is not a true corner lot.

Mr. Tannenhaus made a motion to approve the application for Stanley Domin. Motion was seconded by Mr. Greenfield and carried with Mr. Greenfield, Mr. Seaman, Ms. Talente, Mr. Tannenhaus, Councilman Gasior, Mr. Kyle, Mr. Mercer and Chairman Huszar.

MASTER PLAN STATUS REPORT: Mr. Tannenhaus said there was no update but they are working on the Farmland Preservation Element and he would like to make a strong argument that they work on the Utility Plan especially with electric vehicles. The Committee needs to understand their limits and would like feedback from the Council and Town Manager.

Mr. Tannenhaus made a motion to adjourn the meeting. Motion was seconded by Mr. Seaman and carried with all Board members voting for the motion and the meeting adjourned at 9:23 p.m.

Respectfully submitted,



**Eileen Rubano
Recording Secretary**

NOTE: A CD or DVD of this meeting is available on request.

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TOWNSHIP OF HOWELL PLANNING BOARD
COUNTY OF MONMOUTH - STATE OF NEW JERSEY

REGULAR MEETING FOR:

AAFFHW PROPERTY LLC (FORMAN FAMILY)
BLOCK 164, LOT 5.01
29 HOWELL ROAD WHISPERING WOODS SETTLEMENT AND
REMAND HEARING
PRELIMINARY AND FINAL MAJOR SITE PLAN

WHISPERING WOODS SETTLEMENT AND REMAND HEARING FOR
PRELIMINARY AND FINAL MAYOR SITE PLAN APPROVAL

APPLICATION NO. 1085

THURSDAY, FEBRUARY 16, 2023

7:00 P.M.

TRANSCRIPT OF PROCEEDINGS

REMOTE PUBLIC HEARING

* * *

AB COURT REPORTING, LLC
CERTIFIED COURT REPORTERS
26 ALGONQUIN TERRACE
MILLSTONE TOWNSHIP, NEW JERSEY 08535
TEL: (732)882-3590
angelabuonocsr@gmail.com

1 BOARD MEMBERS PRESENT:

2 PAUL BOISVERT, CHAIRMAN

3 RANDY BISHOP

4 JOSEPH CRISTIANO

5 FRED GASIOR, COUNCILMAN

6 BRIAN GREENFIELD

7 NICHOLAS HUSZAR, VICE-CHAIRMAN (Recused)

8 MATTHEW KYLE

9 CHRISTOPHER MERCER

10 ROBERT SEAMAN

11 MEGAN TALENTE

12 BRIAN TANNENHAUS

13

14 BOARD PROFESSIONALS AND STAFF PRESENT:

15 RONALD CUCCHIARO, ESQUIRE, Board Attorney
- Weiner Law Group, LLP

16 LAURA NEUMANN, P.E., Board Engineer
- CME Associates

17 JENNIFER BEAHM, P.P., AICP, Board Planner
- Leon S. Avakian, Inc.

18 SHARI SPERO, Certified Tree Expert
- CME Associates

19 EILEEN RUBANO, Planning Board Secretary
-Howell Township

22

23 STENOGRAPHICALLY REPORTED BY:

24 LAURA A. CARUCCI, C.C.R., R.P.R.
25 License #XI02050

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A P P E A R A N C E S: (Via Video Conference)

HEROLD LAW, P.A.
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25 Independence Boulevard
Warren, New Jersey 07059-6747
T: (908) 657-2022
F: (908) 647-7721
EMAIL: rsimon@heroldlaw.com

- Counsel for the Applicant

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<u>WITNESSES</u>	<u>PAGE</u>
JEROMIE LANGE, P.E. Active Acquisitions, LLC	25
CHRISTINE COFONE, P.P. Cofone Consulting Group	44

PUBLIC QUESTIONS/COMMENTS:

<u>NAME</u>	<u>ADDRESS</u>	<u>PAGE</u>
Rosemary Bird	501 Newtons Corner Road	56
Mamu Chopra	7168 Westfield Court Alexandria, Virginia	57
Kathy Okerson	459 Okerson Road	58
Albert J. Cestero, Jr.	3 Howell Road	62
Jacqueline Cestero	3 Howell Road	67

APPLICANT'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
1		
2		
3	A-1 Submission Letter prepared by Colliers Engineering & Design dated 2/2/23	*
4		
5	A-2 List of Professionals testifying	*
6	A-3 Utilities applications prepared by Colliers Engineering & Design, dated 4/6/21	*
7		
8	A-4 Certified List of Property Owners, dated 11/12/20	*
9	A-5 Monmouth County Planning Board application, dated 4/6/21	*
10		
11	A-6 Freehold Soil Conservation District application, dated 4/6/21	*
12	A-7 Site Plans consisting of thirty-four (34) sheets prepared by Colliers Engineering & Design dated 4/6/21, last revised 8/18/22	*
13		
14	A-8 Preliminary Assessment and Phase I Environmental Site Assessment prepared by Maser Consulting, dated November 2020	*
15		
16		
17	A-9 Stormwater Management Operations and Maintenance Manual prepared by Colliers Engineering & Design, dated 8/18/22	*
18		
19	A-10 Supplemental Preliminary Infiltration Evaluation report prepared by Colliers Engineering & Design, dated 12/8/22	*
20		
21		
22	A-11 Traffic Impact Study prepared by Bright View Engineering, dated 4/1/21	*
23		
24	A-12 Natural Resource Inventory report prepared by Colliers Engineering & Design, dated 4/23/21	*
25		

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
1		
2	A-13 Environmental Impact Report prepared by Maser Consulting, dated April 2021	*
3		
4	A-14 Water Tank Sight Line Exhibit consisting of one (1) sheet prepared by Colliers Engineering & Design, dated 8/18/22	*
5		
6	A-15 WB-67 Circulation Plan Exhibit consisting of one (1) sheet prepared by Colliers Engineering & Design, dated 8/18/22	*
7		
8		
9	A-16 Garbage Truck Circulation Plan Exhibit consisting of one (1) sheet prepared by Colliers Engineering & Design, dated 8/18/22	*
10		
11	A-17 Fire Truck Circulation Plan consisting of one (1) sheet prepared by Colliers Engineering & Design, dated 8/18/22	*
12		
13	A-18 Buffer Exhibit consisting of one (1) sheet prepared by Colliers Engineering & Design, dated 9/1/22	*
14		
15	A-19 Site Plan Exhibit consisting of one (1) sheet prepared by Colliers Engineering & Design, dated 9/1/22	*
16		
17	A-20 Existing Conditions Aerial Exhibit consisting of one (1) sheet prepared by Colliers Engineering & Design, dated 9/2/21	*
18		
19		
20	A-21 Overall Existing Conditions Aerial Exhibit consisting of one (1) sheet prepared by Colliers Engineering & Design, dated 9/2/21	*
21		
22	A-22 ALTA/NSPS Land Title Survey consisting of one (1) sheet prepared by Colliers Engineering & Design, dated 3/8/21	*
23		
24		
25	A-23 Alternate Lighting Plan consisting of one (1) sheet prepared by Colliers Engineering & Design, dated 9/30/21	*

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>	
1			
2	A-24	Right of Way Dedication Description	*
3		prepared by Colliers Engineering & Design, dated 8/16/21	
4	A-25	Right of Way Dedication Exhibit	*
5		consisting of one (1) sheet prepared by Colliers Engineering & Design, dated 8/16/21	
6	A-26	Architectural Plans consisting of four	*
7		(4) sheets prepared by Mitchell and Hugeback Architects, Inc.,	
8		dated 8/18/22	
9	A-27	Roadway Improvement Plans consisting of	*
10		three (3) sheets prepared by Bright View Engineering, dated 8/17/22	
11	A-28	Utility Will Serve Letters	*
12	A-29	Stormwater Management Report prepared	*
13		by Colliers Engineering & Design dated March 26, 2021, last revised August 18, 2022	
14	A-30	Submission Letter for Remand Hearing	*
15		submitted by Colliers Engineering & Design, dated 2/2/23	
16	A-31	Stormwater Management Report prepared	*
17		by Colliers Engineering & Design dated March 26, 2021, last revised February 1, 2023	
18	A-32	Supplemental Preliminary Infiltration	*
19		Evaluation prepared by Colliers Engineering & Design, dated 12/8/22	
20	A-33	Fully Compliant Architectural Plans, Revision 5, consisting of four (4)	*
21		sheets prepared by Mitchell and Hugeback Architects, Inc.,	
22		dated 8/16/21, last revised 2/1/23	
23	A-34	Fully Compliant Architectural	*
24		Rendering, Revision 5, consisting of one (1) sheet prepared by Mitchell and Hugeback Architects, Inc., dated 2/1/23	
25			

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>	
1			
2	A-35	Landscape Plan Exhibit consisting of	*
3		one (1) sheet prepared by Colliers Engineering & Design, dated 2/1/23	
4	A-36	Trash Compactor Enclosure Exhibit	*
5		consisting of one (1) sheet prepared by Colliers Engineering & Design, dated 2/1/23	
6			
7	A-37	Loading Dock Landscape Plan (North)	*
8		Exhibit consisting of one (1) sheet prepared by Colliers Engineering & Design, dated 2/1/23	
9	A-38	Loading Dock Landscape Plan (South)	*
10		Exhibit consisting of one (1) sheet prepared by Colliers Engineering & Design, dated 2/1/23	
11			
12	A-39	Sidewalk Ramp Compliance Exhibit	*
13		consisting of one (1) sheet prepared by Colliers Engineering & Design, dated 2/1/23	
14	A-39A	Alternative Sidewalk Ramp Compliance	*
15		Exhibit consisting of one (1) sheet prepared by Colliers Engineering & Design, dated 2/1/23	
16			
17	A-40	Retaining Wall Compliance Exhibit	*
18		consisting of one (1) sheet prepared by Colliers Engineering & Design, dated 2/1/23	
19	A-41	Utility Consolidation Exhibit	*
20		consisting of one (1) sheet prepared by Colliers Engineering & Design, dated 2/1/23	
21			
22	A-42	Utility Consolidation Exhibit	*
23		consisting of one (1) sheet prepared by Colliers Engineering & Design, dated 2/1/23	
24	A-43	Water Tank Sight Line Exhibit	*
25		consisting of one (1) sheet prepared by Colliers Engineering & Design dated 2/1/23	

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
A-44	Office Sewer Plans and Sanitary Conveyance Map consisting of one (1) sheet prepared by Colliers Engineering & Design dated 9/27/22, last revised 12/13/22	*
A-45	Architectural Plans consisting of four (4) sheets prepared by Mitchell and Hugeback Architects, Inc. Dated 8/16/21, last revised 2/1/23 (Rev 4)	*

(*) Exhibits were premarked prior to commencement.

BOARD EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
B-5	Settlement Agreement	23

*Exhibits not retained by Stenographer.

1 MS. RUBANO: Planning Board
2 Meeting, Thursday, February 16, 2023. I hereby
3 declare this meeting of the Howell Township Planning
4 Board to be open.

5 Adequate notice having been given pursuant to
6 the New Jersey Open Public Meeting Act in the
7 following manner: First, on January 6th, 2023, a
8 copy of said notice was mailed to The Asbury Park
9 Press and the Star Ledger.

10 Second, on January 6th, 2023, a copy of said
11 notice was hand delivered to the clerk of the
12 Township of Howell.

13 Third, on January 6, 2023, said notice was
14 posted in the office of the Planning Board and on
15 the bulletin board in the Howell Township Municipal
16 Building, 4567 Route 9, Howell Township, New Jersey.

17 Members of the public will have a chance to
18 ask questions and comment on applications once the
19 Chairman opens the hearing up to members of the
20 public.

21 If you wish to ask questions or comment on an
22 application, you will need to use the
23 raise-your-hand feature. And you will be brought
24 into the meeting one at a time.

25 You will need to have audio and video

1 capability. You will be sworn in. And you will be
2 required to provide your name and address.

3 For anyone calling in, you could press *9 to
4 raise or lower your hand and *6 to mute or unmute
5 yourself.

6 This meeting is being videotaped for possible
7 future broadcast on Howell Township TV 77.

8 Thank you.

9 CHAIRMAN BOISVERT: Roll call, please.

10 MS. RUBANO: Mr. -- hold on one
11 second. He's not here.

12 Mr. Cristiano?

13 MR. CRISTIANO: Present.

14 MS. RUBANO: Mr. Greenfield?

15 MR. GREENFIELD: Here.

16 MS. RUBANO: Mr. Huszar?

17 VICE CHAIRMAN HUSZAR: Here.

18 MS. RUBANO: Mr. Seaman?

19 MR. SEAMAN: Here.

20 MS. RUBANO: Ms. Talente?

21 MS. TALENTE: Here.

22 MS. RUBANO: Mr. Tannenhaus?

23 (No response.)

24 MS. RUBANO: Brian, you're muted.

25 MR. TANNENHAUS: Sorry.

1 Here.

2 MS. RUBANO: Thank you.

3 Councilman Gasior?

4 COUNCILMAN GASIOR: Here.

5 MS. RUBANO: Mr. Kyle?

6 MR. KYLE: Here.

7 MS. RUBANO: Mr. Mercer?

8 MR. MERCER: Here.

9 MS. RUBANO: Thank you.

10 And, Chairman Boisvert?

11 CHAIRMAN BOISVERT: Here.

12 MS. RUBANO: We have a quorum.

13 CHAIRMAN BOISVERT: All right.

14 Great.

15 You can all rise for the pledge of
16 allegiance, and then a moment of silence for our
17 troops serving both home and abroad.

18

19 (Whereupon, all rise for a recitation
20 of the Pledge of Allegiance and remain
21 standing in a moment of silence for troops
22 serving both home and abroad.)

23

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(Whereupon, the board conducts other
agenda items from 7:04 to 7:15 p.m. when they

1 begin the public hearing on this matter.)

2

3 CHAIRMAN BOISVERT: Next up is Case
4 No. 1085, AAFHWH Properties, LLC, Forman.

5 This is the Whispering Woods settlement
6 and remand for preliminary and final site plan
7 approval.

8 VICE-CHAIRMAN HUSZAR: Mr. Chair, I'm
9 going to have to recuse myself from this
10 application.

11 CHAIRMAN BOISVERT: Okay.

12 VICE-CHAIRMAN HUSZAR: If somebody
13 would just give me a text when the next one's on,
14 all right?

15 CHAIRMAN BOISVERT: You got it.

16 MS. RUBANO: Thank you, Nick.

17 VICE-CHAIRMAN HUSZAR: All right.

18 Thank you.

19 (Whereupon, Vice Chairman Huszar
20 recuses himself and logs out of the meeting.)

21 MS. RUBANO: Give me one second.

22 (Pause.)

23 MR. CUCCHIARO: Mr. Simon, if you just
24 want to enter your appearance.

25 MR. SIMON: Sure.

1 Good evening, good to be before this
2 Board. Rob Simon from the firm of Herold Law, here
3 on behalf of the Applicant.

4 MR. CUCCHIARO: Mr. Chairman, if I
5 could just sort of give a brief history of where
6 we've been and where we are and what we are tasked
7 with tonight. I think it would be helpful to the
8 Board, members of the public, the Applicant and
9 everybody.

10 CHAIRMAN BOISVERT: Go ahead.

11 MR. CUCCHIARO: As everyone may
12 recall, this application originally came to the
13 Board. The Applicant was seeking preliminary and
14 final site plan approval with some ancillary design
15 waiver relief.

16 The Board denied the application. The
17 Applicant filed an action in lieu of prerogative
18 writs challenging the board's decision in Superior
19 Court.

20 Prior to the Superior Court holding
21 hearings and issuing a decision, the parties entered
22 into settlement negotiations.

23 The Board approved a settlement
24 agreement which permitted the applicant to come back
25 for what we call a Whispering Woods hearing.

1 Whispering Woods is just the name of
2 the Court case that establishes the procedural
3 process.

4 That application involves -- or that
5 proposal involved some modifications of the
6 originally denied plan, such as the erection of a
7 sound barrier wall, reorientation of buildings, and
8 some tractor trailer parking and a few other things
9 that the Applicant felt would be a benefit to some
10 of the residential neighbors.

11 The Board did approve the settlement
12 agreement. The settlement agreement didn't approve
13 the application, but it permitted the Board to hear
14 the application at a hearing, at a public hearing.

15 Upon hearing the application and taking
16 testimony from the public, the Board ultimately
17 denied that settlement application as well.

18 And I was directed to proceed with the
19 litigation. That, in fact, did happen. The Court,
20 Judge Acquaviva ruled against the Board and held
21 that the Applicant had complied with its statutorily
22 required burdens of proof, with the exception of the
23 design waiver relief which wasn't really addressed
24 because the Board had denied the application on
25 other grounds.

1 So Judge Acquaviva remanded the matter
2 back to the Board simply to consider the design
3 waiver relief, not to talk about traffic or the
4 grave sites or environmental issues. The Judge had
5 ruled against the Board on all of those things.

6 Subsequent to that decision, I
7 re-engaged the Applicant in settlement discussions
8 and the Applicant/Plaintiff did agree to return to
9 what was the previous settlement plan, which
10 included the sound barrier and the reorientation of
11 the buildings, rather than moving forward in the
12 first instance with the original plan that didn't
13 have any of that, that the Judge basically just
14 remanded for the consideration of the two design
15 waivers.

16 So what we have tonight is I have
17 worked out language that's mutually acceptable to
18 the plaintiff and myself with a settlement agreement
19 that the Board members have.

20 Essentially, what that settlement
21 agreement does is just say that they're going to
22 re-present that plan that had been previously
23 denied, the settlement plan with the sound walls.

24 And if the Board denies it again, then
25 they would move forward with the plan that the Judge

1 remanded, which, it was the original plan that was
2 denied where we're just looking at a couple of
3 design waivers.

4 So the first task that the Board has
5 tonight is to vote on whether it wants to hear the
6 settlement proposal in a hearing. That's number
7 one. So I would ask the Board -- and if the Board
8 has any questions regarding the settlement agreement
9 that was circulated, the draft agreement, you can
10 certainly ask.

11 But as I said, the agreement basically
12 says they are going to re-present that second plan
13 that we saw at the last settlement conference.

14 So, Mr. Chairman, we would need a
15 motion to either approve or deny the settlement
16 agreement at this juncture.

17 CHAIRMAN BOISVERT: Okay. I will take
18 a motion.

19 MR. TANNENHAUS: I'll make a motion
20 for -- Ron, correct me, but if I say I am approving
21 the settlement agreement, that means we are hearing
22 the modified plan?

23 MR. CUCCHIARO: Correct.

24 MR. TANNENHAUS: Okay.

25 Then that's my motion.

1 MR. CRISTIANO: I'll second Brian's
2 motion.

3 MS. RUBANO: Mr. Cristiano?

4 MR. CRISTIANO: Yes.

5 MS. RUBANO: Mr. Greenfield?

6 MR. GREENFIELD: Yes.

7 MS. RUBANO: Mr. Seaman?

8 MR. SEAMAN: Yes.

9 MS. RUBANO: Ms. Talente?

10 MS. TALENTE: Yes.

11 MS. RUBANO: Mr. Tannenhaus?

12 MR. TANNENHAUS: Yes.

13 MS. RUBANO: Councilman Gasior?

14 COUNCILMAN GASIOR: Yes.

15 MS. RUBANO: Mr. Kyle?

16 MR. KYLE: Yes.

17 MS. RUBANO: Mr. Mercer?

18 MR. MERCER: Yes.

19 MS. RUBANO: And, Chairman Boisvert?

20 CHAIRMAN BOISVERT: Yes.

21 MR. CUCCHIARO: Okay. So,

22 Mr. Chairman, what we'll do now is we'll mark that
23 as one of the Board's exhibits so that it's part of
24 the record.

25 I also just want to speak briefly

1 about what it is you're going to hear now, what the
2 Court did and what our focus is.

3 So let me -- let me just start with
4 what you're going to hear.

5 The Applicant is going to put on
6 testimony which goes through the differences from
7 the first plan that was denied, the one that did not
8 have the sound wall or the reorientation, go through
9 all the changes, why the changes were made, why they
10 think it's a benefit.

11 There is still some relief,
12 particularly relief associated with some of the
13 things that they're doing to put the sound wall up
14 and a few other things.

15 They're going to put some testimony on
16 as to why they think they should be granted relief.

17 I want to speak a little bit about what
18 the Court did and what we are bound by. You know,
19 there was -- the Court has simply rejected the
20 traffic arguments.

21 The Board, you know, has no choice, it
22 has to listen to what the Court said. So while
23 there may be concern about the traffic that's
24 generated, and we specifically linked it to the
25 ingress and egress, the Court has rejected that.

1 So the Court is not going to entertain
2 or permit us to revisit traffic generation on the
3 site.

4 The Court also rejected our
5 environmental arguments with regard to the areas
6 that need to be remediated.

7 So, again, in that instance, the Court
8 is not going to accept us revisiting that issue that
9 it has already ruled upon.

10 The same thing with regard to the
11 existence of the grave sites. The Court has
12 rejected that.

13 So it's a very narrow focus that we
14 have. And it's still -- it's limited to: Do they
15 comply with site plan requirements? And where they
16 don't, do we think they've satisfied their burden of
17 proof. And they're going to speak directly to that
18 tonight.

19 But our inquiry is limited by the
20 Court's decision. It's not your own decision to
21 limit it, but it's the Court's decision. And we
22 have no choice but to follow the decision that the
23 Court has issued.

24 So they're really limiting -- we are
25 limited, by the Court, to listening to the changes,

1 reviewing those changes. Do they comply with the
2 ordinance? And if they don't comply, is there a
3 benefit that -- that, you know, to the planning on
4 the site. And they're going to go through that.

5 But all of those other areas, the Court
6 has specifically told us, in a written opinion, are
7 not areas that we can revisit.

8 And again, if the Board denies this,
9 then we have to follow what the Court said in its
10 opinion, which is the original -- we have to then
11 immediately hear the original proposal again and
12 limit our discussion only to the two design waivers
13 that are necessary.

14 It's -- again, it's not an indication
15 to revisit anything, it's very limited to the two
16 design waivers associated with that application.

17 So it may be that we hear one proposal
18 tonight and approve it. It may be that we hear two
19 proposals tonight. But the scope of what we hear
20 and how we can participate, and the testimony that
21 we can take from the public, is limited by what the
22 Court has told us, and it's -- and it's those
23 parameters.

24 With that, Mr. Chairman, if anyone has
25 any questions of me, you know, certainly ask away.

1 Otherwise, I think Mr. Simon can begin his
2 presentation.

3 CHAIRMAN BOISVERT: Any Board Members
4 have any questions?

5 (No response.)

6 CHAIRMAN BOISVERT: Okay.

7 Mr. Simon?

8 MR. SIMON: Thank you, Mr. Chairman
9 and Mr. Cucchiaro.

10 And, certainly I concur with Ron's
11 summary as to what brought us here and the charge of
12 the Board going forward with regard to a Whispering
13 Woods hearing.

14 Just by way of some housekeeping, I
15 believe that we have provided to the Board an
16 updated list of exhibits as marked, and I think it
17 ended in terms of the Applicant's Exhibits as A-31.

