

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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: APPLICATION OF BRANDYWINE :
: SENIOR LIVING AT POTOMAC, LLC : Case No. CU 16-01
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A hearing in the above-entitled matter was held on January 15, 2016, commencing at 9:34 a.m., at the Stella B. Werner Council Office Building, 100 Maryland Avenue, Second, Floor, Rita Davidson Memorial Hearing Room, Rockville, Maryland 20850 before:

Martin L. Grossman

Hearing Examiner

Page 6

1 PROCEEDINGS
2 MR. GROSSMAN: This is a continuation of a public
3 hearing in the matter of Brandywine Senior Living at
4 Potomac, LLC. It's Conditional Use Application 16-01.
5 Petition for conditional use under Zoning Ordinance Section
6 59.3.3.2.E.2.C. To establish a residential care facility
7 consisting of 140 beds for seniors needing assisted living
8 and memory care. The subject site constitutes a 4.02 acre
9 property identified as Parcel A of the Potomac Tennis Club
10 located at 10800 Potomac Tennis Lane, approximately 600 feet
11 north of the intersection with Maryland 189 at Falls Road in
12 Potomac, Maryland. It is in the RE-2 Zone. The hearing was
13 begun on November 6, 2015, resumed on December 3 and
14 December 7th, 2015. Formal notice was issued resetting the
15 further resumption of the hearing to today, January 15,
16 2016. My name is Martin Grossman. I'm a Hearing Examiner,
17 which means I will hear evidence and write a report and
18 decision in this case.
19 Will the parties identify themselves, please, for
20 the record?
21 MS. GIRARD: Erin Girard with Linowes and Blocher
22 on behalf of the applicant.
23 MR. KAUFMAN: Steve Kaufman also with Linowes.
24 MR. UHRE: Curtis Uhre.
25 MR. GROSSMAN: Mr. Uhre.

Page 7

1 MS. LEE: Suzanne Lee with the West, currently the
2 president of the West Montgomery County Citizens
3 Association.
4 MR. CHEN: Bill Chen representing Dr. and Mrs.
5 Ronald Paul.
6 MR. GROSSMAN: Mr. Chen. Okay. Is there anybody
7 else here today who wishes to be heard who was not here in
8 the last sessions who wishes to testify? I see no hands.
9 All right.
10 Since there are no new faces here, I won't go
11 through another explanation of these proceedings. Let me
12 just turn to the preliminary matters. We completed three
13 witnesses on November 6, Brenda Bacon, Hal Bolton and Josh
14 Sloan. And on December 3, applicant completed its case with
15 Don Mitchell, the civil engineer, and Nancy Randall,
16 transportation planner. We also heard testimony from
17 opposition witnesses Suzanne Lee and Ted Duncan. On
18 December 7, we heard testimony from opposition witnesses
19 Curtis Uhre, Toni Paul, Lionel Danielian, Dr. Ronald Paul
20 and land planner James Noonan, who has not finished his
21 testimony. In the middle of Mr. Noonan's testimony I asked
22 the applicant whether the trash dumpster, the storm water
23 management facility and a driveway could be moved further
24 from the Pauls' residence and whether the third floor of the
25 western side could be eliminated to improve compatibility

Page 8

1 with the Pauls' property. That's at transcript of 12/15,
2 259 to 274.
3 The applicant elected to submit modified plans
4 removing the third story on the western side of the proposed
5 building and moving the trash dumpster and a reconfigured
6 storm management, storm water management facility. Those
7 are Exhibits 129 to 131 and 134. Exhibit 129A summarized
8 the changes and I commend the applicant for an effort to
9 improve compatibility in this case. Technical Staff review
10 of the changed plans is in the record as Exhibit 133. And I
11 apologize to the parties for the delay caused by my little
12 heart issue. And, but if I'm grumpy today it's because I
13 had my first rehab session last night. All right. And if I
14 leap up with a cramp, you'll know what, what happened. All
15 right.
16 I note that the Pauls have withdrawn their request
17 that I conduct a site visit in the case. It's Exhibit 123.
18 Additional witnesses have been added to the list. Mr. Chen
19 added an acoustics expert, Gerald Henning, Exhibit 132. The
20 applicant added two potential rebuttal witnesses, Donald
21 Boucher, a licensed real estate appraiser, Exhibit 135, and
22 Scott Harvey, a noise expert, Exhibit 138. Mr. Chen will
23 also examine a Technical Staff reviewer and in this case
24 it's Benjamin Berbert, Exhibit 136. And he is scheduled to
25 come here at 2 o'clock and I've told him to, that we would

Page 9

1 take him as the next witness when he arrives at, at 2:00. I
2 figured after lunch would make, would make sense rather than
3 having him come, come at 1:00.
4 Are there any other, oh - I do have one question
5 for the parties. If the conditional use is approved in this
6 case, would the following condition be okay? And this is
7 somewhat of a change from what was suggested by the Planning
8 Board and the Technical Staff. Except in emergencies,
9 regular, regular deliveries are limited to Monday through
10 Friday, 8:30 a.m. to 5:00 p.m., and Saturday, 9:00 a.m. to
11 5:00 p.m. And trash pick-up is limited to Monday through
12 Friday, 9:00 a.m. to 5:00 p.m., and Saturday, 9:00 a.m. to
13 4:00 p.m. In other words, I narrowed the hours of allowing
14 these things to happen. Will that be okay?
15 MS. GIRARD: Yes.
16 MR. KAUFMAN: Yes.
17 MR. GROSSMAN: Okay. All right. Any other
18 preliminary matters here?
19 MR. CHEN: It's, Examiner, please, I don't know
20 where we are procedurally in this, in this matter. We've
21 now got, as I understand it and as you've identified new
22 plans. So just could you tell me where we are procedurally?
23 MR. GROSSMAN: Good question. And I was going to
24 ask whether the parties think that the, the way to handle
25 that is to allow the applicant to recall a witness of their

Page 10

1 choice to explain the new plans and what they would do and
2 then to have Mr. Noonan come back on the stand, at your
3 pleasure, Mr. Chen, to give whatever testimony he wishes.
4 Or if you need to recall somebody else regarding that you
5 can. Is that, does that make sense?
6 MR. KAUFMAN: For us it does. Yeah.
7 MR. CHEN: Respectfully, I've, I, I think I have a
8 concern with what's, what you just said and I'm not sure
9 that really clarifies the situation. As I understand what
10 we've got is essentially a new application. At least in, in
11 large part it is a new application. When we left on the
12 7th, my read of the transcript was that the Examiner
13 suggested that there were certain areas of concern that they
14 --
15 MR. GROSSMAN: Right.
16 MR. CHEN: -- you've identified in the record.
17 One you left out this morning was relocating the service
18 drive to the north side, but that was mentioned. But that's
19 okay. The Examiner suggested that the applicant meet in
20 the, after the hearing to discuss your concerns, meet with
21 myself, Mr. Uhre and Ms. Lee. And I did in fact had a
22 meeting with Mr. Kaufman and Mr., I, I don't know whether
23 they met with Uhre and Ms. Lee. But at the same time,
24 during the course of that proceeding, you also mentioned
25 though that, and this is at 274 of the transcript, you

Page 11

1 stated, And by the way, the applicant doesn't have to make
2 any of these changes, they go forward with their plan, they
3 can go forward with their plans exactly as they are and then
4 I will have to evaluate it in the context of all the
5 evidence I've heard, end quote.
6 MR. GROSSMAN: Right.
7 MR. CHEN: So that the way it was left on the 7th
8 was not any filing and not, not any request for new plans.
9 And, indeed, the day that I met with Mr. Kaufman and Ms.
10 Girard, they filed new plans. And I think that is Exhibit
11 129. I think electronically it was transmitted on actually
12 December 11, which is when I had the meeting. And that's
13 Exhibit 124. So it's my understanding that 124 is the
14 electronic version of certain new plans and information and
15 Exhibit 129 is the hard copies. I, I, that --
16 MR. GROSSMAN: Well, I can look at the exhibit
17 list and I'll, I'll tell you what we have. Yeah, 124,
18 December 11, '15 email from Ms. Girard submitting revised
19 exhibits showing proposed plan modifications and letter
20 explaining revisions in detail. So that was an email. And
21 129 was the letter with the hard copies.
22 MR. CHEN: Yeah. I think I've got that, what I
23 understood to be those exhibits. And then subsequently on
24 December 22nd at Exhibit 131 there were additional plans
25 submitted. Now my understanding is that, and I submit, this

Page 12

1 is an amended, for whatever, whatever words were used, it's
2 an amended application. But, and it's already been amended
3 once. If you recall, the Examiner approved one amendment
4 before the hearing started. There is no provision in the
5 law for amending an application once the hearing starts. So
6 my position is that there is no legal authority for these
7 submissions and that, however, and I stand on that. I, I
8 just don't see the legal authority for this. Once the
9 hearing starts, the law does not contemplate and does not
10 provide for an amendment to an application. Now if the
11 Examiner please, I sent you a letter and you were kind
12 enough to respond making reference to Section
13 59.3.3.2.E.2.c.ii.(i).
14 MR. GROSSMAN: That's the arcane numbering system
15 of our new Zoning Ordinance.
16 MR. CHEN: Now, and this is where I guess I need
17 some help, Mr. Examiner. I, as I say, I don't think that
18 there is any legal basis for amending this application at
19 this point in time and that therefore, these exhibits are
20 all 124, 129, 131, 134, should be struck and not received
21 because you cannot amend. However, and I'm not saying that
22 I agree with you, but I also understand your email
23 responding to my letter and your reference to that section
24 that I, I just identified.
25 MR. GROSSMAN: The, for everybody else, the

Page 13

1 section gives the Hearing Examiner specific authority to
2 modify requirements in order to aid in compatibility in an
3 application.
4 MR. CHEN: Now, where I'm confused, and I say this
5 all respectfully. That how are those exhibits viewed by the
6 Examiner? Are they, can, can you give me the, the legal
7 basis for why they are before your office at this time?
8 Given the fact that I don't think you can amend an
9 application at this point.
10 MR. GROSSMAN: Well, it's routinely, applications
11 are routinely amended in the course of this, in this kind of
12 way in the course of the hearing and the parties are given
13 an opportunity to respond to amended applications. And as
14 plans changed, based on observations that come up in the
15 hearing either by the Hearing Examiner or by members of the
16 community, as is done in, as happened in this case. This is
17 a routine occurrence, but we always give when there are
18 amendments to the application, that is changes in plans,
19 made in the course of the hearing, we always give the
20 parties an opportunity to respond. And there has been ample
21 time to respond in this case since they happened in early,
22 changes happened in early December and it's now January 15,
23 2016.
24 MR. CHEN: Well, it's --
25 MR. GROSSMAN: I was going to give the applicant

Page 14

1 an opportunity to respond to your comments.
2 MS. GIRARD: Yes. And I'm scrambling, looking
3 quickly at the law while, while we're talking because I
4 wasn't anticipating this coming up, but I, you know, I don't
5 see anything that would preclude what's been done here in
6 the OZAH Rules of Procedure. It seems to me under the
7 authority of the Hearing Examiner which is 4.2 of the rules,
8 Hearing Examiner has the authority to regulate the course of
9 the hearings, call, examine, cross-examine witnesses and
10 introduce into the record documents, any other evidence. It
11 just, you know, I'm not all the way through because I'm
12 looking at it, but, and I agree with the Hearing Examiner.
13 We do do this routinely in response to issues that come up
14 during the course of the hearing.
15 MR. GROSSMAN: Right. It is a, it's, it's a
16 practice that has gone on for the last, at least for the
17 last 12 years. So I know that.
18 MR. CHEN: Well, if I may, the Zoning Ordinance
19 does permit an amendment, but the Zoning Ordinance only
20 permits an amendment before a hearing starts. There is
21 virtually --
22 MR. GROSSMAN: Does it, does it say that in there?
23 MR. CHEN: Yeah. Yes.
24 MR. GROSSMAN: In the zoning, what does it say,
25 what is the specific language you're talking about that,

Page 15

1 that says it can only happen before a hearing?
2 MR. CHEN: Yes. It is Section 59.7.3. I think
3 it's 1.D.3.a, which says an applicant may amend the
4 application before the hearing if the Hearing Examiner
5 approves a motion to amend after giving 10 days' notice to
6 all parties entitled to the original notice of the filing.
7 And as I said, that happened in this case because there was
8 an amendment. Now there is nothing in the Rules of
9 Procedure that authorize an amendment after a hearing
10 starts. And, indeed, I would have to say even if there were
11 the rule has to give way to the law. And in this case,
12 there's only one circumstance under the law in which an
13 amendment, an amendment can be had after a hearing starts.
14 The practice that you've identified, Mr. Examiner, and
15 corroborated by Ms. Girard's statements, I can't speak to.
16 I've, I've been in hearings during that period of time. I
17 can't remember any, any OZAH hearings that I've participated
18 in where that happened. But the point in this case, and I,
19 I, you know, trying to look at it both sides, I can see
20 where a, a document may have to be revised based upon
21 something happening. I respect that and understand that
22 that can happen. But, and that might be a revision to an
23 exhibit or something like that. But in this case, there is
24 literally, based upon the Examiner's observations of
25 concerns that the Examiner had, a, a major, major material

Page 16

1 alteration in this application. The --
2 MR. GROSSMAN: To the benefit of your clients.
3 Would you, would you not agree to that?
4 MR. CHEN: I don't, I'm not sure I would agree
5 with that actually. Okay.
6 MR. GROSSMAN: I see.
7 MR. CHEN: But leaving that aside for a minute and
8 they were filed, the first filing was on the 11th of
9 December electronically and I, I got the hard copy on the
10 filing of Exhibit 129. And where there is a material, such
11 a material change in the application, I respectfully submit
12 that the practice that you've mentioned really is not
13 applicable. That there has been an amendment so that for
14 the record, I, on behalf of my client, have to object to any
15 consideration of these new plans that are before the
16 Examiner. Further, I would have to submit that at a minimum
17 what is now happening is essentially a re-opening of the
18 applicant's case in that the applicant, as I understand the,
19 what is about to happen, can make its presentation and
20 should present even these new witnesses that it's talking
21 about because it's back in its case. And for the, also for
22 the record, and I understand you can't do anything about
23 what I'm about to mention. And that is, and by the way,
24 when they re-open it, Mr. Examiner, 30 days, I heard your
25 comment about the opposition having enough time. We don't

Page 17

1 know what their experts, who they are that are going to
2 testify. I assume it's going to be people that have been
3 here before. I'm not being coy. But we don't know what
4 they're going to say and, and in the normal course there
5 should be a summary. You know, they can re-identify. We've
6 got new plans. This is what it is. These are the
7 witnesses. Just as if it's required under the pretrial,
8 excuse me, pre-hearing submission rules with that summary.
9 I think that's a minimum that would have to happen.
10 Assuming this type of amendment would be permissible during
11 the hearing, which I, again, I don't think is. If also the
12 Examiner is relying upon 59.3.3.2.E.2.c.ii.(i), again, and I
13 understand that that's the law and the Examiner has
14 recognized it and, and certainly would follow it because it
15 is a law that the County Council has enacted. Just for the
16 record, I think that that law is invalid. I think that
17 among the problems with it is that there is an unlawful
18 delegation of legislative power to the Hearing Examiner. I
19 think it's impermissibly vague, particularly use of the word
20 maximize any standards. The standards we're talking about
21 here are legal standards, but under this provision, the
22 Examiner can modify these standards. I think there's a due
23 process issue when you get into this type of circumstance so
24 that, for the record, to the extent that we are now
25 proceeding forward, not only do I object that there is no

Page 18

1 lawful ability to amend this application. And that is
2 what's going on here. And number two, that it is proceeding
3 forward under this section of the Zoning Ordinance. For the
4 record, for a minimum of the reasons I've just stated that,
5 respectfully, and I know the Examiner has to follow the law,
6 I think that, that ordinance section is just invalid for
7 among the reasons I've just stated.
8 MR. GROSSMAN: If --
9 MR. CHEN: And I will abide by what, the
10 Examiner's procedures. I don't want you to think I'm being
11 contumacious. I'll abide by your rulings.
12 MR. GROSSMAN: If in fact changes are made in the
13 course of a hearing as a result of that section, if that
14 section were applied because at, at this point, I haven't
15 changed any standards. I've just asked the applicant
16 whether or not they could make changes in their plans which
17 would reduce compatibility issues that were raised by the
18 opposition. But if changes that were proposed were of no
19 harm to your clients, what would be the basis for any
20 objection to you to this statutory language?
21 MR. CHEN: I'm not sure because part of my concern
22 in that circumstance is I, I'd want to look, I'd have to sit
23 down and go through the whole package at that point in time.
24 And it may be that there's tradeoffs. For instance, if I
25 may, in this particular case, you made observations that

Page 19

1 were of concern to you based upon the testimony that you've
2 heard. The filing that has been made by the applicant does
3 not respond to all of those concerns. I, I'm, I don't know
4 the extent to which you've looked at it, but your head
5 nodding, I think you have. Yes.
6 MR. GROSSMAN: I have. And they haven't moved the
7 driveway if that's what you're --
8 MR. CHEN: Yes. Right.
9 MR. GROSSMAN: Right.
10 MR. CHEN: So that I think my issue would be that
11 if, if you're going to look at, at a wholesale amendment
12 like this that you make a good point. There well may be
13 improvements as far as compatibility that my clients would
14 be appreciative of. But by the same token, again, they, I
15 have to look at it as a whole. And as a whole even with
16 those improvements, it does not alter the belief and, and we
17 submit the established adverse impact on the properties
18 here.
19 MR. GROSSMAN: You're not responding to my
20 question though. I'm saying if the changes as they are, the
21 changes that were made are all beneficial to your clients,
22 what would be the, the harm to your clients justifying your
23 objection?
24 MR. CHEN: I understand that. I'm, I'm sorry if I
25 was not being direct. I could see a circumstance where

Page 20

1 there would be wholesale, to use an expression, wholesale or
2 major revisions to a, an application during the course of
3 the hearing that would be properly recognized to be an, an
4 impermissible amendment. I understand that. However, if
5 those changes were acceptable to the concerned opposing, if
6 you will, adjacent and confronting property owners and they
7 accepted them, then certainly that proceeding would not be
8 subject to any challenge, at least not by those parties. In
9 this particular case, you don't have that situation however.
10 There have been some changes that have been made and I, I've
11 recognized that.
12 MR. GROSSMAN: Well, let me ask you this. You,
13 you, in the course of your objection you indicated that you
14 aren't so sure that these changes are beneficial to your
15 clients.
16 MR. CHEN: Yeah.
17 MR. GROSSMAN: What, if any, changes that are
18 proposed would not be beneficial to your clients?
19 MR. CHEN: Of very much concern the turnaround
20 area, the trash compacter part of it. We don't see,
21 actually not the trash enclosure area, the, there's other
22 changes, as I understand the plan, this goes in part in not
23 having that summary, I'm just reading off the plan and
24 asking our consultants to read off the documents, but those
25 matters where there have been changed, they do not benefit

Page 21

1 my client. Now one point to acknowledge where you, I think
2 your question is, they have removed the structure that was
3 literally six inches off the property line. So, please.
4 MR. GROSSMAN: The storm water management
5 facility?
6 MR. CHEN: Yeah. You know that, yeah.
7 MR. GROSSMAN: They moved it. They have removed
8 it.
9 MR. CHEN: That, that is no longer there so
10 obviously that is a, a, a compatibility issue that has been
11 addressed by the applicant. To a certain extent, I would
12 even have to say that, and I'm not trying to be again
13 clever. You know, removing some of the story on the west
14 side, that certainly is an improvement. Now is it enough of
15 an improvement on the bulk and scale, you know, I can't go
16 there right now, but certainly I would agree with the
17 Examiner and I think that's maybe where you're going. That
18 those kinds of changes --
19 MR. GROSSMAN: And, and you, and you feel that the
20 relocation of the trash compacter or the trash bin is not a
21 benefit to your client?
22 MR. CHEN: No. It's a noise issue. You know,
23 because I think it's maybe like 30 feet. This is just --
24 MR. GROSSMAN: Is it, does it make it --
25 MR. CHEN: This is just me as an attorney

Page 22

1 speaking, but --

2 MR. GROSSMAN: Right. Did it make it worse, in

3 your opinion or is it just, it just didn't make it enough

4 better?

5 MR. CHEN: I don't think it ameliorated the

6 problem.

7 MR. GROSSMAN: But it didn't make it worse?

8 MR. CHEN: Further away, I guess you could say it

9 doesn't make it worse, but it still nonetheless remains a

10 problem.

11 MR. GROSSMAN: All right. Now I'm going to remind

12 you, you know, as I said at the, at the last hearing, the

13 applicant has a right to go forward on its original plans

14 and you're almost suggesting to them that that's what you

15 want them to do. But I, I will leave it up to them. If

16 they want to go forward today with the plans that were there

17 originally and not use the amended plans which I think is

18 obvious of benefit to your clients in terms of

19 compatibility, then they have a right to do so and have me

20 consider it whether it meets the standards of the

21 conditional use the way it was. And in fairness to them,

22 I'm going to, I'm going to recess and give them a few

23 minutes to talk about it if you wanted, Mr. Kaufman and Ms.

24 Girard, to decide whether or not given the objection that's

25 been raised, whether you want to proceed on the new plans or

Page 23

1 --

2 MR. KAUFMAN: Yeah, we want to proceed on the new

3 plans.

4 MS. GIRARD: Yeah. We, we had felt that the

5 modifications were, were good, to be honest with you. So I

6 think we're comfortable in moving forward with the revised

7 plans today.

8 MR. GROSSMAN: Okay. All right.

9 MS. GIRARD: Can I address the other --

10 MR. GROSSMAN: Absolutely.

11 MS. GIRARD: I don't know if this is the right

12 time or not?

13 MR. GROSSMAN: Go ahead. Sure.

14 MS. GIRARD: The only other points I wanted to

15 make, one, just under 3.9 of the Rules of Procedure,

16 procedural motions must be made promptly and if possible

17 before the public hearing. And, you know, here we are. We,

18 we've made this amendment on December 11th. We're over a

19 month later and now we're talking about it. So I'm

20 questioning the propriety of the timing of raising this

21 objection about the amendment. Secondly, I want to note

22 that, I have to cite to the Code, 59.7.3.1.D.3.a that was

23 cited to by Mr. Chen, an applicant may amend the application

24 before the hearing if the Hearing Examiner approves a motion

25 to amend. May amend. It does not preclude. It doesn't say

Page 24

1 you may only amend or shall only. You may amend it before

2 the hearing and, and the, if you read that in the context,

3 it also sets forth how the parties get notice of the

4 amendment and making sure that the Planning Board has time

5 to review. All of that has happened in this case. The

6 parties knew on December 7th that we may be modifying our

7 plans. On December 11th everyone got the revised plans.

8 The Planning Board and Staff have had the time to review.

9 So I, I'm just not seeing that that's, that somehow

10 precludes the filing of an amendment during the hearings.

11 MR. GROSSMAN: Yeah. I'm going to rule it doesn't

12 preclude it. I will say, however, I'm in the process now of

13 amending the OZAH rules to conform to the most recent

14 changes in the Zoning Ordinance. And I will look them over

15 to see if there is an absence of a provision that

16 specifically allows what's been happening in these hearings

17 over the, at the least the 12 years and probably much longer

18 than that, which is the allowance of amendments in the

19 course of the hearing as long as parties are given the

20 opportunity to respond. And usually those responses are in

21 the matter of written submissions, but when the Hearing

22 Examiner feels that further hearing is required because of

23 changes made, then there is another hearing date. That's

24 what's happened here. We haven't deprived anybody of

25 notice. They've been given well more than 10 days' notice

Page 25

1 before the follow-up hearing on this so there is no real

2 prejudice in terms of the other parties and, in fact, the

3 objecting party is, clients are, in my belief, the chief

4 beneficiary of the proposed amendments. So that's my ruling

5 here. It's not, these amendments are not improper. There

6 has been ample opportunity for commentary and for

7 participation at the hearing in response to these changes

8 and they are the, to the benefit of the objecting party so I

9 overrule the objection. All right.

10 So I think procedurally what we said is we're

11 going to allow you to recall the witness of your choice and

12 maybe witnesses of your choice to the extent necessary to

13 explain the changes that are being proposed here and any

14 commentary on it. And then we'll give the opposition the

15 opportunity after, of course, cross-examination to call or

16 recall any witnesses they need to address specifically the

17 impacts of the changes. Clearly, they have no impact on

18 traffic so that's not an issue, or access or view from the

19 roadway. It's, it's just as to the specific changes that

20 have been proposed here. All right.

21 MR. KAUFMAN: Okay. Give us just a second.

22 MR. GROSSMAN: Sure, Mr. Kaufman. Do you need a

23 recess or you just --

24 MR. KAUFMAN: No, no, no. Just a second.

25 MR. GROSSMAN: Okay. Sure.

Page 26

1 MR. KAUFMAN: Okay. Thank you.
2 MR. GROSSMAN: All right.
3 MS. GIRARD: I, we'll call, we'll recall Josh
4 Sloan.
5 MR. GROSSMAN: All right.
6 MR. SLOAN: Going to be using --
7 MR. GROSSMAN: We're going to be sitting up here
8 today. I don't remember whether we were down there or up
9 here the last time, but --
10 MR. SLOAN: We're not as clear last time, last
11 week.
12 MR. GROSSMAN: All right. And Mr. Sloan, I remind
13 you that you are still under oath.
14 MR. SLOAN: Okay. I am.
15 DIRECT EXAMINATION (Resumed)
16 BY MS. GIRARD:
17 Q. Yes, this is pretty open ended, Mr. Sloan. Could
18 you review for us the changes that have been made since the
19 December 7th hearing?
20 A. Since the December 7th hearing, we have relocated
21 the trash enclosure more than 50 feet further away from the
22 Pauls' residence and I'll indicate on our exhibit --
23 MR. GROSSMAN: You want a laser pointer so you
24 don't have to jump up and down there?
25 THE WITNESS: That would be great. Thank you.

Page 27

1 MR. GROSSMAN: You can't keep it though.
2 THE WITNESS: Oh --
3 MR. GROSSMAN: It's my favorite toy.
4 THE WITNESS: This is a consolation prize. This
5 is --
6 BY MS. GIRARD:
7 Q. This is Exhibit 134A. This is the rendered site
8 plan.
9 A. The rendered site plan. So in our previous plan
10 the trash enclosure was closer to the apex of the triangle
11 on the western side near, directly near the turnaround for
12 backing movements before trucks left the site at the, even
13 closer to the apex. We have moved this directly adjacent to
14 the building. The western façade of the building on the
15 northern side of that western façade so that trucks can come
16 down, have a simpler single movement directly around to pick
17 up trash. Only one backing movement before they leave. So
18 this simplified and, and significantly changed the turning
19 movements necessary and made it a simpler way to actually
20 load trash too because we already had an access on the
21 northern façade and that can come around and, and so all
22 movement and, and things will need, will be directly
23 adjacent to the building. So that change allowed us to also
24 move our drainage area or regrade our drainage area and move
25 the storm water facility that collects all of the driveway

Page 28

1 area and some of the landscape area further away also from,
2 from the Pauls' residence. So now we have a complete 15
3 plus, it's 15 to 20 feet plus buffer area of plantings along
4 the south/southeastern property line.
5 MR. GROSSMAN: South/southwestern, you mean?
6 THE WITNESS: South/southwestern property line.
7 Thank you. So we increased our plantings along this area.
8 We more than comply with the screening requirements for our
9 conditional use between, or when it's abutting a residential
10 use. And then the last primary thing we did was to use the
11 wall on the back of the storm water facility and actually
12 created a, sort of an L-shape on the western turnaround and,
13 and then coming up the southern side of the driveway to
14 provide a six foot masonry wall so that backing movements,
15 any, any noise from them are deflected by that wall
16 significantly. So those are the, those are the fundamental
17 changes to that area.
18 BY MS. GIRARD:
19 Q. Can you also explain, did you evaluate the
20 feasibility of moving that drive aisle to the north side of
21 the property?
22 A. We did. And so the, the drive aisle comes down
23 the, the south/southwestern side of the property. And we
24 actually had looked at this and discussed this with the
25 Planning Staff and Planning Board at, at our, at our work

Page 29

1 session there. There, there are several reasons why we
2 don't think it's a good idea and why Planning Staff and the
3 Board ultimately agreed. The first is, of course, because
4 we have significant environmental buffers on this side that
5 we'd like to protect.
6 MR. GROSSMAN: This side meaning?
7 THE WITNESS: This side being the northern side of
8 the property.
9 MR. GROSSMAN: Okay.
10 THE WITNESS: The environmental buffers run all
11 the way from our northern courtyard to, to the rear of the
12 property. And in line with the Planning Board's
13 environmental guidelines, we're removing all structures from
14 that area, replanting it, reforesting it, putting it into an
15 easement to comply with forest conservation law. So if we
16 move the driveway, as the building sits now to that side,
17 we'd be encroaching in that. And then significantly grading
18 further almost probably to the property line to establish a
19 safe and, and an adequate road grade to come down. The, the
20 second reason we, we didn't want to change is because we
21 have significant critical root zones and so even moving, for
22 example, the trash enclosure to, to the ends of one of the
23 drive aisles on the northern side, the northeastern side, we
24 were specifically asked to stay off of the critical root
25 zone of some, some large native trees. And we had modified

Page 30

1 our plan already to comply with that for again forest
2 conservation law. A third reason is that when we looked at
3 this design alternative of a drive aisle, what we feel,
4 right now we have a six foot six inch board-on-board fence
5 all the way down the southern property line. And until
6 about the far northern end of the building the grade, and
7 even further down. I guess now the way we've regraded it,
8 about the middle of the turnaround area. The grade on the
9 property line is higher than the grade in the turnaround
10 area. So all lights are going to be below that six foot six
11 inch fence and the grade combined, which is up to, you know,
12 eight, 10 feet plus as you go, as you go east. So most of,
13 most of, if not all of the headlight traffic seems to me
14 lower and blocked by this area. It's also directed --
15 MR. GROSSMAN: By this area being?
16 THE WITNESS: This area being the eastern, the
17 southern property line. It's also directed across the back
18 of the property line of the Pauls into the golf course area.
19 Whereas if we move it to this side, we're going to be coming
20 in at a higher grade --
21 MR. GROSSMAN: By moving it to this side, you mean
22 to the --
23 THE WITNESS: Moving it to the northern side. We
24 will be coming from a higher grade and then down where the
25 potential for headlight glare is actually directly into the

Page 31

1 Pauls' residence. And you can see on this exhibit with the
2 part of the, the rectangle of the building --
3 MR. GROSSMAN: The rectangle --
4 THE WITNESS: -- on the top of the drawing.
5 MR. GROSSMAN: -- on the very top. What, what is
6 the number of the exhibit that the witness is looking --
7 MS. GIRARD: 134A.
8 THE WITNESS: 134A.
9 MR. GROSSMAN: Okay.
10 THE WITNESS: So, you know, we thought it wasn't a
11 good design idea. It wasn't being neighborly. It wasn't
12 dealing with the environmental restrictions and guidelines
13 that we are under to, to move it to this side. Further, if
14 we try to move away from the storm water buffer, we would
15 be, have to move the building significantly closer to the
16 Pauls' property line and we'd run into setback and screening
17 restrictions that they won't allow us to move us, move it
18 enough to comply with both those setback and screenings and
19 the environmental buffers. So we're, we settled on the
20 location. We, we had it and maintained it there for those
21 reasons.
22 BY MS. GIRARD:
23 Q. I think you'd mentioned putting the trash
24 enclosure on the northeast corner. That would impact the
25 critical root zones of trees. Are there other issues with

Page 32

1 putting it up there?
2 A. There, there are some other issues. We also have
3 a fire access on this side that, that may be impeded or, or
4 we'd be, we'd have to actually move, move this fire access
5 area. We'd have, we wouldn't be able to put it within the
6 paved area now and comply with the fire access that we had
7 approved.
8 MR. GROSSMAN: Yeah, that was, I wondered about
9 whether or not that that wasn't a feasible place to put it
10 in that northeastern corner. Even if you did have to add a
11 bit more concrete to make sure that there was adequate fire
12 turnaround whether in fact that couldn't be done without,
13 without impinging on any of the environmental concerns or
14 impinging upon the fire truck turnaround area?
15 THE WITNESS: I don't, I don't see a way to do
16 that now.
17 MR. GROSSMAN: Okay.
18 THE WITNESS: The pavement would, would have to
19 come out over in this area and this is all critical root
20 zone.
21 MR. GROSSMAN: This area being the very --
22 THE WITNESS: This area being the, the very --
23 MR. GROSSMAN: -- northern tip, I guess.
24 THE WITNESS: -- the very northeastern tip.
25 MR. GROSSMAN: Yeah.

Page 33

1 THE WITNESS: And also this area. We, we were
2 even, had to restrict our plantings in these areas to not,
3 not impact root zone.
4 MR. GROSSMAN: Okay.
5 BY MS. GIRARD:
6 Q. And understanding we can recall the civil if we
7 need to, but understanding that the civil is in your firm,
8 do you have any understandings generally as to what happened
9 with the storm water as a result of this, these changes?
10 MR. CHEN: Objection.
11 MS. GIRARD: I'm just trying to avoid calling
12 everybody, but we can if we need to.
13 MR. GROSSMAN: You have that witness here?
14 MS. GIRARD: Yeah, I do.
15 MR. GROSSMAN: Okay. Let's, let's --
16 MS. GIRARD: Okay.
17 MR. GROSSMAN: Your objection, I take it, is to
18 not using the civil engineer to make that description?
19 MR. CHEN: Yeah.
20 MR. GROSSMAN: I think that's a fair point. I
21 think the better witness would be --
22 MS. GIRARD: Okay.
23 MR. GROSSMAN: Although I'm sure that Mr. Sloan is
24 perfectly capable of answering it.
25 MS. GIRARD: Yeah. He's just going to speak to an

Page 34

1 exhibit, but that's, that's fine.
2 MR. GROSSMAN: I think it's a fair point.
3 MS. GIRARD: I believe that's it.
4 MR. GROSSMAN: What about the removal of the third
5 floor on the west --
6 MS. GIRARD: I, I will call the architect for
7 that.
8 MR. GROSSMAN: Okay. All right.
9 MS. GIRARD: For the same reason that I figured
10 that would get objected to.
11 MR. GROSSMAN: All right. Any cross-examination,
12 Mr. Uhre?
13 MR. UHRE: Yes. Thank you.
14 CROSS-EXAMINATION
15 BY MR. UHRE:
16 Q. Mr. Sloan, in reviewing possible options, did you
17 think about reconfiguring the basement level of the proposal
18 so that the actual entrance to the garage was toward the, I
19 guess it would be the eastern part of the building? In
20 other words, why does the service road have to run all the
21 way to the rear of the building? Why couldn't the entry to
22 the garage be further in the mid-section of the building,
23 actually on either side of the building? That way you would
24 not disturb the environmental impacts on the farther
25 northeastern part of the, of the layout or the plot.

Page 35

1 MR. GROSSMAN: Okay.
2 THE WITNESS: I'm just going to clarify the
3 question to make sure I understand. So you're asking if we
4 looked at a reconfiguration to move the drive aisle from the
5 southern side to the northern side and to not impact these
6 environmental buffers on the northern side by coming into
7 the garage before those environmental buffers start?
8 BY MR. UHRE:
9 Q. Correct. Correct.
10 A. Understood.
11 Q. And as, actually as an alternative, even leaving
12 it on the side that it is instead of moving everything to
13 the rear.
14 A. Just shifting up. Okay.
15 Q. Shifting, shifting everything to the mid-part of
16 the building. Was that actually really analyzed and looked
17 at?
18 A. We did not look at moving this up for the simple
19 fact that it's, it's not a feasible grading effort. We have
20 to have a safe and adequate grade and someone can object if
21 I, you know, go over my, my bounds here. We're grading down
22 from a point at the, on the eastern ends, eastern side where
23 our driveway is and --
24 MR. GROSSMAN: Western side?
25 THE WITNESS: Or the, no. The eastern side.

Page 36

1 MR GROSSMAN: Oh, I see. From the eastern to the
2 west. Okay.
3 THE WITNESS: Right. From the, from our, our
4 front property boundary which is the eastern side. In
5 either case, it would be very similar. So one answer really
6 should suffice for both cases. We have to grade down from
7 the elevation at our front to a point where we can actually
8 get under the building with adequate height and we cannot
9 grade this down steeply enough to come in at a, at a point,
10 the garage is only under part of this building. It's not
11 under, under the entire area. So that all our, our
12 alternative is to, to grade this very steeply down and try
13 to come in which I don't think is safer or effective or to
14 raise the entire building up out of the ground significantly
15 to, to come in at a, at a more easterly point. And I don't
16 think that's, I, I think that, that raises the, the obvious
17 issues of height conforming with the zoning requirements.
18 Let alone raising the building on, on the, on the northern
19 or northwestern, the western side which I, I, I don't think
20 we would have entertained because it would have exacerbate
21 any concerns that people have about the compatibility of
22 height issues that we're working with by actually reducing
23 the height level there. I hope that answers that.
24 MR. GROSSMAN: All right. Any further questions,
25 Mr. Uhre?

Page 37

1 MR. UHRE: Yes, I have another question.
2 BY MR. UHRE:
3 Q. Looking at the service road you talked about in
4 the western part of the, where the new configuration is for
5 the turnaround and you talked about the, having a wall, I
6 think, of six foot height, can you tell us in that northern
7 part or the, I'm sorry, the western, the, the western part
8 of the service road which is adjacent to the Pauls'
9 property, what approximately the slope is from the edge of
10 the service road down toward the Pauls' property? Isn't
11 there a downward, a pretty significant downward slope
12 between that service road and the Pauls' property?
13 A. So we need to identify this exhibit.
14 MS. GIRARD: It's the revised Conditional Use
15 Plan.
16 THE WITNESS: This is the revised Conditional Use
17 Plan.
18 MR. GROSSMAN: All right. And that will be
19 Exhibit --
20 MS. GIRARD: 131A.
21 MR. GROSSMAN: Okay.
22 THE WITNESS: Okay. I want to make sure that I
23 address specifically the area that you're talking about.
24 The turnaround ends where I'm pointing on the plan, which is
25 in the western, toward the western apex of the, of the

Page 38

1 property. You're asking about the grade going down from
2 here further to the west?
3 BY MR. UHRE:
4 Q. To, no. Between there --
5 A. There?
6 Q. -- and directly across from the Pauls' property.
7 A. You mean directly across.
8 Q. I think you indicated that that was approximately
9 15 feet. Is that, was that correct? If you could comment
10 on that as well, I'd appreciate it. In width. I'm sorry.
11 A. In width --
12 MR. GROSSMAN: Well, you, what? In the grade or,
13 or the distance?
14 MR. UHRE: No. The, the, the distance between the
15 edge of the service road and the Pauls' property, I think he
16 indicated previously was --
17 MR. GROSSMAN: Okay.
18 MR. UHRE: -- approximately 15 to 20 feet in
19 width.
20 MR. GROSSMAN: Right. Their new, on the revised
21 Conditional Use Plan you want to know the --
22 THE WITNESS: On the revised Conditional Use --
23 MR. GROSSMAN: Right.
24 THE WITNESS: -- the width from the front of curb
25 to the property line is 20 feet. Five feet from the curb,

Page 39

1 we have a masonry wall and then 15 feet of planting to
2 comply with the 15 foot screening buffer required by the
3 ordinance. At that point, on the plan you can, there,
4 there, on the exhibit, there is a 394-foot contour running
5 almost parallel to, to the back of the western side of the
6 building. And that slopes down to 392.4 feet where it
7 drains between the wall and the curb into a storm water,
8 storm water retention planter to the north of the drive, of
9 the drive aisle. From that 392.4 feet you go up six inches
10 through the curb and then we have an area for the wall.
11 That's necessarily a little bit higher actually so that we,
12 and then lower so it's, it's a swale to capture water and
13 move it, move it down to the storm water facility. Behind
14 the wall, we slope from 394 feet to 390, sorry, 392-foot
15 contour to a 390, 398, et cetera. So we do slope down
16 behind the wall.
17 MR. GROSSMAN: You said 398. You mean 390.8 or
18 398?
19 THE WITNESS: Oh, sorry. 390, 388, 396, 394.
20 MR. GROSSMAN: Okay.
21 THE WITNESS: Down to our, for our discharge for
22 the, for the storm water. And we have an exhibit that shows
23 that area in detail that I'm guessing you'd want the civil
24 to talk about.
25 BY MR. UHRE:

Page 40

1 Q. Do you, do you have the elevation at the Pauls'
2 property line then? If you go directly. I think we've been
3 through this before, but --
4 THE WITNESS: Is this a new exhibit?
5 MS. GIRARD: It would be new. Yeah.
6 THE WITNESS: This is a, a detailed exhibit of
7 the, of that area in question to show specifically the, the
8 drainage flow that, that we prepared.
9 MR. GROSSMAN: What's the number on that one?
10 THE WITNESS: This would be a new exhibit.
11 MS. GIRARD: Yeah. It would be a new one. Do you
12 have the, the two point, the smaller, bigger stand? That's
13 the only one I --
14 THE WITNESS: We do have the bigger stand. Yeah.
15 We printed it in two scales. One shows the Pauls' residence
16 and one is the, it's even bigger. See this, but you can't
17 see the driveway.
18 MS. LEE: See the new exhibit?
19 MR. CHEN: What?
20 MS. LEE: It's a new exhibit they have.
21 MR. GROSSMAN: All right. So this would be
22 Exhibit 142. And what do you want to call this, Ms. Girard?
23 MS. GIRARD: Proposed drainage --
24 THE WITNESS: Proposed drainage --
25 MS. GIRARD: -- flow exhibit.

Page 41

1 MR. GROSSMAN: Proposed drainage flow exhibit.
2 MR. CHEN: What number is it?
3 MR. GROSSMAN: This will be 142.
4 (Hearing Exhibit No. 142 was
5 marked for identification.)
6 THE WITNESS: So the simple way to read a, a
7 grading plan is contour lines that point uphill form ridges.
8 Contour lines that point downhill form swales. And we have
9 graded this so that we're on a ridge line as it goes into
10 the Pauls' property. Only we can't grade on their property.
11 They already have --
12 MR. GROSSMAN: Mr. Sloan, would you mind actually
13 stepping back and using the pointer so I can see too?
14 THE WITNESS: Okay.
15 MR. GROSSMAN: Start that sentence over again.
16 THE WITNESS: Yeah. Okay.
17 MR. CHEN: Can I, if I may just before we get into
18 that?
19 MR. GROSSMAN: Yes.
20 MR. CHEN: I thought Mr. Sloan was accepted as an
21 expert as a land planner?
22 MR. GROSSMAN: Yes.
23 MR. CHEN: I don't understand that a land planner
24 has the expertise to testify about drainage flow, courses of
25 water. I'm just --

Page 42

1 MS. GIRARD: I think right now he's speaking to
2 the, to the grading. We'll, we'll have --
3 MR. GROSSMAN: Right. I think he's using this as
4 a, to explain the grading in response to Mr. Uhre's
5 question. So I'll overrule the objection, but you're going
6 to be, have the opportunity to cross-examine the civil
7 engineer on any points regarding water flow if you wish to.
8 THE WITNESS: And, I guess just a little in my
9 defense, landscape architects also one complete section of
10 the exam for certification and then licensure is, is in
11 grading and drainage. But our civil engineer can talk to
12 anything about this that I, I miss or you don't think I'm
13 getting, getting right. So I'm going to point now to the
14 property line along the south. The Pauls' residence is, is
15 towards the left side and, and top of the drawing.
16 BY MR. UHRE:
17 Q. I'm sorry. May I interrupt? This is, how, do we
18 have the location of the proposed structure on this?
19 A. It's at the very bottom of the drawing towards the
20 left corner.
21 Q. So that's the --
22 A. This is the wall.
23 Q. That's the suggested wall?
24 A. That's the wall. And you can see there's a
25 pattern of ridges and swales and ridges that's going to

Page 43

1 direct water. Without grading on to the Pauls' property, we
2 worked from the contours so they tied off at the property.
3 It's called tying off, which means we're not affecting, and
4 we'll have a silt fence on this side and we'll be grading
5 from there in. But we have to come back to the side on, on
6 --
7 MR. GROSSMAN: On this side being on the southern
8 side?
9 THE WITNESS: On the subject property on the
10 southern, on the northern side of the property line. We
11 have to meet the grade so that we don't have any adverse
12 impact. So we have contoured, contoured the contours, we
13 have graded the contours so that we are directing water
14 towards our facility where in, in the very far western apex
15 of the property where we have riprap and graded, graded out
16 to accommodate our drainage structures and the water that
17 they bring. There's a little ridge above the top of the, of
18 the outfall of the drainage because we have to get water
19 once it comes here to come around and then flow into this.
20 So this is a very careful grading exercise to, to make the
21 water move directly into the existing stream valley buffer
22 at that, almost directly at that apex. Maybe five feet from
23 the apex, the stream valley buffer enters our site and comes
24 easterly through our site. So you can see the grade at the
25 Pauls' residence. It, property line. It changes from 390

Page 44

1 to all the way down to 378 feet as, as ours does. It, it
2 slopes down.
3 BY MR. UHRE:
4 Q. Okay. But, but as, if I'm reading this correctly,
5 the, just going to the wall itself is approximately 392
6 feet?
7 A. Correct.
8 Q. At the bottom? And I believe you said that the
9 turnaround area is 394 feet.
10 A. At the end is 392.4 feet, I believe.
11 Q. The part of it, so there would be a part where
12 the, the wall if it were six feet is actually going to be at
13 some points in the turnaround at least two feet lower on a
14 slope so that the net effect of the wall if you were to look
15 vertically across is only approximately four feet in height
16 as opposed to the six feet in height. That the --
17 MR. GROSSMAN: Which wall are referencing? The
18 wall?
19 MR. UHRE: I'm talking about the masonry wall.
20 THE WITNESS: The wall on the back.
21 MR. UHRE: Because the wall is built on a downward
22 slope, the, the masonry wall, as I understand, is built on a
23 downward slope so that from the turnaround it's not going to
24 appear visibly as a six-foot wall.
25 MR. GROSSMAN: Mr. Uhre, just I make sure I

Page 45

1 understand which --
2 MR. UHRE: I'm sorry.
3 MR. GROSSMAN: -- which wall you're talking about.
4 The one that is now, Mr. Sloan is pointing to? Wait a
5 second.
6 MR. UHRE: I, I'm talking about the new masonry
7 wall that they're putting in around the edge of the proposed
8 turnaround.
9 MR. GROSSMAN: Okay.
10 MR. CHEN: It's at a lower elevation.
11 MR. UHRE: Yeah.
12 MR. GROSSMAN: Well, I just want to make sure
13 we're talking about, there are a number of walls so I just
14 want to make sure we're talking about the same wall. Okay.
15 MR. UHRE: Oh, thank you. I'm sorry. I'm just --
16 THE WITNESS: Yeah. So this, this is a, it's,
17 it's complicated so, but the wall is actually built on a, a
18 ridge so we have our 392-foot contour coming north to south
19 from this stream valley buffer area on the northern side,
20 comes across our property. It actually then keeps, it, it
21 sort of goes around the back of the service alley and then
22 meets the, the property line on our southern side. But we
23 have a second 392-foot contour that we need so that we're
24 actually building the, the storm water retention area lower.
25 We're coming up to a ridge to collect the, because we need

Page 46

1 to collect the water. We're basically forming a dam on the
2 back. And that dam continues all the way under the base of
3 the wall to its, its furthest point here. So our wall at
4 the base is at 392 feet, a little bit higher actually,
5 because of this ridge of the dam on its northern side. As
6 it moves to the southern side, it's directly at 392 feet.
7 And in the front of it, it'll actually be a little bit, the
8 grade will be a little bit higher because we're directing
9 water down and we need to get to this 392 point. So this
10 will be 392 point something. So this wall is not built on a
11 down slope. And then it comes up, up the grade into, into,
12 up the hill. And it goes up the hill, if we've got a six-
13 foot six-inch wall here or actually we're beyond the setback
14 at 20 feet so we could build a, you know, a seven-foot wall
15 or something, but, you know, we don't need it for,
16 headlights aren't that tall. Six foot, you can, if it's
17 perfectly flat, you leave the top of the wall flat, but if
18 it's a six foot wall and you want it six foot at top of wall
19 versus bottom of wall, you step the wall or slant the wall.
20 Given the architecture of this kind of thing we'll probably
21 step it, but we, you know, we haven't designed the top. But
22 it'll stay at least six feet above the grade of the
23 driveway.
24 MR. GROSSMAN: So that, that wall that you've been
25 referencing, one at the very bottom of, of that exhibit is

Page 47

1 six point, is the wall that's 6.5 feet. Is that correct?
2 THE WITNESS: Yes.
3 MR. GROSSMAN: All right. So, on, on your bigger
4 plan, it's 131A, I think. Yes. 131A. That's described as
5 6.5-foot wall to match building?
6 THE WITNESS: Yes.
7 MR. GROSSMAN: Okay.
8 BY MR. UHRE:
9 Q. So as I understand your testimony then, you're
10 saying that the wall will be the, the wall will be six to
11 six and a half feet above the elevation of the truck
12 turnaround elevation?
13 A. Yes.
14 Q. The top of the wall?
15 A. Yes.
16 Q. Okay. Thank you.
17 MR. GROSSMAN: Ms. Lee, any questions?
18 CROSS-EXAMINATION
19 BY MS. LEE:
20 Q. Just one question about the, what looks like the
21 storm water management flowing towards the Falls Road Golf
22 Course. I just wondered if you folks have been in touch
23 with them and whether they have approved what looks like
24 increased flow to Falls Road to the golf course. Have they
25 agreed to these, these storm water management plans?