18 So, Ron, I believe that the settlement
19 agreement should be marked as A-32, unless I'm
20 off --

21 MR. CUCCHIARO: Well, I was -- we were
22 marking it as our own exhibit.

23 MR. SIMON: Okay. That's fine.

24 MR. CUCCHIARO: That is a B exhibit.

25 MR. SIMON: So that would be -- what

1 would that exhibit be then? Would that be B-5?

2 MR. CUCCHIARO: Yes, I think that's
3 the next B exhibit.

4 Correct, Eileen?

5 MS. RUBANO: Yes.

6 MR. CUCCHIARO: Yes, B-5.

7 MR. SIMON: Very good.

8
9 (Exhibit B-5, Settlement Agreement is
10 received and marked in evidence.)

11
12 MR. SIMON: And then I presume that
13 this Board has jurisdiction certainly to hear this
14 Whispering Woods hearing, and that the exhibit list
15 that I just referred to is part of the record of the
16 proceedings?

17 MR. CUCCHIARO: Yes.

18 MR. SIMON: So with that -- and your
19 attorney, Mr. Cucchiaro, gave an excellent summary
20 of what we are here for with regard to a Whispering
21 Woods hearing and to demonstrate the changes from
22 the prior plan.

23 So we intend to place on the record and
24 present the testimony this evening of Jeromie Lange,
25 the Applicant representative and a professional

1 engineer and a professional planner; as well as
2 Christine Cofone, the professional planner of record
3 on the project, again identifying the changes to the
4 application and the site plan as part of and
5 consistent with the settlement. And to the extent
6 necessary, as again mentioned by Mr. Cucchiaro,
7 justification for any relief required of the Board
8 associated with the changes to the application in
9 furtherance of the settlement.

10 We certainly have available other
11 professionals on behalf of the applicant should
12 their testimony be required, including: The civil
13 engineer of record; the traffic engineer of record;
14 the architect of record; the environmental scientist
15 of record. And, certainly, as needed, we can
16 certainly present their testimony.

17 But we're going to initially rely on
18 the testimony that's going to be presented by
19 Mr. Lange.

20 So unless there's any other further
21 questions of the Applicant -- of the Board -- excuse
22 me -- I would like to have Mr. Lange sworn in and I
23 would get him qualified.

24 MR. CUCCHIARO: Good evening,
25 Mr. Lange, are you -- is he on camera?

1 MS. RUBANO: Yes, he is.

2 MR. LANGE: Yes.

3 MR. CUCCHIARO: Okay.

4 Do you swear or affirm the testimony
5 you're about to give this board is the truth, the
6 whole truth and nothing but the truth?

7 MR. LANGE: I do.

8

9 J E R O M I E L A N G E, P.E., P.P.

10 having been duly sworn, testifies as follows:

11 MR. CUCCHIARO: Please state and spell
12 your name for the record.

13 MR. LANGE: It's Jeromie,
14 J-E-R-O-M-I-E, Lange, L-A-N-G-E.

15 MR. CUCCHIARO: Mr. Simon, in what
16 capacity is Mr. Lange testifying tonight?

17 MR. SIMON: So Mr. Lange is a
18 representative of the applicant.

19 As I stated in my preliminary remarks,
20 he's also a professional engineer and a professional
21 planner.

22 And what he's going to do is walk
23 through, for the benefit of the Board and the
24 public, the changes to the site plan and identifying
25 any relief that may be needed incident to those

1 changes.

2 And then after that, we'll go to
3 Christine Cofone, our professional planner, to
4 provide testimony, whether it's -- I believe there's
5 one or two variances that are required, as well as
6 some exception/waiver relief.

7 MR. CUCCHIARO: Go ahead, Mr. Lange.

8 MR. LANGE: Thank you.

9 Good evening.

10

11 E X A M I N A T I O N

12

13 BY MR. SIMON:

14 Q. So, Mr. Lange, you are a professional
15 engineer and a professional planner?

16 A. Yes, my background I am.

17 But tonight I am testifying in my
18 capacity as director of development for Active
19 Acquisitions, who is a related entity to the
20 applicant entity.

21 Q. Thank you.

22 And you were present at the beginning
23 of this hearing when Mr. Cucchiaro and myself spoke
24 to the scope of this Whispering Woods hearing and
25 what is anticipated by way of testimony, correct?

1 A. Yes.

2 And I'm ready to present that
3 testimony.

4 Q. Why don't you proceed then.

5 Thank you.

6 A. So I'm going to beginning -- begin --
7 excuse me -- with Exhibit A-19, which is the site
8 plan exhibit.

9 That's coming up before you here. It's
10 dated September 1st. It was prepared by Colliers
11 Engineering & Design.

12 So I want to jump right in and talk
13 about what is really the primary change.

14 So if you look in the upper right-hand
15 corner of this exhibit, you'll see a smaller
16 building. It's labeled as Building B in the
17 northeast corner of the site.

18 That building, essentially, between the
19 original plan that was denied and what is now the
20 settlement plan has been flipped from east to west.
21 So along the north/south access, so what used to be
22 facing east is now facing west, and vice versa.

23 So more specifically, the truck loading
24 docks and the whole truck court area used to be on
25 the east side of Building B. We flipped that. Now

1 that truck court is located internal to the site
2 between Buildings A and B.

3 And then in its place on the east side
4 we now have the passenger vehicle parking that used
5 to be in the center of the site.

6 So that is the major change. There's a
7 series of other smaller changes that kind of come
8 off of that, but that is, by far, the biggest change
9 on the plan.

10 The other, somewhat significant, change
11 is the addition of a sound wall. So you'll see
12 where we're indicating here (indicating) along
13 the -- essentially the easterly property line, it's
14 really the side yard area, with the exception of a
15 piece of it that punctures into the Michael Curtin
16 Lane front yard.

17 But other than that, it's located in
18 the side yard.

19 And the purpose of this is to provide
20 an additional visual and sound attenuation buffer
21 between us and the neighboring residential property.

22 So that's the other, somewhat, major
23 change here.

24 Q. And that's along the eastern side as
25 you referenced on the exhibit?

1 A. Correct.

2 That easterly side. You can -- you can
3 see it here (indicating) in this kind of faint brown
4 line, the little hand is, kind of, showing you where
5 it's at.

6 But it's along that side yard.

7 It does go into the required front yard
8 of Michael Curtin Lane, which is of note. And I
9 will get to that in a short bit.

10 Now, so -- a few other more ancillary
11 things I want to go over.

12 In flipping the building, it changes,
13 obviously, the truck circulation. So we have
14 reconfigured the drive aisles to direct the trucks
15 to the truck court now located in the center of the
16 site as it relates to Building B.

17 That means the drive aisles now that
18 service the parking on the east side do not have to
19 be 30 feet anymore. Now they can be 25 feet under
20 the ordinance.

21 So that has been reduced to 25 feet,
22 the parking area itself, as well as the driveway
23 leading to it.

24 The truck court, itself, has expanded
25 by 5 feet. It went from 65 feet to 70 feet deep.

1 The purpose of that was to help with the truck
2 circulation. By putting the truck court in the
3 middle it does change the circulation.

4 As you can see, we've got two different
5 entry points to the truck court, one on the north
6 side and one on the southwest portion. That extra
7 5 feet just assists with that circulation.

8 Another thing that is really not a
9 change, but something I want to address, we did
10 provide curb ramps at least every 65 feet in the
11 parking areas and at all the relevant
12 intersections -- driveway intersections, I should
13 say.

14 We are not providing curb ramps along
15 the drive aisles that aren't associated with parking
16 or that aren't at an intersection.

17 The reason for that is it's not part of
18 the pedestrian circulation plan. And, generally,
19 mid-block crossings are discouraged because of
20 safety concerns.

21 What I want to focus on now is the
22 buffer, so I am going to switch exhibits now to
23 A-18.

24 On this plan you'll see there's two
25 substantial buffers proposed, one on the left, one

1 on the right or west and east.

2 The one on the west is identical to the
3 original site plan. That's a farmland buffer.
4 There's been absolutely no change to that
5 whatsoever.

6 The one on the right, the buffer is
7 very similar, it's almost not changed. There was a
8 little bit of changing of the berm. But the big
9 addition here is that sound wall.

10 So not only do we have the sound wall I
11 described earlier, but we continue to have the
12 landscape buffer that we always had in this entire
13 side yard area.

14 So now we're going from just a
15 landscape buffer to the landscape buffer and the
16 sound wall.

17 So nothing was lost in adding the sound
18 wall. The sound wall is an add-on, additional means
19 of buffering our operation to the adjacent
20 residential lot.

21 That sound wall, just to give you a
22 little specifics on it, will be a sound transmission
23 Class 30 sound wall, and that has to do with how
24 much sound it can absorb. It's, kind of, a national
25 standard rating. It will be an earth tone in color,

1 so it will blend in with that landscaping. That
2 way, as you're perceiving it from the residential
3 lot looking through the trees, it will blend in with
4 the, you know, the color of the branches and the
5 wooded nature of that vegetation, so it should not
6 stand out as seen through the vegetation.

7 But it will, of course, block --
8 obviously it would completely block light emanating
9 from the site up to the combined berm/wall height of
10 15 feet. And it will also, obviously, mitigate
11 sound significantly.

12 So in terms of the variance relief
13 necessary, because the wall goes into the required
14 front setback, that triggers some ordinance
15 requirements, one of which is that the wall cannot
16 exceed four feet in height in the required front
17 yard.

18 In this case, because we're proposing a
19 combined height of the berm and wall of 15 feet,
20 it's obviously exceeding that.

21 However, this is a very unusual area,
22 Michael Curtin Lane, which is the northeast corner.
23 Michael Curtin is a dead-end street. There are no
24 driveways in close proximity to the wall.

25 So you're not, you know, blocking any

1 critical view paths from any vehicle circulation
2 situation, but at the same time we are -- that area
3 is blocking the development from some of the rear
4 yards of the adjacent residential uses.

5 So we do think it's worth extending the
6 wall into the front yard. If the Board felt
7 otherwise, we could retreat the wall back to the
8 front yard setback line, and that would actually
9 eliminate that height variance.

10 MR. TANNENHAUS: Mr. Lange?

11 THE WITNESS: In a very similar vein,
12 another --

13 MR. TANNENHAUS: Mr. Lange?

14 THE WITNESS: Yes.

15 MR. TANNENHAUS: Real quick question.

16 THE WITNESS: Yes.

17 MR. TANNENHAUS: I'm assuming the
18 height of the sound wall and the length of the sound
19 wall you're proposing is to maximize the sound
20 absorption and transmission from the site to the
21 residents to the east?

22 THE WITNESS: That's correct. It's
23 basically to separate --

24 MR. TANNENHAUS: Would it also be fair
25 to say that any modification to that would reduce

1 its ability to absorb that sound?

2 THE WITNESS: Correct.

3 The bigger the better, it's kind of --

4 MR. TANNENHAUS: Thank you, appreciate
5 it.

6 THE WITNESS: -- in that sense.

7 MR. TANNENHAUS: Thank you.

8 THE WITNESS: Yep.

9 So the other variance that comes out of
10 that similar is there's also a requirement in the
11 required setback for it to be 50 percent open.

12 But actually to the point that was just
13 made, obviously if it was 50 percent open it would
14 not be nearly as effective in blocking, you know,
15 sound or light or anything else, so that obviously
16 makes no sense. So we are seeking that variance as
17 well for it to be solid.

18 And then finally, there is an 8-foot
19 retaining wall height maximum when you're outside
20 the required setback, and we do have up to a
21 9-foot-tall retaining wall that is supporting --
22 directly supporting, actually, the sound wall.

23 So that 9-foot retaining wall is part
24 of what is elevating the sound wall.

25 So, again, we think that makes total

1 sense.

2 While we could comply on all three of
3 these things, it would definitely reduce the height
4 of the wall, reduce the extent of the wall and make
5 it less effective.

6 And as I already noted, we're still
7 complying with 188-63E as in Edward, where we are
8 providing the berm and landscaping, to satisfy that
9 ordinance standard.

10 So this is, kind of, a belt and
11 suspenders or an additional method that we're
12 adding.

13 There is another waiver that we are
14 seeking, that has to do with the screening of solid
15 waste and recycling areas.

16 So you'll see on the -- like, for
17 instance here, we're looking at Building B on the
18 left side or west side, both at the north and south
19 end, there are some solid gray rectangles.

20 Those are fully enclosed, compactor-fed
21 recycling and/or refuse containers.

22 They are not being landscaped
23 immediately around them. What is being done,
24 though, there is landscaping at both ends -- and
25 this is true for both warehouses by the way, both A

1 and B.

2 So at the north and south end of the
3 truck court, there is landscaping. And then in the
4 case of Building B, Building A actually blocks the
5 view to the truck court. And then for Building A,
6 that farmland buffer that we looked at earlier,
7 blocks the view to that truck court.

8 So while we're not literally complying
9 with the ordinance in that we don't have the
10 landscaping immediately around the container, it is
11 still buffered, and the intent of the ordinance is
12 still met.

13 Next thing that we did, this is kind of
14 a minor change but something I want to bring to your
15 attention, if you would go to Exhibit A-14, and that
16 has to do with the water tank.

17 In, you know, advancing this project as
18 time has gone on, we have refined the sanitary
19 system.

20 So originally we had a central sanitary
21 pump station. In cooperation with the Township
22 sewer department, though, we have switched that to
23 be six, what we call E1 sanitary pump stations. And
24 these are small, they're the size of a manhole
25 basically, pump stations that will service the

1 individual users so there are six of them. They're
2 underground.

3 The benefit of that is -- there's some
4 engineering benefit to that, but the benefit as it
5 applies here is that it freed up area in the
6 vicinity of the water tank such that the water tank
7 could be pushed further into the site.

8 So the tank now is about 74 feet
9 further away from Howell Road than it was on the
10 original plan, and that's what's depicted here.

11 And then we have the associated pump
12 house and, you know, equipment house immediately to
13 the west of that.

14 So both of these now are roughly
15 74 feet further back than they used to be from
16 Howell Road, which I think is another benefit.

17 Going back to Exhibit A-19, I'm just
18 going to touch on a few other things in terms of the
19 driveways at either end.

20 We -- as part of the layout change,
21 what we did on Howell Road, the inbound driveway, we
22 narrowed up. You could just zoom in there. That
23 used to be 30 feet. We narrowed that down to
24 20 feet inbound.

25 And then as I already mentioned

1 earlier, the circulation aisle north and east of
2 Building B, we reduced from 30 feet to 25 feet.
3 And, again, that's because that's all passenger
4 vehicles, there's no longer a truck court there on
5 the east side of Building B. So that's why we did
6 that.

7 As far as the ordinance is concerned,
8 there's two ordinance sections, 188-106A, requires
9 the planning board to approve driveways when they're
10 wider than 24 feet.

11 But in this case the ordinance also
12 mandates that for an industrial development, that
13 wider driveways are actually required.

14 And that's specified at 188-106F as in
15 Frank, 1A as in Andrew and B as in boy, for 30 feet
16 and 25 feet, respectively.

17 And we have met all that criteria, and
18 that has also been reviewed by Chief Lewis from the
19 fire department in both his November 21, 2022 review
20 memorandum, which he just reconfirmed in a
21 February 3, 2023 e-mail.

22 So, again, fully satisfying the fire
23 department. And we believe fully satisfying the
24 ordinance.

25 Next, if we can go to Exhibit A-31, the

1 Board Engineer, in her February 10th, 2023 letter
2 had a comment, this is comment C(2), that discussed
3 the trucks passing each other, the ability of trucks
4 in the circulation aisles to pass one another going
5 in opposite directions.

6 So we went ahead and made those
7 revisions so that the trucks could do that. That's
8 the two areas that are shaded in red here
9 (indicating).

10 Those -- the radii of those curves has
11 been changed to accommodate the trucks passing one
12 another, so that should satisfy that comment
13 entirely.

14 Next, if we can, you know, just go back
15 to the main plan now, A-19. I just want to note to
16 the Board on the lighting, originally we had
17 submitted a lighting plan that was fully conforming
18 with the ordinance. What we are offering instead to
19 do, although we're kind of agnostic about this,
20 we'll go either way with it, is to comply -- instead
21 of complying with the ordinance, we would comply
22 with the Illuminating Engineering Society standards.

23 We do believe, I believe, that that is
24 more appropriate for a warehouse use.

25 But we're happy to go either way,

1 either to comply with the ordinance or accept the
2 waiver and comply with the IES standards.

3 So we'll leave that --

4 BY MR. SIMON:

5 Q. And, Jeromie --

6 A. Yes.

7 Q. Yes, Jeromie, I'm sorry I'm
8 interrupting.

9 So the alternative lighting plan that's
10 A-23?

11 A. Actually, I think the alternative plan
12 is in A-7.

13 A-23 is also an alternate lighting
14 plan, but that was for the remand hearing.

15 When we resubmitted the last time, last
16 year, the Whispering Woods plan, the lighting plan
17 was updated, because we, at that time, understood
18 the Board was interested in the IES lighting plan,
19 so we actually made that the lighting plan in the
20 Whispering Woods set of plans, which is A-7.

21 Q. Right. Thank you for the
22 clarification. Thanks.

23 A. No problem.

24 But either -- but either way, we'll
25 either comply with the ordinance or with the IES,

1 whichever the Board would prefer. We're happy to do
2 either.

3 And then, you know, finally there was a
4 few other just grading and stormwater management
5 changes that are ancillary to all this.

6 As you can imagine, moving everything
7 around, there have been some gradings, some
8 stormwater drainage had to move, so that's all been
9 done.

10 The impervious coverage still
11 completely complies. We're still well under the
12 70 percent maximum.

13 And in the spirit of good faith, the
14 Applicant is still honoring all of our prior
15 commitments, which include things like milling and
16 overlay, overlaying Okerson Road in Howell Township,
17 and also installing bollards along the parking
18 spaces where they front the buildings.

19 So that's -- they're all things we're
20 still honoring.

21 And then, just to finish addressing the
22 February 10th letter from the Board Engineer, I
23 already addressed that -- that one comment regarding
24 the trucks passing.

25 There's another comment in there, 2A,

1 that had to do with the Howell Road driveway, so
2 just to make sure it's clear, because this wasn't
3 originally the case, there are no trucks entering
4 from Howell Road. So that driveway is not
5 accommodating truck traffic, because Howell Road is
6 a weight-restricted road. So that driveway is only
7 for passenger vehicle use.

8 And then, in terms of -- there is
9 another comment, 2B, in that letter, and that has to
10 do with another truck overlap area, and that used to
11 be in the northeast corner of Building B. That's no
12 longer there because the building is flipped.

13 I will tell you, though, that the truck
14 circulation is designed really to be one way. The
15 trucks can go both ways, but trucks want to,
16 relative to the building, operate in a
17 counterclockwise fashion.

18 So what that means here is the truck
19 would come into the site from Okerson Road, enter
20 from the north side of the truck court, go to its
21 assigned bay, and then exit from the south and go
22 back out to Okerson Road.

23 So the truck sweeps entering the truck
24 court do not accommodate trucks going from two-way,
25 and that's one of the consequences of this building

1 flip.

2 But I think, you know, the benefit or
3 the intended purpose of the flip would outweigh, you
4 know, that functional issue. There's excellent
5 sight distance and, having done a lot of this work
6 both as an engineer and as the director of
7 development for Active Acquisitions, I am very
8 comfortable operationally that this flow is safe and
9 efficient and will work for the intended purpose.

10 And then two more housekeeping things
11 then I'm done. 5A in the letter, I had mentioned
12 this to the Board Engineer at one point, but in
13 terms of plans, we will provide roadway profile and
14 roadway cross sections for all areas of the roadway,
15 which is really Howell Road that we are widening;
16 but areas where we are doing mill and overlay, we're
17 just going to show the extent of the mill and
18 overlay on the plan view.

19 And then finally, with regard to
20 environmental, the environmental issues,
21 particularly AOC No. 1, will be addressed at the
22 time the site work commences.

23 So with that, that's the end of my
24 testimony, and then, Rob, I will turn it back to
25 you.

1 I don't know if we're going to go right
2 into Christine's planning testimony or if we're
3 going to pause for questions.

4 MR. SIMON: Yes, right.

5 So, Mr. Chairman, we would ask, if it's
6 okay with the Board, that if we can proceed directly
7 with Ms. Cofone's testimony, because it sort of
8 weaves in with Mr. Lange's testimony, and then at
9 the end we would open up both witnesses for
10 questions of the Board and the public.

11 CHAIRMAN BOISVERT: Okay. Yeah,
12 that's fine.

13 MR. SIMON: Ms. Cofone?

14 MR. CUCCHIARO: Okay. Do you swear or
15 affirm the testimony you're about to give this Board
16 is the truth, the whole truth and nothing but the
17 truth?

18 MS. COFONE: Yes, I do.

19

20 C H R I S T I N E C O F O N E, P.P.,

21 125 Half Mile Road, Suite 200, Red Bank, New
22 Jersey, having been duly sworn, testifies as
23 follows:

24 MR. CUCCHIARO: Place state and spell
25 your name for the record.

1 MS. COFONE: My name is Christine,
2 C-H-R-I-S-T-I-N-E, Cofone, C-O-F-O-N-E. Business
3 address is 125 Half Mile Road, Suite 200, Red Bank,
4 New Jersey, 07701.

5 I'm testifying this evening as a
6 licensed professional planner.

7 I've been testifying as such for
8 27 years in the State of New Jersey. And I have
9 been qualified in Howell on many, many occasions, as
10 well in excess of over 400 or so planning and zoning
11 boards.

12 I teach planning and zoning courses for
13 the Rutgers Center for Government Services.

14 And my licenses are current and valid.

15 CHAIRMAN BOISVERT: Okay. We'll
16 accept your credentials.

17 MS. COFONE: Thank you.

18 MR. SIMON: Thank you.

19

20 E X A M I N A T I O N

21

22 BY MR. SIMON:

23 Q. So, Ms. Cofone, you've been present to
24 hear the testimony of Mr. Lange with regard to this
25 Whispering Woods settlement hearing?

1 A. Yes, I have.

2 Q. And he referenced some variances and
3 waivers that are triggered by the revised plan.

4 If you can go over them in terms of the
5 applicable criteria for the relief that is needed to
6 be granted by the Board, incident to those variances
7 and waivers.

8 A. Of course.

9 So the variance relief that Mr. Lange
10 spoke about earlier this evening relates to the
11 construction of the sound wall.

12 There were three variances that he
13 spoke about that were associated with that wall. It
14 was for the height of the wall; the fact that the
15 wall is not 50 percent open; as well as the height
16 of the retaining wall to support the construction of
17 that sound wall.

18 From a planning point of view
19 statutorily, the Board can grant those bulk
20 variances under two mechanisms, C-1 or C-2.

21 Those criteria are not unique to this
22 application. And they're certainly relative to any
23 Board granting a variance in the State of New
24 Jersey.

25 The C-1 relate to a hardship, the C-2

1 criteria relate to a better zoning alternative.