Page 48

1 A. When we submitted our original plans, the, the
2 plans go to 40 plus agencies including Department of
3 Permitting Services. So my, I'll have to say it's an
4 assumption. As Department of Permitting Services runs all
5 of the permitting issues for, for County land and this isn't
6 park land. The County owns this. They looked at this and
7 they, they determined, they have approved our storm water
8 concept with this runoff. And recharge of streams is
9 typical for storm water management.
10 Q. So it's the Revenue Authority I think that --
11 A. Right.
12 Q. -- operates and not the Department of Permitting
13 Services, but I guess my concern is I know you've
14 reconfigured the storm water management substantially since
15 the first submission. And I do have a concern. I think
16 it's soggy back there already on the golf course area. And
17 whether they would agree to this, this new increased flow to
18 their, to their site?
19 A. We haven't, to my knowledge, had any, anything
20 back from the Revenue Authority on it.
21 Q. But they wouldn't have received a copy of the
22 revised plan?
23 A. They wouldn't have directly received it. It would
24 have gone through Department of Permitting Services in the
25 storm water.

Page 49

1 Q. This, this most recent amended one with the new
2 storm water?
3 A. This new one has not. And I, and I think our
4 civil can talk about the amount of change while it directs
5 further water off of the, the Pauls' residence. We'll get
6 to that in a, in what, in a further stage of storm water
7 approvals. And Department of Permitting Services will look
8 at that. It, it's soggy because these are all, these are
9 wetlands and there, there are, you have significant water
10 here and there's a stream. The tee box that's here --
11 MR. GROSSMAN: That's here being?
12 THE WITNESS: That's on the, on the northwestern,
13 just off the northwestern point of our property.
14 MR. GROSSMAN: Can we be, tell me your concern,
15 Ms. Lee? I, I sent out notice of this resumed hearing
16 approximately a month ago to all parties that would be, you
17 know, would ordinarily get the notice so.
18 MR. CHEN: Did you send it to the Revenue
19 Authority?
20 MR. GROSSMAN: I, whoever is on the list of
21 adjoining and confronting property owners would have gotten
22 it.
23 THE WITNESS: They do get noticed. Right.
24 MS. LEE: I guess I am just concerned just as a
25 practical matter. If it's going to the head of DPS and

Page 50

1 you've got somebody who actually is on the ground that's at
2 the, at the club and having to deal with issues that they
3 should be consulted as well, but I understand.
4 MR. GROSSMAN: All right. Mr. Chen.
5 CROSS-EXAMINATION
6 BY MR. CHEN:
7 Q. Mr. Sloan, you mentioned specimen tree. What is a
8 specimen tree?
9 A. A specimen tree is a tree that is at least 30
10 inches in, in diameter. What we call diameter at breast
11 height so it's about four and a half, five feet off the
12 ground.
13 Q. What's a, what's a champion tree?
14 A. A champion tree is, is the largest of its, of its
15 kind in the, in the State.
16 Q. Do you know the type of specimen trees that you
17 refer to today?
18 A. I could try to recall them from memory but I, I
19 would probably fail. We have it on our approved natural
20 resources inventory, which is Exhibit 376.
21 MS. GIRARD: No. 370B.
22 THE WITNESS: 37, oh, that's a B-
23 MS. GIRARD: 37B.
24 THE WITNESS: 37B.
25 MS. GIRARD: We'd be panicked. We are way ahead

Page 51

1 of ourselves.
2 THE WITNESS: Okay. But 37B. And this is
3 oriented, north is, is actually up on our natural resources
4 inventory. So on our northeastern corner directly off of
5 our property line, we have a 36 inch red oak, a 32 inch red
6 oak, and then, then our further specimen trees are in the
7 buffer, in the buffer area off, off our property primarily
8 in the golf course property to the, to the north. So, so
9 the two closest ones that Staff was concerned about were the
10 two red oaks. And staying out of, on the natural resources
11 inventory we put what's called a critical root zone and
12 based on the diameter of the tree, that determines where
13 most of the roots doing most of the work are typically
14 located. And we stay out of that as much as possible.
15 BY MR. CHEN:
16 Q. So are these two red oak trees are the reasons why
17 you couldn't relocate the fire access pavement area that
18 Examiner Grossman inquired about?
19 A. It's, it's a primary reason why we didn't want to
20 push to the property line and, and put the trash enclosure
21 at, at the end here. There, there are operational
22 considerations of things too, but having the --
23 MR. GROSSMAN: At the northern apex.
24 THE WITNESS: -- having, at the northern apex
25 having the, having a concrete structure that we wouldn't

Page 52

1 subgrade, you know, at least probably eight to 12 inches
2 down. That would have been, we would have had to consider
3 this tree removed and we're saving it at this point.
4 BY MR. CHEN:
5 Q. Okay. Are, are either these two trees, what are
6 their dimension, their diameters again?
7 A. 36 and 32 inch.
8 Q. Yeah. Thank you. Are either one of them a
9 champion?
10 A. No.
11 Q. Are red oaks rare trees in this area?
12 A. No.
13 Q. So that rather than providing for the driveway on
14 the northern side, one of the reasons is to preserve two
15 specimen red oaks, 36 inches and 32 inches in diameter?
16 A. I guess I, I disagree with that. It has nothing
17 to do with the driveway because the driveway would come
18 around before we got to that. It's simply a matter of
19 whether the trash dumpster could be relocated in the
20 northern apex.
21 Q. Okay. So I apologize. So the, it's the existence
22 of these two red oaks that would preclude on this plan
23 locating the trash dumpster area?
24 A. That's one reason. Yes.
25 Q. And it's also am I correct, one of the reasons for

Page 53

1 the fire access point that Examiner Grossman asked about?
2 Am I mistaken on that? Remember he mentioned putting that
3 turnaround area up in the northeastern corner and I thought
4 you --
5 MR. GROSSMAN: The fire truck turnaround area.
6 MR. CHEN: Yeah. I thought --
7 THE WITNESS: That, that's where our fire truck
8 turnaround area is now.
9 BY MR. CHEN:
10 Q. Yeah. Yeah. I, if I may, I just, I thought you
11 said that, in response to a question from Mr. Grossman about
12 increasing the pavement area that that would impact the
13 critical root area for the two specimen trees. Am I
14 mistaken on that?
15 A. Correct. No. That's right.
16 Q. So that but for the two specimen trees, you could
17 put the turnaround area and the trash area up at that
18 location?
19 A. The turnaround area, well, we wouldn't be, the
20 turnaround area for the truck, for the trash. Yes. The
21 turnaround area for deliveries wouldn't be here. It would
22 still be --
23 Q. I'm not talking about deliveries. I'm talking
24 about the turnaround area and the fire truck --
25 A. They --

Page 54

1 MR. GROSSMAN: The fire truck turnaround and the
2 trash --
3 THE WITNESS: Yeah. They would use the same
4 turnaround point.
5 BY MR. CHEN:
6 Q. Okay.
7 A. That's already there.
8 Q. Okay. And you could in, in theory now, I know
9 this plan doesn't show it, but I thought that again Mr.
10 Grossman's question went to increasing that area because
11 it's partially paved now as I recollect?
12 A. Right.
13 Q. And that the, to do that, I thought your answer
14 was that to do that would encroach into the root zone area
15 of those two specimen red oaks?
16 A. Further into them. Yes.
17 Q. Okay. Have you, you mentioned that the six-foot
18 masonry wall would deflect noise. Could you tell us what
19 the level of noise would be before and after?
20 A. No, I could not.
21 Q. Why?
22 A. Because I have not done a noise study and I'm not
23 a noise expert.
24 Q. But you said, your, I put it in quotes. You said
25 that that wall would deflect the noise. What's the basis

Page 55

1 for that answer? For that information.
2 A. My basis in that information is, is one, feedback
3 from our consultant who we worked with on, on looking at the
4 design of this wall. And two, just some level of
5 rudimentary physics, but I, I probably overstepped my bounds
6 on that.
7 Q. So you don't really know?
8 A. If, if the wall deflects noise?
9 Q. Yeah.
10 A. I don't know how much it reflects, but I know
11 walls deflect noise.
12 Q. Okay. But you don't know how much?
13 A. No, I do not.
14 Q. You characterized the relocation of the driveway
15 area to the northern side as, quote, not a good idea, end
16 quote. Do you recall that testimony, sir?
17 A. The removal, moving the wall, relocation of, of
18 the drive to this side is not a good idea. Agreed.
19 Q. Yeah. And one of the reasons was the
20 environmental buffers on the northern side. Correct?
21 A. Correct.
22 Q. Now, at the present time there is improvements in
23 that area. Isn't that right?
24 A. There are.
25 Q. And the, as I understand it, the Technical Staff

Page 56

1 at the Park and Planning Commission asked or directed that
2 that area be, what's the right word? Remedied or those
3 improvements removed. I think part of the bubble is in that
4 area. Isn't that right, sir?
5 A. Yes. To remove and replant this area, re-
6 establish forests and easement.
7 MR. GROSSMAN: This area being?
8 THE WITNESS: The northern side.
9 MR. GROSSMAN: Okay.
10 THE WITNESS: Of the property.
11 BY MR. CHEN:
12 Q. And what, what, how would you describe that area?
13 Environmentally, what type of area is it?
14 A. Now?
15 Q. Yes. Well, what, in its natural state.
16 MR. GROSSMAN: Well, Mr. Chen, this is cross-
17 examination regarding the changes. Let's not go back to
18 describing the property as it was.
19 MR. CHEN: Well, I'm not doing --
20 MR. GROSSMAN: That's already been done. So there
21 isn't any reason to go back to that kind of description. So
22 --
23 MR. CHEN: I, well, wait a minute. He,
24 respectfully, he said that they are going to replant and re-
25 forest. So I'm trying to find out what kind of area it is.

Page 57

1 With the --
2 MR. GROSSMAN: Well, he's already, that, that was,
3 what kind of area it is has already been described in
4 earlier hearings and that doesn't change. In other words,
5 by doesn't change, it is what it is. That part of it hasn't
6 changed. Now there are going, there are plans, but the new
7 plans don't change that area. So I don't see where your
8 question is pertinent.
9 MR. CHEN: Well, it's pertinent because the
10 testimony is that with this plan that the driveway, it's not
11 a good idea to put it on that side because of environmental
12 buffers. He raised it and his counsel raised it. I'm
13 entitled to cross-examine on this area.
14 MR. GROSSMAN: All right. I will let you go on,
15 but let's not go too far into examining what is the current
16 condition because that's already been --
17 MR. CHEN: I'm --
18 MR. GROSSMAN: The current condition isn't changed
19 by the plans.
20 MR. CHEN: I'm not going by the current condition.
21 MR. GROSSMAN: Okay.
22 BY MR. CHEN:
23 Q. I, I just want to know what, you know, what type
24 of area is it? Is it, is it a stream buffer area, sir? Is
25 it something else? That's all.

Page 58

1 A. It is, it is, it is in stream valley buffer. Yes.
2 Q. All right. Okay. And as I understand your
3 testimony, the Technical Staff of Park and Planning wanted
4 to have that area, have the improvements removed from it and
5 they've asked for an easement over, a conservation easement
6 over that area. Is that right?
7 A. Yes.
8 Q. And your client has agreed to do that. Is that
9 right?
10 A. Correct.
11 Q. Is there any reason why that any regrading could
12 not be taken too close to the property line? You mentioned
13 that also as a reason to not relocate the service drive.
14 A. To regrade further and along our northern property
15 line?
16 MR. GROSSMAN: What diagram are you looking at
17 now?
18 THE WITNESS: I'm looking at the final forest
19 conservation plan.
20 MR. GROSSMAN: And which is exhibit?
21 THE WITNESS: This, I don't know.
22 BY MR. CHEN:
23 Q. I, I know you're looking at counsel. I just have
24 a, you know, is there a reason why you can't grade on that
25 side?

Page 59

1 MR. GROSSMAN: We're trying to get the, identify
2 what exhibit it is.
3 MR. CHEN: Oh, I'm sorry. I apologize.
4 THE WITNESS: Yeah. I just wanted to refer to the
5 number.
6 MR. CHEN: You're just waiting for a number. I, I
7 apologize. I thought we had the number.
8 MS. GIRARD: 26.
9 MR. GROSSMAN: Okay.
10 MS. GIRARD: Which sheet is this? 2? So it's
11 26B.
12 MR. GROSSMAN: All right.
13 THE WITNESS: So referring to 26B, 26B which is,
14 this was approved by the Planning Board. It does not have
15 the modification at the end of the, the turnaround.
16 MS. GIRARD: I'm sorry. It's 30, it got amended.
17 I apologize.
18 MR. GROSSMAN: All right.
19 MS. GIRARD: 39G(ii).
20 MR. GROSSMAN: 39G(ii). Okay.
21 THE WITNESS: There's an area that we indicated on
22 our property in the final forest conservation plan between
23 the northern property line and a variable amount into the
24 site that includes specifically a wetland buffer that comes
25 on to our property at the very northern, very western side

Page 60

1 of our, our northern property line. And we maintain the
2 limits of disturbance outside of that. And then it, it
3 decreases slowly, then increases again as much as we could
4 around the, the specimen trees that are along our property
5 line. And the goal here was to keep impacts to those below
6 30 percent and to keep entirely off of wetland buffers. And
7 so, as you can see to on the southern side to accommodate
8 this drive aisle to get down to the grades that we need to
9 work with the building and not raise the building up again,
10 we have to grade, we have 20 some odd feet between the
11 building and the road edge and then the, the planting area.
12 We have to grade all the way to the property line. And we
13 would have to do the same on this side. And therefore
14 require a variance for at least two more trees and
15 disturbance of the wetland buffer which we don't think, to
16 use my other term, a good, is a good idea, a good idea and
17 would require another approval by the Planning Board.
18 Q. Yeah, they approved the same day that they issued
19 their recommendations on this plan they approved that plan.
20 Isn't that right?
21 A. Right.
22 Q. So you can ask for amendments to these, these
23 plans?
24 A. We can.
25 Q. And this is a brand new plan, indeed. Isn't that

Page 61

1 right?
2 A. The one that we provided?
3 Q. Yeah. It was approved the day of the Planning
4 Board's consideration of the Conditional Use Application.
5 It was on their agenda?
6 A. Right.
7 Q. Okay. So all, all my comments that this approved
8 plan that you've just referred to was approved very recently
9 within the last couple of months?
10 A. The final forest conservation plan was, well, when
11 was our hearing at the Planning Board?
12 Q. It was the end of October.
13 MR. GROSSMAN: Whatever. It was --
14 MR. CHEN: Yeah.
15 MR. GROSSMAN: We all agree it was approved by the
16 Planning Board.
17 THE WITNESS: Yeah.
18 BY MR. CHEN:
19 Q. Yeah. Yeah. And it's the same, same day that
20 the, the Planning Board considered this Conditional Use
21 Application.
22 A. Right.
23 Q. Okay. Now, by the way, you mentioned apparently
24 there are some more specimen trees along that northern side.
25 Are any of them champions?

Page 62

1 A. No.
2 Q. Are any of the rare?
3 A. I don't believe so. No. We have, no.
4 Q. Oh. Yeah. Are they red oak?
5 A. A 32-inch elm. Actually it's not a, it's not a
6 rare in the technical term, but an elm that survived Dutch
7 elm disease is a, is an interesting kind of case.
8 Q. It's not protected.
9 A. It's not protected. And then two, two white oaks.
10 Q. Okay. Those aren't, those aren't rare either, are
11 they?
12 A. No.
13 Q. Were you present at the Planning Board hearing
14 when it considered approval of the forest conservation plan
15 and its recommendation on this conditional use?
16 A. Yes.
17 Q. And do you recall that --
18 MS. GIRARD: Objection. Aren't we going, we're
19 going back over, this was not things that he testified to
20 this time.
21 MR. GROSSMAN: Sustained. I just don't see that
22 this is responsive to the changes in the plan.
23 MR. CHEN: Well, I'm, I'm trying to respond and
24 ask him about his own testimony today. Now if has mentioned
25 something that came up before, but he's mentioned it, I'm

Page 63

1 entitled to cross.
2 MR. GROSSMAN: I, I just think it's too far
3 afield. I've already given you a lot of latitude in
4 examining on this, but we don't want to waste time here.
5 MR. CHEN: Okay. Okay. Exception noted.
6 BY MR. CHEN:
7 Q. You mentioned also that there is going to be this
8 six-foot board-on-board fence along the southwestern
9 boundary line. Do you recall that testimony, sir?
10 A. Yes.
11 Q. And that the lights would be below the fence. But
12 lights coming down on the, at night reflect, your testimony,
13 on the northern side would be directed towards the Paul
14 property?
15 A. Right.
16 Q. Have there been any lighting tests or illumination
17 tests taken?
18 A. For headlights? No.
19 Q. Okay. Again, the basis for your testimony then?
20 A. Basis, it, my, my design experience.
21 Q. Okay. But you don't know?
22 MR. GROSSMAN: Well, he's already answered. You
23 didn't say he didn't know.
24 MR. CHEN: Okay.
25 BY MR. CHEN:

Page 64

1 Q. Do you know if any of those lights might be
2 shielded by existing vegetation on the Paul property? Did
3 you take that into consideration?
4 A. Lights, if we had moved their driveway. Whether
5 there was enough existing vegetation here --
6 MR. GROSSMAN: Here being on the western --
7 THE WITNESS: On, on, on the --
8 MR. CHEN: On the Paul property?
9 THE WITNESS: Off of our property on the western
10 property. If, if there was any vegetation here it would
11 have the same impact whether it was on either side. Then I
12 guess it would be, no. I didn't consider that because it's
13 not a changeable thing within our control.
14 BY MR. CHEN:
15 Q. I understand. Did you consider putting the access
16 and the service activities under or inside the building when
17 you were considering the revisions?
18 A. We had a brief conversation about whether it was
19 feasible to, to provide them underneath or inside the
20 building. I'm going to defer a little bit, you know, at
21 least to, to the architect, but we had, we had problems
22 again with restrictions of height to be able to accommodate
23 those and that would require moving the, the building
24 further up, which we didn't want to do. So we, we abandoned
25 that idea relatively quickly and worked on other things.

Page 65

1 Q. Did you consider relocating the garage entrance to
2 the northern side before you get to those specimen trees?
3 A. No. We, we were too, we're, the grade is too
4 high. We, we can't get down below the garage there. To, or
5 to, down to the garage grade level that we need to. You'd
6 have to come in and have a driveway that pitched that the
7 trucks just couldn't do.
8 Q. Does the 6 1/2-foot wall have any function other
9 than to be a screen?
10 A. Well --
11 MR. GROSSMAN: Which, are we talking about the --
12 MR. CHEN: The six -
13 MR. GROSSMAN: -- the concrete wall or the --
14 MR. CHEN: The masonry wall.
15 MR. GROSSMAN: The masonry wall. All right.
16 MR. CHEN: The 6 1/2-foot masonry --
17 THE WITNESS: The masonry wall.
18 BY MR. CHEN:
19 Q. Yeah.
20 A. The only thing other, otherwise that we'll use it
21 as is a, as an aesthetic component, you know, to compose the
22 plant pallet against and --
23 Q. I'm sorry, sir. I didn't hear that. The --
24 MR. GROSSMAN: An aesthetic component to --
25 BY MR. CHEN:

Page 66

1 Q. So.
2 A. Compose the plant pallet against.
3 MR. GROSSMAN: To compose the plant pallet
4 against. It's a bit of tongue twister.
5 MR. CHEN: I have no further questions.
6 MR. GROSSMAN: Any redirect?
7 MS. GIRARD: No.
8 MR. GROSSMAN: Thank you, Mr. Sloan. With a
9 little luck you will not have to make another appearance.
10 THE WITNESS: Happy to oblige.
11 MR. GROSSMAN: All right. Your next witness?
12 MS. GIRARD: We'll call Don Mitchell to address
13 the storm water.
14 MR. GROSSMAN: All right. Mr. Mitchell.
15 MR. MITCHELL: Morning, Mr. Grossman.
16 MR. GROSSMAN: Good morning, Mr. Mitchell.
17 MR. MITCHELL: Glad to see you back and healthy.
18 MR. GROSSMAN: Thank you. I remind you you're
19 still under oath.
20 MR. MITCHELL: I am aware.
21 MR. GROSSMAN: And Ms. Girard, I wanted to mention
22 to you I'm not as interested at this point because we have a
23 set of plans now that we're going forward on as to what
24 might have been done. So if any, any of the additional
25 witnesses you're going to call, I'd ask you to address it

Page 67

1 to, you know, what the impact is of what the new plans are
2 and what to do rather than what might have been done had you
3 done some other plan. Because the plans which will be
4 considered are the ones that are before me now.
5 MS. GIRARD: Okay. Yeah. Fair point.
6 DIRECT EXAMINATION
7 BY MS. GIRARD:
8 Q. Okay. Mr. Mitchell, are you familiar with this
9 exhibit that's now marked 142?
10 A. I am.
11 Q. As the civil engineer for the case, you heard Mr.
12 Sloan's testimony, but can you expand on that from a civil
13 engineering standpoint as to the drainage pattern?
14 A. I can. Along the southern/southwesterly property
15 line common with the Pauls' property there is a change as
16 relative to the site where at, at a certain point drainage
17 flows to the proposed project and then as you go west, it
18 reverses course and goes towards the southwest, towards the
19 Pauls' property. And that's been a, an important point to
20 understand. It's approximately right here.
21 MR. GROSSMAN: Right here being?
22 THE WITNESS: Right here being at the southerly
23 property line where the 6 1/2-foot masonry wall begins. At
24 that point is the transition from flow towards the north and
25 the property and flow towards the south and the Pauls'

Page 68

1 property. As you move southwesterly, the drainage area
2 behind this masonry wall to a point mid-line as I would, is
3 about 25 feet from the southerly property line there's a
4 drainage divide that runs to the west, as I'm showing here,
5 that was demonstrated on a previous exhibit and
6 representative of the proposed condition drainage area that
7 flows uncontrolled to the Paul's property. One of the, the
8 primary changes we made to the design was to remove a
9 structural bioplanter that was just within six inches of the
10 Pauls' property at its nearest corner and moved it to a non-
11 structural practice to the north approximately where the
12 dumpster enclosure had previously been proposed, which was
13 the constraint previously is that the dumpster was located
14 there. Because in my civil engineering perspective the new
15 location is superior both in drainage and as well as cost
16 effectiveness and aesthetic quality in that it, the, the
17 previous was a structural bioplanter with an exposed wall
18 facing the Paul's property and being extremely close to the
19 property line, but south. It is now an in-ground graded
20 storm water bioretention basin that is able to control the
21 same relative amount within a, a coupled hundredth of an
22 acre drainage area, but is able to do it in-ground without
23 it being exposed above grade. As far as the storm drain
24 systems that serve the bioretention basin and then flow to
25 the northwesterly apex of the site. There really has not

Page 69

1 been a significant change. We have created this Exhibit 142
2 to better respond to the comments by Mr. Chen regarding the
3 flow being controlled within the proposed project and then
4 draining to the golf course to the north of the Pauls'
5 property. And that is in fact what the proposed grading
6 does. At the outfall of the storm drain system at that
7 northwesterly apex, there is a V channel which is shown in
8 cross-section that controls that drainage and directs it to
9 the existing stream course on the golf course property.
10 Q. And in your experience in situations like this
11 where you're directing drainage into an existing stream,
12 does that tend to be a problem for the adjacent landowner
13 who owns that stream?
14 MR. CHEN: Objection.
15 MR. GROSSMAN: What's your objection?
16 MR. CHEN: This is a, as I heard the, this is a
17 customized storm drainage system that's been proposed with
18 this application. So how, how can this be used as a basis
19 for other situations?
20 MR. GROSSMAN: Well, I'm going to overrule that
21 and hear his answer and we'll find out.
22 THE WITNESS: It's a, it's a simple answer, Mr.
23 Chen. There is an existing --
24 BY MR. CHEN:
25 Q. You don't have to direct your answer to me. Just

Page 70

1 the Examiner.
2 A. Thank you.
3 MR. GROSSMAN: It's okay.
4 THE WITNESS: The storm drain outfall as exists
5 today in the field at this northwestern apex is located in
6 relatively, relatively the same location and directs some
7 portion of that site to the stream valley. So the proposed
8 condition doesn't change the fact that there is a
9 concentrated flow going through the water course on the golf
10 course property. It just creates, in my opinion, a better
11 engineered and controlled discharge to that stream course.
12 BY MS. GIRARD:
13 Q. And as part of your analysis, did you prepare what
14 is Exhibit 129G? And I apologize that we don't have a large
15 copy of this.
16 A. I believe what Ms. Girard is showing me is, is
17 that exhibit that I created showing the proposed and
18 existing drainage area that flows to the Pauls' property.
19 Q. And what was the net effect of the changes that
20 were made on the drainage to the Pauls' property?
21 MR. KAUFMAN: You want to let the Examiner get the
22 exhibit out.
23 MR. GROSSMAN: Hold on one second.
24 MR. KAUFMAN: What was the number again?
25 MS. GIRARD: 129A. I'm not sure that's right.

Page 71

1 THE WITNESS: G.
2 MR. GROSSMAN: 129G. 129D. 129C. 129D, E, F, G.
3 Okay. I found it.
4 THE WITNESS: This exhibit, as I previously
5 referred to, shows the existing and proposed drainage area
6 to a study point near where that storm drain outfall is
7 shown at the northwester apex of the project adjacent to the
8 Pauls' property. The exhibit demonstrates that in existing
9 conditions approximately half an acre or 20,473 square feet
10 of surface area flows by gravity across the ground and flows
11 into the Pauls' property. In proposed condition, this
12 drainage area is reduced by 96.4 percent to a net 747 square
13 feet of surface drainage area that in ultimate conditions
14 will be flowing to the Pauls' property at this northwestern
15 apex of the site.
16 MR. GROSSMAN: And I take it that the current
17 conditions are represented by the red figure on the, on the
18 exhibit, on Exhibit 129G. It's kind of a, a triangle with a
19 regular lines and the proposed area is the, the figure which
20 is, it's much smaller in green. Is that correct?
21 THE WITNESS: That is correct.
22 BY MS. GIRARD:
23 Q. And had you prepared this, a similar exhibit for
24 the previous condition before the modifications were
25 proposed in December?

Page 72

1 A. I have.
2 Q. And is this, is the amount of reduction higher or
3 lower than that initial exhibit?
4 A. This revised drainage and plan in, is an
5 improvement and, and results in less surface running, runoff
6 going to the Pauls' property.
7 MR. GROSSMAN: Less than in the original plan?
8 THE WITNESS: Less than in the original submitted
9 and approved plan.
10 MS. GIRARD: That's all I have.
11 MR. GROSSMAN: All right. Cross-examine, Mr.
12 Uhre?
13 MR. UHRE: I have no questions.
14 MR. GROSSMAN: Ms. Lee?
15 CROSS-EXAMINATION
16 BY MS. LEE:
17 Q. I wondered if you could, if you could explain the
18 amount, and I'm sorry if I don't know the technical words.
19 I guess its surface area or drainage area that is currently
20 going to the, to the golf course versus what will now with
21 the new, the new plan, the, going to the golf course and if
22 you can translate that into even, I don't know, gallons or
23 inches or whatever?
24 A. First, let me be clear if I understand the
25 question. Are you asking what if the surface material,

Page 73

1 whether it's impervious or not impervious?
2 Q. Well, you, you mentioned, well, you mentioned
3 right now that under the current conditions with the, with
4 the tennis club, 20,400 surface area, that's the drainage
5 area that's currently going to the Pauls' property, for
6 example.
7 A. Um-hmmm.
8 Q. And now it appears that it's being diverted more
9 as you mentioned as you testified, more directly to the golf
10 course and substantially reducing the amount that's going to
11 their property. So I just wondered if you could provide,
12 and as I say, I'm not, I don't know the technical word, but
13 I guess it's, it's the amount of drainage area, the area,
14 drainage area that will be going, and also if you could
15 translate that into just gallons or anything like, any, any
16 other sort of quantitative amount of water flow.
17 A. The exhibit doesn't do that because
18 proportionality, I thought, represented the idea but for
19 your benefit I'll give you just a quick thumbnail way of, of
20 addressing that. Based upon the proposed condition being
21 grass and landscaping, there would be, you would, the best
22 way to do this is called the rational method, which is I'm
23 going to go and say too many things and then I'm going to be
24 castigated later, but CIA is, is the formal. It's
25 representative of the runoff coefficient times the intensity

Page 74

1 times the drainage area results in a cubic foot per second
2 flow. But to give you your answer clear, this is a minute
3 amount of water. It, the runoff coefficient should say it's
4 .5. The intensity is .6. So we end up with three times the
5 drainage area. In acres, 747 divided by 483,560 is less
6 than 2.02. So .02 times 3 is .06 cubic feet per second
7 roughly. Round it up and say a tenth of a cubic foot per
8 second. In the, to give you the proportionality of that, a
9 normal storm drain inlet could receive 7 1/2 feet cubic feet
10 per second, a normal 10 foot inlet. So this is just a very
11 small amount of water.

12 MR. GROSSMAN: That's the water flowing towards
13 the Pauls' property?

14 THE WITNESS: In ultimate conditions.

15 MR. GROSSMAN: And I think that Ms. Lee also asked
16 you for the equivalent figures for the current amount
17 flowing towards the golf course and what the proposed change
18 will result in.

19 THE WITNESS: Um-hmmm. I'm unable to answer the
20 question for existing conditions since the, and this was
21 covered in previous testimony that the existing site does
22 not have a storm drain plan that's on record and it's, we
23 know that, we're able to identify the storm drain outfalls
24 and the inlets on-site, but to ascertain the exact storm
25 drainage system drainage area that feeds to that is,

Page 75

1 required more information than we, was available on public
2 record. That's why I was clear to say that it's surface
3 area that we're talking about, but clearly in existing
4 conditions there's a greater amount of drainage going to the
5 storm drainage system than just surface will. So I'm not
6 able to answer the question existing conditions. In
7 proposed conditions at concept level, we have not, it's not
8 required to determine that. The environmental site design
9 to the maximum extent practicable is trying to create
10 conditions that match woods in good condition and create a
11 non-erosive outfall. The quantities are a function of
12 what's out there.

13 MR. GROSSMAN: Well, instead of putting it in, in
14 terms of numbers, let me just ask a more general question.
15 Will the proposed storm water management system reduce,
16 increase or leave the same the amount of flow of storm water
17 towards the golf course from the subject property?

18 THE WITNESS: I understand the question. It's a
19 function of storm event. For a normal storm event or
20 designed storm event, 10-year storm, it will decrease
21 because ES, storm water management structures proposed do
22 provide quantity control. That's not their primary purpose,
23 but they do provide quantity control for the ten year storm.
24 Since there's no storm water management control out there
25 today, it, I can, I'm confident in saying that it will

Page 76

1 reduce the peak flow for a 10-year storm. Greater storm
2 events, they're God's will and they'll, they overrun all
3 systems.

4 BY MS. LEE:

5 Q. But what, that's the 10-year storm event. What if
6 it's just this afternoon's? What's, I guess if I, if I was
7 going to call up the folks at the Falls Road Golf Course and
8 say were you aware and you know there's going to be some
9 impact. You've just told us that you're going to reduce it
10 from 20,400 to something like 700 or 900. Doesn't that,
11 doesn't that translate into increased storm water that's
12 going to go to the, to the golf course?

13 A. If you're picking a particular geographic
14 location, it would, the drainage area would be increased to
15 that outfall. It has to, you recall though that the Pauls'
16 property actually flows to the golf course also. So the
17 water that went today to the golf, to the Pauls' property
18 does go to that stream, same stream tributary a little
19 farther west. So the, the answer is in relative range of a
20 couple hundred feet, it doesn't change the drainage area
21 going to the golf course.

22 Q. But I'm, I'm really concerned about, can you give
23 me just a, a percentage increase in the amount that will go
24 to the, to the Falls Road Golf Course?

25 A. I believe that it will not be an increase for

Page 77

1 every, it's typical one-year storm event, which is the
2 lowest storm event that we designed to. That this will
3 decrease the, the discharge because the storm water devices
4 have greater quantity control for smaller storm events. In
5 other words, there is a flip of water storage in each one of
6 these devices. When it rains everything is accumulated in
7 them and over a 24-hour period they infiltrate out.

8 MR. GROSSMAN: Let me, let me rephrase my earlier
9 question to ask it in even more simple terms. Will the
10 proposed storm water management system that you are
11 suggesting here today improve or remain the same or, or, or
12 decrease the amount of storm water flow from the subject
13 site on to the golf course property?

14 THE WITNESS: I wish I could just say that simply,
15 but it's the same amount of water fall, same amount of water
16 will eventually go to the golf course. Peak discharge will
17 be reduced for any storm event.

18 MR. GROSSMAN: Okay.

19 THE WITNESS: It'll improve.

20 MR. GROSSMAN: So you're saying it's a net
21 improvement because the peak will be reduced, but overall it
22 may be, remain the same. Will it in any way make it worse?

23 THE WITNESS: It will not.

24 MR. GROSSMAN: All right. I think that addresses
25 the essence of your question?

Page 78

1 MS. LEE: But it all will, yeah. No. Thank you
 2 very much because that's much better. Crazy enough.
 3 BY MS. LEE:
 4 Q. But it will now instead of going to the Pauls'
 5 property and then going that way, it's all going, there's
 6 going to be one outfall to the, to the golf course?
 7 A. No. There, there is multiple outfalls. Three --
 8 Q. But from that, from, but from that side? I mean I
 9 know from the, the stream buffer side there's going to be
 10 other outfalls, but to that.
 11 A. Yes. Let's be clear. Yeah.
 12 Q. Okay. Thank you.
 13 MR. GROSSMAN: All right. Mr. Chen?
 14 CROSS-EXAMINATION
 15 BY MR. CHEN:
 16 Q. Are you aware of any existing erosion at the
 17 western point of the property, subject property?
 18 A. When you say western do you mean adjacent to the
 19 Pauls or the golf course?
 20 Q. Adjacent to the Pauls.
 21 A. I, when I field walked the site it appeared to me
 22 that there was. We didn't go on to the Pauls' property.
 23 Q. I understand. How about on the golf course side?
 24 A. Clearly there was sedimentation into the stream
 25 valley system from the, the proposed project property.

Page 79

1 Q. How big is the riprap receiving area that is
 2 depicted on Exhibit, I think it's 142?
 3 A. Now the riprap section isn't final engineered.
 4 This was done for concept and it's approximately 22 foot.
 5 Q. Is that, it's, that's, is that it's length?
 6 A. Yes.
 7 Q. How about its width?
 8 A. The width, it's a V channel. It, it will contain
 9 the storm event. Ultimate conditions I, I, are not
 10 reflected necessarily on this, but I expect it'll probably
 11 be five to eight feet wide.
 12 Q. What is the largest storm event that it can
 13 handle?
 14 A. It's, that's not the way the design process works.
 15 It's, it's designed for a 10-year storm. That doesn't mean
 16 it won't handle a larger storm event, but it's designed for
 17 the 10-year storm.
 18 Q. Would there be any ponding?
 19 A. No.
 20 Q. How much of the storm water that falls on the
 21 subject property is conveyed to that area?
 22 A. I'm not sure I understand the question.
 23 Q. Well, of, of all the, the storm water that would
 24 fall on the subject property, what percentage of it would
 25 flow to the point of discharge at the riprap area?

Page 80

1 A. I'm, I'm still not clear. Are you referring to
 2 the point zero, the 747 square feet will flow on to the
 3 Pauls' property from, in proposed condition? The rest of it
 4 goes to the golf course.
 5 Q. No. I, I'm talking about at the point shown on
 6 Exhibit 142 where the riprap begins.
 7 A. Oh, you want to know what is the drainage area
 8 that goes to that outfall.
 9 Q. I, I'm, no. The question is how much, what
 10 percentage of the storm water that falls on the subject
 11 property will go to that point?
 12 A. I'm uncertain of that number. It's, I can
 13 approximate it for you that it's approximately an acre of
 14 drainage.
 15 Q. And do you know how much of the storm water, and I
 16 know we have these other exhibits, but, and, and I apologize
 17 if I forgot the number, but do you have any information as
 18 to the amount of storm water that would still remain to flow
 19 on to the Paul property?
 20 A. 747 square feet. I, I want to rethink that. I, I
 21 think that it's more than an acre that will go to that
 22 outfall. I, I don't have the number in front of me and I'd
 23 have to look at the drainage area now. But I think it might
 24 be larger than an acre. It's, it's close to what's out
 25 there today I suspect based on topo.

Page 81

1 Q. And this property is something over four acres in
 2 size.
 3 A. Right.
 4 Q. Where will the rest of the storm water flow?
 5 A. The rest of the storm water will flow into the
 6 other two outfalls that come out of the storm water
 7 management systems.
 8 Q. And they're located on the northern side of the
 9 subject property?
 10 A. Correct.
 11 MR. CHEN: I have no further questions.
 12 MR. GROSSMAN: Any redirect?
 13 MS. GIRARD: No.
 14 MR. KAUFMAN: No.
 15 MR. GROSSMAN: Well, I thank you very much, sir.
 16 THE WITNESS: Thank you.
 17 MR. GROSSMAN: All right. Let's take a five
 18 minute break. Come back at 11:30.
 19 (Off the record.)
 20 (On the record.)
 21 MR. GROSSMAN: All right. We'll go back on the
 22 record. And before we resume with your next witness, Mr.
 23 Chen's objection caused me to go look back at OZAH's rules
 24 on modifications to conditional use applications and Rule 22
 25 governs that. And if you look at Rule 22.3 it contemplates

Page 82

1 amendments to the application during the hearing by saying
2 no written notice is required for amendments made during a
3 public a hearing.
4 MR. CHEN: Yeah. Just, just for the record, I'm
5 aware of that and there, there's a problem with that. The
6 OZAH rule cannot overrule the, the law, the Zoning
7 Ordinance. And, in any event, it only talks about notice.
8 But we have a disagreement.
9 MR. GROSSMAN: It doesn't overrule, it doesn't
10 overrule the law. It, it further explicates it and I note
11 that the Council Rules as with the Zoning Ordinance, I mean
12 the OZAH Rules as with the Zoning Ordinance are approved by
13 the Council. We don't just make them up. They --
14 MR. CHEN: I understand that.
15 MR. GROSSMAN: They go through a Council procedure
16 and approved by Council resolution. So. All right. So I
17 think that handles that issue.
18 MR. CHEN: Well, I mean as I, I, I --
19 MR. GROSSMAN: We have your objection. I --
20 MR. CHEN: Yeah.
21 MR. GROSSMAN: You can pursue it in any way you
22 think will be fertile, but I don't think it'll go far.
23 MR. CHEN: I, please. I think we respectfully
24 have a, a legitimate disagreement and I, I appreciate you
25 recognizing the objection and we just proceed.

Page 83

1 MR. GROSSMAN: Well, I don't have a choice. You
2 made an objection. I don't have a choice whether to
3 recognize it or not. It's an objection. But I, I don't
4 think it's, I don't think that it will carry the day. All
5 right.
6 Your next witness, Ms. Girard.
7 MS. GIRARD: Mr. Hal Bolton.
8 MR. GROSSMAN: All right. Mr. Bolton, you've
9 testified previously and I remind you you're still under
10 oath.
11 MR. BOLTON: Thank you.
12 DIRECT EXAMINATION
13 BY MS. GIRARD:
14 Q. Mr. Bolton, can you just go through the
15 architectural revisions that were made after the December
16 7th hearing?
17 A. Certainly. The architectural revisions consist
18 primarily of taking residential units which had previously
19 been located on the second level on the western portion of
20 the building and relocating these units to the third level
21 essentially to the mid-point of the building. The net
22 effect of this was reducing the western elevation facing the
23 Pauls by 12 feet, taking what had been our roofline at this
24 level and dropping it down 12 feet to the second floor.
25 MS. GIRARD: And Mr. Bolton is referring to

Page 84

1 131D(viii).
2 MR. GROSSMAN: Okay.
3 BY MS. GIRARD:
4 Q. And you mentioned relocating the units. Where
5 were those units relocated to?
6 A. The units were relocated to the existing third
7 floor just to the west of the residential units that were
8 previously located on the third floor.
9 Q. And so there was no reduction in units?
10 A. There's no reduction in units.
11 Q. And do you believe that the, the location of the,
12 of the relocated units will have any adverse impacts on the
13 adjacent properties?
14 A. I do not.
15 MR. CHEN: Well, objection. I, I'm sure that
16 there's an area within which this gentleman can express an
17 opinion, but the way that question is, is I think it's
18 overly broad.
19 MR. GROSSMAN: And I take it that you mean in an
20 architectural sense?
21 MS. GIRARD: From an architectural standpoint.
22 Yes.
23 MR. GROSSMAN: Yes.
24 THE WITNESS: No, I do not. It, it keeps within
25 the character and the overall aesthetic of the building as

Page 85

1 we had it designed.
2 BY MS. GIRARD:
3 Q. And a question was raised earlier about the
4 possibility of moving the garage entrances to, or the garage
5 entrance to the east. Can you, Mr. Sloan, you heard,
6 addressed it from the grading standpoint. Do you have any
7 architectural insight into that question as well?
8 A. Only to say that given the program and special
9 requirements for the parking that we are providing as well
10 as the location of the elevators and the service needed to
11 receive goods and bring them up to the kitchen level, we, we
12 were unable to shift that entrance because we have
13 additional programming that's required at that level to the
14 east side of where the existing parking is located.
15 MS. GIRARD: That's all I have.
16 MR. GROSSMAN: All right. Mr. Uhre, questions?
17 CROSS-EXAMINATION
18 BY MR. UHRE:
19 Q. Let's just start where you left off. You said you
20 were unable to shift? What did you mean by that? I, I'm
21 trying to, I'm not quite sure I understand that interchange
22 so.
23 A. So we have a parking layout with a door located
24 centrally within that layout so that it can easily access
25 all the parking spaces within that area. To the east of

Page 86

1 that we have programming required for receiving of goods.
2 As we've discussed, the elevators to transport that
3 vertically to the building. So any attempt to move that
4 door, the entrance to the garage to the east would have an
5 adverse impact on the parking layout and the use of the
6 building at that level.
7 Q. Did you consider reducing the size of the
8 structure itself so that you could put the service road, for
9 example, on the northern side?
10 A. We did not in this exercise, sir.
11 Q. So it's not that you couldn't put it over there.
12 It's just that you can't put it over there and still have a
13 size of 140 beds. Is that basically what you're saying?
14 A. Well, we're discussing, I think, the location of
15 the parking level. Not the --
16 Q. Well, I was switching to the service road. I'm
17 sorry. The --
18 MR. GROSSMAN: Well, Mr. Uhre, I'm going to stop
19 you here because once again I'm going to consider the plans
20 that are, are before me, not a reduced version. And, yes,
21 you can always reduce something in size. I mean I have to
22 reminisce a bit. Once when I asked somebody if I could do
23 something on the computer and he informed me, yes, you could
24 turn a toaster into a computer if you add the right chips on
25 to it. Well, you can do a lot of things if you change the

Page 87

1 size, but I think we have the plans now that we had before
2 us and, and I'm not going to go into an examination of what
3 could have been done with the plans. I'm going to review
4 the ones that are before me now. So whether they could have
5 made this half the size and had half the number of patients
6 we already have testimony that that wouldn't be effective
7 from their own policy standpoint and so on. So.
8 BY MR. UHRE:
9 Q. When you moved the units from the, basically the
10 rear of the building or the western side of the building, as
11 I understand, you added essentially a new level to the
12 center of the building to accommodate those units?
13 A. I would phrase it that we extended the existing
14 third level that we have to the center.
15 Q. From the front of the building? Is that what you
16 --
17 A. From the east portion to the west. So it, it,
18 that, the, what had been the western edge of the third floor
19 now extends more toward the center of the building.
20 Q. And what is the new elevation to the top of the
21 roof after that was extended?
22 A. It's the same as it was previously. That roof
23 continues the same roofline as had been previously shown.
24 Q. So there's no change in the height of the
25 roofline?

Page 88

1 A. Not from, the existing third floor roof has
2 extended at the same elevation farther west, but it has not,
3 it has not raised.
4 Q. I'm, I'm talking about the, what I would term the
5 mid-section of the building, which would be the north and
6 south and the middle of the building where, as I understand,
7 units were added to an additional level at that part of the
8 building. Is that understanding correct?
9 A. Units were added to the third level. That's --
10 Q. So the new level was added to the mid-section of
11 the building?
12 A. I would phrase it differently. That level was
13 already there so I don't think we're adding a new level.
14 Q. In the mid-section of the building, what is the
15 elevation currently with the proposed revised plans to the
16 top of the roof in that mid-section of the building?
17 A. So our roof bearing at that point as it is at the
18 eastern --
19 MR. CHEN: Exhibit, Exhibit --
20 THE WITNESS: This is the same exhibit.
21 131D(viii).
22 MR. GROSSMAN: The, it's Roman numeral, small
23 Roman numeral viii.
24 THE WITNESS: The roof bearing at that, the
25 portion where we added the units is the same as it was in

Page 89

1 the existing third floor at 36 feet above grade.
2 MR. UHRE: All right. I don't have any other
3 questions.
4 MR. GROSSMAN: Ms. Lee?
5 MS. LEE: No.
6 MR. GROSSMAN: Mr. Chen?
7 CROSS-EXAMINATION
8 BY MR. CHEN:
9 Q. In response to the question by Ms. Girard about
10 moving the garage entrance you started by saying given the
11 program and space requirements, end quote. What did you
12 mean by that?
13 A. We have a certain number of parking spaces that we
14 were providing.
15 Q. What's that number?
16 A. I believe it's 18. I would have to go back and
17 double check the -- 18.
18 Q. Okay.
19 A. And a minimum size for each parking space plus
20 egress components that factor into that. And accessible
21 parking spaces. And accessible parking spaces.
22 Q. Okay. That's all that you meant by when you said
23 given the program and space --
24 A. Well, the program for the parking. There's also
25 programming at that level as we have discussed in previous

Page 90

1 testimony to bring goods into the building, to bring food
2 for the kitchen. And, and the location of that delivery has
3 been discussed prior.
4 Q. Oh, okay. You, so you're, all you're saying is
5 that given the existing proposal that that's the reason why
6 the garage could not be relocated?
7 A. Right.
8 Q. That's an architectural function, right?
9 A. Yes. And you're talking about the garage door?
10 Q. Yeah. I mean when you, when you, I'm just trying
11 to understand what you're saying. That program and the
12 space requirements are based upon how the architectural
13 layout is proposed by this project.
14 A. Um-hmmm. Well, and we've also heard testimony
15 today --
16 Q. Did, excuse me. I apologize. You said hmmm and
17 I, I --
18 MR. GROSSMAN: Is that a yes?
19 THE WITNESS: Yes.
20 MR. GROSSMAN: Is this hmmm --
21 THE WITNESS: Yes.
22 MR. GROSSMAN: Okay.
23 THE WITNESS: Testimony about the grading on the
24 north side of the building regarding that.
25 BY MR. CHEN:

Page 91

1 Q. Yeah. I understand, but that's not your area. Is
2 that right?
3 A. Right.
4 Q. Okay. I just want you to stay in your area.
5 Okay.
6 MR. CHEN: That's all I've got.
7 MR. GROSSMAN: All right. Any redirect?
8 MS. KAUFMAN: No. I don't think so.
9 MR. GROSSMAN: All right. Thank you, Mr. Bolt. I
10 appreciate your coming back.
11 MR. BOLT: Thank you. Um-hmmm.
12 MR. GROSSMAN: All right. Are there any further
13 witnesses from the applicant?
14 MS. GIRARD: No.
15 MR. GROSSMAN: No. Okay. I mean subject to your,
16 you have listed two additional rebuttal witnesses.
17 MS. GIRARD: Yeah. Rebuttals considering
18 completely separate things.
19 MR. GROSSMAN: Okay. All right then. Let's move
20 to, Mr. Uhre, do you have any --
21 MR. CHEN: If I may?
22 MR. GROSSMAN: Yes, sir.
23 MR. CHEN: I object. We are in the applicant's
24 case. We're in the applicant's case on an amended
25 application.

Page 92

1 MR. GROSSMAN: Right.
2 MR. CHEN: The applicant cannot have it two ways.
3 The case has been open, reopened to accommodate the amended
4 application. This is the time for the applicant to put on
5 the witnesses that it has disclosed in the last 30 days. So
6 I, I object to them not being called during this period of
7 time when we're back in the applicant's case and I think
8 that they should be called now.
9 MR. GROSSMAN: Okay. And you're talking about the
10 two who were listed as rebuttal witnesses.
11 MR. CHEN: Yeah.
12 MR. GROSSMAN: That is the noise witness and the
13 one, the appraiser.
14 MR. CHEN: Yes.
15 MR. GROSSMAN: You know, I think there's a
16 legitimate point to be made there. That is, is there any
17 reason why they can't be called in the applicant's case
18 since you've already heard from --
19 MS. GIRARD: Honestly, it's just going to spin
20 this out. We'll call them and then we'll hear the rest, I
21 mean we were, it is an unusual circumstance in that we were
22 in the middle of the opposition's case when the amendments
23 were made.
24 MR. GROSSMAN: It is.
25 MS. GIRARD: So it's, it's unusual in that way.

Page 93

1 We were planning aside really nothing to do with the
2 amendments was the appraiser and the, the noise expert.
3 They were more responsive to the experts that were being
4 called in the opposition's case.
5 MR. GROSSMAN: Right.
6 MS. GIRARD: So they were meant to be rebuttal
7 witnesses. Not primary witnesses. So.
8 MR. GROSSMAN: Right. But we, we know, at this
9 juncture, we know we've heard from at least an appraiser
10 regarding this. I don't think it's unreasonable to say that
11 the applicant should put on, since we know that both noise
12 and the real estate appraisal are issues that have been
13 raised in the case to ask the applicant to put it on in
14 their case in chief. So.
15 MS. GIRARD: I don't have any problem with that.
16 I'm just saying --
17 MR. GROSSMAN: Okay.
18 MS. GIRARD: -- then we reserve the right to call
19 them back on rebuttal after the opposition is done with its
20 --
21 MR. GROSSMAN: If it's true, if it becomes true
22 rebuttal, then you would have, I don't know about a right,
23 but I would let you do it if it's necessary as to rebuttal.
24 So let's, I think it's a fair --
25 MS. GIRARD: Right.