2 This, to me, is a textbook case of a
3 C-2 variance. And the reason I say that is because
4 while the Applicant is proposing this sound wall,
5 the Applicant in no way needs to construct this
6 sound wall for either the benefit of constructing
7 Building A or B; meaning, that we can construct
8 those buildings, we can comply with the buffers per
9 Howell's Ordinance, we meet the sound regulations
10 without building this sound wall.

11 The reason we're building the sound
12 wall is to provide greater screening and greater
13 sound attenuation for the benefit of our neighbors.

14 Mr. Lange explained extensively how the
15 construction of the wall will certainly allow for
16 better buffering to the rear yard setbacks of the
17 adjoining homeowners.

18 So with that being said, I find this to
19 be, in my opinion, a textbook C-2 variance, meaning
20 that it's a better zoning alternative. It's more
21 palatable to the neighbors to have it, but we
22 certainly don't need to have it in order to
23 construct one single square foot of our building
24 related to Building A or B.

25 So the purposes of the land use law

1 that would be advanced if the Board grants this, in
2 my opinion, would be Criteria A, promoting the
3 general welfare. There's obviously been a lot of
4 public interest in this case, and certainly the
5 ability to create screening and sound attenuation
6 for the -- additional screening and sound
7 attenuation for the benefit of our neighbors would
8 certainly promote the general welfare.

9 Criteria I also talks about promoting a
10 desirable visual environment.

11 Those stated purposes are found at
12 Section 40:55D-2 of the Municipal Land Use Law. And
13 statutorily, in order to sustain our burden of
14 proof, we only have to advance one.

15 I believe those two are solidly
16 advanced by the grant of the variance relief
17 associated with the sound wall.

18 As far as the negative criteria, the
19 land use law does not ask you to hold us or any
20 other applicant to a standard that there be no
21 detriment, just that the benefits of the grant of
22 the variance outweigh any detriment.

23 You heard Mr. Lange testify extensively
24 this evening, there are things that we can do to the
25 wall. We can eliminate the wall in its entirety, we

1 do not need it. We can modify the wall. We can put
2 up a 50 percent solid wall. We can make the wall
3 shorter. There are things that we can do to it to
4 make it a different -- a different -- and we would
5 have a different impact or, as Mr. Tannenhaus
6 indicated, less of an effective impact.

7 But when you don't need to have the
8 wall there to meet your state guidelines or to meet
9 your township ordinance requirements, you do have
10 that flexibility as an Applicant.

11 So to come to the conclusion that the
12 grant of the variance would have a substantial
13 detriment on either the public good or the zone
14 plan, I just don't see it. I think that the
15 variance relief associated with that wall is
16 reasonable in nature, advances the positive
17 criteria, as well as the negative criteria.

18 And not only will it not have a
19 substantial negative impact on the -- it will not
20 have a substantial negative impact on the
21 neighborhood, it actually creates benefits with
22 regard to sound attenuation and screening. It's a
23 muted color program. And I think that we certainly
24 substantiate our burden of proof with respect to the
25 positive and negative criteria.

1 As far as the waivers, Mr. Lange
2 identified those as well. He spoke about the waiver
3 for the landscaping around the dumpsters, the refuse
4 areas associated with both Building A and
5 Building B. It's really -- we are meeting the
6 intent of the ordinance. Those structures will
7 absolutely be screened from view.

8 The issue is the landscaping isn't
9 immediately adjacent to them. So, certainly, there
10 are some practical issues there.

11 And as far as the lighting, the
12 illumination, we are -- we can comply with the
13 ordinance, it's not as if we can't comply. It is
14 our design professional's belief that the IES, the
15 Illuminating Engineers Society standards are more
16 appropriate for a warehouse.

17 But we could certainly comply with the
18 ordinance if we needed to, but we feel it's a better
19 alternative to seek that waiver.

20 The standard for a waiver, and the land
21 use law specifically allows for the Board to grant
22 waivers if you feel as though they are reasonable,
23 and the general purpose and the intent of the
24 ordinance are met with respect to the site plan
25 review.

1 In both instances relative to the
2 siting and the lighting, we are meeting the intent
3 of the ordinance. Those refuse areas and recycling
4 areas will absolutely be screened from view. There
5 is more than enough landscaping, in compliance with
6 the ordinance requirements. It's not as if we're
7 asking for relief from the quantity or the quality
8 or the size of the plants to be provided, just that
9 they're simply not immediately adjacent to the
10 refuse area.

11 So with the standard for those two
12 waivers being that they be reasonable and still meet
13 the intent of the ordinance, I feel as though the
14 Applicant has certainly met its burden of proof with
15 respect to the grant of the waivers.

16 And with that, I have nothing further
17 on direct, Mr. Simon.

18 BY MR. SIMON:

19 Q. And, Ms. Cofone, with regard to the
20 waivers, just a couple of things.

21 One of the considerations always is
22 impracticability.

23 Can you just go to -- in terms of
24 whether it's practical to comply with the ordinance
25 for the reasons that Mr. Lange stated --

1 A. Well, it's certainly not practical --

2 Q. -- just touch on --

3 (Simultaneous Speaking.)

4 A. Yeah, of course.

5 The practicality of complying with
6 installing landscaping immediately adjacent to a
7 refuse area, particularly one that's not visible
8 from the adjoining roadway networks or any of the
9 neighbors, is not practical.

10 It makes more sense to provide
11 screening perhaps not immediately adjacent, but
12 surrounding, as the Applicant is proposing, but
13 still meeting the intend of the ordinance, which is
14 the test here.

15 Q. Thank you.

16 A. You're welcome.

17 Q. And there was also a question, I think,
18 regarding maybe one of the prior review memos, as to
19 whether it was necessary to have certain spacing
20 between the curbing ramps, with regard to the
21 requirement of having curb ramps every 65 feet, and
22 that they should not apply to drive aisles, except
23 at intersections because mid-block crossings or
24 drive aisles do serve parking areas, and -- as
25 compared to areas where there is no pedestrian

1 circulation.

2 A. Correct.

3 And I think the Board wouldn't even
4 want to encourage the pedestrian location in there.

5 So I think the plan that we have before
6 the Board is certainly appropriate and has -- meets
7 the intent of the ordinance.

8 Q. And you would agree that it would be
9 impractical to comply, since it would create a
10 safety concern, under those circumstances?

11 A. Yes.

12 It would create a less desirable
13 pedestrian crossing.

14 MR. SIMON: And so with that,
15 Mr. Chairman, I have no further questions for
16 Ms. Cofone, for Mr. Lange.

17 And so I open up both witnesses first
18 to the Board.

19 CHAIRMAN BOISVERT: Sure.

20 Anybody from the Board have any
21 questions?

22 MR. TANNENHAUS: No, thank you,
23 Mr. Chairman.

24 CHAIRMAN BOISVERT: Could you stop
25 screen share -- there we go.

1 Thank you.

2 MR. TANNENHAUS: I have no questions,
3 Mr. Chairman.

4 CHAIRMAN BOISVERT: Okay.

5 Anybody else from the Board have any
6 questions?

7 MR. GREENFIELD: Just to confirm,
8 they're going to honor paving Okerson Road they
9 said?

10 THE WITNESS: Yes, we did.

11 MR. GREENFIELD: Okay.

12 CHAIRMAN BOISVERT: Okay.

13 Everybody from the Board good?

14 (No response.)

15 CHAIRMAN BOISVERT: So before I open
16 it up to the public, Mr. Cucchiaro, is there a scope
17 as far as what...

18 MR. CUCCHIARO: Sure.

19 Basically questions can be asked about
20 anything that was testified to tonight, comments
21 about anything that was testified to tonight.

22 But, you know, the public is
23 restrained, as the Board are, by the Court decision.
24 We cannot entertain issues about traffic; it's
25 already been ruled upon. Issues upon the

1 environmental impact; it's already been ruled upon.
2 Issues upon -- issues relating to the cemetery; it's
3 already been ruled upon.

4 The -- really, we are limited to what
5 has been testified to tonight.

6 And, again, that's not a Board
7 decision, that's from the Court.

8 CHAIRMAN BOISVERT: Okay, thank you.

9 All right. With that being said, we'll
10 open up for questions from the public.

11 MR. CUCCHIARO: Questions and
12 comments.

13 CHAIRMAN BOISVERT: And comments.

14 MS. RUBANO: At this time the Chairman
15 has opened up the hearing for questions and comments
16 of the public.

17 I ask you to please use the
18 raise-your-hand feature, I'll bring you into the
19 meeting one at a time. You will be sworn in and
20 have to give your name and address.

21 To raise your hand, if you're calling
22 in press *9, to raise or lower your hand; *6 to mute
23 or unmute yourself.

24 And to start, I have Rosemarie Bird.

25 MR. CUCCHIARO: Just let me know when

1 she's in.

2 MS. RUBANO: She's there.

3 MR. CUCCHIARO: Okay. Ms. Bird, if
4 you could just unmute yourself.

5 Do you swear or affirm --

6 MS. BIRD: I'm a little confused.

7 This is on the warehouse unit, right?

8 MS. RUBANO: Yes.

9 MR. CUCCHIARO: That is correct.

10 MS. BIRD: I don't want to discuss
11 this, I'm here to discuss the Domin --

12 MR. CUCCHIARO: Okay, that'll --
13 that'll be the next application.

14 MS. BIRD: Right, right.

15 MS. RUBANO: Please don't raise your
16 hand until he opens it to the public then.

17 Thank you.

18 MS. BIRD: Oh, I'm sorry. I must have
19 bumped it by accident.

20 MS. RUBANO: Okay. One second.

21 Next I have Mamu Chopra.

22 MR. CUCCHIARO: Okay.

23 Do you swear or affirm the testimony
24 you're about to give this Board is the truth, the
25 whole truth and nothing but the truth?

1 MR. CHOPRA: Yes, sir.

2

3 M A M U C H O P R A,

4 7168 Westfield Court, Alexandria, Virginia,

5 having been duly sworn, testifies as follows:

6 MR. CUCCHIARO: Can you please state
7 and spell your name and give us your address.

8 MR. CHOPRA: My name is Mamu Chopra,
9 M-A-M-U, C-H-O-P-R-A.

10 My address, 7168 Westfield Court,
11 Alexandria, Virginia 22306.

12 MR. CUCCHIARO: Do you own property in
13 Howell?

14 MR. CHOPRA: Yes.

15 My dad owns a townhouse and it's by a
16 basketball and a tennis court, and usually on nice
17 days like this I just get to play basketball and --
18 and it's in my neighborhood.

19 MR. CUCCHIARO: Okay.

20 MR. CHOPRA: Well, you're -- you're
21 welcome to come this Sunday to my basketball
22 tournament.

23 MR. CUCCHIARO: We appreciate the
24 invitation.

25 Thank you for signing in tonight.

1 CHAIRMAN BOISVERT: Thank you.

2 MR. CHOPRA: Thank you.

3 MS. RUBANO: One second.

4 Next I have Kathy Okerson.

5 MR. CUCCHIARO: Okay. You just need
6 to unmute.

7 MS. RUBANO: Go ahead.

8 MR. CUCCHIARO: Do you swear or affirm
9 the testimony you're about to give this board is the
10 truth, the whole truth and nothing but the truth?

11 MS. OKERSON: I do.

12

13 K A T H Y O K E R S O N,

14 459 Okerson Road, Howell, New Jersey, having
15 been duly sworn, testifies as follows:

16 MR. CUCCHIARO: Please state and spell
17 your name for the record and give us your address.

18 MS. OKERSON: Kathy with a K, Okerson,
19 O-K-E-R-S-O-N, 459 Okerson Road.

20 MR. CUCCHIARO: Okay.

21 Go ahead, ma'am.

22 MS. OKERSON: You talked about a lot
23 that we can't talk about tonight, but I'm still
24 concerned about the water.

25 I'm looking at that plans and how are

1 they going to address all the water that comes off
2 that proper -- that farm that comes off without
3 buildings there.

4 MR. CUCCHIARO: Mr. Chairman?

5 CHAIRMAN BOISVERT: Yes.

6 MR. CUCCHIARO: The Judge found that
7 the Applicant had satisfied all ordinance
8 requirements, which would include the stormwater
9 management.

10 So there's been a judicial ruling on
11 that.

12 CHAIRMAN BOISVERT: Okay.

13 Thank you.

14 MS. OKERSON: So if I get flooded out
15 I come back to the Board?

16 MR. CUCCHIARO: Ma'am, we're here to
17 discuss the application and to do it in a way that
18 we have been ordered to by the Judge.

19 MS. OKERSON: Right.

20 But you didn't say anything about the
21 water. You said about the traffic.

22 MR. CUCCHIARO: The Judge said -- the
23 Judge said that they had complied with everything
24 and the only thing that we needed to do was to talk
25 about design waiver relief.

1 So the Judge has not permitted us to
2 revisit stormwater management.

3 MS. OKERSON: Okay. What are the
4 difference between the two lightings that they're
5 talking about?

6 MR. CUCCHIARO: Well, that -- that the
7 applicant can answer.

8 MS. OKERSON: Go ahead.

9 MR. SIMON: Jeromie?

10 MR. LANGE: So it has to do with the
11 evenness of the distribution lighting -- of the
12 lighting, excuse me, and the intensity.

13 The IES standards are better for
14 warehousing. They have some higher lighting in
15 areas where it's important and lower where it's not.

16 Whereas, the ordinance standard has a
17 more even requirement. So it's not as task
18 orientated, which would be a more appropriate
19 lighting here.

20 So, basically, we want the best
21 lighting in the truck court, which from, you know,
22 the neighbors' perspective is, you know, behind the
23 building, particularly in this layout, it's very
24 much behind the building because we have flipped
25 Building B, so --

1 MS. OKERSON: Right, but that doesn't
2 help me, because you have everything facing the
3 farm.

4 So which lighting would benefit not
5 lighting my house up like a Christmas tree.

6 MR. LANGE: Neither lighting plan will
7 light it up like a Christmas tree. These are -- are
8 both recognized lighting standards that will not be
9 offensive light trespass.

10 These are fully enclosed lighting
11 fixtures, so you're not going to get the light
12 trespass you're concerned about.

13 MS. OKERSON: So I'm not going to have
14 it like I have a baseball field lighting up the
15 house?

16 MR. LANGE: No. That's -- sports
17 lighting is an entirely different level of lighting,
18 orders of magnitude higher in all respects,
19 actually, in intensity, in the height of the
20 fixtures. So it's entirely different.

21 MS. OKERSON: Okay. All right.

22 Thank you.

23 CHAIRMAN BOISVERT: Thank you.

24 MS. OKERSON: And how do I get off
25 this?

1 MS. RUBANO: I'll move you.

2 MS. OKERSON: Thank you.

3 MS. RUBANO: Next I have AJC.

4 MR. CUCCHIARO: We need you to unmute
5 yourself.

6 Do you swear or affirm the testimony
7 you're about to give this board is the truth, the
8 whole truth and nothing but the truth?

9 MR. CESTERO: I do.

10

11 A L B E R T J. C E S T E R O, J R,

12 3 Howell Road, Freehold, New Jersey, having
13 been duly sworn, testifies as follows:

14 MR. CESTERO: My name is Albert J.
15 Cestero, Jr.

16 I live at 3 Howell Road, Freehold, New
17 Jersey.

18 We're in the back yard of this project.

19 MR. CUCCHIARO: Can you just spell
20 your last name for us, sir?

21 MR. CESTERO: C-E-S-T-E-R-O.

22 MR. CUCCHIARO: Go ahead.

23 MR. CESTERO: My first name is Albert.
24 We've lived here for 40 years.

25 I just wanted to clarify with

1 Mr. Lange, there are two active driveways; 3 Howell
2 Road, which is mine, and 1 Howell Road which is next
3 door to me.

4 Those are two active driveways at the
5 end of Michael Curtin Lane. We use them every day.

6 It's hard enough the get out on Howell
7 Road, which is a difficult task, so that's what we
8 use. And they have been active for 40 years.

9 My -- my other question to you was, I
10 noticed on the plans and in the testimony that there
11 didn't seem to be any kind of improvement on Michael
12 Curtin Lane, even though your project does front it,
13 and there's no accommodation for any kind of
14 sidewalk there.

15 And in previous testimony there was an
16 issue about a sidewalk on Howell Road and some
17 people questioned it and basically said that they
18 didn't see a need for it because Howell Road really
19 isn't trafficked by pedestrians.

20 But when the Department of
21 Transportation reconfigured the intersection at
22 Route 33, Howell Road, Five Points Road, Okerson
23 Road, they put in the intersection crosswalks and
24 curb cuts in anticipation of heavy pedestrian
25 traffic.

1 There is heavy pedestrian traffic in
2 the summertime, on bicycles going to the Howell
3 Point swim club from the developments on Five Point
4 Road, and also to the ball fields on Okerson Road.

5 Lastly, I wanted to bring to your
6 attention, to the Board's attention, recently the
7 railroad that was removed from Okerson Road and
8 Howell Road, they reactivated that. They're laying
9 tracks now.

10 So there's going to be an active
11 railroad crossing on Okerson Road and an active
12 railroad crossing on Howell Road.

13 So I just wanted to bring that to your
14 attention, and especially to Mr. Lange about the
15 driveways, there are active driveways. We want --
16 if this thing is going to go through, and it is
17 appears that it is, because even though the majority
18 of Howell Township doesn't want it, the Board didn't
19 want it two times, I appreciate the board members
20 for denying it in October of '21 and September of
21 '22, and I -- it, kind of -- it's -- it's a bit
22 alarming to me as a Howell Township taxpayer for
23 over 40 years, 46 years in my small business in this
24 township that the vast majority of the township
25 doesn't want it. The Planning Board voted it down

1 twice. And one Superior Court Judge is able to push
2 it through.

3 So with that being said, there needs to
4 be on notice as far as the railroad crossings, which
5 I know were not included in your plans because it
6 didn't exist at the time, and the pedestrian
7 traffic.

8 So I'm asking the project developers to
9 -- if they're going to do something, Michael Curtin
10 Lane right now, we were promised years ago when they
11 did the traffic reconfiguration, that road was
12 supposed to be paved. It was supposed to be taken
13 care of. There was supposed to be signage put up on
14 it. And there's been absolutely nothing done since.
15 It's -- it's a mess.

16 Right now our grandchildren ride their
17 bicycles on it because there's hardly any traffic
18 there, but that's going to change.

19 So I am asking the -- the planners to
20 include, if you're going to get this thing down, a
21 wall as high as you can get it, I have no problems
22 with that.

23 I don't know whether or not it's going
24 to have to be set back off of Michael Curtin Lane or
25 not, being that there are active driveways, but --

1 and a sidewalk. And also if you're going to mill
2 Okerson Road, to please take care of Michael Curtin
3 Lane, if this is going through, and it appears that
4 it is.

5 Thank you for your time.

6 MS. CESTERO: And there's no sign on
7 Michael Curtain --

8 MR. CUCCHIARO: Thank you.

9 MR. CESTERO: Yes.

10 It's not their problem.

11 MS. CESTERO: I have one more
12 question.

13 MR. CESTERO: Oh, wait a minute. My
14 wife wants to talk.

15 MS. CESTERO: About the maintenance of
16 the wall.

17 MR. CESTERO: Go ahead.

18 MS. CESTERO: You can do it.

19 MR. CESTERO: My wife is asking me --

20 MR. CUCCHIARO: Ma'am, just before you
21 start, I need to swear you in also.

22 MS. CESTERO: Oh, okay.

23 MR. CUCCHIARO: Do you swear or affirm
24 the testimony you're about to give this board is the
25 truth, the whole truth and nothing but the truth?

1 MS. CESTERO: Yes.

2

3 J A C Q U E L I N E C E S T E R O ,

4 3 Howell Road, Freehold, New Jersey, having
5 been duly sworn, testifies as follows:

6 MR. CUCCHIARO: Okay. If you could
7 just state your name.

8 MS. CESTERO: Yes. Jacqueline
9 Cestero.

10 MR. CUCCHIARO: Okay.

11 Go ahead, ma'am.

12 MS. CESTERO: I just have a question
13 about maintenance of the wall.

14 Who is going to be -- are they going to
15 be taking care of that wall?

16 MR. CUCCHIARO: Yeah, that -- that
17 would be --

18 MS. CESTERO: Okay.

19 MR. CUCCHIARO: -- the property owner's
20 responsibility to maintain the wall.

21 MS. CESTERO: The property owner?
22 Okay, the people that are putting it up.

23 And the lighting, I know Mrs. Okerson
24 brought up the lighting, and I was a bit confused
25 about that.

1 Given that we're, I'm going to just,
2 off the top of my head, 250 feet from the wall or
3 not even that --

4 MR. CESTERO: Fifty feet, if that.

5 MS. CESTERO: -- 50 feet from the
6 wall, so maybe 250 feet from the building and the
7 lighting.

8 I -- I hope the Board decides in favor
9 of residents that live nearby, as it is our lighting
10 here with all the other industrial areas around.

11 I mean, when we moved here it wasn't
12 like that. Now it's -- it's -- we can't see the sky
13 at night because it's flooded.

14 MR. CESTERO: They've been -- they've
15 been -- the buildings in the area have been putting
16 up LED lights and they're right in our face.

17 And, actually, if you try to pull out
18 our driveway onto Howell Road at night --

19 MS. CESTERO: At night.

20 MR. CESTERO: -- if one of -- the
21 lights across the way in the Sakers Industrial Park,
22 it blinds you.

23 So I am just asking you --

24 MS. CESTERO: To consider us.

25 MR. CESTERO: -- to consider us.

1 We've been here a very long time.

2 And also consider the addition of two
3 railroad crossings, one on Howell Road and one on
4 Okerson Road, which will absolutely be impacted by
5 this project with all the traffic, so...

6 MR. TANNENHAUS: If you don't mind,
7 Mr. Chairman, I would like to address that one.

8 CHAIRMAN BOISVERT: Sure.

9 MR. TANNENHAUS: Ms. Neumann?

10 MR. CESTERO: Pardon?

11 MS. CESTERO: No, he's saying

12 Ms. Neumann.

13 MR. CESTERO: Oh.

14 MR. CUCCHIARO: Can you come back in
15 for a second, please?

16 MR. CESTERO: There she is.

17 MR. CUCCHIARO: Ms. Neumann, our
18 lighting ordinance requires lights to be installed
19 in such a manner that they do not provide any type
20 of glare, especially off of their property.

21 Is that a fair statement?

22 MS. NEUMANN: Correct.

23 They cannot have spillage.

24 MR. TANNENHAUS: And if we have -- we
25 have buildings that have replaced lighting that now

1 provides a glare, that's a -- not a regulation
2 issue -- a code enforcement, that is a code
3 enforcement issue that should be brought to the
4 town. Is that a fair statement?

5 MS. NEUMANN: Yes.

6 MR. TANNENHAUS: Okay.

7 That would be my recommendation.

8 MS. NEUMANN: Thank you.

9 MR. TANNENHAUS: And this applicant is
10 going to have to comply with that as well.

11 MS. CESTERO: Okay.

12 I had just one more thing to add about
13 Michael Curtin Lane. There's no signage at all and
14 there never has been.

15 We did go to a council meeting years
16 ago and they said it would be taken care of, it
17 never was.

18 MR. CESTERO: We pushed the issue.

19 MS. CESTERO: The road is -- the road
20 is never plowed. Never. I have never seen it
21 plowed. We plow it ourselves.

22 MR. CESTERO: Yeah.

23 MS. CESTERO: And there's no
24 maintenance as far as it's starting to crumble.

25 MR. CESTERO: Right.

1 MS. CESTERO: So if a truck comes in
2 off of Okerson Road and maybe has a missed turn or
3 it needs to turn around, I'm thinking they're going
4 to turn around on Michael Curtin Lane.

5 As it stands, there's very poor
6 drainage there. If there's a --

7 MR. CESTERO: It floods.

8 MS. CESTERO: -- big event, it floods
9 when we have a heavy rain.

10 MR. CESTERO: Yes. Yeah.

11 MS. CESTERO: But also, the condition
12 of the road, I don't know if it will withstand a
13 tractor trailer.

14 MR. CESTERO: Yeah, it won't.

15 MS. CESTERO: It's already crumbling --

16 MR. CESTERO: Right.

17 MS. CESTERO: -- on the sides.

18 MR. CESTERO: Right.

19 MS. CESTERO: So do I bring that up to
20 the Council again about maintenance of that road, or
21 is that --

22 MR. CUCCHIARO: That would be the
23 proper body, yes.

24 MS. CESTERO: Okay.

25 MR. CESTERO: Okay.

1 Thank you.

2 MS. CESTERO: All right.

3 Thank you.

4 COUNCILMAN GASIOR: Mr. Chairman, I
5 have a question for the Cesteros.

6 CHAIRMAN BOISVERT: Sure.

7 COUNCILMAN GASIOR: This Michael
8 Curtin Lane, is this directly behind your house?

9 I am looking on a map right now and it
10 doesn't even list it as a regular road.

11 MS. CESTERO: I -- I think...

12 MR. CUCCHIARO: Why don't we have
13 Laura -- Laura, are you able to weigh in on what
14 the...

15 MS. NEUMANN: Yes.

16 I mean, it's a lane -- so it's not a
17 wide roadway, it's classified as a lane.

18 MR. CESTERO: What it is, it's the
19 remnant of the old Okerson Road.

20 MS. CESTERO: No, so it was a road.

21 MR. CESTERO: It was a road, and when
22 DOT reconfigured Okerson Road, what they did was
23 they left the portion of Okerson Road that went past
24 our back -- our frontage on our back road here, and
25 -- which intersected at the intersection which is

1 named Five Points Road because there were five roads
2 intersecting there.

3 It was Five Points Road, Route 33 East,
4 Route 33 West, Howell Road and Okerson Road.

5 So it's the remnant of a town road
6 that, when it was reconfigured, the township said
7 that they were going to name it Michael Curtin Lane
8 after the first soldier that was killed, I believe,
9 in Iraq in one of the wars from New Jersey. It was
10 Michael Curtin from Howell Township.

11 But they never did that, and I never
12 pushed the issue.

13 They were supposed to put signage up on
14 the road. And they were supposed to maintain the
15 road. And they've never maintained it.

16 So what I am asking you is if you're
17 building a project on that road, you're already
18 talking about milling Okerson Road, which is a whole
19 lot longer than Michael Curtin Lane, and you are
20 going to have frontage on Michael Curtin Lane, if
21 you put a sidewalk on Michael Curtin Lane in the
22 front, so at least it looks presentable from our
23 standpoint and -- and it's safe. Because there is
24 foot traffic there.

25 MS. NEUMANN: Mr. Chairman, let's just

1 ask the Applicant: Are you willing to pave the
2 portion of Michael Curtin Lane and provide sidewalk
3 as was requested by the resident?

4 MR. LANGE: No on paving. Yes on the
5 sidewalk.

6 MS. CESTERO: The township is --

7 MR. CESTERO: Yeah, we could just go
8 after the township for the paving of the road then.
9 I get that.

10 CHAIRMAN BOISVERT: Perfect.

11 COUNCILMAN GASIOR: Mr. Cestero, I
12 have a meeting with the town manager tomorrow, I'm
13 going to ask about this and get back to you.

14 MR. CESTERO: Okay.

15 I appreciate it.

16 Thank you, Mr. Gasior.

17 COUNCILMAN GASIOR: You're welcome.

18 That's it for me.

19 CHAIRMAN BOISVERT: Okay. Thank you.

20 MS. RUBANO: I have a phone-in caller.

21 MR. CUCCHIARO: If you can just tell
22 them how to unmute themselves on the phone again.

23 Oh, they did it.

24 THE COURT REPORTER: I'm the Court
25 Reporter here for Mr. Simon. I'm sorry.

1 MS. RUBANO: Oh, okay.

2 MR. CUCCHIARO: Okay.

3 CHAIRMAN BOISVERT: Okay.

4 Is there anybody else from the public?

5 MS. RUBANO: I have no one else with
6 their hand up right now.

7 CHAIRMAN BOISVERT: Okay. So then I
8 am going to close the public portion.

9 MR. CUCCHIARO: So, Mr. Chairman,
10 again -- well, actually, let me -- let me turn it
11 over to Mr. Simon if he has any closing remarks and
12 then I'll address the Board.

13 CHAIRMAN BOISVERT: Okay.

14 MR. SIMON: Right, thank you.

15 We really appreciate, certainly, the
16 Board agreeing to hear us and entering into the
17 settlement agreement with us, certainly subject to a
18 public hearing which is what we're conducting under
19 the Whispering Woods case, where the applicant has
20 the opportunity to present the settlement, which it
21 has, through the testimony of Mr. Lange and
22 Ms. Cofone, as well as hearing from members of the
23 public and, obviously, any questions of the Board.

24 And I will say, parenthetically, that
25 in my over 30 years practicing, that this is the

1 first time I have seen an applicant go forward with
2 a settlement plan not once, but twice, in a good
3 faith attempt to go above and beyond the Applicant's
4 legal obligations under the ordinance and the MLUL
5 in response to some requests from the Board,
6 including a sound attenuation wall, and, obviously,
7 changing the orientation of one of the buildings.

8 We believe that the Applicant has
9 continued to pursue this application, including the
10 settlement, in good faith.

11 We are proud of the plan as --
12 certainly as revised, and we ask you to act
13 favorably upon the application that is before you
14 pursuant to a Whispering Woods hearing.

15 MR. CUCCHIARO: So, Mr. Chairman,
16 essentially, what the board has in front of it was
17 the presentation of the settlement plan.

18 If the Board is amenable to the plan,
19 then there would be a motion to either grant
20 preliminary and final site plan approval, subject to
21 the conditions, or preliminary site plan approval
22 subject to the conditions.

23 Mr. Simon, I just want to run through a
24 couple of the conditions that are not the
25 boiler-plate conditions to make sure that we're both

1 on the same page.

2 MR. SIMON: Sure.

3 And I may ask Mr. Lange to chime in to
4 the extent necessary.

5 MR. CUCCHIARO: Okay.

6 There's going to be sidewalk on Michael
7 Curtin Lane.

8 The property owner will have the
9 responsibility of maintaining the sound wall.

10 There is going to be a condition
11 confirming that there's not going to light spillage
12 onto the adjoining properties.

13 And subject, if the Board grants you
14 the waiver relief, that you would be going with the
15 alternative -- I'm sorry, the IED?

16 MR. SIMON: IES.

17 MR. LANGE: IES.

18 MR. CUCCHIARO: IES lighting
19 requirements.

20 And then the standard requirements,
21 obtaining all outside agency approvals,
22 certification that taxes are paid to date.

23 Is there anything -- and also
24 compliance with any of the technical comments in the
25 board's reports -- Board professionals' reports,

1 rather, that --

2 MR. LANGE: Mr. Cucchiaro, I did -- as
3 I testified to, I did address a few of Laura's
4 comments, so just consistent with that testimony.

5 MR. CUCCHIARO: Well, is there
6 something in the report that you're not doing, I
7 guess, let me ask it that way?

8 MS. NEUMANN: The only thing he's not
9 going to do is to -- as stipulated.

10 So the areas of Howell Road that are
11 going to be milled, he's not going to provide the
12 cross-sections and the profile.

13 And the AOC No. 1, that will be
14 completed when site work commences on the site.

15 Previously we had noted prior to
16 construction. It will be once site work commences.

17 MR. SIMON: Correct.

18 Upon site work commencing, yeah.

19 MR. CUCCHIARO: Okay.

20 Then with that, Mr. Chairman, if the
21 Board wants to make a motion.

22 CHAIRMAN BOISVERT: I will entertain a
23 motion.

24 MR. TANNENHAUS: I'll make a motion to
25 approve the application for preliminary and final

1 site plan with all the stipulations discussed.

2 MR. SEAMAN: Second.

3 MS. RUBANO: I have a motion and a
4 second.

5 Mr. Cristiano?

6 MR. CRISTIANO: Yes.

7 MS. RUBANO: Mr. Greenfield?

8 MR. GREENFIELD: Yes.

9 MS. RUBANO: Mr. Seaman?

10 MR. SEAMAN: Yes.

11 MS. RUBANO: Ms. Talente?

12 (No response.)

13 MS. RUBANO: Ms. Talente, you're
14 muted?

15 MS. TALENTE: Yes.

16 MS. RUBANO: Thank you.

17 Mr. Tannenhaus?

18 MR. TANNENHAUS: Yes.

19 MS. RUBANO: Councilman Gasior?

20 COUNCILMAN GASIOR: Yes.

21 MS. RUBANO: Mr. Kyle?

22 MR. KYLE: Yes.

23 MS. RUBANO: Mr. Mercer?

24 MR. MERCER: Yes.

25 MS. RUBANO: And, Chairman Boisvert?

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CHAIRMAN BOISVERT: Yes.

MS. RUBANO: Motion carries.

MR. SIMON: We thank the Board very
much.

CHAIRMAN BOISVERT: Thank you.

MR. SIMON: Thank you for listening to
our presentation.

CHAIRMAN BOISVERT: Have a good night.

(Whereupon, this matter is concluded at
8:22 p.m.)

C E R T I F I C A T E

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I, LAURA A. CARUCCI, C.C.R., R.P.R., a Notary Public of the State of New Jersey, Notary ID. #50094914, Certified Court Reporter of the State of New Jersey, and a Registered Professional Reporter, hereby certify that the foregoing is a verbatim record of the testimony provided under oath before any Court, referee, board, commission or other body created by statute of the State of New Jersey.

I am not related to the parties involved in this action; I have no financial interest, nor am I related to an agent of or employed by anyone with a financial interest in the outcome of this action.

This transcript complies with regulation 13:43-5.9 of the New Jersey Administrative Code.

LAURA A. CARUCCI, C.C.R., R.P.R.
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Notary Public of New Jersey #50094914
Notary Expiration Date December 3, 2023

Dated: February 28, 2023

#	10:13, 38:21, 39:1, 81:22, 81:25	6	A-19 [4] - 6:15, 27:7, 37:17, 39:15	accommodate [2] - 39:11, 42:24
#50094914 [2] - 81:5, 81:22	21 [1] - 38:19	6 [3] - 10:13, 11:4, 55:22	A-2 [1] - 5:4	accommodating [1] - 42:5
#X102050 [2] - 2:25, 81:21	22306 [1] - 57:11	62 [1] - 4:21	A-20 [1] - 6:17	accommodation [1] - 63:13
'	23 [1] - 9:16	647-7721 [1] - 3:5	A-21 [1] - 6:19	Acquaviva [2] - 15:20, 16:1
'21' [1] - 64:20	24 [1] - 38:10	65 [3] - 29:25, 30:10, 52:21	A-22 [1] - 6:22	Acquisitions [3] - 4:4, 26:19, 43:7
'22' [1] - 64:21	25 [6] - 3:3, 4:4, 29:19, 29:21, 38:2, 38:16	657-2022 [1] - 3:4	A-23 [3] - 6:24, 40:10, 40:13	Act [1] - 10:6
0	250 [2] - 68:2, 68:6	67 [1] - 4:22	A-24 [1] - 7:2	act [1] - 76:12
07059-6747 [1] - 3:4	26 [3] - 1:23, 7:13, 7:17	6th [2] - 10:7, 10:10	A-25 [1] - 7:4	action [3] - 14:17, 81:12, 81:15
07701 [1] - 45:4	27 [1] - 45:8	7	A-26 [1] - 7:6	active [7] - 63:1, 63:4, 63:8, 64:10, 64:11, 64:15, 65:25
08535 [1] - 1:24	28 [1] - 81:25	70 [2] - 29:25, 41:12	A-27 [1] - 7:9	Active [3] - 4:4, 26:18, 43:7
1	29 [1] - 1:7	7168 [3] - 4:19, 57:4, 57:10	A-28 [1] - 7:11	add [2] - 31:18, 70:12
1 [27] - 6:4, 6:6, 6:9, 6:11, 6:13, 6:15, 6:17, 6:20, 6:22, 6:25, 7:4, 7:18, 7:25, 8:2, 8:4, 8:7, 8:9, 8:12, 8:14, 8:17, 8:19, 8:22, 8:24, 9:3, 43:21, 63:2, 78:13	2A [1] - 41:25	732 882-3590 [1] - 1:24	A-29 [1] - 7:12	add-on [1] - 31:18
1085 [2] - 1:10, 13:4	2B [1] - 42:9	74 [2] - 37:8, 37:15	A-3 [1] - 5:5	adding [2] - 31:17, 35:12
10th [2] - 39:1, 41:22	3	77 [1] - 11:7	A-30 [1] - 7:14	addition [3] - 28:11, 31:9, 69:2
11/12/20 [1] - 5:8	3 [9] - 4:21, 4:22, 7:9, 38:21, 62:12, 62:16, 63:1, 67:4, 81:22	7:00 [1] - 1:13	A-31 [3] - 7:16, 22:17, 38:25	additional [4] - 28:20, 31:18, 35:11, 48:6
12/13/22 [1] - 9:4	3/8/21 [1] - 6:23	7:04 [1] - 12:25	A-32 [2] - 7:19, 22:19	address [11] - 11:2, 30:9, 45:3, 55:20, 57:7, 57:10, 58:17, 59:1, 69:7, 75:12, 78:3
12/8/22 [2] - 5:21, 7:20	30 [6] - 29:19, 31:23, 37:23, 38:2, 38:15, 75:25	7:15 [1] - 12:25	A-33 [1] - 7:21	ADDRESS [1] - 4:17
125 [2] - 44:21, 45:3	33 [3] - 63:22, 73:3, 73:4	8	A-34 [1] - 7:24	addressed [3] - 15:23, 41:23, 43:21
13:43-5.9 [1] - 81:17	34 [1] - 5:12	8-foot [1] - 34:18	A-35 [1] - 8:2	addressing [1] - 41:21
15 [2] - 32:10, 32:19	4	8/16/21 [4] - 7:3, 7:5, 7:23, 9:7	A-36 [1] - 8:4	adequate [1] - 10:5
16 [2] - 1:12, 10:2	4 [4] - 7:7, 7:21, 9:6, 9:7	8/17/22 [1] - 7:10	A-37 [1] - 8:6	adjacent [6] - 31:19, 33:4, 50:9, 51:9, 52:6, 52:11
164 [1] - 1:6	4/1/21 [1] - 5:22	8/18/22 [7] - 5:13, 5:18, 6:5, 6:7, 6:10, 6:12, 7:8	A-38 [1] - 8:9	adjoining [3] - 47:17, 52:8, 77:12
18 [1] - 7:13	4/23/21 [1] - 5:24	8:22 [1] - 80:11	A-39 [1] - 8:11	Administrative [1] - 81:18
188-106A [1] - 38:8	4/6/21 [4] - 5:6, 5:9, 5:11, 5:13	9	A-39A [1] - 8:14	advance [1] - 48:14
188-106F [1] - 38:14	40 [3] - 62:24, 63:8, 64:23	9 [3] - 10:16, 11:3, 55:22	A-4 [1] - 5:7	advanced [2] - 48:1, 48:16
188-63E [1] - 35:7	400 [1] - 45:10	9-foot [1] - 34:23	A-40 [1] - 8:16	advances [1] - 49:16
1A [1] - 38:15	40:55D-2 [1] - 48:12	9-foot-tall [1] - 34:21	A-41 [1] - 8:19	advancing [1] - 36:17
1st [1] - 27:10	44 [1] - 4:6	9/1/22 [2] - 6:14, 6:16	A-42 [1] - 8:21	Aerial [2] - 6:17, 6:19
2	4567 [1] - 10:16	9/2/21 [2] - 6:18, 6:21	A-43 [1] - 8:24	affirm [7] - 25:4, 44:15, 56:5, 56:23, 58:8, 62:6, 66:23
2/1/23 [13] - 7:23, 7:25, 8:3, 8:5, 8:8, 8:10, 8:13, 8:15, 8:18, 8:20, 8:23, 8:25, 9:7	459 [3] - 4:20, 58:14, 58:19	9/27/22 [1] - 9:4	A-44 [1] - 9:2	agency [1] - 77:21
2/2/23 [2] - 5:3, 7:15	46 [1] - 64:23	9/30/21 [1] - 6:25	A-45 [1] - 9:5	agenda [1] - 12:25
20 [1] - 37:24	5	908 [2] - 3:4, 3:5	A-5 [1] - 5:9	agent [1] - 81:13
200 [2] - 44:21, 45:3	5 [4] - 7:21, 7:24, 29:25, 30:7	A	A-6 [1] - 5:10	agnostic [1] - 39:19
2020 [1] - 5:16	5.01 [1] - 1:6	A-1 [1] - 5:3	A-7 [3] - 5:12, 40:12, 40:20	ago [2] - 65:10, 70:16
2021 [3] - 6:2, 7:13, 7:17	50 [5] - 34:11, 34:13, 46:15, 49:2, 68:5	A-10 [1] - 5:19	A-8 [1] - 5:14	agree [2] - 16:8, 53:8
2022 [2] - 7:13, 38:19	501 [1] - 4:18	A-11 [1] - 5:22	A-9 [1] - 5:17	agreeing [1] - 75:16
2023 [10] - 1:12, 7:18, 10:2, 10:7, 10:10,	56 [1] - 4:18	A-12 [1] - 5:23	AAFFHW [2] - 1:6, 13:4	
	57 [1] - 4:19	A-13 [1] - 6:2	AB [1] - 1:22	
	58 [1] - 4:20	A-14 [2] - 6:3, 36:15	ability [3] - 34:1, 39:3, 48:5	
	5A [1] - 43:11	A-15 [1] - 6:6	able [2] - 65:1, 72:13	
		A-16 [1] - 6:8	abroad [2] - 12:17, 12:22	
		A-17 [1] - 6:11	absolutely [5] - 31:4, 50:7, 51:4, 65:14, 69:4	
		A-18 [2] - 6:13, 30:23	absorb [2] - 31:24, 34:1	
			absorption [1] - 33:20	
			accept [3] - 20:8, 40:1, 45:16	
			acceptable [1] - 16:17	
			access [1] - 27:21	
			accident [1] - 56:19	