Page 94

1 MR. CHEN: Just for the record. I recognize that.
2 MR. GROSSMAN: Okay.
3 MR. CHEN: That makes sense.
4 MR. GROSSMAN: Okay. I think it's a fair point
5 and actually it's something that had occurred to me as well
6 in terms of the timing of the witnesses.
7 MR. KAUFMAN: I would ask that Mr. Chen remove his
8 two witnesses during this testimony --
9 MR. CHEN: No.
10 MR. KAUFMAN: -- because they will have the
11 benefit of going to school on these two witnesses and can
12 change their testimony from what it would have been.
13 MR. GROSSMAN: This is, this is not, these are
14 expert witnesses, not fact witnesses. There isn't any rule
15 on witnesses that's necessary or usually applied in rezoning
16 --
17 MR. KAUFMAN: I mean you can see the, the reason
18 this is being done and --
19 MR. GROSSMAN: There isn't, you don't have to
20 respond because there, there isn't any, any precedence for,
21 in, in zoning cases in conditional use applications for
22 having a rule on witnesses, which is essentially what you're
23 asking for, especially from, from expert witnesses who are
24 not fact witnesses. So.
25 MR. KAUFMAN: Actually in the past I have had this

Page 95

1 done, but, you know, I certainly respect --
2 MR. GROSSMAN: I'm, I've never done it in, in one.
3 You may have had it done. For an expert witness to be
4 removed? Not a fact witness?
5 MR. KAUFMAN: I've had it done prior to you being,
6 you know, Hearing Examiner.
7 MR. GROSSMAN: Not prior to my birth, was it, Mr.
8 Kaufman?
9 MR. KAUFMAN: Well, well, you, you, how long have
10 you been a Hearing Examiner?
11 MR. GROSSMAN: I think it's 12 or 13 years.
12 Twelve years.
13 MR. KAUFMAN: Yeah. Well, I've been doing this
14 for 43 so. Okay.
15 MR. GROSSMAN: I know. That's why I asked.
16 MR. KAUFMAN: Yeah. But I, you know, it doesn't
17 matter. I, I'll understand.
18 MR. GROSSMAN: All right. But in any event,
19 their, that's my ruling.
20 MR. CHEN: And just, just --
21 MR. GROSSMAN: They're not, they're not fact
22 witnesses. They're, they're expert witnesses and so I don't
23 see any, any basis for a rule on witnesses.
24 MR. CHEN: Just, and just for the record. As Mr.
25 Kaufman knows, I used to sit in the same chair you're in,

Page 96

1 sir. And that was too many years ago that I don't want to
2 relate, but I, your ruling is exactly my experience both as
3 an examiner and as a lawyer before administrative bodies.
4 MR. GROSSMAN: Okay. All right. So why don't you
5 call your additional witnesses and we'll go on from there.
6 MS. GIRARD: Sure. Then we'll call Donald
7 Boucher.
8 MR. GROSSMAN: Okay. Mr. Boucher, would you state
9 your full name and your business address, please?
10 MR. BOUCHER: Donald S. Boucher, 214 Red Hill
11 Road, Orange, Virginia 22960.
12 MR. GROSSMAN: And would you raise your right
13 hand, please? Do you swear or affirm to tell the truth, the
14 whole truth and nothing but the truth under penalty of
15 perjury?
16 MR. BOUCHER: I do.
17 MR. GROSSMAN: All right. You may proceed.
18 MS. GIRARD: Mr. Boucher's resume is in the record
19 as 135A and a copy of his license is 135B. We're happy to
20 go through his expert qualifications, but --
21 MR. CHEN: I have no problem recognizing Mr.
22 Boucher as an appraiser, sir.
23 MR. GROSSMAN: All right. Mr. Uhre, do you have
24 any questions regarding this witness's expertise as a real
25 estate appraiser?

Page 97

1 MR. UHRE: No.
2 MR. GROSSMAN: Ms. Lee?
3 MS. LEE: No.
4 MR. GROSSMAN: No. All right. Yes. Based on Mr.
5 Boucher's resume, I, and the fact there's no objection to
6 it, I accept Mr. Boucher as an expert in real estate
7 appraisal.
8 DIRECT EXAMINATION
9 BY MS. GIRARD:
10 Q. Mr. Boucher, are you familiar with the property
11 and the existing improvements on the property?
12 A. Which property are you talking about? Are you
13 talking about the existing tennis facility?
14 Q. Yes.
15 A. And the, the existing conditions in, in that area
16 with the Manor Care Nursing Home facility, the tennis
17 facility and the proposed facility conditional use? Yes.
18 Q. Exhibit 105A is an aerial. Does that accurately
19 depict your understanding of the site and the adjacent area?
20 A. Yes.
21 Q. Okay. And are you familiar with the plans for the
22 Brandywine Assisted Living facility that is proposed to
23 replace the existing Potomac Tennis and Fitness Club?
24 A. I am.
25 Q. If you were preparing an appraisal of a house

Page 98

1 adjacent to these facilities, how would you consider and
2 analyze the respective impacts on value?
3 MR. CHEN: Objection. I have no problem as an
4 appraiser if he gives his opinion as to the fair market
5 value of property. Absolutely none. That's not what this
6 question goes for. Unless there's a foundation that I have
7 not heard for this type of an inquiry of an appraiser.
8 MR. GROSSMAN: Will you repeat the question for me
9 so I?
10 MS. GIRARD: The question was if you were
11 preparing an appraisal of a house adjacent to these
12 facilities, how would you consider and analyze the
13 respective impacts on value?
14 MR. GROSSMAN: I think that's a legitimate
15 question for this expert witness and I'll overrule the
16 objection.
17 THE WITNESS: As an appraiser, in the normal
18 course of business, I think I would consider the existing
19 conditions or the proposed conditions with the new
20 Brandywine facility to be equal in terms of their effect on
21 the value of adjacent properties.
22 BY MS. GIRARD:
23 Q. Okay. So when you, when you're doing an appraisal
24 of a property you do consider the adjacent uses?
25 A. Yes.

Page 99

1 Q. And you, you think that the proposed, based on
2 your understanding of the plans, the proposed would have a
3 similar impact on value as the existing tennis club?
4 MR. CHEN: Excuse me. Again, are we talking about
5 fair market value?
6 MR. GROSSMAN: Are you talking about fair market
7 value when you value?
8 BY MS. GIRARD:
9 Q. Are you talking about fair market value?
10 MR. GROSSMAN: Is that pass it along or is that --
11 THE WITNESS: Fair, fair market value is the term
12 that's used by the Internal Revenue Service only these days.
13 Market value is something that appraisers use. I think what
14 we're dealing with here in the zoning here is, is the
15 economic value. It's impact on adjacent and confronting
16 properties. So I think what we're dealing with here is the
17 economic value impact on adjacent properties. That would be
18 the definition.
19 MR. GROSSMAN: Okay. So now you want to state
20 that question again because, so he's answered what value is.
21 He hasn't answered the direct question.
22 THE WITNESS: But, but also in, in terms of normal
23 appraisal practice unless I was doing an estate appraisal, I
24 would be using market value. If I was doing an estate
25 appraisal, I would be using fair market value. For the

Page 100

1 purposes of this hearing, we're dealing with economic value.
2 MR. GROSSMAN: Well, what's the difference between
3 fair market value and economic value?
4 THE WITNESS: Well, I, I looked into the Zoning
5 Code to find a definition of economic value. I'm just, I
6 couldn't find a definition, but my understanding was, was
7 that the, intent of the Zoning Code is to look at the impact
8 on any kind of value on adjacent or confronting properties.
9 MR. GROSSMAN: No. What I'm getting at is you've
10 made a distinction between economic value and fair market
11 value as a term used by the Internal Revenue Service. In
12 terms of what you're describing by the term economic value,
13 what is the difference between that and fair market value?
14 Is there any difference?
15 THE WITNESS: I, I don't know because I couldn't,
16 I couldn't find, I'm just trying to --
17 MR. GROSSMAN: Well, forget about what the Zoning
18 Ordinance says. Just tell me what, what --
19 THE WITNESS: Then we're, then we're looking at
20 market value.
21 MR. GROSSMAN: Okay.
22 THE WITNESS: That's what we're looking at for
23 those purposes.
24 MR. GROSSMAN: So essentially, okay. And in your
25 mind is there any difference other than the words between

Page 101

1 fair market value, market value and economic value?
2 THE WITNESS: No. I'm going to say no.
3 MR. GROSSMAN: Okay. So when we talk, so for
4 shorthand if she says value or market value, economic value,
5 we're talking about the same thing?
6 THE WITNESS: Right.
7 MR. GROSSMAN: Okay.
8 BY MS. GIRARD:
9 Q. And Mr. Boucher, if we can just explore for a
10 minute the, the foundation of that conclusion. Do you have
11 experience in, in this area of the County doing appraisers,
12 appraisals?
13 A. I've been doing appraisals for 42 years and I've
14 done hundreds of appraisals in the Potomac market area.
15 I've done appraisals of houses, low-end houses, high-end
16 houses and everything. And, and the basis for my making
17 that opinion and conclusion is my experience appraising many
18 houses in Potomac, Bethesda, similar in the areas over the
19 years.
20 Q. And were some of those houses adjacent to maybe
21 not exactly this facility, but similar facilities?
22 A. I've appraised houses that are backed up to high
23 tension power lines. That can become an issue at times.
24 I've, the houses that back up to schools, houses that are
25 proximate to shopping centers, houses that are on busy

Page 102

1 streets, houses, you know, it, there, there's all kinds of
2 locational things that can affect value. And in 42 years, I
3 think I've seen them all.
4 Q. Okay. So it's your conclusion then that the
5 proposed assisted living facility would have no more of an
6 impact or is it fair to say no more of an impact on the
7 economic value of the adjacent residential property than
8 does the existing tennis club?
9 A. That would be my opinion.
10 Q. Okay.
11 MS. GIRARD: That's all we have.
12 MR. GROSSMAN: I noticed that the exhibit that's,
13 was posted, Exhibit 105A, has the, the adjacent property or
14 the subject property has a, a tennis bubble on it. There's
15 been testimony that that bubble is only there for a portion
16 of the year. Is your opinion different at all for that time
17 in which the bubble is not erected on the subject site?
18 THE WITNESS: I, I asked Ms. Girard about that. I
19 think that the, that the bubble is only up through March or
20 April or something like that. And I have a, actually a
21 bigger concern when the bubble is not up because it's my
22 understanding that they allow the lights on the tennis
23 courts to be on to like 9 o'clock at night.
24 MR. GROSSMAN: Well, let's do --
25 THE WITNESS: So, so when the bubble is off, then

Page 103

1 the lights would be shining. And that could be a bigger
2 problem.
3 MR. GROSSMAN: So, well, let me, my question is
4 when that bubble is off does your opinion change as to the,
5 the relevant market value, of a relative market value
6 between the current use on the property and the proposed
7 use?
8 THE WITNESS: My opinion doesn't change.
9 MR. GROSSMAN: Okay. All right. Mr. Uhre?
10 MR. UHRE: Could I let Mr. Chen go first with this
11 witness?
12 MR. GROSSMAN: If Mr. Chen wants to. Mr. Chen?
13 MS. LEE: Could, I have one --
14 MR. GROSSMAN: All right. Ms. Lee, go ahead.
15 MS. LEE: I'll do, if he wants to take just a
16 second.
17 MR. GROSSMAN: Well, he's thinking. We'll let you
18 go ahead.
19 MS. LEE: Okay.
20 CROSS-EXAMINATION
21 BY MS. LEE:
22 Q. This is sort of still sorting out my, my first
23 time around on what the condition, what the, what the
24 standards are. You mentioned that you had done a lot of
25 work through, with regard to locational value. All kinds of

Page 104

1 things. High wires, schools, so that sort of thing. But
2 that you were making your conclusion based on what the
3 existing tennis club is. And I think there's a continuing,
4 what the value is now with the existing tennis club versus
5 this residential facility. And I wondered if, I think there
6 is an issue about what the standard is with regard to what
7 you should be comparing it to. But that aside, could you
8 tell me what your opinion is based, based on your experience
9 with regard to homes and their value if they are placed next
10 to assisted living or a skilled nursing facility, more
11 institutional uses, and if there's a percentage, you know,
12 of difference in houses that are located next to those kinds
13 of uses versus, versus residential, other residential?
14 A. Well, there --
15 MR. GROSSMAN: Good question, Ms. Lee.
16 THE WITNESS: That would, that would depend on the
17 type of house. I mean for a \$300,000 house, the answer
18 might be one thing. For a \$3 million house, the answer
19 might be another thing. So I, I really am trying to
20 understand, are you, are you saying like in --
21 MR. GROSSMAN: Well, let's take this in the purest
22 form of that, that question. Forget about what's, what
23 exists on the subject site now. Because you were asked a
24 question regarding its relative impacts of what exists now
25 versus what is proposed. What about just the pure question

Page 105

1 that is, is raised by Ms. Lee? Would the proposed assisted
2 living facility now have an economic impact on property
3 values or property value impact on the adjacent residential,
4 being the Pauls' residence?
5 THE WITNESS: Would --
6 MS. GIRARD: Wait. Can I, I'm sorry. Can I just
7 ask for clarification on that? You mean as, as compared to
8 what?
9 MR. GROSSMAN: Not as compared to anything. As
10 compared to, I guess you could say --
11 MS. GIRARD: Just if it were there and then you
12 plopped down a --
13 MS. LEE: It's residential.
14 MS. GIRARD: -- residential care facility?
15 MR. GROSSMAN: Right. If you had, it's in a
16 residential zone. Is, is there an impact of the proposed
17 facility, an economic impact, a property value impact on the
18 Pauls' residence?
19 THE WITNESS: Assuming that the tennis facility
20 and the Manor Care is not institutional? It's just a blank,
21 it's just a --
22 MR. GROSSMAN: Forget about the tennis facility.
23 It's just a question of whether or not, whether this
24 proposed, let's say it was, it was just an empty --
25 THE WITNESS: -- a blank piece of land.

Page 106

1 MR. GROSSMAN: -- an empty piece of land now, but
2 I'm not asking you to consider what's there now. I'm asking
3 you just to consider whether the proposed facility would
4 have an impact, negative, positive or none at all, on the
5 property value, the market value of the Pauls' residence?
6 THE WITNESS: I, I, I can't appraise the Pauls'
7 residence. I, I'll talk about, I haven't been on the Pauls'
8 property. I can't address the Pauls' property specifically,
9 but in general, I can talk about, you know, what if there
10 was a house next door to it. I think the answer to your
11 question is this. In a neighborhood like Lockland Drive if
12 one house --
13 MR. GROSSMAN: Lockland Drive is the address of
14 the Pauls' residence.
15 THE WITNESS: Well, Lockland Drive runs from Glen
16 Road all the way up to Piney Meetinghouse.
17 MR. GROSSMAN: Right.
18 THE WITNESS: But if you, if you had two identical
19 sites with two identical houses and one was at the lower end
20 of the T on Lockland Drive and one was at the upper end and
21 there was a proposed new building to be built there, that
22 would impact that value and/or marketability of that
23 property. However, having said that, it would also depend
24 on market conditions. And in weaker markets, things like
25 proximity to high tension power lines and busy streets tend

Page 107

1 to have more of effect than in stronger markets. In
2 stronger markets, where people have less choices than no,
3 they overlook things. So it just depends on what kind of
4 market we're in. You know, are we in the '08 market where
5 things were diving or in we in a stronger market like today.
6 So it can be, it can be relative to the timeframe.
7 MR. GROSSMAN: All right. And you said it can
8 have an impact. You're saying can have a, an impact of
9 reducing the adjacent property value, increasing it, or, or
10 what?
11 THE WITNESS: No. It, it obviously it would, it
12 would either decrease the property value or decrease the
13 marketability.
14 MR. GROSSMAN: Okay. All right. Does that answer
15 your question, Ms. Lee?
16 MS. LEE: Thank you.
17 MR. GROSSMAN: All right. Mr. Chen?
18 CROSS-EXAMINATION
19 BY MR. CHEN:
20 Q. Are you aware that the lights that you've
21 mentioned that are on until 9 o'clock, whether they can be
22 seen from the Paul property, sir?
23 A. I'm not.
24 Q. Okay. Do you know when the trash collection is
25 done for the tennis club special exception?

Page 108

1 A. I do not.
2 Q. Do you know what the trash collection for the
3 proposed senior living facility is being proposed?
4 A. I asked that question once and I got an answer and
5 I can't remember. It, it, it wouldn't be something if I was
6 doing an appraisal that I would focus on.
7 Q. Do you, what do you know about the activities
8 that'll transpire on the subject property vis-à-vis
9 vehicular traffic?
10 A. Not much.
11 Q. Okay. Tell me what you, tell me the amount of
12 that not much.
13 A. I, I don't really know anything.
14 Q. Do you know how many residents will be in the
15 senior living facility?
16 A. I don't.
17 Q. Are you aware of how many units will be in that
18 facility?
19 A. I think that there was 100 and, was it 196 or
20 something in that vicinity. It was high 100's.
21 Q. Are you aware of any of the additional services
22 that are available in it, such as a restaurant, things of
23 those types of services?
24 A. In, in general, I'm aware of services that are
25 provided in assisted living facilities and nursing homes.

Page 109

1 Q. I mean for this particular one.
2 A. It's not something --
3 Q. You can't nod, you can't just nod your head. You
4 have --
5 A. No, no. The answer is no because it's not
6 something that I would consider in the normal course of
7 doing an appraisal of the property nearby.
8 Q. Have you, what do you know about the proposed
9 activities that will occur on the subject property if the
10 conditional use is approved?
11 A. I, I know what I've been told, what I've been
12 shown and --
13 Q. What is that?
14 A. Well, I've been shown the plans for the proposed
15 development and I've looked at the floor plans. I know
16 that, you know, senior living facilities have kitchens and
17 they have medical services and that, you know, cars will be
18 coming in and out of the garage. Trucks will be delivering
19 stuff there. Trash trucks will be picking up things.
20 Ambulances and other emergency vehicles will be there from
21 time to time. There's seating areas outside where residents
22 will lounge. I mean there's a whole range of things that go
23 on.
24 MR. CHEN: I have no further questions of this
25 gentleman. Thank you, sir.

Page 110

1 MR. GROSSMAN: I take it, Mr. Boucher, that your,
2 your answers to my question as elaborated on by Mr. Chen is
3 that not necessarily as to this particular proposed assisted
4 care facility, but just in general that assisted, having an
5 assisted care facility next to or adjacent to a residence
6 may have an market impact. Is that essentially what you're,
7 you're saying?
8 THE WITNESS: It, it could have. Yeah.
9 MR. GROSSMAN: Depending on market conditions?
10 THE WITNESS: Depending on market conditions.
11 MR. GROSSMAN: All right. All right. Mr. Uhre,
12 you have any questions?
13 MR. UHRE: Yeah. A couple questions.
14 CROSS-EXAMINATION
15 BY MR. UHRE:
16 Q. In doing your evaluation, did you look at the
17 existing conditions for the Potomac Tennis Club, such as our
18 situation or anything of that nature?
19 A. No. That's something I normally wouldn't do in
20 the normal course of doing an appraisal of the property for
21 any other purpose. I did drive up there and drive around
22 and looked at the existing facilities, but I didn't do much
23 more than that.
24 Q. So as I understand what you're saying, you drove
25 in and you looked at it. You've looked at the plans and

Page 111

1 you've come to a conclusion that there's no difference
2 between the two operations as it relates to a potential
3 negative impact in value on the Pauls' property?
4 A. In the normal course of doing an appraisal for any
5 typical intended use or purpose, I think that any appraiser,
6 myself or any buyer would consider both conditions about the
7 same.
8 Q. Following up on Mr. Grossman's question I think
9 was, you, you were talking about a potential home at the end
10 of Lockland and a home next to a commercial setting.
11 Assuming the homes were identical and one had an assisted
12 living center such as being proposed here adjacent to it,
13 can you give us some type of estimate as to what you think
14 the difference would be on value or time on market?
15 A. No. It would depend on a lot of things and one of
16 the things that I said is what market are we in.
17 Q. I, I, I think I said the market today. That I
18 can, at today's --
19 A. Yeah. No, I haven't, I haven't done that analysis
20 so I'm, I'm not going to throw out a percentage or a number.
21 No.
22 Q. Okay. Thank you.
23 MR. GROSSMAN: Any redirect?
24 MS. GIRARD: No.
25 MR. GROSSMAN: All right. Thank you, Mr. Boucher.

Page 112

1 MS. GIRARD: Mr. Grossman, I hate to break the
2 rhythm here, but could we have a five minute, since we're,
3 we weren't expecting to call our noise expert right now.
4 MR. GROSSMAN: Sure.
5 MS. GIRARD: Could we just have five minutes to --
6 MR. GROSSMAN: Sure. All right. So it's 12:10
7 now. We'll come back at 12:15.
8 MS. GIRARD: Okay. Thank you.
9 (Off the record.)
10 (On the record.)
11 MR. GROSSMAN: Okay. Back on the record. Are you
12 ready to proceed, Ms. Girard?
13 MS. GIRARD: Yes.
14 MR. GROSSMAN: All right.
15 MS. GIRARD: Thank you. Our next witness is Scott
16 Harvey.
17 MR. GROSSMAN: All right. Mr. Harvey, would you
18 state your full name and business address?
19 MR. HARVEY: Scott Vincent Harvey, 5216 Chairman's
20 Court, Suite 107, Frederick, Maryland 21703.
21 MR. GROSSMAN: Would you raise your right hand,
22 please? Do you swear or affirm to tell the truth, the whole
23 truth and nothing but the truth under penalty of perjury?
24 MR. HARVEY: I do.
25 MR. GROSSMAN: All right. Please proceed.

Page 113

1 MS. GIRARD: Mr. Harvey's resume is Exhibit 138A.
2 MR. CHEN: I have no problem recognizing Mr.
3 Harvey as a, as an expert in, I guess, would a noise expert
4 work for you?
5 MR. GROSSMAN: Noise analysis?
6 MS. GIRARD: Acoustical engineer? Is that right?
7 MR. GROSSMAN: Acoustical engineering?
8 THE WITNESS: I'll take all of them. Yeah.
9 MR. GROSSMAN: Analysis, acoustical engineering.
10 MR. CHEN: Is that, but, but all joking aside.
11 Generally it's a noise expert would be proper --
12 THE WITNESS: A noise expert. Yeah.
13 MR. CHEN: Okay. Thank you very much.
14 MR. GROSSMAN: Okay.
15 DIRECT EXAMINATION
16 BY MS. GIRARD:
17 Q. Mr. Harvey, are you familiar --
18 MR. GROSSMAN: Hold on one second.
19 MS. GIRARD: Oh, I'm sorry.
20 MR. GROSSMAN: Mr. Uhre, you have any questions
21 regarding this witness's expertise as a noise analyst and
22 acoustical engineer?
23 MR. UHRE: No, I don't. Thank you.
24 MR. GROSSMAN: Ms. Lee?
25 MS. LEE: No, I don't.

Page 114

1 MR. GROSSMAN: All right.
2 MR. CHEN: You didn't do that with the last
3 witness, Mr. Examiner.
4 MR. GROSSMAN: I, I thought I did. Did I not ask?
5 MR. CHEN: Don't worry, don't worry.
6 MR. GROSSMAN: I think I did actually, but in any
7 event, did you have objections, in case I did forget?
8 MS. LEE: No, not at all.
9 MR. UHRE: No. No, sir.
10 MR. GROSSMAN: All right.
11 MR. CHEN: The transcript won't lie. We hope.
12 MR. GROSSMAN: All right. I was going to --
13 MR. CHEN: No.
14 MR. GROSSMAN: All right. Based on Mr. Harvey's
15 qualifications as listed in his resume, Exhibit 138, and
16 absent any objections from the other participants, I accept
17 him as an expert in noise analysis and acoustical
18 engineering.
19 BY MS. GIRARD:
20 Q. Just from a foundational standpoint, Mr. Harvey,
21 I, I know the summary of your expert history is in the
22 record as, as 138B. Do you have familiarity with evaluating
23 conditional uses, used to be called special exceptions, in
24 particular and their acoustical impact on adjacent
25 properties?