<p>Agreement [2] - 9:16, 23:9</p> <p>agreement [12] - 14:24, 15:12, 16:18, 16:21, 17:8, 17:9, 17:11, 17:16, 17:21, 22:19, 75:17</p> <p>ahead [9] - 14:10, 26:7, 39:6, 58:7, 58:21, 60:8, 62:22, 66:17, 67:11</p> <p>AICP [1] - 2:18</p> <p>aisle [1] - 38:1</p> <p>aisles [6] - 29:14, 29:17, 30:15, 39:4, 52:22, 52:24</p> <p>AJC [1] - 62:3</p> <p>alarming [1] - 64:22</p> <p>Albert [3] - 4:21, 62:14, 62:23</p> <p>Alexandria [3] - 4:19, 57:4, 57:11</p> <p>ALGONQUIN [1] - 1:23</p> <p>allegiance [1] - 12:16</p> <p>Allegiance [1] - 12:20</p> <p>allow [1] - 47:15</p> <p>allows [1] - 50:21</p> <p>almost [1] - 31:7</p> <p>ALT/NSPS [1] - 6:22</p> <p>alternate [1] - 40:13</p> <p>Alternate [1] - 6:24</p> <p>Alternative [1] - 8:14</p> <p>alternative [6] - 40:9, 40:11, 47:1, 47:20, 50:19, 77:15</p> <p>amenable [1] - 76:18</p> <p>ancillary [3] - 14:14, 29:10, 41:5</p> <p>AND [5] - 1:7, 1:8, 1:9, 1:9, 2:14</p> <p>Andrew [1] - 38:15</p> <p>angelabuonocsr@gmail.com [1] - 1:25</p> <p>answer [1] - 60:7</p> <p>anticipated [1] - 26:25</p> <p>anticipation [1] - 63:24</p> <p>AOC [2] - 43:21, 78:13</p> <p>appearance [1] - 13:24</p> <p>applicable [1] - 46:5</p> <p>applicant [9] - 14:24, 24:11, 25:18, 26:20, 48:20, 60:7, 70:9, 75:19, 76:1</p> <p>Applicant [20] - 3:6, 14:3, 14:8, 14:13, 14:17, 15:9, 15:21, 16:7, 19:5, 23:25,</p>	<p>24:21, 41:14, 47:4, 47:5, 49:10, 51:14, 52:12, 59:7, 74:1, 76:8</p> <p>APPLICANTS [1] - 5:1</p> <p>Applicant's [2] - 22:17, 76:3</p> <p>Applicant/Plaintiff [1] - 16:8</p> <p>APPLICATION [1] - 1:10</p> <p>application [21] - 5:9, 5:11, 10:22, 13:10, 14:12, 14:16, 15:4, 15:13, 15:14, 15:15, 15:17, 15:24, 21:16, 24:4, 24:8, 46:22, 56:13, 59:17, 76:9, 76:13, 78:25</p> <p>applications [2] - 5:5, 10:18</p> <p>applies [1] - 37:5</p> <p>apply [1] - 52:22</p> <p>appreciate [5] - 34:4, 57:23, 64:19, 74:15, 75:15</p> <p>appropriate [4] - 39:24, 50:16, 53:6, 60:18</p> <p>APPROVAL [1] - 1:9</p> <p>approval [4] - 13:7, 14:14, 76:20, 76:21</p> <p>approvals [1] - 77:21</p> <p>approve [6] - 15:11, 15:12, 17:15, 21:18, 38:9, 78:25</p> <p>approved [1] - 14:23</p> <p>approving [1] - 17:20</p> <p>April [1] - 6:2</p> <p>architect [1] - 24:14</p> <p>Architects [4] - 7:7, 7:22, 7:25, 9:6</p> <p>Architectural [4] - 7:6, 7:21, 7:24, 9:5</p> <p>area [11] - 27:24, 28:14, 29:22, 31:13, 32:21, 33:2, 37:5, 42:10, 51:10, 52:7, 68:15</p> <p>areas [16] - 20:5, 21:5, 21:7, 30:11, 35:15, 39:8, 43:14, 43:16, 50:4, 51:3, 51:4, 52:24, 52:25, 60:15, 68:10, 78:10</p> <p>arguments [2] - 19:20, 20:5</p> <p>Asbury [1] - 10:8</p> <p>Assessment [2] -</p>	<p>5:14, 5:15</p> <p>assigned [1] - 42:21</p> <p>assists [1] - 30:7</p> <p>associated [9] - 19:12, 21:16, 24:8, 30:15, 37:11, 46:13, 48:17, 49:15, 50:4</p> <p>Associates [2] - 2:17, 2:20</p> <p>assuming [1] - 33:17</p> <p>attempt [1] - 76:3</p> <p>attention [4] - 36:15, 64:6, 64:14</p> <p>attenuation [6] - 28:20, 47:13, 48:5, 48:7, 49:22, 76:6</p> <p>Attorney [1] - 2:15</p> <p>attorney [1] - 23:19</p> <p>audio [1] - 10:25</p> <p>August [1] - 7:13</p> <p>available [1] - 24:10</p> <p>Avakian [1] - 2:18</p>	<p>47:16, 47:20, 50:18, 60:13</p> <p>between [5] - 27:18, 28:2, 28:21, 52:20, 60:4</p> <p>beyond [1] - 76:3</p> <p>bicycles [2] - 64:2, 65:17</p> <p>big [2] - 31:8, 71:8</p> <p>bigger [1] - 34:3</p> <p>biggest [1] - 28:8</p> <p>Bird [3] - 4:18, 55:24, 56:3</p> <p>BIRD [4] - 56:6, 56:10, 56:14, 56:18</p> <p>BISHOP [1] - 2:3</p> <p>bit [5] - 19:17, 29:9, 31:8, 64:21, 67:24</p> <p>blend [2] - 32:1, 32:3</p> <p>blinds [1] - 68:22</p> <p>BLOCK [1] - 1:6</p> <p>block [4] - 30:19, 32:7, 32:8, 52:23</p> <p>blocking [3] - 32:25, 33:3, 34:14</p> <p>blocks [2] - 36:4, 36:7</p> <p>Board [71] - 2:15, 2:16, 2:18, 2:21, 5:9, 10:1, 10:4, 10:14, 14:2, 14:8, 14:13, 14:16, 14:23, 15:11, 15:13, 15:16, 15:20, 15:24, 16:2, 16:5, 16:19, 16:24, 17:4, 17:7, 19:21, 21:8, 22:3, 22:12, 22:15, 23:13, 24:7, 24:21, 25:23, 33:6, 39:1, 39:16, 40:18, 41:1, 41:22, 43:12, 44:6, 44:10, 44:15, 46:6, 46:19, 46:23, 48:1, 50:21, 53:3, 53:6, 53:18, 53:20, 54:5, 54:13, 54:23, 55:6, 56:24, 59:15, 64:18, 64:25, 68:8, 75:12, 75:16, 75:23, 76:5, 76:18, 77:13, 77:25, 78:21, 80:3</p> <p>BOARD [4] - 1:1, 2:1, 2:14, 9:14</p> <p>board [10] - 10:15, 12:24, 25:5, 38:9, 58:9, 62:7, 64:19, 66:24, 76:16, 81:9</p> <p>Board's [2] - 18:23, 64:6</p> <p>board's [2] - 14:18, 77:25</p>	<p>boards [1] - 45:11</p> <p>body [2] - 71:23, 81:9</p> <p>boiler [1] - 76:25</p> <p>boiler-plate [1] - 76:25</p> <p>Boisvert [3] - 12:10, 18:19, 79:25</p> <p>BOISVERT [36] - 2:2, 11:9, 12:11, 12:13, 13:3, 13:11, 13:15, 14:10, 17:17, 18:20, 22:3, 22:6, 44:11, 45:15, 53:19, 53:24, 54:4, 54:12, 54:15, 55:8, 55:13, 58:1, 59:5, 59:12, 61:23, 69:8, 72:6, 74:10, 74:19, 75:3, 75:7, 75:13, 78:22, 80:1, 80:5, 80:8</p> <p>bollards [1] - 41:17</p> <p>Boulevard [1] - 3:3</p> <p>bound [1] - 19:18</p> <p>boy [1] - 38:15</p> <p>branches [1] - 32:4</p> <p>BRIAN [2] - 2:6, 2:12</p> <p>Brian [1] - 11:24</p> <p>Brian's [1] - 18:1</p> <p>brief [1] - 14:5</p> <p>briefly [1] - 18:25</p> <p>Bright [2] - 5:22, 7:10</p> <p>bring [5] - 36:14, 55:18, 64:5, 64:13, 71:19</p> <p>broadcast [1] - 11:7</p> <p>brought [4] - 10:23, 22:11, 67:24, 70:3</p> <p>brown [1] - 29:3</p> <p>Buffer [1] - 6:13</p> <p>buffer [8] - 28:20, 30:22, 31:3, 31:6, 31:12, 31:15, 36:6</p> <p>buffered [1] - 36:11</p> <p>buffering [2] - 31:19, 47:16</p> <p>buffers [2] - 30:25, 47:8</p> <p>Building [16] - 10:16, 27:16, 27:25, 29:16, 35:17, 36:4, 36:5, 38:2, 38:5, 42:11, 47:7, 47:24, 50:4, 50:5, 60:25</p> <p>building [13] - 27:16, 27:18, 29:12, 42:12, 42:16, 42:25, 47:10, 47:11, 47:23, 60:23, 60:24, 68:6, 73:17</p> <p>buildings [8] - 15:7, 16:11, 41:18, 47:8, 59:3, 68:15, 69:25,</p>
		B		
		<p>B-5 [4] - 9:16, 23:1, 23:6, 23:9</p> <p>background [1] - 26:16</p> <p>ball [1] - 64:4</p> <p>Bank [2] - 44:21, 45:3</p> <p>barrier [2] - 15:7, 16:10</p> <p>baseball [1] - 61:14</p> <p>basketball [3] - 57:16, 57:17, 57:21</p> <p>bay [1] - 42:21</p> <p>BEAHM [1] - 2:18</p> <p>begin [3] - 13:1, 22:1, 27:6</p> <p>beginning [2] - 26:22, 27:6</p> <p>behalf [2] - 14:3, 24:11</p> <p>behind [3] - 60:22, 60:24, 72:8</p> <p>belief [1] - 50:14</p> <p>belt [1] - 35:10</p> <p>benefit [13] - 15:9, 19:10, 21:3, 25:23, 37:3, 37:4, 37:16, 43:2, 47:6, 47:13, 48:7, 61:4</p> <p>benefits [2] - 48:21, 49:21</p> <p>berm [3] - 31:8, 32:19, 35:8</p> <p>berm/wall [1] - 32:9</p> <p>best [1] - 60:20</p> <p>better [6] - 34:3, 47:1,</p>		

<p>76:7 Buildings [1] - 28:2 bulk [1] - 46:19 bulletin [1] - 10:15 bumped [1] - 56:19 burden [4] - 20:16, 48:13, 49:24, 51:14 burdens [1] - 15:22 business [2] - 45:2, 64:23 BY [6] - 2:23, 3:3, 26:13, 40:4, 45:22, 51:18</p>	<p>CERTIFIED [1] - 1:23 certify [1] - 81:7 Cestero [5] - 4:21, 4:22, 62:15, 67:9, 74:11 CESTERO [56] - 62:9, 62:14, 62:21, 62:23, 66:6, 66:9, 66:11, 66:13, 66:15, 66:17, 66:18, 66:19, 66:22, 67:1, 67:8, 67:12, 67:18, 67:21, 68:4, 68:5, 68:14, 68:19, 68:20, 68:24, 68:25, 69:10, 69:11, 69:13, 69:16, 70:11, 70:18, 70:19, 70:22, 70:23, 70:25, 71:1, 71:7, 71:8, 71:10, 71:11, 71:14, 71:15, 71:16, 71:17, 71:18, 71:19, 71:24, 71:25, 72:2, 72:11, 72:18, 72:20, 72:21, 74:6, 74:7, 74:14 Cesteros [1] - 72:5 Chair [1] - 13:8 Chairman [22] - 10:19, 12:10, 13:19, 14:4, 17:14, 18:19, 18:22, 21:24, 22:8, 44:5, 53:15, 53:23, 54:3, 55:14, 59:4, 69:7, 72:4, 73:25, 75:9, 76:15, 78:20, 79:25 CHAIRMAN [41] - 2:2, 2:7, 11:9, 11:17, 12:11, 12:13, 13:3, 13:8, 13:11, 13:12, 13:15, 13:17, 14:10, 17:17, 18:20, 22:3, 22:6, 44:11, 45:15, 53:19, 53:24, 54:4, 54:12, 54:15, 55:8, 55:13, 58:1, 59:5, 59:12, 61:23, 69:8, 72:6, 74:10, 74:19, 75:3, 75:7, 75:13, 78:22, 80:1, 80:5, 80:8 challenging [1] - 14:18 chance [1] - 10:17 change [11] - 27:13, 28:6, 28:8, 28:10, 28:23, 30:3, 30:9, 31:4, 36:14, 37:20, 65:18 changed [2] - 31:7, 39:11</p>	<p>changes [12] - 19:9, 20:25, 21:1, 23:21, 24:3, 24:8, 25:24, 26:1, 28:7, 29:12, 41:5 changing [2] - 31:8, 76:7 charge [1] - 22:11 Chief [1] - 38:18 chime [1] - 77:3 choice [2] - 19:21, 20:22 Chopra [3] - 4:19, 56:21, 57:8 CHOPRA [5] - 57:1, 57:8, 57:14, 57:20, 58:2 Christine [3] - 24:2, 26:3, 45:1 CHRISTINE [2] - 4:6, 45:2 Christine's [1] - 44:2 Christmas [2] - 61:5, 61:7 CHRISTOPHER [1] - 2:9 circulated [1] - 17:9 circulation [10] - 29:13, 30:2, 30:3, 30:7, 30:18, 33:1, 38:1, 39:4, 42:14, 53:1 Circulation [3] - 6:6, 6:8, 6:11 circumstances [1] - 53:10 civil [1] - 24:12 clarification [1] - 40:22 clarify [1] - 62:25 Class [1] - 31:23 classified [1] - 72:17 clear [1] - 42:2 clerk [1] - 10:11 close [2] - 32:24, 75:8 closing [1] - 75:11 club [1] - 64:3 CME [2] - 2:17, 2:20 code [2] - 70:2 Code [1] - 81:18 Cofone [8] - 24:2, 26:3, 44:13, 45:2, 45:23, 51:19, 53:16, 75:22 COFONE [4] - 4:6, 44:18, 45:1, 45:17 cofone [1] - 4:6 Cofone's [1] - 44:7 Colliers [34] - 5:3, 5:6, 5:12, 5:18, 5:20,</p>	<p>5:24, 6:4, 6:7, 6:9, 6:11, 6:13, 6:15, 6:18, 6:20, 6:23, 6:25, 7:2, 7:5, 7:12, 7:15, 7:17, 7:19, 8:2, 8:5, 8:7, 8:10, 8:12, 8:15, 8:17, 8:20, 8:22, 8:25, 9:3, 27:10 color [3] - 31:25, 32:4, 49:23 combined [2] - 32:9, 32:19 comfortable [1] - 43:8 coming [1] - 27:9 commencement [1] - 9:9 commences [3] - 43:22, 78:14, 78:16 commencing [1] - 78:18 comment [8] - 10:18, 10:21, 39:2, 39:12, 41:23, 41:25, 42:9 comments [6] - 54:20, 55:12, 55:13, 55:15, 77:24, 78:4 commission [1] - 81:9 commitments [1] - 41:15 Compactor [1] - 8:4 compactor [1] - 35:20 compactor-fed [1] - 35:20 compared [1] - 52:25 completed [1] - 78:14 completely [2] - 32:8, 41:11 Compliance [3] - 8:11, 8:14, 8:16 compliance [2] - 51:5, 77:24 Compliant [2] - 7:21, 7:24 complied [2] - 15:21, 59:23 complies [2] - 41:11, 81:16 comply [16] - 20:15, 21:1, 21:2, 35:2, 39:20, 39:21, 40:1, 40:2, 40:25, 47:8, 50:12, 50:13, 50:17, 51:24, 53:9, 70:10 complying [4] - 35:7, 36:8, 39:21, 52:5 concern [2] - 19:23, 53:10 concerned [3] - 38:7, 58:24, 61:12</p>	<p>concerns [1] - 30:20 concluded [1] - 80:10 conclusion [1] - 49:11 concur [1] - 22:10 condition [2] - 71:11, 77:10 Conditions [2] - 6:17, 6:19 conditions [4] - 76:21, 76:22, 76:24, 76:25 conducting [1] - 75:18 conducts [1] - 12:24 conference [1] - 17:13 Conference [1] - 3:1 confirm [1] - 54:7 confirming [1] - 77:11 confirming [1] - 39:17 confused [2] - 56:6, 67:24 consequences [1] - 42:25 Conservation [1] - 5:10 consider [4] - 16:2, 68:24, 68:25, 69:2 consideration [1] - 16:14 considerations [1] - 51:21 consistent [2] - 24:5, 78:4 consisting [28] - 5:12, 6:4, 6:6, 6:9, 6:11, 6:13, 6:15, 6:17, 6:20, 6:22, 6:24, 7:4, 7:6, 7:9, 7:21, 7:24, 8:2, 8:4, 8:7, 8:9, 8:12, 8:14, 8:17, 8:19, 8:22, 8:24, 9:3, 9:5 Consolidation [2] - 8:19, 8:21 construct [3] - 47:5, 47:7, 47:23 constructing [1] - 47:6 construction [4] - 46:11, 46:16, 47:15, 78:16 Consulting [3] - 4:6, 5:15, 6:2 container [1] - 36:10 containers [1] - 35:21 continue [1] - 31:11 continued [1] - 76:9 Conveyance [1] - 9:3 cooperation [1] - 36:21 copy [2] - 10:8, 10:10</p>
C				
<p>C(2) [1] - 39:2 C-1 [2] - 46:20, 46:25 C-2 [4] - 46:20, 46:25, 47:3, 47:19 C-E-S-T-E-R-O [1] - 62:21 C-H-O-P-R-A [1] - 57:9 C-O-F-O-N-E [1] - 45:2 C.C.R [3] - 2:24, 81:3, 81:21 caller [1] - 74:20 camera [1] - 24:25 cannot [3] - 32:15, 54:24, 69:23 capability [1] - 11:1 capacity [2] - 25:16, 26:18 care [4] - 65:13, 66:2, 67:15, 70:16 carries [1] - 80:2 CARUCCI [3] - 2:24, 81:3, 81:21 case [8] - 15:2, 32:18, 36:4, 38:11, 42:3, 47:2, 48:4, 75:19 Case [1] - 13:3 cemetery [1] - 55:2 center [2] - 28:5, 29:15 Center [1] - 45:13 central [1] - 36:20 certain [1] - 52:19 certainly [21] - 17:10, 21:25, 22:10, 23:13, 24:10, 24:15, 24:16, 46:22, 47:15, 47:22, 48:4, 48:8, 49:23, 50:9, 50:17, 51:14, 52:1, 53:6, 75:15, 75:17, 76:12 certification [1] - 77:22 Certified [3] - 2:19, 5:7, 81:5</p>	<p>C(2) [1] - 39:2 C-1 [2] - 46:20, 46:25 C-2 [4] - 46:20, 46:25, 47:3, 47:19 C-E-S-T-E-R-O [1] - 62:21 C-H-O-P-R-A [1] - 57:9 C-O-F-O-N-E [1] - 45:2 C.C.R [3] - 2:24, 81:3, 81:21 caller [1] - 74:20 camera [1] - 24:25 cannot [3] - 32:15, 54:24, 69:23 capability [1] - 11:1 capacity [2] - 25:16, 26:18 care [4] - 65:13, 66:2, 67:15, 70:16 carries [1] - 80:2 CARUCCI [3] - 2:24, 81:3, 81:21 case [8] - 15:2, 32:18, 36:4, 38:11, 42:3, 47:2, 48:4, 75:19 Case [1] - 13:3 cemetery [1] - 55:2 center [2] - 28:5, 29:15 Center [1] - 45:13 central [1] - 36:20 certain [1] - 52:19 certainly [21] - 17:10, 21:25, 22:10, 23:13, 24:10, 24:15, 24:16, 46:22, 47:15, 47:22, 48:4, 48:8, 49:23, 50:9, 50:17, 51:14, 52:1, 53:6, 75:15, 75:17, 76:12 certification [1] - 77:22 Certified [3] - 2:19, 5:7, 81:5</p>	<p>changes [12] - 19:9, 20:25, 21:1, 23:21, 24:3, 24:8, 25:24, 26:1, 28:7, 29:12, 41:5 changing [2] - 31:8, 76:7 charge [1] - 22:11 Chief [1] - 38:18 chime [1] - 77:3 choice [2] - 19:21, 20:22 Chopra [3] - 4:19, 56:21, 57:8 CHOPRA [5] - 57:1, 57:8, 57:14, 57:20, 58:2 Christine [3] - 24:2, 26:3, 45:1 CHRISTINE [2] - 4:6, 45:2 Christine's [1] - 44:2 Christmas [2] - 61:5, 61:7 CHRISTOPHER [1] - 2:9 circulated [1] - 17:9 circulation [10] - 29:13, 30:2, 30:3, 30:7, 30:18, 33:1, 38:1, 39:4, 42:14, 53:1 Circulation [3] - 6:6, 6:8, 6:11 circumstances [1] - 53:10 civil [1] - 24:12 clarification [1] - 40:22 clarify [1] - 62:25 Class [1] - 31:23 classified [1] - 72:17 clear [1] - 42:2 clerk [1] - 10:11 close [2] - 32:24, 75:8 closing [1] - 75:11 club [1] - 64:3 CME [2] - 2:17, 2:20 code [2] - 70:2 Code [1] - 81:18 Cofone [8] - 24:2, 26:3, 44:13, 45:2, 45:23, 51:19, 53:16, 75:22 COFONE [4] - 4:6, 44:18, 45:1, 45:17 cofone [1] - 4:6 Cofone's [1] - 44:7 Colliers [34] - 5:3, 5:6, 5:12, 5:18, 5:20,</p>	<p>5:24, 6:4, 6:7, 6:9, 6:11, 6:13, 6:15, 6:18, 6:20, 6:23, 6:25, 7:2, 7:5, 7:12, 7:15, 7:17, 7:19, 8:2, 8:5, 8:7, 8:10, 8:12, 8:15, 8:17, 8:20, 8:22, 8:25, 9:3, 27:10 color [3] - 31:25, 32:4, 49:23 combined [2] - 32:9, 32:19 comfortable [1] - 43:8 coming [1] - 27:9 commencement [1] - 9:9 commences [3] - 43:22, 78:14, 78:16 commencing [1] - 78:18 comment [8] - 10:18, 10:21, 39:2, 39:12, 41:23, 41:25, 42:9 comments [6] - 54:20, 55:12, 55:13, 55:15, 77:24, 78:4 commission [1] - 81:9 commitments [1] - 41:15 Compactor [1] - 8:4 compactor [1] - 35:20 compactor-fed [1] - 35:20 compared [1] - 52:25 completed [1] - 78:14 completely [2] - 32:8, 41:11 Compliance [3] - 8:11, 8:14, 8:16 compliance [2] - 51:5, 77:24 Compliant [2] - 7:21, 7:24 complied [2] - 15:21, 59:23 complies [2] - 41:11, 81:16 comply [16] - 20:15, 21:1, 21:2, 35:2, 39:20, 39:21, 40:1, 40:2, 40:25, 47:8, 50:12, 50:13, 50:17, 51:24, 53:9, 70:10 complying [4] - 35:7, 36:8, 39:21, 52:5 concern [2] - 19:23, 53:10 concerned [3] - 38:7, 58:24, 61:12</p>	<p>concerns [1] - 30:20 concluded [1] - 80:10 conclusion [1] - 49:11 concur [1] - 22:10 condition [2] - 71:11, 77:10 Conditions [2] - 6:17, 6:19 conditions [4] - 76:21, 76:22, 76:24, 76:25 conducting [1] - 75:18 conducts [1] - 12:24 conference [1] - 17:13 Conference [1] - 3:1 confirm [1] - 54:7 confirming [1] - 77:11 confirming [1] - 39:17 confused [2] - 56:6, 67:24 consequences [1] - 42:25 Conservation [1] - 5:10 consider [4] - 16:2, 68:24, 68:25, 69:2 consideration [1] - 16:14 considerations [1] - 51:21 consistent [2] - 24:5, 78:4 consisting [28] - 5:12, 6:4, 6:6, 6:9, 6:11, 6:13, 6:15, 6:17, 6:20, 6:22, 6:24, 7:4, 7:6, 7:9, 7:21, 7:24, 8:2, 8:4, 8:7, 8:9, 8:12, 8:14, 8:17, 8:19, 8:22, 8:24, 9:3, 9:5 Consolidation [2] - 8:19, 8:21 construct [3] - 47:5, 47:7, 47:23 constructing [1] - 47:6 construction [4] - 46:11, 46:16, 47:15, 78:16 Consulting [3] - 4:6, 5:15, 6:2 container [1] - 36:10 containers [1] - 35:21 continue [1] - 31:11 continued [1] - 76:9 Conveyance [1] - 9:3 cooperation [1] - 36:21 copy [2] - 10:8, 10:10</p>