Page 115

1 A. Yes.
2 Q. Okay. And are you --
3 MR. GROSSMAN: Well, what is, now you've asked
4 that question, what is your, your background in that?
5 THE WITNESS: I've been doing acoustical
6 consulting for the last 25 years as an engineer in the D.C.
7 area and surrounding counties. Specifically in the building
8 industry where we evaluate buildings as they impact
9 themselves and others. In the course of the, we, I've been
10 called as a witness and, and worked with developers to
11 develop properties that find themselves adjacent to other
12 properties where they might have a noise impact on that
13 property and, and we work with those developers to mitigate
14 that noise to meet the local, the local standards.
15 MR. GROSSMAN: All right. Have you testified in
16 conditional use hearings or special exception hearings?
17 THE WITNESS: Special exception hearings.
18 MR. GROSSMAN: All right. Well, that's, they
19 changed the nomenclature, but it's the same thing.
20 THE WITNESS: Okay.
21 MR. GROSSMAN: Conditional use is a special
22 exception?
23 THE WITNESS: Yes.
24 MR. GROSSMAN: All right.
25 BY MS. GIRARD:

Page 116

1 Q. And are you familiar with the subject property,
2 surrounding area in Application No. CU 16-01?
3 A. Yes.
4 Q. And are you familiar with the Montgomery County
5 Noise Control Ordinance and related regulations?
6 A. Yes.
7 Q. With regard to this project in particular, what
8 typically would you look at as, when you're doing an
9 evaluation of noise impacts?
10 A. We look at what the adjacent uses are, whether
11 it's commercial or residential, and then look at the
12 building itself and its use and how noise sources from that
13 use would impact the adjacent properties. That can be
14 mechanical noise. Many times first it's mechanical noise
15 and then there are other transportation noise issues when
16 you've transportation on the site or loading docks or, or
17 things of that nature.
18 Q. And are you generally familiar with the proposed
19 mechanical equipment on this project?
20 A. Generally, I, I understand in general what the
21 mechanical equipment is going to be on the building.
22 Q. And have you in fact been in that work with the
23 applicants and agreed to help them develop plans for that
24 mechanical equipment to make sure that it's properly
25 screened, screened and any noise mitigated?

Page 117

1 A. Yes, we have.
2 Q. And have you looked, there's been discussion, even
3 this morning, about the, the service drive and the truck
4 turnaround area. Are you aware of how frequently vehicles
5 would be using that area?
6 A. Yes. It's my understanding that, that there would
7 be three trash truck operations per week along the drive
8 aisle and then three food deliveries along that drive aisle
9 as well, per week.
10 Q. And based on your, and you're also aware of the
11 latest plan that includes a masonry wall?
12 A. Yes.
13 Q. And based on your review of the plans, do you
14 believe there will be any issues with meeting the noise
15 ordinance and, and making sure there's no adverse noise
16 impacts on the adjacent properties?
17 A. In, in the area along, let's see, that's the
18 western property, western property area where, where the
19 drive and you, you've got the turnaround for the, for the
20 trash truck, and then you're backing up in that area, those
21 backup areas might have difficulty exactly meeting the noise
22 code on that very corner, upper corner, right in that area.
23 Q. The rest of the site as far as the --
24 A. It should, it should be okay. You've got, the new
25 masonry wall will aid in blocking, blocking noise from, from

Page 118

1 that, those activities to the, for the points further away.
2 Q. And the question was asked about whether masonry
3 walls do in fact screen noise. Can you address that?
4 A. Yes, they do.
5 Q. And are you aware one of the findings that need to
6 be made in a conditional use is there being no adverse noise
7 impacts. Are you aware of where the, the Pauls' house is in
8 relation to the site?
9 A. Yes, I am.
10 Q. And do you believe there would be any adverse
11 noise impacts?
12 A. I don't believe there would be any significant
13 adverse noise impacts.
14 MS. GIRARD: That's all I have.
15 MR. GROSSMAN: Now I'm intrigued by your saying
16 that there might be problems in meeting the noise ordinance
17 where the present plan is to have the trash pick-up area
18 located. What do you anticipate if it can't meet the noise
19 ordinance under its present structure, what needs to be done
20 in order to meet the noise ordinance?
21 THE WITNESS: Well, the, the trash actually, the
22 trash pick-up is, is, I believe, exempted because according
23 to the COMCOR for, which controls, COMCOR 48.00.02, which
24 controls the refuse, refuse collection and addresses noise,
25 its restriction on trash pick-up is that it merely be done

Page 119

1 from 7:00 a.m., between the hours of 7:00 a.m. and 9:00 p.m.
2 on weekdays and then 9:00 a.m. to 9:00 p.m. on weekends and
3 holidays. The, it would be the, the delivery trucks when
4 they come down and turn around and backup, there's going to
5 be some, some impact there from the backup beeper and, and
6 just the noise of, of that truck. So, so, so there's
7 somewhat of a concern. Although backup beepers may be
8 exempt as well. They, because of their emergency and, and
9 the necessity of a backup beeper. And, and we're assuming
10 that a backup beeper is there. Not all trucks have to have
11 the backup, not all trucks will have a backup beeper. It,
12 it, over the road trucks are not required to have backup
13 beepers so it's not saying that everyone will.
14 MR. GROSSMAN: Well, but to get back to my
15 question. You implied on your, on the direct examination
16 that there might be a problem in meeting the noise ordinance
17 in the trash truck area. In response to my, my questions
18 you said well, maybe not because it's covered by a different
19 regulation for trash trucks in particular. So I'm trying to
20 find out exactly what your opinion is as to whether or not
21 the proposed trash pick-up system will violate County
22 ordinances, whichever apply?
23 THE WITNESS: I don't believe it will.
24 MR. GROSSMAN: All right. I'll leave it open to
25 cross-examination. Mr. Uhre?

Page 120

1 MR. UHRE: Thank you.
2 CROSS-EXAMINATION
3 BY MR. UHRE:
4 Q. Let's assume for a second that trash trucks aren't
5 exempt. If the trash trucks are not exempt, could --
6 MS. GIRARD: Objection. We're, why are we
7 hypothesizing about something that he just said in the law
8 is clearly exempt?
9 MR. GROSSMAN: Well, I, I basically agree with
10 you, but I'm going to allow the question anyway just so I
11 hear the answer. I don't have to rely on it if I feel that
12 it's an improper area. So finish your question.
13 BY MR. UHRE:
14 Q. If, well, let me rephrase. If, if trash trucks
15 are subject or the noise of trash trucks is subject to the
16 Maryland, or the Montgomery County Noise Ordinance, in your
17 opinion, would they be able to meet the noise requirements
18 at the property line of the Pauls?
19 A. It's possible. It's possible that they could.
20 It's possible that they couldn't.
21 Q. But you don't know? Did you test any trucks as it
22 relates to noise?
23 A. I, I haven't tested trucks for, for this, for this
24 application. No.
25 Q. Some noise from trash trucks would be above a six

Page 121

1 foot level. Correct?
2 A. Yes.
3 MR. GROSSMAN: When you say, you mean the
4 generation of the noise would be higher than six feet?
5 MR. UHRE: Correct.
6 MR. GROSSMAN: Okay. And your answer is?
7 THE WITNESS: Some, some, I don't know what size
8 trucks we're talking about on, on this application. I'm
9 presuming they're fairly small. I mean generally trucks,
10 some trucks can get very large. But I presume these will be
11 fairly small, smaller trucks.
12 BY MR. UHRE:
13 Q. But that's not quite my question. My question is
14 a trash truck in its operations typically would raise the
15 dumpster and put it into the truck. The truck is probably
16 13 feet in height so the dumpster is going to be probably
17 greater in height than that so the noise of the banging of
18 the dumpster in at least part of the function would be
19 greater than six feet. The question then is if it's, if
20 that is the case and the noise, the masonry wall would not
21 be at all helpful in diminishing the noise at the Pauls'
22 property line if the noise is created above the six foot
23 level. Correct?
24 A. The noise that's above the six foot level.
25 Q. Okay. And I think there was --

Page 122

1 A. If, if the, if the barrier is not occluding the
2 site line, you know. It's got, it's, the barrier in some
3 locations on the property might occlude the site line. It
4 just depends on where you're located.
5 Q. Okay. But the noise ordinance is enforced at the
6 property line. Correct?
7 A. That's correct.
8 Q. So the noise at the Pauls' level while, might,
9 from the enforcement of the noise ordinance is not relative
10 as to it's at the property line not at their house is the
11 enforceable noise level. Correct?
12 A. It can be enforced at the property line.
13 MR. GROSSMAN: Well, that's where the statute
14 tells you, it tells you to measure, right?
15 THE WITNESS: Yeah. At, at receiving properties.
16 At receiving properties.
17 MR. GROSSMAN: Let, let me see if I understand
18 what you're getting, what you're getting at. You say it can
19 be enforced at the property line. It is enforceable at the
20 property line, is it not?
21 THE WITNESS: It is.
22 MR. GROSSMAN: Okay. I take it from the waffle
23 that you suggested that, you're saying that the actual
24 impact on residences is at their house rather than the
25 property line. Is that what you're saying or is that --

Page 123

1 THE WITNESS: Yes. Some, some residents might
2 complain at their house that they've got a noise impact.
3 MR. GROSSMAN: All right. Okay.
4 BY MR. UHRE:
5 Q. Did you communicate with the Montgomery County
6 Office of Noise Enforcement to see how they applied their
7 regulations to trash trucks?
8 A. Not, not on this case. No.
9 Q. Okay. Thank you.
10 MR. GROSSMAN: Ms. Lee?
11 CROSS-EXAMINATION
12 BY MS. LEE:
13 Q. I guess my only question is did you actually take
14 into consideration those trash trucks, those delivery
15 trucks. Did you actually take the information and determine
16 exactly how much noise each of those is going to cause?
17 They must have some idea of --
18 A. Not for the, not for the trash truck. No.
19 Q. And how about for the --
20 A. For the, for mechanical equipment we, we did.
21 Q. And for the delivery trucks?
22 A. We haven't done anything for delivery trucks.
23 Q. Okay. So it was only for the mechanical?
24 A. Yeah.
25 Q. Not for any of the vehicles?

Page 124

1 A. Correct.
2 Q. Okay.
3 MR. GROSSMAN: What's your conclusion about the
4 mechanical noise at the property line?
5 THE WITNESS: It's well within the Code. And, and
6 can be, you know, we haven't, we haven't analyzed the, the
7 rooftop stuff, but it, it can be designed to be within the
8 Code.
9 MR. GROSSMAN: All right.
10 BY MS. LEE:
11 Q. So you haven't, so I guess just to follow-up.
12 Sorry. So, so you don't have anything at the roofline? You
13 don't have any information on that either?
14 A. That, that hasn't been designed yet. So it's, I
15 can't analyze it.
16 Q. Okay.
17 MR. GROSSMAN: Mr. Chen?
18 CROSS-EXAMINATION
19 BY MR. CHEN:
20 Q. Well, that's a segue to my question, Mr. Harvey,
21 which was based upon your review and understanding of the
22 revised plan for the Brandywine Senior Living, what sources
23 would generate noise close to the property line?
24 A. Mechanical sources?
25 Q. Any, sir, I, the, the word noise is unqualified.

Page 125

1 A. Yeah. Mechanical sources such --
2 Q. Well, that would be, excuse me.
3 MR. GROSSMAN: Well, let him finish his answer.
4 BY MR. CHEN:
5 Q. I, I apologize. Go ahead.
6 A. Chillers, emergency generators, exterior
7 condensing units, any rooftop cooling towers that may be
8 there, but I don't, I understand those aren't going to be
9 involved. You know, there's a myriad of mechanical, exhaust
10 fans for, for instance. Those all have to be analyzed and
11 made sure to be in compliance.
12 Q. Well --
13 A. And then the activity of the loading dock, or the
14 loading area. Excuse me.
15 Q. What do you about those activities that will
16 result from approval of this conditional use?
17 A. I understand there's, there's three trash pick-ups
18 per week and there's three food deliveries at the delivery
19 door along the drive aisle per week.
20 Q. So that's the only information you have relative
21 to noise that would be associated with an approval of this
22 conditional use?
23 A. Yes.
24 Q. Do you know of any other sources of noise that
25 would occur or be generated as a consequence of this

Page 126

1 conditional use?
2 A. No.
3 Q. And I take it, well, do you, do you know of any
4 noise that is generated by the existing tennis club special
5 exception?
6 A. Yes.
7 Q. What do you know about that?
8 A. I was there. I made a site visit to walk the site
9 and understand how the layout was and to see this area where
10 the drive aisle would be. And, and there's an existing
11 drive aisle there already, isn't there?
12 MS. GIRARD: Objection. What's the relevance of,
13 of the existing conditions? I means what's, generation.
14 MR. GROSSMAN: I, I agree with you, I agree with
15 you and that's actually why I asked the question that I did
16 on the real estate appraiser in, in that not comparing it to
17 the present use, but rather, just in and of itself. I think
18 it is of questionable relevance. I'm going to let you ask
19 and answer the question, but, since you've asked it, but --
20 MR. CHEN: Well --
21 MR. GROSSMAN: But once again, I'm, I may
22 disregard it in terms of my evaluation because I am going to
23 evaluate this proposed use in terms of compatibility in and
24 of itself. Not in comparison.
25 MR. CHEN: I withdraw the question. And, if I

Page 127

1 may, and Mr. Examiner, I, help me if I, if I misstate this
2 because I, I agree with what you just said.
3 BY MR. CHEN:
4 Q. To what extent, Mr. Harvey, will the proposed
5 conditional use have any noise implication for the adjacent
6 Paul property? Will they hear anything that they're not
7 hearing now?
8 A. I'm very hesitant to, to testify as to what they
9 will hear. I can testify as to what the noise levels are
10 emitted from this property and this use.
11 MR. GROSSMAN: This type of use or this --
12 THE WITNESS: So what they hear, I don't know what
13 they hear.
14 BY MR. CHEN:
15 Q. Okay.
16 MR. GROSSMAN: Mr. Harvey, are you saying, when
17 you say this use, you're talking about this type of use in
18 general as opposed --
19 THE WITNESS: This, the proposed type of use.
20 MR. GROSSMAN: Proposed type of use. Okay.
21 BY MR. CHEN:
22 Q. And what would that be?
23 A. The operation of a senior living facility where
24 you've got people living inside primarily. There's not a
25 lot of space for outdoor activities on that end of the

Page 128

1 property. I don't see anything on the site plan that shows
2 anyone outdoors. So it's left to these sources that we've
3 been discussing.
4 Q. Are those, are those noise sources that you are,
5 just mentioned inherent with any senior living facility?
6 A. I've, I did another senior living facility in
7 Prince George's County over the summer and, and it was very
8 similar to this one.
9 Q. Okay. So you're --
10 A. I can't speak to any senior facility.
11 Q. Okay. So is it your testimony that you're not
12 familiar with what would be noise generated from this type
13 of use that would be inherent with it?
14 A. These are the sources I'm aware of.
15 Q. Okay. The ones you've identified? That would be
16 three trash truck pick-ups a week and three food deliveries
17 a week?
18 A. Yes. And mechanical equipment.
19 Q. And just help me just for a minute. On the
20 mechanical equipment, and maybe I missed it, I take it
21 you've not done any evaluation of noise to be generated by
22 mechanical equipment that would be proposed for this
23 conditional use. Is that a fair statement?
24 A. Well, I have done on some preliminary numbers
25 they, they, that were given to me for the emergency

Page 129

1 generator. The emergency generator is probably my biggest
2 question, especially given its location to the property
3 line. So we, we were given a sample, an emergency generator
4 type with sound pressure levels that were used at a
5 different location by the same, by the same company. And
6 so, I used those numbers and based on its location, using a,
7 a, the, the noise enclosure that was specified for that one,
8 based on those, those sound, sound power, that sound power
9 data and then took in the fact, the, took into consideration
10 the 14-foot masonry wall around which it's going to be
11 enclosed by and calculated the noise level and then made
12 some assumptions about the noise level from a chiller that's
13 also going to be in that, in that same area. I, it, we're
14 talking about the area to the, it's probably the western
15 most structure in the building. There's a, there's just an
16 area, outdoor area right there on the western part end of
17 the building that shows a, a masonry wall. Inside that
18 there's a chiller and a, and the emergency generator. I
19 made some assumptions about the chiller noise and calculated
20 that the noise level at the property line, the nearest
21 receiving property line would be less than 55 DBA.
22 Q. Okay. Are those the --
23 A. Which is in, in accordance with the nighttime
24 noise code for Montgomery County.
25 Q. Okay. You mentioned the generator, the chiller

Page 130

1 and the emergency generator. Any other equipment?
2 A. I'm sorry. The generator and emergency generator
3 are the same thing. It's, it's only two pieces.
4 Q. Okay. Okay. Any other equipment?
5 A. No.
6 Q. Exhaust fans?
7 A. No.
8 Q. Are you aware there's going to be a restaurant?
9 MS. GIRARD: Objection. Where, where is that
10 coming from?
11 MR. CHEN: Well, I'm trying to find out the
12 sources of noise. That's all. That's a fair question.
13 MS. GIRARD: There's nothing in the record to
14 suggest there's going to be restaurant.
15 MR. UHRE: It says pub.
16 MR. CHEN: It's, yeah. It says a pub.
17 MR. GROSSMAN: You mean indoors?
18 MR. CHEN: Yes, sir. Well, you've got to cook it
19 and it's --
20 MS. GIRARD: Well, objection.
21 MR. GROSSMAN: Okay.
22 MS. GIRARD: He's, he's speculating as to what's
23 going to go on in the pub area.
24 MR. GROSSMAN: Well, all right.
25 MR. CHEN: No, I'm not.

Page 131

1 MR. GROSSMAN: What, well, let's ask that question
2 since he, he's raised, is there going to be a food, you're
3 talking about something that's going to serve food to the
4 residents. Is that --
5 MR. CHEN: It just says pub. I've seen that and
6 as, it looks like a restaurant with a big room with tables
7 and chairs.
8 MR. GROSSMAN: Inside the building --
9 MS. GIRARD: We can have Brandywine clarify, but
10 as I understand it, it is, there, they serve some drinks
11 there. It's exactly as the name implies.
12 MR. GROSSMAN: All right. Well, let's, let's take
13 it from exactly what the name was. Is there any --
14 MR. CHEN: Excuse me. Just so, clarification for,
15 for your benefit.
16 MR. GROSSMAN: Yes.
17 MR. CHEN: They're going to have food being served
18 for the residents. So, I mean I thought that was
19 understood.
20 MR. GROSSMAN: Well, obviously there's going to be
21 food --
22 MR. CHEN: I thought there was testimony about it.
23 MR. GROSSMAN: -- served for the residents.
24 That's, so the question I guess is is there any, from, from
25 your knowledge of the proposed use and the fact that they're

Page 132

1 going to be serving food for the residents and have a,
2 quote, pub, will that generate any noise that would exceed
3 the County levels of noise?
4 THE WITNESS: Well, they would have to be
5 designed, you know, I, I don't think the building is in the
6 state of design that we can predict if it's going to, but it
7 would have to be designed so that it would. We, we've got
8 an agreement to aid them in the design process to make sure
9 that they're meeting the noise code.
10 MR. GROSSMAN: All right.
11 BY MR. CHEN:
12 Q. And that, does that agreement identify any sources
13 of noise?
14 A. No.
15 Q. Did your information that you received include any
16 information about noise emanating from garage doors?
17 A. We did look at the garage door. And the garage
18 door was also a concern. The, we would work with them to
19 develop and select a garage door that would also meet the
20 Code.
21 Q. What other, do you have any, did you receive,
22 excuse me, any other information about vehicles that would
23 be coming to the site other than the three trash truck pick-
24 ups and three food deliveries a week?
25 A. Other delivery trucks to the front of the

Page 133

1 building.
2 Q. Any other vehicles?
3 A. No.
4 Q. So it's your understanding that the only trucks,
5 delivery trucks that would use the service drive would be
6 what you've testified?
7 A. Yes.
8 Q. Okay. And what other types of vehicles will use
9 that service drive? If you know?
10 A. I presume automobiles going into the parking
11 garage.
12 Q. And were you able to ascertain the noise levels of
13 the delivery trucks at the property line?
14 A. No, I haven't done that yet.
15 Q. How about ambulances?
16 A. We haven't, we haven't analyzed ambulances.
17 Q. Okay. It's a 16-passenger van.
18 A. Same as an automobile.
19 Q. Have you done any testing of that?
20 A. No. But I own one and it's, it's the same as an
21 automobile or a pick-up truck.
22 Q. Do you have any understanding of the level of
23 noise at the property line that would result from any of
24 these activities that you've identified?
25 A. I'm sorry. Can you --

Page 134

1 Q. Do you know the, the DBA level that would be at
 2 the property line from any of these noise --
 3 A. The one we produced for the emergency generator
 4 and the chiller was less than, less than 50 DBA.
 5 Q. What was it?
 6 A. The emergency generator was 44 and then the
 7 chiller was an assumption on, and I made it on the same
 8 order as the emergency generator. So it would be the 44 and
 9 the 42. And they're 44 and 44 together. 47, 48 decibels.
 10 So less than 50.
 11 Q. Okay.
 12 MR. GROSSMAN: Can you give us an example of a
 13 similar sound level from some source that we would
 14 understand of what 48 decibels is?
 15 THE WITNESS: That's quiet. That's, the normal
 16 speaking voice is 65 decibels at two feet. When I'm talking
 17 to you at two feet, that's 65. Ten decibels down from that
 18 is half as loud and so another 10 is half as loud. So
 19 we're, we're quiet.
 20 MR. GROSSMAN: Okay.
 21 BY MR. CHEN:
 22 Q. Are there other noise, other ways of evaluating
 23 the impact of noise on a property besides comparison of the
 24 noise levels with a noise code?
 25 A. Not in this context. Generally we go by the noise

Page 135

1 code.
 2 Q. Have you made any recommendations to the applicant
 3 in order to comply with the County noise ordinance?
 4 A. We've talked about some, some things, some
 5 options. Enclosures for the generator. Make sure that the
 6 generator meets it and, and talk about rooftop barriers for
 7 mechanical equipment as they might be necessary, but again,
 8 we don't, we haven't made anything specific because we don't
 9 have specific data for that.
 10 Q. Okay. And just, and I apologize if I'm, if this
 11 has been asked before, but I just need some clarification.
 12 Other than the equipment that you've identified for us and
 13 the three deliveries, have you been informed of any other
 14 noise that would be generated by the conditional use?
 15 A. No.
 16 Q. Okay.
 17 MR. CHEN: I don't have any further questions.
 18 MR. GROSSMAN: In your opinion, is there anything
 19 atypical about the amount of noise that would be produced by
 20 this proposed facility versus a typical residential care
 21 facility of this sort?
 22 THE WITNESS: No.
 23 MR. GROSSMAN: Okay. Any redirect?
 24 MS. GIRARD: Just a little.
 25 REDIRECT EXAMINATION

Page 136

1 BY MS. CHEN:
 2 Q. Do you know how often the generators is exercised?
 3 A. Yeah. Once a week, on Tuesdays.
 4 Q. So it's not running constantly. So what little
 5 noise would be generated wouldn't be on all the time?
 6 A. Correct.
 7 Q. And when questions were asked with, about trash
 8 trucks and, you know, dealings with the Department of
 9 Environmental, or the, the noise people, what you may not
 10 have evaluated that specifically for this project, you do,
 11 you have in other cases evaluated similar issues and you've
 12 had dealings with the Department of Environment, have you
 13 not?
 14 A. Yes. Yes.
 15 Q. And when you're talking, your concern about that
 16 one point of trucks backing up, have you, do you believe
 17 that can be mitigated?
 18 A. Yes.
 19 MR. CHEN: This is beyond cross-examination, but
 20 --
 21 MR. GROSSMAN: No, it's not. I overrule that
 22 objection if that's an objection.
 23 BY MS. GIRARD:
 24 Q. And what, what would you suggest? Is it fairly
 25 easy?

Page 137

1 A. Yeah. You could talk about the wall height and
 2 the length.
 3 Q. Okay. And just, just to reiterate. So while some
 4 of the specifics of the equipment have not yet been defined
 5 and obviously you can't testify to the specifics, you will
 6 work with the applicant and, and you are confident that you
 7 can do so in the setting as proposed to insure that there's
 8 no adverse noise impacts?
 9 MR. CHEN: Objection. It's --
 10 MR. GROSSMAN: Overruled.
 11 THE WITNESS: Yes.
 12 MR. GROSSMAN: Okay.
 13 MS. GIRARD: That's all.
 14 MR. GROSSMAN: All right. Any recross just on
 15 the, the redirect questions? Mr. Uhre?
 16 RECROSS EXAMINATION
 17 BY MR. UHRE:
 18 Q. You, you said, as I understood, that to contain
 19 the noise you could modify the wall height. How much
 20 modification would be necessary, your opinion?
 21 A. I think we need to look at it a little more
 22 closely in the design process.
 23 Q. Do you have a range?
 24 A. It's at six feet, 6 1/2 now. Eight to 12.
 25 Something like that.

Page 138

1 MR. GROSSMAN: Are we talking about, I take it,
2 not the perimeter wall, but you're talking about the, the
3 masonry wall?
4 THE WITNESS: The masonry wall --
5 MR. GROSSMAN: Okay.
6 THE WITNESS: -- at the end of the drive, at the
7 end of the loading area.
8 MR. GROSSMAN: All right.
9 MR. UHRE: I don't have any further questions.
10 RE-CROSS EXAMINATION
11 BY MS. LEE:
12 Q. So that, I guess just to follow-up. So that would
13 be, you folks obviously have to meet the standards, the
14 legal standards. So is that what you would be proposing?
15 An eight to 12 foot wall back there based on the testimony
16 of your witness?
17 MR. GROSSMAN: Are you, who are you addressing?
18 MS. GIRARD: Are you asking us?
19 BY MS. LEE:
20 Q. Ask, so it would be, so in order to meet the
21 statutory requirements --
22 A. Well, I, I think looking at the length of the wall
23 might, might be as beneficial. See not just the height. So
24 that's a possibility too because, because noise barriers are
25 a matter of length and height.

Page 139

1 Q. But they haven't changed that on their site plan
2 yet?
3 A. They've added this, this masonry wall.
4 Q. But that was for other purposes. But for purposes
5 of, of, of noise, they have not amended their site plan to
6 provide for an eight to 12 foot wall even though you are
7 recommending that that would be required in order to meet
8 the --
9 A. I'm not, I'm not necessarily recommending an eight
10 to 12-foot wall. I'm saying it's an option.
11 MR. GROSSMAN: You're saying that's an option if,
12 okay. Let, let me ask you this in, in view of the noise
13 testimony here. If this were approved, if this conditional
14 use were approved, would anybody object to a condition that
15 would require a noise measurement with notice to all parties
16 while a trash truck was doing its pick-up as well as during
17 other operational times with the possibility if it, if there
18 were violations of the noise ordinance of requiring either a
19 modification of the masonry wall and/or a relocation of the
20 trash pick-up are as, as need be?
21 MS. LEE: Well, my primary concern is that the
22 trash truck noise is exempt under, under regulations.
23 MR. GROSSMAN: I don't know if it is or isn't.
24 It's unclear on the record now. I, I don't know if it is or
25 it isn't. You can, you can opine on that.

Page 140

1 MR. KAUFMAN: Yeah. Could we, could we have a
2 minute to confer with the client on that request?
3 MR. GROSSMAN: Sure. Sure.
4 MR. KAUFMAN: Give us a five minute --
5 MR. GROSSMAN: Why don't we do this? I'll let
6 you, I'll let you confer with your client over the lunch
7 hour and --
8 MR. KAUFMAN: Okay.
9 MR. GROSSMAN: -- but I'm just suggesting that in
10 view of the somewhat tentative noise conclusions here, it
11 would seem that if this were approved that some kind of
12 testing protocol and some potential remedies, one suggested
13 by the, the witness of, of modifying the masonry wall either
14 in height or in length, might be the first thing you look at
15 and then potentially relocating the trash enclosure if that
16 were necessary.
17 MR. KAUFMAN: Yeah. Can I just ask a
18 clarification?
19 MR. GROSSMAN: Yes.
20 MR. KAUFMAN: Mr. Examiner. So you're, you're
21 indicating that, you're talking about a condition that would
22 be subsequent not precedent, not preceding. In other words,
23 once the project was up and --
24 MR. GROSSMAN: Right. It's very hard, I think,
25 to, to get a, a good feel for exactly what, what the noise

Page 141

1 levels would be based on this testimony without having the
2 actual operation.
3 MR. KAUFMAN: Right. So the condition subsequent
4 would be based upon a test that --
5 MR. GROSSMAN: Right. That all parties would
6 receive notice of and it would be reported to, to the
7 Technical Staff --
8 MR. KAUFMAN: Once in operation.
9 MR. GROSSMAN: -- and to my office and then it
10 would include the possibility of modifications of either the
11 masonry wall or relocation, if necessary, of, of the trash
12 enclosure.
13 MR. KAUFMAN: Well, one second. Yes. Thank you.
14 Okay. All right. Our client says that they would accept
15 such a condition.
16 MR. GROSSMAN: Okay.
17 MR. KAUFMAN: Saved a few minutes.
18 MR. GROSSMAN: All right. Anybody else have a
19 comment on that potential --
20 MS. LEE: I think, I guess I'd object. If, they
21 should have some good information now as to what all of the
22 noise is going to be about. And I would think that they
23 want to have, want to have that right now in the plan. But
24 that's just my --
25 MS. GIRARD: But the issue with, I'm sorry.

Page 142

1 MS. LEE: Sure. Sure. Go ahead.
2 MS. GIRARD: The issue with that, and we run into
3 this all the time, is it's an unfair burden on an applicant
4 to require to fully design a, a use that has not yet been
5 improved. I mean there's a lot of architectural
6 considerations, engineering considerations to select these
7 equipment, to place them appropriately in, in the facility.
8 So it's, it's just, would be an unfair burden to require a
9 full design before you know you can actually get approval.
10 MS. LEE: I guess I object just because if, it
11 just seems like just a straightforward kind of, of
12 information that a hearing, you know, acoustical folks could
13 decide what's required and it should be there beforehand
14 rather than afterwards.
15 MS. GIRARD: The other issue I'd say it's not
16 unprecedented to have conditions on noise to test the noise
17 or certify the noise after the fact.
18 MR. KAUFMAN: Or design to, to meet the --
19 MS. GIRARD: That's happened in a number of
20 conditional uses.
21 MR. CHEN: Isn't there also an issue about the
22 maximum height within the setback area? A wall?
23 MR. GROSSMAN: If it's within the, if it's within
24 a setback area, yeah.
25 MR. CHEN: Well, I --

Page 143

1 MR. GROSSMAN: Are you talking about a, you're
2 talking about this particular masonry wall?
3 MR. CHEN: Well, please, yeah. I, I, I'm not
4 trying to cause a problem. And I know what you're trying to
5 do. And, please, I am, I'm not trying to cause a problem.
6 But my understanding was that the proposed wall would be in
7 the setback area.
8 MR. KAUFMAN: It's not.
9 MR. CHEN: I could, may, if I'm mistaken, fine.
10 MR. GROSSMAN: I don't think so.
11 MR. CHEN: But if it's not in the setback area,
12 where is it, where --
13 MR. KAUFMAN: It's not in the setback area.
14 MR. CHEN: Okay.
15 MR. GROSSMAN: Okay. So I don't know, I mean
16 that, that kind of issue could be determined afterwards.
17 All I'm suggesting is that if this conditional use is
18 approved, it might be advisable to have some sort of testing
19 protocol for noise since that seems to be an issue and since
20 the testimony of the witness is not fully dispositive of the
21 issue. Based on the uncertainties of design at this point.
22 MS. LEE: I guess, I guess I just looking at it
23 and thinking for something that's straightforward that has
24 such an impact with an adjacent homeowner that that design
25 piece would be approved. In order to make sure that it

Page 144

1 meets the requirements of law that it be approved
2 beforehand.
3 MR. GROSSMAN: I mean you can, you, all right.
4 You can usually do that kind of thing with, with generators
5 as has been done here. The problem is, I guess, with a,
6 with the trash truck thing, I'm not sure that's, there
7 aren't more variables than, than you can anticipate. I'm
8 not sure. I mean that's what I, I gather from what the
9 witness has said. I mean if you can, if you can make that
10 projection now, fine. But the projection he made was that
11 it might be a problem or it might not. So that's, what do I
12 have to go by?
13 MS. LEE: Yeah. Except it's not clear. Yeah.
14 MR. GROSSMAN: All right. If there's nothing
15 further, we can excuse this witness. Thank you, sir.
16 All right. Well, I guess our next witness --
17 MR. CHEN: It's probably staff.
18 MR. GROSSMAN: Okay. Would, well, yes. When we
19 come back from lunch would be Technical Staff, but also is
20 there going to be any further testimony from Mr. Uhre or Ms.
21 Lee in light of any of the changes that have been proposed?
22 I see Ms. Lee shaking, saying --
23 MS. LEE: No. We still have a, there's a, I'm
24 sorry because I don't know the procedures, a closing
25 statement, but that's separate. Is that correct?

Page 145

1 MR. GROSSMAN: Yes. But I would consider that,
2 that, I consider that part of your testimony if you made a
3 closing statement. In this kind of situation you're not an
4 attorney, so I'll take that as part of your testimony. And
5 Mr. Uhre --
6 MS. LEE: Then I will, I will have a closing, some
7 additional comments.
8 MR. UHRE: Yeah. I'll have a brief closing
9 statement incorporated into the --
10 MR. GROSSMAN: Okay. Okay. And Mr. Chen, I take
11 it we were in the middle of Mr. Noonan's testimony when I
12 made my now famous suggestions regarding the plans.
13 MR. CHEN: Did you say famous?
14 MR. GROSSMAN: Yes, I did. And so did you wish to
15 recall Mr. Noonan and, and/or any other witnesses and
16 what's, what's your plan?
17 MR. CHEN: I anticipate having witnesses to that
18 specific point you just mentioned. Candidly, I'm not sure.
19 But I know Mr. Noonan will be back and I've disclosed other
20 witnesses and I'm probably going to make final decisions
21 about that during the luncheon break.
22 MR. GROSSMAN: Okay. All right. So we said Mr.
23 Berbert at, I mean we could start out now and take another
24 15 minutes and, and put Mr. Noonan on the stand and then
25 break him. Why don't, why don't we do that? So we'll take

Page 146

1 45 minutes for lunch. Come back at 2:00 for Mr. Berbert.
2 MR. CHEN: I don't even have the file here, I, but
3 I can try, but I may be, I can try for 15 minutes. I can
4 try.
5 MR. GROSSMAN: Yeah, yeah.
6 MR. CHEN: But I, I, I'm just telling you that --
7 MR. GROSSMAN: You can, you can, I'm sure you can
8 clear your throat for 15 minutes, has been my experience.
9 MR. CHEN: No, no. I have no problems going for
10 15 minutes.
11 MR. GROSSMAN: Okay.
12 MR. CHEN: The, the qualification is we're going
13 to come back to him probably in about an hour and a half or
14 so and there may be, I may overlap some and just be tolerant
15 of that. And other than that, that's all I'm asking is you
16 be tolerant of that because I'm going, I'm going to, I can
17 jump in on some things right now, I think.
18 MR. GROSSMAN: I'm an, a tolerant guy, I'd say.
19 Too tolerant some would say.
20 MR. CHEN: I've got some notes, but --
21 MR. GROSSMAN: All right. Let, let's go forward
22 with --
23 MR. CHEN: -- I, I'll tell you my, I'll tell you
24 my only problem and candidly, is between staying on the,
25 when I'm not sure of, because of what I've heard today is do

Page 147

1 I stay on the same track that I was at the point of
2 suspension or do I jump into what I heard today. That, that
3 was why I was thinking I'm going to have to make a decision
4 on organization.
5 MR. GROSSMAN: All right. I'll tell you what. We
6 won't go forward now. We'll, we'll do this, we'll come back
7 at 1:45 and we'll begin with, with whoever your witness is
8 and then we'll break for Mr. Berbert as necessary --
9 MR. CHEN: Yeah. And if I can get a 15 minute
10 witness in at that point in time, I'll probably do that.
11 MR. GROSSMAN: Okay. Fair enough. All right.
12 We're recessed until 1:45.
13 (Off the record.)
14 (On the record.)
15 MR. GROSSMAN: All right. Let's go back on the
16 record. And as I mentioned off the record, Mr. Berbert is
17 here from Technical Staff called by, by Mr. Chen. So we'll
18 take him first up. Mr. Chen. Well, I'll just say, Mr.
19 Berbert, would you state your full name and your office
20 address?
21 MR. BERBERT: It's Benjamin Christopher Berbert,
22 and I work at 8787 Georgia Avenue in Silver Spring, Maryland
23 20910.
24 MR. GROSSMAN: Would you raise your right hand,
25 please? Do you swear or affirm to tell the truth, the whole

Page 148

1 truth and nothing but the truth under penalty of perjury?
2 MR. BERBERT: I do.
3 MR. GROSSMAN: All right. And Mr. Berbert, you're
4 a member of the Technical Staff of the Maryland National
5 Capital Park and Planning Commission?
6 MR. BERBERT: That is correct.
7 MR. GROSSMAN: All right. And Mr. Chen has asked
8 for your appearance here. He has a few questions for you.
9 So Mr. Chen, the floor is all yours.
10 MR. CHEN: Thank you.
11 DIRECT EXAMINATION
12 BY MR. CHEN:
13 Q. Mr. Berbert, what was your involvement in
14 preparing the comments of the Technical Staff for the Park
15 and Planning Commission dated January 6, 2016 on the
16 conditional use that's before the Hearing Examiner?
17 A. I was the primary person who did the drafting of
18 those comments.
19 Q. Were there any other members of the staff that
20 participated in that?
21 A. Just editorial review from my supervisor and my
22 division chief.
23 Q. And those individuals?
24 A. Richard Weaver and Kip Reynolds.
25 Q. Okay. So you prepared the document that is the

Page 149

1 January 6 letter and you had your superiors review it?
2 A. Correct.
3 Q. What did you do to prepare this report?
4 A. I looked at the, there was a packet of, of
5 drawings that we received back on December 23rd to our
6 office. And I, I looked over them. They're a series of
7 revised conditional use plan, revised utility plan, this new
8 building elevations, building massings, schematic diagrams
9 of that sort in there, and a new landscaping plan. I
10 compared all these documents to make sure they, they made
11 sense as a, a bigger picture and I made sure I understood
12 where the changes were occurring as it related to the
13 existing plans that we had reviewed a couple months prior.
14 Q. Did you meet with anybody?
15 A. No.
16 Q. Did you have any phone conversations with anybody?
17 A. Only internal staff.
18 Q. And was there a reason why the revised plans were
19 not presented to the Planning Board?
20 A. We did not feel that the revisions really had any
21 major impact on any of the findings either within our
22 original Staff Report or had any major impact on anything
23 the Board had discussed and so we didn't feel it was
24 necessary to bring it back to the Planning Board.
25 Q. Was the location of the building, the revised

Page 150

1 plans and the changes to the proposed structure part of your
2 review?
3 A. Yes.
4 Q. Was the location of revised structure of any
5 significance?
6 A. It was significant to the extent that we thought
7 that it, it was actually even a more compatible design than
8 what was originally presented to us and to the Planning
9 Board.
10 Q. Was that because of the height?
11 A. Yes.
12 Q. Okay. And it also stayed out of the conservation
13 area?
14 A. Correct.
15 Q. Did you undertake any analyses of the proposed
16 conditional use in light of the revised plans other than
17 reviewing the plans?
18 A. No.
19 Q. No consideration of, with the change in the
20 structure and the relocation of facilities, no consideration
21 of noise implications?
22 A. From what had changed, it didn't seem that noise
23 would be a, would have much of a change. It seemed the
24 change was mainly going to impact the visual, it would be a
25 visual change from the neighboring properties, probably

Page 151

1 slight noise reduction from the actual operation of, of
2 dumping the trash and because there was a new masonry wall
3 shown there, but we didn't feel that it was going to have
4 substantial change in the, the noise that was expected from
5 the prior plans.
6 Q. Is there a reason why you did not consult with
7 anybody other than your, essentially yourself?
8 A. I did not feel that the changes were dramatic
9 enough to warrant further analysis. They pretty much
10 primarily dealt with, a little bit with on-site circulation,
11 the building massing and landscaping, which were all things
12 that I was the lead in reviewing for the original plans.
13 Q. With regard to the massing aspect of it, I, I take
14 it that was covered by the change in building height on the
15 western portion of the structure?
16 A. Correct. And the new location and where they had
17 moved that mass to.
18 Q. Okay. And what did, what was your consideration
19 relative to internal circulation?
20 A. I had noted that because they had moved the trash
21 enclosure, it allowed for a slightly different layout for
22 where the vehicles would turn around at the end of the
23 service drive. This actually allowed a, sort of a wing of
24 the three-point turn to be removed from the plans, which
25 provided a little more room for landscaping to help continue

Page 152

1 to buffer between the, the use on this site and the
2 neighboring property.
3 Q. Did you give any consideration, well, let me back
4 up for a minute. In your review of the revised plans, did
5 you compare the plans with the requirements for a senior, or
6 a living facility conditional use?
7 A. Not directly, no.
8 Q. How about with the general conditions for
9 conditional uses in the Zoning Ordinance? Did you look at
10 those in your evaluation of the revised plans?
11 A. I did not revisit those. No.
12 Q. Am I correct in understanding, however, that one
13 of the considerations that you did look at was the fact that
14 the revised plans did not have any change to the location of
15 the building relative to the Forest Conservation Plan?
16 A. Correct.
17 Q. Were, were there any requests to meet with you
18 relative to the revised plan?
19 A. We had received a request from Mr., I hope I don't
20 pronounce your name, Uhre to meet on the plans and we
21 declined to do so. We didn't feel it was appropriate as
22 Technical Staff to have a meeting with any of, really any
23 party of the record because we're no longer serving our
24 Planning Board. We're serving as Technical Staff to the
25 Hearing Examiner at this point.

Page 153

1 MR. CHEN: I don't have any further questions.
2 MR. GROSSMAN: All right. Ms. Lee, any cross-
3 examination?
4 CROSS-EXAMINATION
5 BY MS. LEE:
6 Q. I wanted to just ask you about one statement that
7 you made with regard to the, the impact or the, the visual
8 impact that the, it would have. You indicated you made a
9 determination with regard to west towards the Pauls'
10 property and east. What did you do with regard to the
11 County Club and the, and the, the nursing facility?
12 A. I really didn't consider it that much. The change
13 in massing would have added a, you know, 60 or 70 additional
14 feet of that third story height there. But considering that
15 we never found it even remotely a compatibility issue before
16 and that it hadn't been raised since, we did not feel that
17 that change really was the primary driving force of any
18 opposition or any concern on us.
19 MS. LEE: That's all I have. Thanks.
20 MR. GROSSMAN: Mr. Uhre, any questions?
21 MR. UHRE: Yes.
22 CROSS-EXAMINATION
23 BY MR. UHRE:
24 Q. First, let me clarify. You indicated that I
25 requested a meeting. I think I said I requested a meeting

Page 154

1 if appropriate and if you were meeting. Is that not
 2 correct?
 3 A. That's correct.
 4 Q. Okay. And you indicated that you told me you were
 5 not meeting. I'm not sure that I ever had a response to
 6 that other than --
 7 A. I was not, I was not the one who provided the
 8 response. I was told that someone else from our office that
 9 was cc'd provided that response.
 10 Q. Okay. I, I just wanted to make it clear that I'm
 11 saying that if you are meeting with people, we wanted to be
 12 able to meet if it was appropriate under the circumstances.
 13 In your supplement, the bottom sentence says the building
 14 height does increase around the two outdoor courtyards.
 15 You're talking about the change of the location of, or the
 16 adding of a level in the mid-section of the building? Is
 17 that what you're referring to there or what?
 18 A. Correct. In the, in the original plans, the
 19 three-story portion of the building was only on the east
 20 side of the courtyard and the revised plans showed the
 21 three-story wrapping to the back side so that now both sides
 22 of those courtyards had a three-story building height.
 23 Q. To the north and south of the middle section of
 24 the building. Correct?
 25 A. Yes.

Page 155

1 Q. Okay. And then you go on to say or you said
 2 actually before that, you said these changes will have no
 3 visual impact on the eastern elevation of the building and
 4 will therefore not change any of the findings relative to
 5 compatibility or architecture as it relates to the
 6 application's visibility from the surrounding public roads.
 7 Could you explain what you meant by that, please?
 8 A. One of the primary concerns that was raised by
 9 Staff, raised by the public and to a lesser extent, but
 10 raised by the Planning Board was the divisibility and
 11 compatibility impacts that this use would have from Falls
 12 Road and from Potomac Tennis Lane. And the statement was
 13 that from the perspective of somebody on one of these two
 14 roads, you wouldn't be able to see the change that is
 15 occurring by moving the building massing around.
 16 Q. But certainly there would be a change, a visible
 17 change, noticeable from the golf course to the north.
 18 Correct?
 19 A. It's plausible. Yes.
 20 Q. And was there any consideration of that change as
 21 it relates to compatibility?
 22 A. No.
 23 MR. UHRE: I don't have any further questions.
 24 MR. GROSSMAN: Any cross-examination from the
 25 applicant?

Page 156

1 MS. GIRARD: No.
 2 MR. KAUFMAN: No. No.
 3 MR. GROSSMAN: No. All right.
 4 MR. KAUFMAN: We appreciate them coming in.
 5 MR. GROSSMAN: Yes. I thank you very much, Mr.
 6 Berbert. And you're certainly welcome to stay for, and
 7 watch the proceedings.
 8 MR. KAUFMAN: Like he doesn't have anything to do.
 9 MR. GROSSMAN: But you're not chained to do. So
 10 that's up to you. Thank you for coming down here.
 11 Appreciate it. All right.
 12 Mr. Chen, your next witness?
 13 MR. CHEN: Ron Danielian.
 14 MR. GROSSMAN: All right. And how do you
 15 pronounce your name, sir?
 16 MR. DANIELIAN: Danielian.
 17 MR. GROSSMAN: Mr. Danielian, would you state your
 18 full name and your business address?
 19 MR. DANIELIAN: Ronald Lawrence Danielian. 12605
 20 Native Dancer Place in, in Darnestown, Maryland or 14955
 21 Shady Grove Road in Rockville.
 22 MR. GROSSMAN: All right. Hold on one second, if
 23 you will.
 24 MR. DANIELIAN: I was already sworn, I think.
 25 MR. GROSSMAN: Pardon me, sir?

Page 157

1 MR. DANIELIAN: I was already sworn.
 2 MR. GROSSMAN: Right. Okay. And you are still
 3 under oath.
 4 MR. DANIELIAN: Yes.
 5 MR. GROSSMAN: All right. You may proceed, Mr.
 6 Chen.
 7 MR. CHEN: Thank you.
 8 DIRECT EXAMINATION
 9 BY MR. CHEN:
 10 Q. Mr. Danielian, you were present this morning when,
 11 when Mr. Boucher testified. Is that correct?
 12 A. Yes.
 13 Q. Do you recall his testimony relative to
 14 distinguishing between fair market value, economic value and
 15 market value?
 16 A. Pardon. I --
 17 Q. Do you recall his testimony --
 18 A. Yes.
 19 Q. -- relative to --
 20 A. Yes.
 21 Q. -- economic value, fair market value --
 22 A. That's right.
 23 Q. -- and market value?
 24 A. That's right.
 25 Q. Do you agree with his testimony that they're all

Page 158

1 the same thing?
2 A. They're not all the same thing.
3 Q. Can you explain that answer, please?
4 A. Economic value is, is more of an, a value of, it's
5 an investment value in terms of the actual price of the
6 property. It can be a maximum value, the economic value.
7 And the definitions that I have found so far run into that
8 kind of an explanation. That it is, it is a high value on
9 the property and generally speaking, it ends up being what
10 the sold price is because it's the highest price a buyer and
11 a seller will agree upon or the lowest price. But, okay.
12 Q. How would that differ from fair market value and
13 even market value?
14 A. Well, as I understand it, an appraiser does do a,
15 it's, it's, it's a judgment of, of what the value is on a
16 property. But it's a judgment from a whole series of
17 statistics and information that they put into their reports.
18 But it's a subjective judgment.
19 MR. GROSSMAN: You're saying that economic --
20 THE WITNESS: Based upon, no, it's based, no, no.
21 The, the, the other is a subjective judgment. It's based
22 upon a whole series of facts that he brings in to it.
23 MR. GROSSMAN: Well, which is the other? What's
24 the other you're referring to?
25 THE WITNESS: The fair market value.

Page 159

1 MR. GROSSMAN: So you're saying that fair market
2 value is a subjective --
3 THE WITNESS: Yes. More --
4 MR. GROSSMAN: -- analysis and that economic value
5 is not subjective?
6 THE WITNESS: I am saying that the economic value
7 is the maximum amount. I can read what I found if you, if,
8 if --
9 MR. GROSSMAN: No, no. I just want to get your,
10 your opinion on this since Mr. Chen asked you what the
11 difference was between these different concepts if they are
12 different. Between market value, economic value and fair
13 market value. So if I understand the distinction you're
14 making, you're saying that economic value is what you call
15 the investment value generally determined by the selling
16 price. And you're saying that fair market value is a
17 subject evaluation of anticipated price or what?
18 THE WITNESS: It could be. Supported by
19 information that the appraiser has.
20 MR. GROSSMAN: Well, you said could be. What
21 would it, what is fair market value in your mind?
22 THE WITNESS: It's a judgment on the part of the,
23 on the part of the appraiser.
24 MR. GROSSMAN: A judgment of what? Of, of what
25 the price will be or what is it, what is it a judgment --

Page 160

1 THE WITNESS: Of, of what the price will be used
2 for mortgages and such. And as such, it's not necessarily
3 the price that the house is going to sell for. The, and I
4 believe he even said the price could, the house could sell
5 for more.
6 MR. GROSSMAN: Okay. And what about market value?
7 How does that differ from fair market value?
8 THE WITNESS: Market value versus fair market
9 value. I view them as the same.
10 MR. GROSSMAN: Okay.
11 BY MR. CHEN:
12 Q. Is the distinction between the two then, I guess,
13 fair market value and economic value that the ultimatum of
14 determining, of the determination of either economic value
15 or fair market value, with an economic value it's going to
16 be demonstrated by what somebody is going to purchase the
17 property for?
18 A. Yes. And, and it can involve a lot of different
19 factors, but it's what the actual sale is on the part of the
20 buyer. What he wants to pay for it.
21 Q. And that, that, it's not necessarily always going
22 to be the same thing as an appraised value?
23 A. That's correct.
24 MR. GROSSMAN: Well, that's a new term then.
25 MR. CHEN: Oh, I, I apologize. Excuse me. You're

Page 161

1 right. And I, and I apologize.
2 BY MR. CHEN:
3 Q. That is a different concept than the fair market
4 value of property.
5 A. Yes. But didn't I hear that the, well, I'm not
6 supposed to ask questions.
7 MR. GROSSMAN: Well, let, let's see. Is it --
8 BY MR. CHEN:
9 Q. Well, I think, I, I, if I, if I may? I think, I
10 think where my question went before and I apologize for
11 cluttering terms that on any given case, it might happen
12 that the fair market value may be in any given case the same
13 as the economic value, but they're not necessarily the same,
14 they're not derived from the same type of analysis.
15 A. That's right. But generally, they can, they are,
16 are different in terms of either higher or lower.
17 MR. GROSSMAN: And assuming that they can be the
18 same, they can be higher, they can be lower, if there, is
19 this a distinction without a real difference in terms of our
20 analysis?
21 THE WITNESS: Well, it's when a buyer and seller
22 actually agree on a sale, on the actual sales price and
23 that's not necessarily known ahead of time, before the sale
24 takes place.
25 MR. GROSSMAN: Right.