<p>corner [4] - 27:15, 27:17, 32:22, 42:11</p> <p>Corner [1] - 4:18</p> <p>correct [11] - 17:20, 17:23, 23:4, 26:25, 29:1, 33:22, 34:2, 53:2, 56:9, 69:22, 78:17</p> <p>council [1] - 70:15</p> <p>Council [1] - 71:20</p> <p>Councilman [1] - 12:3</p> <p>COUNCILMAN [8] - 2:5, 12:4, 18:14, 72:4, 72:7, 74:11, 74:17, 79:20</p> <p>councilman [2] - 18:13, 79:19</p> <p>Counsel [1] - 3:6</p> <p>counterclockwise [1] - 42:17</p> <p>COUNTY [1] - 1:2</p> <p>County [1] - 5:9</p> <p>couple [3] - 17:2, 51:20, 76:24</p> <p>course [3] - 32:7, 46:8, 52:4</p> <p>courses [1] - 45:12</p> <p>Court [27] - 4:19, 14:19, 14:20, 15:2, 15:19, 19:2, 19:18, 19:19, 19:22, 19:25, 20:1, 20:4, 20:7, 20:11, 20:23, 20:25, 21:5, 21:9, 21:22, 54:23, 55:7, 57:4, 57:10, 65:1, 74:24, 81:5, 81:9</p> <p>court [14] - 27:24, 28:1, 29:15, 29:24, 30:2, 30:5, 36:3, 36:5, 36:7, 38:4, 42:20, 42:24, 57:16, 60:21</p> <p>COURT [3] - 1:22, 1:23, 74:24</p> <p>Court's [2] - 20:20, 20:21</p> <p>coverage [1] - 41:10</p> <p>create [3] - 48:5, 53:9, 53:12</p> <p>created [1] - 81:10</p> <p>creates [1] - 49:21</p> <p>credentials [1] - 45:16</p> <p>Cristiano [3] - 11:12, 18:3, 79:5</p> <p>CRISTIANO [5] - 2:4, 11:13, 18:1, 18:4, 79:6</p> <p>Criteria [1] - 48:2</p> <p>criteria [9] - 38:17,</p>	<p>46:5, 46:21, 47:1, 48:9, 48:18, 49:17, 49:25</p> <p>critical [1] - 33:1</p> <p>cross [2] - 43:14, 78:12</p> <p>cross-sections [1] - 78:12</p> <p>crossing [3] - 53:13, 64:11, 64:12</p> <p>crossings [4] - 30:19, 52:23, 65:4, 69:3</p> <p>crosswalks [1] - 63:23</p> <p>crumble [1] - 70:24</p> <p>crumbling [1] - 71:15</p> <p>CUCCHIARO [60] - 2:15, 13:23, 14:4, 14:11, 17:23, 18:21, 22:21, 22:24, 23:2, 23:6, 23:17, 24:24, 25:3, 25:11, 25:15, 26:7, 44:14, 44:24, 54:18, 55:11, 55:25, 56:3, 56:9, 56:12, 56:22, 57:6, 57:12, 57:19, 57:23, 58:5, 58:8, 58:16, 58:20, 59:4, 59:6, 59:16, 59:22, 60:6, 62:4, 62:19, 62:22, 66:8, 66:20, 66:23, 67:6, 67:10, 67:16, 67:19, 69:14, 69:17, 71:22, 72:12, 74:21, 75:2, 75:9, 76:15, 77:5, 77:18, 78:5, 78:19</p> <p>Cucchiaro [6] - 22:9, 23:19, 24:6, 26:23, 54:16, 78:2</p> <p>curb [4] - 30:10, 30:14, 52:21, 63:24</p> <p>curbing [1] - 52:20</p> <p>current [1] - 45:14</p> <p>Curtain [1] - 66:7</p> <p>Curtin [19] - 28:15, 29:8, 32:22, 32:23, 63:5, 63:12, 65:9, 65:24, 66:2, 70:13, 71:4, 72:8, 73:7, 73:10, 73:19, 73:20, 73:21, 74:2, 77:7</p> <p>curves [1] - 39:10</p> <p>cuts [1] - 63:24</p>	<p>5:8, 5:9, 5:11, 5:13, 5:16, 5:18, 5:21, 5:22, 5:24, 6:2, 6:5, 6:7, 6:10, 6:12, 6:14, 6:16, 6:18, 6:21, 6:23, 6:25, 7:3, 7:5, 7:8, 7:10, 7:13, 7:15, 7:17, 7:20, 7:23, 7:25, 8:3, 8:5, 8:8, 8:10, 8:13, 8:15, 8:18, 8:20, 8:23, 8:25, 9:4, 9:6, 27:10</p> <p>Dated [1] - 81:25</p> <p>days [1] - 57:17</p> <p>dead [1] - 32:23</p> <p>dead-end [1] - 32:23</p> <p>December [1] - 81:22</p> <p>decides [1] - 68:8</p> <p>decision [9] - 14:18, 14:21, 16:6, 20:20, 20:21, 20:22, 54:23, 55:7</p> <p>declare [1] - 10:3</p> <p>Dedication [2] - 7:2, 7:4</p> <p>deep [1] - 29:25</p> <p>definitely [1] - 35:3</p> <p>delivered [1] - 10:11</p> <p>demonstrate [1] - 23:21</p> <p>denied [8] - 14:16, 15:6, 15:17, 15:24, 16:23, 17:2, 19:7, 27:19</p> <p>denies [2] - 16:24, 21:8</p> <p>deny [1] - 17:15</p> <p>denying [1] - 64:20</p> <p>department [3] - 36:22, 38:19, 38:23</p> <p>Department [1] - 63:20</p> <p>depicted [1] - 37:10</p> <p>described [1] - 31:11</p> <p>DESCRIPTION [6] - 5:2, 6:1, 7:1, 8:1, 9:1, 9:15</p> <p>Description [1] - 7:2</p> <p>design [9] - 14:14, 15:23, 16:2, 16:14, 17:3, 21:12, 21:16, 50:14, 59:25</p> <p>Design [34] - 5:3, 5:6, 5:13, 5:18, 5:20, 5:24, 6:4, 6:7, 6:9, 6:12, 6:14, 6:16, 6:18, 6:21, 6:23, 6:25, 7:3, 7:5, 7:12, 7:15, 7:17, 7:20, 8:3, 8:5, 8:8, 8:10, 8:12,</p>	<p>8:15, 8:17, 8:20, 8:22, 8:25, 9:4, 27:11</p> <p>designed [1] - 42:14</p> <p>desirable [2] - 48:10, 53:12</p> <p>detriment [3] - 48:21, 48:22, 49:13</p> <p>developers [1] - 65:8</p> <p>development [4] - 26:18, 33:3, 38:12, 43:7</p> <p>developments [1] - 64:3</p> <p>difference [1] - 60:4</p> <p>differences [1] - 19:6</p> <p>different [6] - 30:4, 49:4, 49:5, 61:17, 61:20</p> <p>difficult [1] - 63:7</p> <p>direct [2] - 29:14, 51:17</p> <p>directed [1] - 15:18</p> <p>directions [1] - 39:5</p> <p>directly [4] - 20:17, 34:22, 44:6, 72:8</p> <p>director [2] - 26:18, 43:6</p> <p>discouraged [1] - 30:19</p> <p>discuss [3] - 56:10, 56:11, 59:17</p> <p>discussed [2] - 39:2, 79:1</p> <p>discussion [1] - 21:12</p> <p>discussions [1] - 16:7</p> <p>distance [1] - 43:5</p> <p>distribution [1] - 60:11</p> <p>District [1] - 5:10</p> <p>Dock [2] - 8:6, 8:9</p> <p>docks [1] - 27:24</p> <p>Domin [1] - 56:11</p> <p>done [5] - 35:23, 41:9, 43:5, 43:11, 65:14</p> <p>door [1] - 63:3</p> <p>DOT [1] - 72:22</p> <p>down [3] - 37:23, 64:25, 65:20</p> <p>draft [1] - 17:9</p> <p>drainage [2] - 41:8, 71:6</p> <p>drive [5] - 29:14, 29:17, 30:15, 52:22, 52:24</p> <p>driveway [7] - 29:22, 30:12, 37:21, 42:1, 42:4, 42:6, 68:18</p> <p>driveways [9] - 32:24, 37:19, 38:9, 38:13,</p>	<p>63:1, 63:4, 64:15, 65:25</p> <p>duly [6] - 25:10, 44:22, 57:5, 58:15, 62:13, 67:5</p> <p>dumpsters [1] - 50:3</p>
			E	
			<p>e-mail [1] - 38:21</p> <p>E1 [1] - 36:23</p> <p>earth [1] - 31:25</p> <p>east [9] - 27:20, 27:22, 27:25, 28:3, 29:18, 31:1, 33:21, 38:1, 38:5</p> <p>East [1] - 73:3</p> <p>easterly [2] - 28:13, 29:2</p> <p>eastern [1] - 28:24</p> <p>Edward [1] - 35:7</p> <p>effective [3] - 34:14, 35:5, 49:6</p> <p>efficient [1] - 43:9</p> <p>egress [1] - 19:25</p> <p>EILEEN [1] - 2:21</p> <p>Eileen [1] - 23:4</p> <p>either [12] - 17:15, 37:19, 39:20, 39:25, 40:1, 40:24, 40:25, 41:2, 47:6, 49:13, 76:19</p> <p>elevating [1] - 34:24</p> <p>eliminate [2] - 33:9, 48:25</p> <p>EMAIL [1] - 3:5</p> <p>emanating [1] - 32:8</p> <p>employed [1] - 81:14</p> <p>enclosed [2] - 35:20, 61:10</p> <p>Enclosure [1] - 8:4</p> <p>encourage [1] - 53:4</p> <p>end [7] - 32:23, 35:19, 36:2, 37:19, 43:23, 44:9, 63:5</p> <p>ended [1] - 22:17</p> <p>ends [1] - 35:24</p> <p>enforcement [2] - 70:2, 70:3</p> <p>engaged [1] - 16:7</p> <p>engineer [6] - 24:1, 24:13, 25:20, 26:15, 43:6</p> <p>Engineer [4] - 2:16, 39:1, 41:22, 43:12</p> <p>Engineering [37] - 5:3, 5:6, 5:13, 5:18, 5:20, 5:22, 5:24, 6:4, 6:7, 6:9, 6:12, 6:13, 6:15, 6:18, 6:20, 6:23,</p>	

D

dad [1] - 57:15

date [1] - 77:22

Date [1] - 81:22

dated [45] - 5:3, 5:6,

<p>housekeeping [2] - 22:14, 43:10</p> <p>Howell [38] - 2:21, 4:21, 4:22, 10:3, 10:12, 10:15, 10:16, 11:7, 37:9, 37:16, 37:21, 41:16, 42:1, 42:4, 42:5, 43:15, 45:9, 57:13, 58:14, 62:12, 62:16, 63:1, 63:2, 63:6, 63:16, 63:18, 63:22, 64:2, 64:8, 64:12, 64:18, 64:22, 67:4, 68:18, 69:3, 73:4, 73:10, 78:10</p> <p>HOWELL [2] - 1:1, 1:7</p> <p>Howell's [1] - 47:9</p> <p>Hugeback [4] - 7:7, 7:22, 7:25, 9:6</p> <p>Huszar [2] - 11:16, 13:19</p> <p>HUSZAR [5] - 2:7, 11:17, 13:8, 13:12, 13:17</p>	<p>37:24</p> <p>Inc [5] - 2:18, 7:7, 7:22, 7:25, 9:6</p> <p>incident [2] - 25:25, 46:6</p> <p>include [3] - 41:15, 59:8, 65:20</p> <p>included [2] - 16:10, 65:5</p> <p>including [3] - 24:12, 76:6, 76:9</p> <p>Independence [1] - 3:3</p> <p>indicated [1] - 49:6</p> <p>indicating [3] - 28:12, 29:3</p> <p>indicating [1] - 39:9</p> <p>indication [1] - 21:14</p> <p>individual [1] - 37:1</p> <p>Industrial [1] - 68:21</p> <p>industrial [2] - 38:12, 68:10</p> <p>Infiltration [2] - 5:19, 7:19</p> <p>ingress [1] - 19:25</p> <p>inquiry [1] - 20:19</p> <p>installed [1] - 69:18</p> <p>installing [2] - 41:17, 52:6</p> <p>instance [3] - 16:12, 20:7, 35:17</p> <p>instances [1] - 51:1</p> <p>instead [2] - 39:18, 39:20</p> <p>intend [2] - 23:23, 52:13</p> <p>intended [2] - 43:3, 43:9</p> <p>intensity [2] - 60:12, 61:19</p> <p>intent [6] - 36:11, 50:6, 50:23, 51:2, 51:13, 53:7</p> <p>interest [3] - 48:4, 81:13, 81:14</p> <p>interested [1] - 40:18</p> <p>internal [1] - 28:1</p> <p>interrupting [1] - 40:8</p> <p>intersected [1] - 72:25</p> <p>intersecting [1] - 73:2</p> <p>intersection [4] - 30:16, 63:21, 63:23, 72:25</p> <p>intersections [3] - 30:12, 52:23</p> <p>Inventory [1] - 5:23</p> <p>invitation [1] - 57:24</p> <p>involved [2] - 15:5, 81:12</p> <p>involves [1] - 15:4</p>	<p>Iraq [1] - 73:9</p> <p>issue [8] - 20:8, 43:4, 50:8, 63:16, 70:2, 70:3, 70:18, 73:12</p> <p>issued [1] - 20:23</p> <p>issues [7] - 16:4, 43:20, 50:10, 54:24, 54:25, 55:2</p> <p>issuing [1] - 14:21</p> <p>items [1] - 12:25</p> <p>itself [2] - 29:22, 29:24</p>	<p style="text-align: center;">L</p> <p>L-A-N-G-E [1] - 25:14</p> <p>labeled [1] - 27:16</p> <p>land [3] - 47:25, 48:19, 50:20</p> <p>Land [2] - 6:22, 48:12</p> <p>landscape [3] - 31:12, 31:15</p> <p>Landscape [3] - 8:2, 8:6, 8:9</p> <p>landscaped [1] - 35:22</p> <p>landscaping [9] - 32:1, 35:8, 35:24, 36:3, 36:10, 50:3, 50:8, 51:5, 52:6</p> <p>lane [2] - 72:16, 72:17</p> <p>Lane [17] - 28:16, 29:8, 32:22, 63:5, 63:12, 65:10, 65:24, 66:3, 70:13, 71:4, 72:8, 73:7, 73:19, 73:20, 73:21, 74:2, 77:7</p> <p>Lange [22] - 23:24, 24:19, 24:22, 24:25, 25:14, 25:16, 25:17, 26:7, 26:14, 33:10, 33:13, 45:24, 46:9, 47:14, 48:23, 50:1, 51:25, 53:16, 63:1, 64:14, 75:21, 77:3</p> <p>LANGE [11] - 4:4, 25:2, 25:7, 25:13, 26:8, 60:10, 61:6, 61:16, 74:4, 77:17, 78:2</p> <p>Lange's [1] - 44:8</p> <p>language [1] - 16:17</p> <p>last [10] - 5:13, 7:13, 7:17, 7:23, 9:4, 9:7, 17:13, 40:15, 62:20</p> <p>lastly [1] - 64:5</p> <p>Laura [2] - 72:13</p> <p>LAURA [4] - 2:16, 2:24, 81:3, 81:21</p> <p>Laura's [1] - 78:3</p> <p>Law [3] - 2:15, 14:2, 48:12</p> <p>law [3] - 47:25, 48:19, 50:21</p> <p>LAW [1] - 3:2</p> <p>laying [1] - 64:8</p> <p>layout [2] - 37:20, 60:23</p> <p>leading [1] - 29:23</p> <p>least [2] - 30:10, 73:22</p> <p>leave [1] - 40:3</p> <p>LED [1] - 68:16</p>	<p>Ledger [1] - 10:9</p> <p>left [3] - 30:25, 35:18, 72:23</p> <p>legal [1] - 76:4</p> <p>length [1] - 33:18</p> <p>Leon [1] - 2:18</p> <p>less [3] - 35:5, 49:6, 53:12</p> <p>letter [4] - 39:1, 41:22, 42:9, 43:11</p> <p>Letter [2] - 5:3, 7:14</p> <p>Letters [1] - 7:11</p> <p>level [1] - 61:17</p> <p>Lewis [1] - 38:18</p> <p>Licence [2] - 2:25, 81:21</p> <p>licensed [1] - 45:6</p> <p>licenses [1] - 45:14</p> <p>lieu [1] - 14:17</p> <p>light [6] - 32:8, 34:15, 61:7, 61:9, 61:11, 77:11</p> <p>Lighting [1] - 6:24</p> <p>lighting [29] - 39:16, 39:17, 40:9, 40:13, 40:16, 40:18, 40:19, 50:11, 51:2, 60:11, 60:12, 60:14, 60:19, 60:21, 61:4, 61:5, 61:6, 61:8, 61:10, 61:14, 61:17, 67:23, 67:24, 68:7, 68:9, 69:18, 69:25, 77:18</p> <p>lightings [1] - 60:4</p> <p>lights [3] - 68:16, 68:21, 69:18</p> <p>limit [2] - 20:21, 21:12</p> <p>limited [6] - 20:14, 20:19, 20:25, 21:15, 21:21, 55:4</p> <p>limiting [1] - 20:24</p> <p>line [3] - 28:13, 29:4, 33:8</p> <p>Line [2] - 6:3, 8:24</p> <p>linked [1] - 19:24</p> <p>List [2] - 5:4, 5:7</p> <p>list [3] - 22:16, 23:14, 72:10</p> <p>listen [1] - 19:22</p> <p>listening [2] - 20:25, 80:6</p> <p>literally [1] - 36:8</p> <p>litigation [1] - 15:19</p> <p>live [2] - 62:16, 68:9</p> <p>lived [1] - 62:24</p> <p>LLC [4] - 1:6, 1:22, 4:4, 13:4</p> <p>LLP [1] - 2:15</p> <p>Loading [2] - 8:6, 8:9</p> <p>loading [1] - 27:23</p>
<p style="text-align: center;">I</p>		<p style="text-align: center;">J</p>		
<p>ID [1] - 81:4</p> <p>identical [1] - 31:2</p> <p>identified [1] - 50:2</p> <p>identifying [2] - 24:3, 25:24</p> <p>IED [1] - 77:15</p> <p>IES [8] - 40:2, 40:18, 40:25, 50:14, 60:13, 77:16, 77:17, 77:18</p> <p>illuminating [2] - 39:22, 50:15</p> <p>illumination [1] - 50:12</p> <p>imagine [1] - 41:6</p> <p>immediately [8] - 21:11, 35:23, 36:10, 37:12, 50:9, 51:9, 52:6, 52:11</p> <p>Impact [2] - 5:22, 6:2</p> <p>impact [5] - 49:5, 49:6, 49:19, 49:20, 55:1</p> <p>impacted [1] - 69:4</p> <p>impervious [1] - 41:10</p> <p>important [1] - 60:15</p> <p>impracticability [1] - 51:22</p> <p>impractical [1] - 53:9</p> <p>Improvement [1] - 7:9</p> <p>improvement [1] - 63:11</p> <p>inbound [2] - 37:21,</p>		<p>Jacqueline [2] - 4:22, 67:8</p> <p>January [3] - 10:7, 10:10, 10:13</p> <p>JENNIFER [1] - 2:18</p> <p>JEROMIE [2] - 4:4, 25:14</p> <p>Jeromie [5] - 23:24, 25:13, 40:5, 40:7, 60:9</p> <p>JERSEY [2] - 1:2, 1:24</p> <p>Jersey [17] - 3:4, 10:6, 10:16, 44:22, 45:4, 45:8, 46:24, 58:14, 62:12, 62:17, 67:4, 73:9, 81:4, 81:6, 81:10, 81:17, 81:22</p> <p>JOSEPH [1] - 2:4</p> <p>Jr [2] - 4:21, 62:15</p> <p>Judge [11] - 15:20, 16:1, 16:4, 16:13, 16:25, 59:6, 59:18, 59:22, 59:23, 60:1, 65:1</p> <p>judicial [1] - 59:10</p> <p>jump [1] - 27:12</p> <p>juncture [1] - 17:16</p> <p>jurisdiction [1] - 23:13</p> <p>justification [1] - 24:7</p>		
		<p style="text-align: center;">K</p>		
		<p>Kathy [3] - 4:20, 58:4, 58:18</p> <p>killed [1] - 73:8</p> <p>kind [11] - 28:7, 29:3, 29:4, 31:24, 34:3, 35:10, 36:13, 39:19, 63:11, 63:13, 64:21</p> <p>KYLE [4] - 2:8, 12:6, 18:16, 79:22</p> <p>Kyle [2] - 18:15, 79:21</p> <p>kyle [1] - 12:5</p>		

<p>located [3] - 28:1, 28:17, 29:15</p> <p>location [1] - 53:4</p> <p>logs [1] - 13:20</p> <p>look [1] - 27:14</p> <p>looked [1] - 36:6</p> <p>looking [5] - 17:2, 32:3, 35:17, 58:25, 72:9</p> <p>looks [1] - 73:22</p> <p>lost [1] - 31:17</p> <p>LOT [1] - 1:6</p> <p>lower [3] - 11:4, 55:22, 60:15</p>	<p>maximize [1] - 33:19</p> <p>maximum [2] - 34:19, 41:12</p> <p>MAYOR [1] - 1:9</p> <p>mean [2] - 68:11, 72:16</p> <p>meaning [2] - 47:7, 47:19</p> <p>means [4] - 17:21, 29:17, 31:18, 42:18</p> <p>mechanisms [1] - 46:20</p> <p>meet [4] - 47:9, 49:8, 51:12</p> <p>MEETING [1] - 1:4</p> <p>Meeting [2] - 10:2, 10:6</p> <p>meeting [10] - 10:3, 10:24, 11:6, 13:20, 50:5, 51:2, 52:13, 55:19, 70:15, 74:12</p> <p>meets [1] - 53:6</p> <p>MEGAN [1] - 2:11</p> <p>Members [1] - 22:3</p> <p>members [6] - 10:17, 10:19, 14:8, 16:19, 64:19, 75:22</p> <p>MEMBERS [1] - 2:1</p> <p>memorandum [1] - 38:20</p> <p>memos [1] - 52:18</p> <p>mentioned [3] - 24:6, 37:25, 43:11</p> <p>Mercer [3] - 12:7, 18:17, 79:23</p> <p>MERCER [4] - 2:9, 12:8, 18:18, 79:24</p> <p>mess [1] - 65:15</p> <p>met [4] - 36:12, 38:17, 50:24, 51:14</p> <p>method [1] - 35:11</p> <p>Michael [20] - 28:15, 29:8, 32:22, 32:23, 63:5, 63:11, 65:9, 65:24, 66:2, 66:7, 70:13, 71:4, 72:7, 73:7, 73:10, 73:19, 73:20, 73:21, 74:2, 77:6</p> <p>mid [2] - 30:19, 52:23</p> <p>mid-block [2] - 30:19, 52:23</p> <p>middle [1] - 30:3</p> <p>Mile [2] - 44:21, 45:3</p> <p>mill [3] - 43:16, 43:17, 66:1</p> <p>milled [1] - 78:11</p> <p>milling [2] - 41:15, 73:18</p> <p>MILLSTONE [1] - 1:24</p>	<p>mind [1] - 69:6</p> <p>mine [1] - 63:2</p> <p>minor [1] - 36:14</p> <p>minute [1] - 66:13</p> <p>missed [1] - 71:2</p> <p>Mitchell [4] - 7:7, 7:22, 7:25, 9:6</p> <p>mitigate [1] - 32:10</p> <p>MLUL [1] - 76:4</p> <p>modification [1] - 33:25</p> <p>modifications [1] - 15:5</p> <p>modified [1] - 17:22</p> <p>modify [1] - 49:1</p> <p>moment [2] - 12:16, 12:21</p> <p>MONMOUTH [1] - 1:2</p> <p>Monmouth [1] - 5:9</p> <p>motion [11] - 17:15, 17:18, 17:19, 17:25, 18:2, 76:19, 78:21, 78:23, 78:24, 79:3, 80:2</p> <p>move [3] - 16:25, 41:8, 62:1</p> <p>moved [1] - 68:11</p> <p>moving [2] - 16:11, 41:6</p> <p>MR [164] - 11:13, 11:15, 11:19, 11:25, 12:6, 12:8, 13:23, 13:25, 14:4, 14:11, 17:19, 17:23, 17:24, 18:1, 18:4, 18:6, 18:8, 18:12, 18:16, 18:18, 18:21, 22:8, 22:21, 22:23, 22:24, 22:25, 23:2, 23:6, 23:7, 23:12, 23:17, 23:18, 24:24, 25:2, 25:3, 25:7, 25:11, 25:13, 25:15, 25:17, 26:7, 26:8, 26:13, 33:10, 33:13, 33:15, 33:17, 33:24, 34:4, 34:7, 40:4, 44:4, 44:13, 44:14, 44:24, 45:18, 45:22, 51:18, 53:14, 53:22, 54:2, 54:7, 54:11, 54:18, 55:11, 55:25, 56:3, 56:9, 56:12, 56:22, 57:1, 57:6, 57:8, 57:12, 57:14, 57:19, 57:20, 57:23, 58:2, 58:5, 58:8, 58:16, 58:20, 59:4, 59:6, 59:16, 59:22, 60:6, 60:9, 60:10, 61:6,</p>	<p>61:16, 62:4, 62:9, 62:14, 62:19, 62:21, 62:22, 62:23, 66:8, 66:9, 66:13, 66:17, 66:19, 66:20, 66:23, 67:6, 67:10, 67:16, 67:19, 68:4, 68:14, 68:20, 68:25, 69:6, 69:9, 69:10, 69:13, 69:14, 69:16, 69:17, 69:24, 70:6, 70:9, 70:18, 70:22, 70:25, 71:7, 71:10, 71:14, 71:16, 71:18, 71:22, 71:25, 72:12, 72:18, 72:21, 74:4, 74:7, 74:14, 74:21, 75:2, 75:9, 75:14, 76:15, 77:2, 77:5, 77:16, 77:17, 77:18, 78:2, 78:5, 78:17, 78:19, 78:24, 79:2, 79:6, 79:8, 79:10, 79:18, 79:22, 79:24, 80:3, 80:6</p> <p>MS [105] - 10:1, 11:10, 11:14, 11:16, 11:18, 11:20, 11:21, 11:22, 11:24, 12:2, 12:5, 12:7, 12:9, 12:12, 13:16, 13:21, 18:3, 18:5, 18:7, 18:9, 18:10, 18:11, 18:13, 18:15, 18:17, 18:19, 23:5, 25:1, 44:18, 45:1, 45:17, 55:14, 56:2, 56:6, 56:8, 56:10, 56:14, 56:15, 56:18, 56:20, 58:3, 58:7, 58:11, 58:18, 58:22, 59:14, 59:19, 60:3, 60:8, 61:1, 61:13, 61:21, 61:24, 62:1, 62:2, 62:3, 66:6, 66:11, 66:15, 66:18, 66:22, 67:1, 67:8, 67:12, 67:18, 67:21, 68:5, 68:19, 68:24, 69:11, 69:22, 70:5, 70:8, 70:11, 70:19, 70:23, 71:1, 71:8, 71:11, 71:15, 71:17, 71:19, 71:24, 72:2, 72:11, 72:15, 72:20, 73:25, 74:6, 74:20, 75:1, 75:5, 78:8, 79:3, 79:7, 79:9, 79:11, 79:13, 79:15, 79:16, 79:19, 79:21, 79:23, 79:25, 80:2</p>	<p>Municipal [2] - 10:15, 48:12</p> <p>must [1] - 56:18</p> <p>mute [2] - 11:4, 55:22</p> <p>muted [3] - 11:24, 49:23, 79:14</p> <p>mutually [1] - 16:17</p>
N				
<p>NAME [1] - 4:17</p> <p>name [14] - 11:2, 15:1, 25:12, 44:25, 45:1, 55:20, 57:7, 57:8, 58:17, 62:14, 62:20, 62:23, 67:7, 73:7</p> <p>named [1] - 73:1</p> <p>narrow [1] - 20:13</p> <p>narrowed [2] - 37:22, 37:23</p> <p>national [1] - 31:24</p> <p>Natural [1] - 5:23</p> <p>nature [2] - 32:5, 49:16</p> <p>nearby [1] - 68:9</p> <p>nearly [1] - 34:14</p> <p>necessary [5] - 21:13, 24:6, 32:13, 52:19, 77:4</p> <p>need [11] - 10:22, 10:25, 17:14, 20:6, 47:22, 49:1, 49:7, 58:5, 62:4, 63:18, 66:21</p> <p>needed [5] - 24:15, 25:25, 46:5, 50:18, 59:24</p> <p>needs [3] - 47:5, 65:3, 71:3</p> <p>negative [5] - 48:18, 49:17, 49:19, 49:20, 49:25</p> <p>negotiations [1] - 14:22</p> <p>neighborhood [2] - 49:21, 57:18</p> <p>neighboring [1] - 28:21</p> <p>neighbors [5] - 15:10, 47:13, 47:21, 48:7, 52:9</p> <p>neighbors' [1] - 60:22</p> <p>networks [1] - 52:8</p> <p>NEUMANN [7] - 2:16, 69:22, 70:5, 70:8, 72:15, 73:25, 78:8</p> <p>Neumann [3] - 69:9, 69:12, 69:17</p> <p>never [8] - 70:14, 70:17, 70:20, 73:11,</p>				

<p>73:15 New [17] - 3:4, 10:6, 10:16, 44:21, 45:4, 45:8, 46:23, 58:14, 62:12, 62:16, 67:4, 73:9, 81:4, 81:6, 81:10, 81:17, 81:22 NEW [2] - 1:2, 1:24 Newtons [1] - 4:18 next [11] - 13:3, 13:13, 23:3, 36:13, 38:25, 39:14, 56:13, 56:21, 58:4, 62:3, 63:2 nice [1] - 57:16 NICHOLAS [1] - 2:7 Nick [1] - 13:16 night [4] - 68:13, 68:18, 68:19, 80:8 NO [7] - 1:10, 5:2, 6:1, 7:1, 8:1, 9:1, 9:15 north [5] - 30:5, 35:18, 36:2, 38:1, 42:20 North [1] - 8:6 north/south [1] - 27:21 northeast [3] - 27:17, 32:22, 42:11 Notary [4] - 81:3, 81:4, 81:22, 81:22 note [2] - 29:8, 39:15 noted [2] - 35:6, 78:15 nothing [9] - 25:6, 31:17, 44:16, 51:16, 56:25, 58:10, 62:8, 65:14, 66:25 notice [5] - 10:5, 10:8, 10:11, 10:13, 65:4 noticed [1] - 63:10 November [2] - 5:16, 38:19 number [1] - 17:6</p>	<p>58:22, 59:14, 59:19, 60:3, 60:8, 61:1, 61:13, 61:21, 61:24, 62:2 Okerson [23] - 4:20, 41:16, 42:19, 42:22, 54:8, 58:4, 58:14, 58:18, 58:19, 63:22, 64:4, 64:7, 64:11, 66:2, 67:23, 69:4, 71:2, 72:19, 72:22, 72:23, 73:4, 73:18 old [1] - 72:19 once [3] - 10:18, 76:2, 78:16 one [62] - 6:4, 6:6, 6:9, 6:11, 6:13, 6:15, 6:17, 6:20, 6:22, 6:25, 7:4, 7:25, 8:2, 8:4, 8:7, 8:9, 8:12, 8:14, 8:17, 8:19, 8:22, 8:24, 9:3, 10:24, 11:10, 13:21, 17:7, 18:23, 19:7, 21:17, 26:5, 30:5, 30:6, 30:25, 31:2, 31:6, 32:15, 39:4, 39:11, 41:23, 42:14, 42:25, 43:12, 47:23, 48:14, 51:21, 52:7, 52:18, 55:19, 56:20, 58:3, 65:1, 66:11, 68:20, 69:3, 69:7, 70:12, 73:9, 75:5, 76:7 one's [1] - 13:13 open [8] - 10:4, 34:11, 34:13, 44:9, 46:15, 53:17, 54:15, 55:10 Open [1] - 10:6 opened [1] - 55:15 opens [2] - 10:19, 56:16 operate [1] - 42:16 operation [1] - 31:19 operationally [1] - 43:8 Operations [1] - 5:17 opinion [4] - 21:6, 21:10, 47:19, 48:2 opportunity [1] - 75:20 opposite [1] - 39:5 order [2] - 47:22, 48:13 ordered [1] - 59:18 orders [1] - 61:18 ordinance [29] - 21:2, 29:20, 32:14, 35:9, 36:9, 36:11, 38:7,</p>	<p>38:8, 38:11, 38:24, 39:18, 39:21, 40:1, 40:25, 49:9, 50:6, 50:13, 50:18, 50:24, 51:3, 51:6, 51:13, 51:24, 52:13, 53:7, 59:7, 60:16, 69:18, 76:4 Ordinance [1] - 47:9 orientated [1] - 60:18 orientation [1] - 76:7 original [7] - 16:12, 17:1, 21:10, 21:11, 27:19, 31:3, 37:10 originally [5] - 14:12, 15:6, 36:20, 39:16, 42:3 otherwise [2] - 22:1, 33:7 ourselves [1] - 70:21 outcome [1] - 81:15 outside [2] - 34:19, 77:21 outweigh [2] - 43:3, 48:22 Overall [1] - 6:19 overlap [1] - 42:10 overlay [3] - 41:16, 43:16, 43:18 overlying [1] - 41:16 own [3] - 20:20, 22:22, 57:12 owner [2] - 67:21, 77:8 owner's [1] - 67:19 Owners [1] - 5:7 owns [1] - 57:15</p>	<p>30:11, 30:15, 41:17, 52:24 part [6] - 18:23, 23:15, 24:4, 30:17, 34:23, 37:20 participate [1] - 21:20 particularly [4] - 19:12, 43:21, 52:7, 60:23 parties [2] - 14:21, 81:11 pass [1] - 39:4 passenger [3] - 28:4, 38:3, 42:7 passing [3] - 39:3, 39:11, 41:24 past [1] - 72:23 paths [1] - 33:1 PAUL [1] - 2:2 pause [2] - 13:22, 44:3 pave [1] - 74:1 paved [1] - 65:12 paving [3] - 54:8, 74:4, 74:8 pedestrian [7] - 30:18, 52:25, 53:4, 53:13, 63:24, 64:1, 65:6 pedestrians [1] - 63:19 people [2] - 63:17, 67:22 per [1] - 47:8 perceiving [1] - 32:2 percent [5] - 34:11, 34:13, 41:12, 46:15, 49:2 perfect [1] - 74:10 perhaps [1] - 52:11 permit [1] - 20:2 permitted [3] - 14:24, 15:13, 60:1 perspective [1] - 60:22 Phase [1] - 5:14 phone [2] - 74:20, 74:22 phone-in [1] - 74:20 piece [1] - 28:15 place [3] - 23:23, 28:3, 44:24 plaintiff [1] - 16:18 PLAN [2] - 1:8, 1:9 plan [46] - 13:6, 14:14, 15:6, 16:9, 16:12, 16:22, 16:23, 16:25, 17:1, 17:12, 17:22, 19:7, 20:15, 23:22, 24:4, 25:24, 27:8, 27:19, 27:20, 28:9, 30:18, 30:24, 31:3,</p>	<p>37:10, 39:15, 39:17, 40:9, 40:11, 40:14, 40:16, 40:18, 40:19, 43:18, 46:3, 49:14, 50:24, 53:5, 61:6, 76:2, 76:11, 76:17, 76:18, 76:20, 76:21, 79:1 Plan [8] - 6:6, 6:8, 6:11, 6:15, 6:24, 8:2, 8:6, 8:9 planner [6] - 24:1, 24:2, 25:21, 26:3, 26:15, 45:6 Planner [1] - 2:18 planners [1] - 65:19 planning [6] - 21:3, 38:9, 44:2, 45:10, 45:12, 46:18 PLANNING [1] - 1:1 Planning [6] - 2:21, 5:9, 10:1, 10:3, 10:14, 64:25 plans [5] - 40:20, 43:13, 58:25, 63:10, 65:5 Plans [6] - 5:12, 7:6, 7:9, 7:21, 9:2, 9:5 plants [1] - 51:8 plate [1] - 76:25 play [1] - 57:17 pledge [1] - 12:15 Pledge [1] - 12:20 plow [1] - 70:21 plowed [2] - 70:20, 70:21 Point [2] - 64:3 point [3] - 34:12, 43:12, 46:18 points [1] - 30:5 Points [3] - 63:22, 73:1, 73:3 poor [1] - 71:5 portion [4] - 30:6, 72:23, 74:2, 75:8 positive [2] - 49:16, 49:25 possible [1] - 11:6 posted [1] - 10:14 practical [4] - 50:10, 51:24, 52:1, 52:9 practicality [1] - 52:5 practicing [1] - 75:25 prefer [1] - 41:1 PRELIMINARY [2] - 1:8, 1:9 Preliminary [3] - 5:14, 5:19, 7:19 preliminary [6] - 13:6, 14:13, 25:19, 76:20,</p>
O		P		
<p>oath [1] - 81:8 obligations [1] - 76:4 obtaining [1] - 77:21 obviously [9] - 29:13, 32:8, 32:10, 32:20, 34:13, 34:15, 48:3, 75:23, 76:6 occasions [1] - 45:9 October [1] - 64:20 OF [4] - 1:1, 1:2, 1:15 offensive [1] - 61:9 offering [1] - 39:18 Office [1] - 9:2 office [1] - 10:14 OKERSON [13] - 58:11, 58:18, 58:19,</p>	<p>29:20, 32:14, 35:9, 36:9, 36:11, 38:7,</p>	<p>P.A [1] - 3:2 P.E [3] - 2:16, 4:4, 25:9 p.m [2] - 12:25, 80:11 P.M [1] - 1:13 P.P [4] - 2:18, 4:6, 25:9, 44:20 page [1] - 77:1 PAGE [8] - 4:2, 4:17, 5:2, 6:1, 7:1, 8:1, 9:1, 9:15 paid [1] - 77:22 palatable [1] - 47:21 parameters [1] - 21:23 Pardon [1] - 69:10 parenthetically [1] - 75:24 Park [2] - 10:8, 68:21 parking [8] - 15:8, 28:4, 29:18, 29:22,</p>	<p>30:18, 30:24, 31:3,</p>	<p>14:13, 25:19, 76:20,</p>

<p>76:21, 78:25 premarked [1] - 9:9 prepared [41] - 5:3, 5:5, 5:12, 5:15, 5:17, 5:20, 5:22, 5:24, 6:2, 6:4, 6:6, 6:9, 6:11, 6:13, 6:15, 6:17, 6:20, 6:22, 6:25, 7:2, 7:4, 7:7, 7:9, 7:12, 7:16, 7:19, 7:22, 7:25, 8:2, 8:4, 8:7, 8:10, 8:12, 8:15, 8:17, 8:19, 8:22, 8:24, 9:3, 9:6, 27:10 prerogative [1] - 14:17 present [9] - 11:13, 16:22, 17:12, 23:24, 24:16, 26:22, 27:2, 45:23, 75:20 PRESENT [2] - 2:1, 2:14 presentable [1] - 73:22 presentation [3] - 22:2, 76:17, 80:7 presented [1] - 24:18 press [2] - 11:3, 55:22 Press [1] - 10:9 presume [1] - 23:12 previous [2] - 16:9, 63:15 previously [2] - 16:22, 78:15 primary [1] - 27:13 problem [2] - 40:23, 66:10 problems [1] - 65:21 procedural [1] - 15:2 proceed [3] - 15:18, 27:4, 44:6 proceedings [1] - 23:16 PROCEEDINGS [1] - 1:15 process [1] - 15:3 Professional [1] - 81:6 professional [9] - 23:25, 24:1, 24:2, 25:20, 26:3, 26:14, 26:15, 45:6 professional's [1] - 50:14 professionals [1] - 24:11 PROFESSIONALS [1] - 2:14 Professionals [1] - 5:4 professionals' [1] -</p>	<p>77:25 profile [2] - 43:13, 78:12 program [1] - 49:23 project [7] - 24:3, 36:17, 62:18, 63:12, 65:8, 69:5, 73:17 promised [1] - 65:10 promote [1] - 48:8 promoting [2] - 48:2, 48:9 proof [5] - 15:22, 20:17, 48:14, 49:24, 51:14 proper [2] - 59:2, 71:23 Properties [1] - 13:4 properties [1] - 77:12 PROPERTY [1] - 1:6 property [7] - 28:13, 28:21, 57:12, 67:19, 67:21, 69:20, 77:8 Property [1] - 5:7 proposal [4] - 15:5, 17:6, 21:11, 21:17 proposals [1] - 21:19 proposed [1] - 30:25 proposing [4] - 32:18, 33:19, 47:4, 52:12 proud [1] - 76:11 provide [10] - 11:2, 26:4, 28:19, 30:10, 43:13, 47:12, 52:10, 69:19, 74:2, 78:11 provided [3] - 22:15, 51:8, 81:8 provides [1] - 70:1 providing [2] - 30:14, 35:8 proximity [1] - 32:24 PUBLIC [2] - 1:17, 4:15 Public [3] - 10:6, 81:4, 81:22 public [20] - 10:17, 10:20, 13:1, 14:8, 15:14, 15:16, 21:21, 25:24, 44:10, 48:4, 49:13, 54:16, 54:22, 55:10, 55:16, 56:16, 75:4, 75:8, 75:18, 75:23 pull [1] - 68:17 pump [4] - 36:21, 36:23, 36:25, 37:11 punctures [1] - 28:15 purpose [5] - 28:19, 30:1, 43:3, 43:9, 50:23 purposes [2] - 47:25,</p>	<p>48:11 pursuant [2] - 10:5, 76:14 pursue [1] - 76:9 push [1] - 65:1 pushed [3] - 37:7, 70:18, 73:12 put [8] - 19:5, 19:13, 19:15, 49:1, 63:23, 65:13, 73:13, 73:21 putting [3] - 30:2, 67:22, 68:15</p> <p style="text-align: center;">Q</p> <p>qualified [2] - 24:23, 45:9 quality [1] - 51:7 quantity [1] - 51:7 questioned [1] - 63:17 questions [17] - 10:18, 10:21, 17:8, 21:25, 22:4, 24:21, 44:3, 44:10, 53:15, 53:21, 54:2, 54:6, 54:19, 55:10, 55:11, 55:15, 75:23 QUESTIONS/ COMMENTS [1] - 4:15 quick [1] - 33:15 quorum [1] - 12:12</p> <p style="text-align: center;">R</p> <p>R.P.R [3] - 2:24, 81:3, 81:21 radii [1] - 39:10 railroad [5] - 64:7, 64:11, 64:12, 65:4, 69:3 rain [1] - 71:9 raise [6] - 10:23, 11:4, 55:18, 55:21, 55:22, 56:15 raise-your-hand [2] - 10:23, 55:18 Ramp [2] - 8:11, 8:14 ramps [4] - 30:10, 30:14, 52:20, 52:21 RANDY [1] - 2:3 rather [2] - 16:11, 78:1 rating [1] - 31:25 re [3] - 16:7, 16:22, 17:12 re-engaged [1] - 16:7 re-present [2] - 16:22, 17:12 reactivated [1] - 64:8 ready [1] - 27:2</p>	<p>real [1] - 33:15 really [11] - 15:23, 20:24, 27:13, 28:14, 30:8, 42:14, 43:15, 50:5, 55:4, 63:18, 75:15 rear [2] - 33:3, 47:16 reason [3] - 30:17, 47:3, 47:11 reasonable [3] - 49:16, 50:22, 51:12 reasons [1] - 51:25 received [1] - 23:10 recently [1] - 64:6 recitation [1] - 12:19 recognized [1] - 61:8 recommendation [1] - 70:7 reconfiguration [1] - 65:11 reconfigured [4] - 29:14, 63:21, 72:22, 73:6 reconfirmed [1] - 38:20 record [12] - 18:24, 23:15, 23:23, 24:2, 24:13, 24:14, 24:15, 25:12, 44:25, 58:17, 81:8 rectangles [1] - 35:19 recuse [1] - 13:9 Recused [1] - 2:7 recuses [1] - 13:20 recycling [3] - 35:15, 35:21, 51:3 Red [2] - 44:21, 45:3 red [1] - 39:8 reduce [3] - 33:25, 35:3, 35:4 reduced [2] - 29:21, 38:2 referee [1] - 81:9 referenced [2] - 28:25, 46:2 referred [1] - 23:15 refined [1] - 36:18 refuse [5] - 35:21, 50:3, 51:3, 51:10, 52:7 regard [9] - 20:5, 20:10, 22:12, 23:20, 43:19, 45:24, 49:22, 51:19, 52:20 regarding [3] - 17:8, 41:23, 52:18 Registered [1] - 81:6 regular [1] - 72:10 REGULAR [1] - 1:4 regulation [2] - 70:1,</p>	<p>81:17 regulations [1] - 47:9 rejected [4] - 19:19, 19:25, 20:4, 20:12 relate [2] - 46:25, 47:1 related [4] - 26:19, 47:24, 81:11, 81:13 relates [2] - 29:16, 46:10 relating [1] - 55:2 relative [3] - 42:16, 46:22, 51:1 relevant [1] - 30:11 relief [17] - 14:15, 15:23, 16:3, 19:11, 19:12, 19:16, 24:7, 25:25, 26:6, 32:12, 46:5, 46:9, 48:16, 49:15, 51:7, 59:25, 77:14 rely [1] - 24:17 remain [1] - 12:20 Remand [1] - 7:14 remand [2] - 13:6, 40:14 REMAND [2] - 1:7, 1:9 remanded [3] - 16:1, 16:14, 17:1 remarks [2] - 25:19, 75:11 remediated [1] - 20:6 remnant [2] - 72:19, 73:5 REMOTE [1] - 1:17 removed [1] - 64:7 Rendering [1] - 7:24 reorientation [3] - 15:7, 16:10, 19:8 replaced [1] - 69:25 report [3] - 5:20, 5:23, 78:6 Report [3] - 6:2, 7:12, 7:16 REPORTED [1] - 2:23 REPORTER [1] - 74:24 Reporter [3] - 74:25, 81:5, 81:6 REPORTERS [1] - 1:23 REPORTING [1] - 1:22 reports [2] - 77:25 representative [2] - 23:25, 25:18 requested [1] - 74:3 requests [1] - 76:5 required [11] - 11:2, 15:22, 24:7, 24:12, 26:5, 29:7, 32:13, 32:16, 34:11, 34:20,</p>
--	---	--	--	--

<p>38:13 requirement [3] - 34:10, 52:21, 60:17 requirements [7] - 20:15, 32:15, 49:9, 51:6, 59:8, 77:19, 77:20 requires [2] - 38:8, 69:18 resident [1] - 74:3 residential [5] - 15:10, 28:21, 31:20, 32:2, 33:4 residents [2] - 33:21, 68:9 Resource [1] - 5:23 respect [3] - 49:24, 50:24, 51:15 respectively [1] - 38:16 respects [1] - 61:18 response [5] - 11:23, 22:5, 54:14, 76:5, 79:12 responsibility [2] - 67:20, 77:9 restrained [1] - 54:23 restricted [1] - 42:6 resubmitted [1] - 40:15 retained [1] - 9:25 retaining [4] - 34:19, 34:21, 34:23, 46:16 Retaining [1] - 8:16 retreat [1] - 33:7 return [1] - 16:8 Rev [1] - 9:7 review [3] - 38:19, 50:25, 52:18 reviewed [1] - 38:18 reviewing [1] - 21:1 revised [8] - 5:13, 7:13, 7:17, 7:23, 9:4, 9:7, 46:3, 76:12 Revision [2] - 7:21, 7:24 revisions [1] - 39:7 revisit [4] - 20:2, 21:7, 21:15, 60:2 revisiting [1] - 20:8 ride [1] - 65:16 right-hand [1] - 27:14 rise [2] - 12:15, 12:19 Road [50] - 4:18, 4:20, 4:21, 4:22, 37:9, 37:16, 37:21, 41:16, 42:1, 42:4, 42:5, 42:19, 42:22, 43:15, 44:21, 45:3, 54:8, 58:14, 58:19, 62:12,</p>	<p>62:16, 63:2, 63:7, 63:16, 63:18, 63:22, 63:23, 64:4, 64:7, 64:8, 64:11, 64:12, 66:2, 67:4, 68:18, 69:3, 69:4, 71:2, 72:19, 72:22, 72:23, 73:1, 73:3, 73:4, 73:18, 78:10 ROAD [1] - 1:7 road [15] - 42:6, 65:11, 70:19, 71:12, 71:20, 72:10, 72:20, 72:21, 72:24, 73:5, 73:14, 73:15, 73:17, 74:8 roads [1] - 73:1 Roadway [1] - 7:9 roadway [5] - 43:13, 43:14, 52:8, 72:17 Rob [2] - 14:2, 43:24 ROBERT [2] - 2:10, 3:3 roll [1] - 11:9 Ron [2] - 17:20, 22:18 Ron's [1] - 22:10 RONALD [1] - 2:15 Rosemarie [1] - 55:24 Rosemary [1] - 4:18 roughly [1] - 37:14 Route [4] - 10:16, 63:22, 73:3, 73:4 rsimon@heroldlaw.com [1] - 3:5 RUBANO [50] - 2:21, 10:1, 11:10, 11:14, 11:16, 11:18, 11:20, 11:22, 11:24, 12:2, 12:5, 12:7, 12:9, 12:12, 13:16, 13:21, 18:3, 18:5, 18:7, 18:9, 18:11, 18:13, 18:15, 18:17, 18:19, 23:5, 25:1, 55:14, 56:2, 56:8, 56:15, 56:20, 58:3, 58:7, 62:1, 62:3, 74:20, 75:1, 75:5, 79:3, 79:7, 79:9, 79:11, 79:13, 79:16, 79:19, 79:21, 79:23, 79:25, 80:2 ruled [6] - 15:20, 16:5, 20:9, 54:25, 55:1, 55:3 ruling [1] - 59:10 run [1] - 76:23 Rutgers [1] - 45:13</p>	<p style="text-align: center;">S</p> <p>safe [2] - 43:8, 73:23 safety [2] - 30:20, 53:10 Sakers [1] - 68:21 sanitary [3] - 36:18, 36:20, 36:23 Sanitary [1] - 9:2 satisfied [2] - 20:16, 59:7 satisfy [2] - 35:8, 39:12 satisfying [2] - 38:22, 38:23 saw [1] - 17:13 scientist [1] - 24:14 scope [3] - 21:19, 26:24, 54:16 screen [1] - 53:25 screened [2] - 50:7, 51:4 screening [6] - 35:14, 47:12, 48:5, 48:6, 49:22, 52:11 Seaman [3] - 11:18, 18:7, 79:9 SEAMAN [5] - 2:10, 11:19, 18:8, 79:2, 79:10 second [10] - 10:10, 11:11, 13:21, 17:12, 18:1, 56:20, 58:3, 69:15, 79:2, 79:4 Secretary [1] - 2:21 Section [1] - 48:12 sections [3] - 38:8, 43:14, 78:12 see [9] - 27:15, 28:11, 29:3, 30:4, 30:24, 35:16, 49:14, 63:18, 68:12 seek [1] - 50:19 seeking [3] - 14:13, 34:16, 35:14 seem [1] - 63:11 sense [4] - 34:6, 34:16, 35:1, 52:10 separate [1] - 33:23 September [2] - 27:10, 64:20 series [1] - 28:7 serve [1] - 52:24 Serve [1] - 7:11 service [2] - 29:18, 36:25 Services [1] - 45:13 serving [2] - 12:17, 12:22 set [2] - 40:20, 65:24</p>	<p>setback [4] - 32:14, 33:8, 34:11, 34:20 setbacks [1] - 47:16 Settlement [2] - 9:16, 23:9 SETTLEMENT [2] - 1:7, 1:9 settlement [26] - 13:5, 14:22, 14:23, 15:11, 15:12, 15:17, 16:7, 16:9, 16:18, 16:20, 16:23, 17:6, 17:8, 17:13, 17:15, 17:21, 22:18, 24:5, 24:9, 27:20, 45:25, 75:17, 75:20, 76:2, 76:10, 76:17 Sewer [1] - 9:2 sewer [1] - 36:22 shaded [1] - 39:8 share [1] - 53:25 SHARI [1] - 2:19 sheet [23] - 6:4, 6:6, 6:9, 6:11, 6:13, 6:15, 6:17, 6:20, 6:22, 6:25, 7:4, 7:25, 8:2, 8:4, 8:7, 8:9, 8:12, 8:14, 8:17, 8:19, 8:22, 8:24, 9:3 sheets [5] - 5:12, 7:7, 7:9, 7:22, 9:6 short [1] - 29:9 shorter [1] - 49:3 show [1] - 43:17 showing [1] - 29:4 side [14] - 27:25, 28:3, 28:14, 28:18, 28:24, 29:2, 29:6, 29:18, 30:6, 31:13, 35:18, 38:5, 42:20 sides [1] - 71:17 sidewalk [7] - 63:14, 63:16, 66:1, 73:21, 74:2, 74:5, 77:6 Sidewalk [2] - 8:11, 8:14 sight [1] - 43:5 Sight [2] - 6:3, 8:24 sign [1] - 66:6 signage [3] - 65:13, 70:13, 73:13 significant [1] - 28:10 significantly [1] - 32:11 signing [1] - 57:25 silence [2] - 12:16, 12:21 similar [3] - 31:7, 33:11, 34:10 SIMON [24] - 3:3,</p>	<p>13:25, 22:8, 22:23, 22:25, 23:7, 23:12, 23:18, 25:17, 26:13, 40:4, 44:4, 44:13, 45:18, 45:22, 51:18, 53:14, 60:9, 75:14, 77:2, 77:16, 78:17, 80:3, 80:6 Simon [9] - 13:23, 14:2, 22:1, 22:7, 25:15, 51:17, 74:25, 75:11, 76:23 simply [3] - 16:2, 19:19, 51:9 Simultaneous [1] - 52:3 single [1] - 47:23 Site [3] - 5:12, 5:15, 6:15 SITE [2] - 1:8, 1:9 site [26] - 13:6, 14:14, 20:3, 20:15, 21:4, 24:4, 25:24, 27:7, 27:17, 28:1, 28:5, 29:16, 31:3, 32:9, 33:20, 37:7, 42:19, 43:22, 50:24, 76:20, 76:21, 78:14, 78:16, 78:18, 79:1 sites [2] - 16:4, 20:11 siting [1] - 51:2 situation [1] - 33:2 six [2] - 36:23, 37:1 size [2] - 36:24, 51:8 sky [1] - 68:12 small [2] - 36:24, 64:23 smaller [2] - 27:15, 28:7 so.. [1] - 69:5 Society [2] - 39:22, 50:15 Soil [1] - 5:10 soldier [1] - 73:8 solid [4] - 34:17, 35:14, 35:19, 49:2 solidly [1] - 48:15 somewhat [2] - 28:10, 28:22 sorry [5] - 11:25, 40:7, 56:18, 74:25, 77:15 sort [2] - 14:5, 44:7 sound [38] - 15:7, 16:10, 16:23, 19:8, 19:13, 28:11, 28:20, 31:9, 31:10, 31:16, 31:17, 31:18, 31:21, 31:22, 31:23, 31:24, 32:11, 33:18, 33:19, 34:1, 34:15, 34:22,</p>
---	---	--	---	---

<p>34:24, 46:11, 46:17, 47:4, 47:6, 47:9, 47:10, 47:11, 47:13, 48:5, 48:6, 48:17, 49:22, 76:6, 77:9</p> <p>South [1] - 8:9</p> <p>south [3] - 35:18, 36:2, 42:21</p> <p>southwest [1] - 30:6</p> <p>spaces [1] - 41:18</p> <p>spacing [1] - 52:19</p> <p>Speaking [1] - 52:3</p> <p>specifically [4] - 19:24, 21:6, 27:23, 50:21</p> <p>specifics [1] - 31:22</p> <p>specified [1] - 38:14</p> <p>spell [5] - 25:11, 44:24, 57:7, 58:16, 62:19</p> <p>SPERO [1] - 2:19</p> <p>spillage [2] - 69:23, 77:11</p> <p>spirit [1] - 41:13</p> <p>sports [1] - 61:16</p> <p>square [1] - 47:23</p> <p>STAFF [1] - 2:14</p> <p>stand [1] - 32:6</p> <p>standard [7] - 31:25, 35:9, 48:20, 50:20, 51:11, 60:16, 77:20</p> <p>standards [5] - 39:22, 40:2, 50:15, 60:13, 61:8</p> <p>standing [1] - 12:21</p> <p>standpoint [1] - 73:23</p> <p>stands [1] - 71:5</p> <p>Star [1] - 10:9</p> <p>start [3] - 19:3, 55:24, 66:21</p> <p>starting [1] - 70:24</p> <p>state [6] - 25:11, 44:24, 49:8, 57:6, 58:16, 67:7</p> <p>State [5] - 45:8, 46:23, 81:4, 81:5, 81:10</p> <p>STATE [1] - 1:2</p> <p>statement [2] - 69:21, 70:4</p> <p>station [1] - 36:21</p> <p>stations [2] - 36:23, 36:25</p> <p>statute [1] - 81:10</p> <p>statutorily [3] - 15:21, 46:19, 48:13</p> <p>Stenographer [1] - 9:25</p> <p>STENOGRAPHICAL LY [1] - 2:23</p> <p>still [12] - 19:11,</p>	<p>20:14, 35:6, 36:11, 36:12, 41:10, 41:11, 41:14, 41:20, 51:12, 52:13, 58:23</p> <p>stipulated [1] - 78:9</p> <p>stipulations [1] - 79:1</p> <p>stop [1] - 53:24</p> <p>Stormwater [3] - 5:17, 7:12, 7:16</p> <p>stormwater [4] - 41:4, 41:8, 59:8, 60:2</p> <p>street [1] - 32:23</p> <p>structures [1] - 50:6</p> <p>Study [1] - 5:22</p> <p>subject [4] - 75:17, 76:20, 76:22, 77:13</p> <p>Submission [2] - 5:3, 7:14</p> <p>submitted [2] - 7:15, 39:17</p> <p>subsequent [1] - 16:6</p> <p>substantial [4] - 30:25, 49:12, 49:19, 49:20</p> <p>substantiate [1] - 49:24</p> <p>Suite [2] - 44:21, 45:3</p> <p>summary [2] - 22:11, 23:19</p> <p>summertime [1] - 64:2</p> <p>Sunday [1] - 57:21</p> <p>Superior [3] - 14:18, 14:20, 65:1</p> <p>Supplemental [2] - 5:19, 7:19</p> <p>support [1] - 46:16</p> <p>supporting [2] - 34:21, 34:22</p> <p>supposed [5] - 65:12, 65:13, 73:13, 73:14</p> <p>surrounding [1] - 52:12</p> <p>Survey [1] - 6:22</p> <p>suspenders [1] - 35:11</p> <p>sustain [1] - 48:13</p> <p>swear [8] - 25:4, 44:14, 56:5, 56:23, 58:8, 62:6, 66:21, 66:23</p> <p>sweeps [1] - 42:23</p> <p>swim [1] - 64:3</p> <p>switch [1] - 30:22</p> <p>switched [1] - 36:22</p> <p>sworn [9] - 11:1, 24:22, 25:10, 44:22, 55:19, 57:5, 58:15, 62:13, 67:5</p> <p>system [1] - 36:19</p>	<p style="text-align: center;">T</p> <p>TALENTE [4] - 2:11, 11:21, 18:10, 79:15</p> <p>Talente [4] - 11:20, 18:9, 79:11, 79:13</p> <p>talks [1] - 48:9</p> <p>Tank [2] - 6:3, 8:24</p> <p>tank [4] - 36:16, 37:6, 37:8</p> <p>Tannenhau [4] - 11:22, 18:11, 49:5, 79:17</p> <p>TANNENHAUS [21] - 2:12, 11:25, 17:19, 17:24, 18:12, 33:10, 33:13, 33:15, 33:17, 33:24, 34:4, 34:7, 53:22, 54:2, 69:6, 69:9, 69:24, 70:6, 70:9, 78:24, 79:18</p> <p>task [3] - 17:4, 60:17, 63:7</p> <p>tasked [1] - 14:6</p> <p>taxes [1] - 77:22</p> <p>taxpayer [1] - 64:22</p> <p>teach [1] - 45:12</p> <p>technical [1] - 77:24</p> <p>TEL [1] - 1:24</p> <p>tennis [1] - 57:16</p> <p>terms [7] - 22:17, 32:12, 37:18, 42:8, 43:13, 46:4, 51:23</p> <p>TERRACE [1] - 1:23</p> <p>test [1] - 52:14</p> <p>testified [4] - 54:20, 54:21, 55:5, 78:3</p> <p>testifies [6] - 25:10, 44:22, 57:5, 58:15, 62:13, 67:5</p> <p>testify [1] - 48:23</p> <p>testifying [5] - 5:4, 25:16, 26:17, 45:5, 45:7</p> <p>testimony [27] - 15:16, 19:6, 19:15, 21:20, 23:24, 24:12, 24:16, 24:18, 25:4, 26:4, 26:25, 27:3, 43:24, 44:2, 44:7, 44:8, 44:15, 45:24, 56:23, 58:9, 62:6, 63:10, 63:15, 66:24, 75:21, 78:4, 81:8</p> <p>text [1] - 13:13</p> <p>textbook [2] - 47:2, 47:19</p> <p>that'll [2] - 56:12, 56:13</p> <p>THE [9] - 33:11, 33:14,</p>	<p>33:16, 33:22, 34:2, 34:6, 34:8, 54:10, 74:24</p> <p>the.. [1] - 72:14</p> <p>themselves [1] - 74:22</p> <p>they've [4] - 20:16, 68:14, 73:15</p> <p>think.. [1] - 72:11</p> <p>thinking [1] - 71:3</p> <p>third [1] - 10:13</p> <p>thirty [1] - 5:12</p> <p>thirty-four [1] - 5:12</p> <p>three [3] - 7:9, 35:2, 46:12</p> <p>THURSDAY [1] - 1:12</p> <p>Thursday [1] - 10:2</p> <p>Title [1] - 6:22</p> <p>tomorrow [1] - 74:12</p> <p>tone [1] - 31:25</p> <p>tonight [13] - 14:7, 16:16, 17:5, 20:18, 21:18, 21:19, 25:16, 26:17, 54:20, 54:21, 55:5, 57:25, 58:23</p> <p>top [1] - 68:2</p> <p>total [1] - 34:25</p> <p>touch [2] - 37:18, 52:2</p> <p>tournament [1] - 57:22</p> <p>town [3] - 70:4, 73:5, 74:12</p> <p>townhouse [1] - 57:15</p> <p>Township [11] - 2:21, 10:3, 10:12, 10:15, 10:16, 11:7, 36:21, 41:16, 64:18, 64:22, 73:10</p> <p>TOWNSHIP [2] - 1:1, 1:24</p> <p>township [6] - 49:9, 64:24, 73:6, 74:6, 74:8</p> <p>tracks [1] - 64:9</p> <p>tractor [2] - 15:8, 71:13</p> <p>Traffic [1] - 5:22</p> <p>traffic [15] - 16:3, 19:20, 19:23, 20:2, 24:13, 42:5, 54:24, 59:21, 63:25, 64:1, 65:7, 65:11, 65:17, 69:5, 73:24</p> <p>trafficked [1] - 63:19</p> <p>trailer [2] - 15:8, 71:13</p> <p>transcript [1] - 81:16</p> <p>TRANSCRIPT [1] - 1:15</p> <p>transmission [2] - 31:22, 33:20</p> <p>Transportation [1] -</p>	<p>63:21</p> <p>Trash [1] - 8:4</p> <p>tree [2] - 61:5, 61:7</p> <p>Tree [1] - 2:19</p> <p>trees [1] - 32:3</p> <p>trespass [2] - 61:9, 61:12</p> <p>triggered [1] - 46:3</p> <p>triggers [1] - 32:14</p> <p>troops [2] - 12:17, 12:21</p> <p>truck [22] - 27:23, 27:24, 28:1, 29:13, 29:15, 29:24, 30:1, 30:2, 30:5, 36:3, 36:5, 36:7, 38:4, 42:5, 42:10, 42:13, 42:18, 42:20, 42:23, 60:21, 71:1</p> <p>Truck [2] - 6:8, 6:11</p> <p>trucks [10] - 29:14, 39:3, 39:7, 39:11, 41:24, 42:3, 42:15, 42:24</p> <p>true [1] - 35:25</p> <p>truth [18] - 25:5, 25:6, 44:16, 44:17, 56:24, 56:25, 58:10, 62:7, 62:8, 66:25</p> <p>try [1] - 68:17</p> <p>turn [5] - 43:24, 71:2, 71:3, 71:4, 75:10</p> <p>TV [1] - 11:7</p> <p>twice [2] - 65:1, 76:2</p> <p>two [19] - 16:14, 21:12, 21:15, 21:18, 26:5, 30:4, 30:24, 38:8, 39:8, 42:24, 43:10, 46:20, 48:15, 51:11, 60:4, 63:1, 63:4, 64:19, 69:2</p> <p>two-way [1] - 42:24</p> <p>type [1] - 69:19</p>
U				
<p>ultimately [1] - 15:16</p> <p>under [7] - 29:19, 41:11, 46:20, 53:10, 75:18, 76:4, 81:8</p> <p>underground [1] - 37:2</p> <p>understood [1] - 40:17</p> <p>unique [1] - 46:21</p> <p>unit [1] - 56:7</p> <p>unless [2] - 22:19, 24:20</p> <p>unmute [6] - 11:4, 55:23, 56:4, 58:6,</p>				

<p>62:4, 74:22 unusual [1] - 32:21 up [24] - 10:19, 13:3, 19:13, 27:9, 32:9, 34:20, 37:5, 37:22, 44:9, 49:2, 53:17, 54:16, 55:10, 55:15, 61:5, 61:7, 61:14, 65:13, 67:22, 67:24, 68:16, 71:19, 73:13, 75:6 updated [2] - 22:16, 40:17 upper [1] - 27:14 users [1] - 37:1 uses [1] - 33:4 Utilities [1] - 5:5 Utility [3] - 7:11, 8:19, 8:21</p>	<p>48:10 vote [1] - 17:5 voted [1] - 64:25</p>	<p>welfare [2] - 48:3, 48:8 west [6] - 27:20, 27:22, 31:1, 31:2, 35:18, 37:13 West [1] - 73:4 Westfield [3] - 4:19, 57:4, 57:10 what.. [1] - 54:17 whatsoever [1] - 31:5 whereas [1] - 60:16 whichever [1] - 41:1 WHISPERING [2] - 1:7, 1:9 whispering [1] - 15:1 Whispering [11] - 13:5, 14:25, 22:12, 23:14, 23:20, 26:24, 40:16, 40:20, 45:25, 75:19, 76:14 whole [8] - 25:6, 27:24, 44:16, 56:25, 58:10, 62:8, 66:25, 73:18 wide [1] - 72:17 widening [1] - 43:15 wider [2] - 38:10, 38:13 wife [2] - 66:14, 66:19 willing [1] - 74:1 wish [1] - 10:21 withstand [1] - 71:12 WITNESS [8] - 33:11, 33:14, 33:16, 33:22, 34:2, 34:6, 34:8, 54:10 witnesses [2] - 44:9, 53:17 WITNESSES [1] - 4:2 wooded [1] - 32:5 WOODS [2] - 1:7, 1:9 Woods [12] - 13:5, 14:25, 15:1, 22:13, 23:14, 23:21, 26:24, 40:16, 40:20, 45:25, 75:19, 76:14 worth [1] - 33:5 writs [1] - 14:18 written [1] - 21:6</p>	<p>70:15, 75:25 yourself [4] - 11:5, 55:23, 56:4, 62:5</p>
V	W		Z
<p>valid [1] - 45:14 variance [12] - 32:12, 33:9, 34:9, 34:16, 46:9, 46:23, 47:3, 47:19, 48:16, 48:22, 49:12, 49:15 variances [5] - 26:5, 46:2, 46:6, 46:12, 46:20 vast [1] - 64:24 vegetation [2] - 32:5, 32:6 vehicle [3] - 28:4, 33:1, 42:7 vehicles [1] - 38:4 vein [1] - 33:11 verbatim [1] - 81:7 versa [1] - 27:22 Via [1] - 3:1 vice [1] - 27:22 Vice [1] - 13:19 VICE [5] - 2:7, 11:17, 13:8, 13:12, 13:17 VICE-CHAIRMAN [4] - 2:7, 13:8, 13:12, 13:17 vicinity [1] - 37:6 video [1] - 10:25 Video [1] - 3:1 videotaped [1] - 11:6 View [2] - 5:22, 7:10 view [7] - 33:1, 36:5, 36:7, 43:18, 46:18, 50:7, 51:4 Virginia [3] - 4:19, 57:4, 57:11 visible [1] - 52:7 visual [2] - 28:20,</p>	<p>wait [1] - 66:13 waiver [10] - 14:15, 15:23, 16:3, 35:13, 40:2, 50:2, 50:19, 50:20, 59:25, 77:14 waivers [11] - 16:15, 17:3, 21:12, 21:16, 46:3, 46:7, 50:1, 50:22, 51:12, 51:15, 51:20 walk [1] - 25:22 Wall [1] - 8:16 wall [54] - 15:7, 19:8, 19:13, 28:11, 31:9, 31:10, 31:16, 31:18, 31:21, 31:23, 32:13, 32:15, 32:19, 32:24, 33:6, 33:7, 33:18, 33:19, 34:19, 34:21, 34:22, 34:23, 34:24, 35:4, 46:11, 46:13, 46:14, 46:15, 46:16, 46:17, 47:4, 47:6, 47:10, 47:12, 47:15, 48:17, 48:25, 49:1, 49:2, 49:8, 49:15, 65:21, 66:16, 67:13, 67:15, 67:20, 68:2, 68:6, 76:6, 77:9 walls [1] - 16:23 wants [3] - 17:5, 66:14, 78:21 warehouse [3] - 39:24, 50:16, 56:7 warehouses [1] - 35:25 warehousing [1] - 60:14 Warren [1] - 3:4 wars [1] - 73:9 waste [1] - 35:15 water [6] - 36:16, 37:6, 58:24, 59:1, 59:21 Water [2] - 6:3, 8:24 ways [1] - 42:15 WB-67 [1] - 6:6 weaves [1] - 44:8 weigh [1] - 72:13 weight [1] - 42:6 weight-restricted [1] - 42:6 Weiner [1] - 2:15 welcome [3] - 52:16, 57:21, 74:17</p>	Y	<p>yard [11] - 28:14, 28:16, 28:18, 29:6, 29:7, 31:13, 32:17, 33:6, 33:8, 47:16, 62:18 yards [1] - 33:4 year [1] - 40:16 years [8] - 45:8, 62:24, 63:8, 64:23, 65:10,</p>