Page 162

1 THE WITNESS: So basically you're dealing with do
2 you, when we go and look at properties, we will, we will
3 also assess what is, just what is sold to try and show what
4 the market is, is, is valuing a property of the same size,
5 especially if they're in the same type of condition. But at
6 the same time, you, and, and so we have a series of numbers
7 from actual sales. There are other things that can come
8 into a report. I'm not an appraiser so I don't, you know, I
9 might not bring some of those other things in.

10 MR. GROSSMAN: Well, I guess what I was getting at
11 is the assertions made by the opposition that this proposed
12 use may have an adverse impact on their value of their home
13 or their sale price of their home. I think it was kind of,
14 it was termed in terms of value of their home. But so what
15 I'm trying to find out is for that analysis, if that's a
16 relevant issue, does it make a difference whether I consider
17 economic value or fair market value?

18 THE WITNESS: Well, the economic value is going to
19 be less with, with a structure like that next to a property.

20 MR. GROSSMAN: Well, that's not my question. My
21 question is what difference does it make whether we call it
22 economic value or fair market value for the particular issue
23 that's before me, which is whether or not this proposed use
24 will have an adverse impact on the, the adjacent neighbor's
25 value?

Page 163

1 THE WITNESS: Well, I, I was looking at it just
2 from the standpoint of what is an economic value and what is
3 the value that an appraiser puts on it.

4 MR. GROSSMAN: I know. I'm just trying to say it
5 seems like we're, we're making a distinction without a
6 difference as to what I'm looking at. Isn't that true, Mr.
7 Chen?

8 MR. CHEN: I'm not too sure --

9 MR. GROSSMAN: Why waste any time figuring out the
10 economic value versus fair market value?

11 MR. CHEN: Okay. I believe, and, and I can't
12 testify, but certainly the literature indicates if there's a
13 difference between the two. Now this witness, and I'm not,
14 and, please, I can't testify. This gentleman has testified
15 as to his perception of the distinction between the two. I
16 heard him say at least two separate times, and --

17 MR. GROSSMAN: How does that impact on what I'm
18 analyzing is my question to you?

19 MR. CHEN: Well, it, it impacts on you if you do
20 not agree with what he said or you, you did not receive
21 that. It was, I think, stated. I mean I think he did
22 explain the difference between the two.

23 MR. GROSSMAN: I, I understand. I think I
24 understood his explanation. I'm just saying that from what
25 I have to evaluate, does it make --

Page 164

1 MR. CHEN: Oh.

2 MR. GROSSMAN: Does the distinction make a
3 difference?

4 MR. CHEN: Oh, I, I, I --

5 MR. GROSSMAN: Because that's really all the
6 concern. I don't need to have an intellectual --

7 MR. CHEN: Yeah.

8 MR. GROSSMAN: -- determination as to whether or
9 not there were differences --

10 MR. CHEN: Yeah.

11 MR. GROSSMAN: -- between those two concepts. I'm
12 only interested for the purposes of this case as to how it
13 impacts on what I have to interpret.

14 MR. CHEN: Well, I, I think there is a difference
15 between the two concepts.

16 MR. GROSSMAN: And what is that impact on what --

17 MR. CHEN: And I think how that impacts is that
18 the terminology that has been used in the Zoning Ordinance
19 is economic value. And I, and I'm, obviously I'm not going
20 to go to prior testimony, but I think this witness explained
21 that pretty clearly back on December 7th. And his opinion
22 was that there would be an adverse impact on the economic
23 value of this property. And I think that goes to a standard
24 contained in the Zoning Ordinance.

25 MR. GROSSMAN: Okay. All right. Any comments

Page 165

1 from --

2 MR. CHEN: I, I just had, I did have a final
3 question.

4 MR. GROSSMAN: I'm going to, but I want to give
5 the applicant --

6 MR. CHEN: Oh, okay. I'm --

7 MR. GROSSMAN: If they want to respond to our
8 little colloquy, I'm giving them the opportunity.

9 MR. CHEN: Okay. Sure.

10 MS. GIRARD: No.

11 MR. GROSSMAN: No, no response. Okay. Yes, Mr.
12 Chen.

13 BY MR. CHEN:

14 Q. And you heard the testimony of Mr. Boucher that in
15 his opinion there was no difference as to the impact of the
16 tennis court special exception and the proposed conditional
17 use. Is that right?

18 A. That's correct.

19 Q. Do you agree with that?

20 A. No, I --

21 MS. GIRARD: Objection. Mr. Boucher was an
22 appraiser. Mr. Danielian is a broker. So we can't ask them
23 to perform the same analysis.

24 MR. CHEN: Oh, I, I can maybe accommodate that
25 distinction.

Page 166

1 MR. GROSSMAN: All right.
2 MR. CHEN: I appreciate that.
3 MR. GROSSMAN: Okay.
4 MR. CHEN: In the context of economic value, do
5 you agree with Mr. Boucher's testimony and his opinion that
6 there was no difference in the implication or the impact of
7 the tennis club and the proposed conditional use on the Paul
8 property?
9 MS. GIRARD: Objection. I don't understand that
10 that resolved the issue at all.
11 MR. KAUFMAN: Doesn't change anything.
12 MR. CHEN: Oh, it sure does.
13 MR. GROSSMAN: Yeah, I'm, I'm going to hear, I'm
14 going to overrule the objection and hear what he has to say
15 because I think that some of these distinctions on this case
16 are not really material to what I have to analyze. Go
17 ahead. You may answer it.
18 THE WITNESS: I believe it does.
19 BY MR. CHEN:
20 Q. Why?
21 A. Because the sizes, the sizes are, are similar.
22 Well, am I talking about the revised or am I talking about
23 --
24 Q. Revised. Stick with the revised.
25 A. Revised?

Page 167

1 Q. Yes.
2 A. It still does because you've got, except for that
3 piece of the triangle that people were describing today down
4 at the end, you've still got a building there that is going
5 to show to anybody who is going to find out what is that and
6 to an awful lot of people, they're going to object to it
7 when you show a buyer around the property.
8 Q. Okay. Okay. And I take it all the other reasons
9 you gave previously in past testimony are still in play and
10 still applicable to your opinions?
11 A. I believe so. That's correct.
12 MR. CHEN: I have no further questions.
13 MR. GROSSMAN: And I take it that your comments on
14 that applies in general to having a, a resident facility
15 like this next to the Pauls' residence?
16 THE WITNESS: The size of it. Yes.
17 MR. GROSSMAN: Okay. All right. Cross-
18 examination, Ms., you want to ask a question in light of
19 mine? Let's go, let's, Ms. Lee, do you have any questions?
20 MS. LEE: No.
21 MR. GROSSMAN: Mr. Uhre?
22 MR. UHRE: No. Thank you.
23 MR. GROSSMAN: You have one more question in light
24 of my questions?
25 MR. CHEN: Well, in light of your question, yes.

Page 168

1 MR. GROSSMAN: Go ahead.
2 BY MR. CHEN:
3 Q. Does the size and location and shape of the
4 property on which the use is located have an influence on
5 whether or not there's an adverse impact on the adjacent
6 property?
7 A. I think the size does because the size, does it
8 cover the whole lot, does it not cover the whole lot, is it
9 smaller, is it lower? Those things have, have the impact?
10 As to the other two, I don't, it's hard for me to get,
11 burrow down.
12 Q. That's fine.
13 A. I'm not an expert to burrow down on that.
14 Q. Okay. Fine. Thank you.
15 MR. GROSSMAN: Okay. Cross-examination by the
16 applicant?
17 MS. GIRARD: Just two questions.
18 CROSS-EXAMINATION
19 BY MS. GIRARD:
20 Q. One, when you're talking about economic value and
21 fair market value and you're implying that, let me get it
22 right, economic value is the actual sales price, when
23 appraisers are doing, is it your understanding that when
24 appraisers do their appraisals they look at comparable sales
25 in the neighborhoods for, for like properties?

Page 169

1 A. Yes, I said that. I said that.
2 Q. And you, you said that you believe that this would
3 have an adverse economic impact because anyone looking at
4 the property would look over and say what is that? Would
5 they not do the same with the existing tennis club?
6 A. In, in terms of the magnitude of, of the property
7 and, and the coverage on the property, no. Well --
8 Q. You're saying that when they're standing in the
9 Pauls' backyard they can tell how much coverage there is of
10 the building?
11 A. No, they can't. They will, they will want to walk
12 back and see it. And, and they'll want to walk probably
13 right to the property line.
14 Q. I understand.
15 A. And then they will see it. And they'll see that
16 it's a lot different than, as I understand from earlier
17 testimony, the tennis bubble is not up all the time. It's
18 mainly white so it doesn't, some periods it doesn't show.
19 It's, it's a, it's a matter of judgment in terms of the
20 buyer looking at that and deciding whether or not they want
21 to live next to it.
22 Q. Right. But some buyers could determine that they
23 would rather live next door to a residence than, a
24 residential care facility than a tennis club. Could they
25 not?

Page 170

1 A. Not, not in terms of the size of each. The
2 coverage. The coverage on this is right to the edges.
3 Q. But, but coverage, you're not, you're not, they're
4 not flying over and looking at how much of the site is
5 occupied. I don't understand what you mean by coverage.
6 A. Isn't, isn't this, isn't this very close to the,
7 to the, to the lot lines? I realize it, it, it's with the
8 zoning as it's required to be, but you've got, you've got
9 the road going down there. You've got the, the closeness of
10 it. The, the, the triangle has been, been moved back, you
11 know, the height of the triangle. The rest of it's three
12 stories.
13 Q. Have you done a comparison of where the existing
14 shed is in relation to the proposed building and/or where
15 the current drive aisle on the tennis club property is?
16 A. No. I, because I haven't gone back to, on the
17 property. I haven't gone back to the, to the Pauls'
18 property except for the two times that I went --
19 Q. So it's possible that, or are you saying you don't
20 know fully what the, what the existing improvements are
21 compared to the proposed?
22 A. I can't compare them.
23 Q. And yet you're comfortable reaching a decision
24 that this will be more impactful?
25 A. I think a building like that is going to be

Page 171

1 impactful on a buyer.
2 MR. CHEN: You, you can't nod your head. You have
3 to --
4 THE WITNESS: No. I'm sorry. Yes. I'm sorry.
5 BY MS. CHEN:
6 Q. And do you believe that, is the Manor Care
7 facility visible from the Pauls' backyard?
8 A. There is, not really. Not unless you really get
9 right back there because it's a single level. There is
10 absolutely no deliveries or anything on the backside of it
11 or on either side of it. And the only thing where they have
12 the traffic is on the front of it and that's it. And you,
13 and so the building acts as a great sound barrier, I, I
14 would imagine. That's it.
15 Q. So you don't believe that impacts value at all?
16 A. Not as much. No. I don't.
17 Q. One second.
18 MS. GIRARD: That's all we have.
19 MR. GROSSMAN: Now, I'm going to remind you I
20 didn't stop you because nobody objected, but once again, I
21 am not going to evaluate, unless somebody shows me some law
22 that says that I should be evaluating compatibility by
23 comparing the use that's going to be, that's there now but
24 will be replaced with the, the use that's intended for the
25 site and its surroundings rather than just looking at the

Page 172

1 intended use and its surroundings, I'm only going to look at
2 the intended use and its surroundings. That's
3 compatibility. Now you asked your, your expert witness and
4 you've cross-examined this witness on the comparative
5 analysis of the present use on the subject site and what you
6 intend. Can you show me any law that says that that's the
7 way I'm supposed to evaluate compatibility?
8 MS. GIRARD: Well, I don't, I was under the, the
9 standard that we have to meet is no adverse economic impact.
10 So I don't understand how you can't look at the existing
11 conditions around the property to make that determination as
12 to whether you will actually detract from property values
13 compared to how it is today.
14 MR. GROSSMAN: I see. Okay. I understand your
15 point. Okay. Anybody else want to say anything about that?
16 MR. CHEN: Yeah. Just, I, I think this goes back
17 to my opening comments the very first day of the hearing.
18 We had a, we've got, and candidly, I, I'm, I understood what
19 you were, you were saying and, but I'm not, as we've gone
20 along, Mr. Examiner, I, I've gotten confused, I guess.
21 Because you have said that certainly as to traffic you would
22 accept --
23 MR. GROSSMAN: Right. That's --
24 MR. CHEN: -- the comparative evaluation.
25 MR. GROSSMAN: Right.

Page 173

1 MR. CHEN: So, again, I'm not challenging you.
2 I'm just trying to be understanding.
3 MR. GROSSMAN: No. Traffic is a, traffic is a
4 different situation and it's based on the, the, the agency
5 that is charged with evaluating traffic and the impacts of
6 traffic has a long-standing interpretation of traffic impact
7 that does look at whether or not there's going to be an
8 increase, a decrease or remain the same traffic. So that's
9 a different situation. Compatibility is a different issue.
10 And now, what Ms. Girard pointed out is that she's not
11 questioning these witnesses in terms of compatibility, but
12 in terms of impact on economic value which I'm willing to
13 look at as an argument that you can look at comparative
14 impacts there. I haven't really thought that one through,
15 but, but in terms of pure compatibility, unless somebody
16 shows me any, any law to the contrary, I would look at only
17 the question of whether or not the proposed use is going to
18 be compatible with its surroundings.
19 MR. CHEN: And on that last comment, as I, I have
20 the Zoning Ordinance here with me and I'll, I assume we'll
21 look at it later on today, but I believe that area is within
22 the area of the Zoning Ordinance under compatibility. I
23 could be mistaken, but I think --
24 MR. GROSSMAN: You believe what area?
25 MR. CHEN: The economic value impact.

Page 174

1 MR. GROSSMAN: Okay.
2 MR. CHEN: I think it, I mean just, my
3 recollection of the section of the Zoning Ordinance, I think
4 it's under compatibility.
5 MR. GROSSMAN: Okay. Did you have any other
6 further comments?
7 MR. KAUFMAN: We don't have, we're not objecting
8 to that.
9 MS. GIRARD: No.
10 MR. GROSSMAN: I'm sorry?
11 MR. KAUFMAN: We're not objecting to that.
12 MR. GROSSMAN: Okay. Okay. So anyway, that's,
13 that's the way I'm viewing it right now. I'm willing to be
14 convinced by what anybody has to say on it. So in any
15 event, let's go on. Are we finished with this witness then?
16 Thank you, Mr. Danielian. Appreciate your coming back and
17 offering your further testimony today.
18 Mr. Chen?
19 MR. CHEN: Thank you, Mr. Examiner. Gerald
20 Henning, please. Counsel, I've, I'm getting ahead of
21 myself.
22 MR. GROSSMAN: Okay. Welcome, Mr. Henning. Would
23 you state your full name and address, please?
24 MR. HENNING: Gerald Henning. Business address is
25 1688 East Gude Drive, Suite 302, Rockville, Maryland 20850.

Page 175

1 MR. GROSSMAN: Would you raise your right hand,
2 please? Do you swear or affirm to tell the truth, the whole
3 truth and nothing but the truth under penalty of perjury?
4 MR. HENNING: I do.
5 MR. GROSSMAN: All right. You may proceed, Mr.
6 Chen.
7 DIRECT EXAMINATION
8 BY MR. CHEN:
9 Q. Mr. Henning, what is your occupation?
10 A. Acoustical engineer, a consultant.
11 Q. And how long have you been in that occupation,
12 sir?
13 A. Over 30 years.
14 MR. CHEN: Mr. Examiner, give me one moment to get
15 my, my numbers.
16 MR. GROSSMAN: Sure.
17 BY MR. CHEN:
18 Q. Mr. Henning, you have given me a copy of your
19 resume. Is that correct, sir?
20 A. Yes.
21 MR. CHEN: Mr. Examiner, that's, I believe,
22 Exhibit 132A in the record.
23 MR. GROSSMAN: Okay.
24 BY MR. CHEN:
25 Q. And have you previously been recognized, sir, as

Page 176

1 an expert witness in noise?
2 A. Yes.
3 Q. And again, going to your resume, you recall giving
4 me your resume?
5 A. Yes.
6 Q. And you, you included in that a list of the
7 jurisdictions and matters as to which you have been
8 recognized as an expert?
9 A. Some of them. Yes.
10 Q. Yes?
11 MS. GIRARD: We don't object to Mr. Henning being
12 qualified as an expert.
13 MR. GROSSMAN: Okay.
14 MR. CHEN: Thank you very much.
15 MR. GROSSMAN: Ms. Lee, do you have any objections
16 or questions for this --
17 MS. LEE: No.
18 MR. GROSSMAN: Mr. Uhre, do you have any questions
19 regarding this witness's expertise?
20 MR. UHRE: No. Thank you.
21 MR. GROSSMAN: All right. Based on Mr. Henning's
22 resume, his experience as an expert, I accept him as an
23 expert in acoustical engineering.
24 BY MR. CHEN:
25 Q. Sir, have you reviewed the proposed conditional

Page 177

1 use for the senior living facility, the revised plans that
2 recently were filed?
3 A. Yes.
4 Q. Okay. Based upon your review and understanding of
5 those revised plans, what sources would generate noise close
6 to the property line? Particularly the property line with
7 the Paul property.
8 A. Yeah. That would include trucks, delivery trucks,
9 trash trucks, truck, these trucks would have typically
10 backup alarms. There would be loading and unloading
11 associated with these trucks. There's a, a generator near
12 the property line and, and a chiller.
13 Q. Based on the proposed, or excuse me, the revised
14 plans, will the noise levels that, from those sources comply
15 with the Montgomery County noise ordinance?
16 A. Yeah. Some of them will not. Okay. Not, not as,
17 as the project is now proposed.
18 Q. Okay. Would you please explain that? And, and
19 mind, being mindful that you've already heard some testimony
20 earlier today from another gentleman on some of these
21 points. So in the interest of brevity, if you could just
22 address in your explanation if there are counterpoints,
23 explain them please.
24 A. Okay. Well, the chiller is probably the easiest
25 one to deal with. You know, one of the things is we weren't

Page 178

1 given any kind of information about what the equipment is
2 actually going to be in terms of the size, you know, the,
3 the noise levels. So we, you know, we didn't, haven't had
4 the advantage of the acoustical consultant for the, for the
5 applicant. But, you know, I'll be speaking from my
6 experience on similar jobs with similar equipment. But, you
7 know, based on my experience, the chiller is one of the,
8 probably the least offending source, potential source near
9 the, near the property line. And that may or may not exceed
10 the noise code. So at this point, there's not enough
11 information for me, you know, as an expert to say that the
12 chiller is going to meet the noise code or not. You know,
13 since it wouldn't be running during the nighttime, it would
14 have to meet the 55 DBA requirement as opposed to a 65
15 during the daytime.

16 MR. GROSSMAN: Do you have any, any reason to
17 differ from the applicant's expert in terms of his estimate
18 of, of somewhere in the 40 decibels? 48, I think it was,
19 for the chiller or 46, I think.

20 THE WITNESS: Yes. If, if the chiller didn't have
21 a noise barrier at all around it, and I was looking at
22 something like 60 to 70 DBA at the property line. With the
23 barrier that they have drawn around it, the wall, it kind of
24 depends on how high the wall is relative to the equipment.
25 But, again, I'm looking at maybe an attenuation of five or

Page 179

1 10 depending on that heights difference. And therefore, you
2 know, something like 50 to 65. So if it's on the low end of
3 my range, then it's okay. But if it's on the high end, it
4 could be, you know, twice as loud as the noise then. And
5 again, the generator, again we didn't have any noise data
6 that was provided to really look at that in more detail, but
7 based on my experience, without a barrier, I would expect
8 the generator noise to be like 70 to 80 DBA. And, you know,
9 with this barrier that's shown on the, on the proposed plan,
10 again it depends on the heights difference between the top
11 of the barrier and the equipment. But, you know, with a
12 five to 10 DBA attenuation for that, then that would put the
13 generator noise level at 60 to 75 DBA. And that's based on
14 a generator in a, what, called weatherproof enclosure or
15 weather resistant enclosure. I mean there's other kinds of
16 manufactured enclosures that can be put around the generator
17 to control the noise to some extent. But they do take up
18 space and therefore, you know, that, that could cause, you
19 know, the wall or whatever else is around there to move out
20 further away. Now if, these numbers actually were based on
21 just the, just the wall around the equipment at the
22 generator. You know, I didn't know that there was going to
23 be a, a, a board-on-board type fence and I don't, I don't
24 know the details of that. So we could pick up some
25 additional attenuation from that, depending on the location

Page 180

1 that we're looking at on, on the Paul property. But again,
2 it would probably be more in the neighborhood of, you know,
3 like potentially another five decibels of attenuation.
4 Again, depending on whether or not the line of sight from
5 the top of the masonry wall around the equipment, if you
6 draw a line of sight from there to some position, receiving
7 position typically five feet above the ground. You know,
8 does that wood fence, you know, block the line of site. I
9 didn't hear any testimony that it was put there for acoustic
10 reasons, but I'm offering that it may provide, you know, a
11 modest amount of, of improvement. Then there's the trucks.
12 You know, basically, you know, a truck is going to generate
13 an expected level of about 85 DBA at the property line.

14 MR. GROSSMAN: The, are you talking about the
15 trash trucks or the delivery trucks?

16 THE WITNESS: Well, either one. I mean they're
17 both sort of heavy trucks. And, and it's going to vary. I
18 mean it depends on whether the truck is just moving at a
19 constant velocity or whether it's accelerating, you know,
20 which they will do as they turn around and maneuver, they
21 will, you know, change the, the level of the throttle. And
22 that's where you usually get the highest levels.

23 MR. GROSSMAN: And, and what numbers did you put
24 on that?

25 THE WITNESS: About 85 at the property line. And

Page 181

1 that again, you know, the, with the wooden fence, you may
2 get a, a, a modest reduction because of that. Maybe of five
3 decibel reduction. Something like that. And then, you
4 know, these trucks will have likely backup alarms. And
5 there's a big range on what kind of levels, you know, backup
6 alarms will generate. But, but a range is like 70 to 95 DBA
7 at the property line. So if we're at the, the lowest end of
8 the range, then, you know, we're getting, you know, close to
9 a daytime level. And, you know, if trucks can only enter
10 and leave the property during the daytime, then the, the,
11 the noise code maximum permissible level is 65. But if they
12 come during the night, then it's, it's 55. So, you know,
13 I'm not sure how it's going to end up in terms of, you know,
14 the truck scheduling and entering and leaving the property.
15 You know, that, that's not clear to me at this time. But
16 clearly, it's better from noise standpoint if the trucks
17 enter and leave during the daytime. But the other thing
18 about the backup alarm in reference to the noise code is
19 that the noise code requires a five DBA reduction of the
20 maximum permissible level for a tonal type sound. A tonal
21 sound is more annoying and it's more alerting and it's no
22 surprise that a backup alarm is, in fact, that type of sound
23 because it's made to be that way. It's just, it's made to
24 warn people. So instead of the backup alarm, you know,
25 having the meet a 55 or 65 depending on whether it's day or

1 night, it would have to meet a 50 to 60. So as far as --
 2 MR. GROSSMAN: Does that apply to trash trucks
 3 too? Or is that a different set of regulations?
 4 THE WITNESS: I don't, I, I know trash trucks
 5 have, has been, it has been brought up they may be exempt
 6 from the Code and I don't know that.
 7 MR. GROSSMAN: Okay.
 8 THE WITNESS: But, in any event, no, I'm looking
 9 at there are going to be trucks whether its trash trucks and
 10 delivery trucks or just delivery trucks and except for the,
 11 the noises that are going to be generated by the emptying,
 12 you know, of the trash containers, that type of thing, which
 13 can be pretty loud in terms of, you know, banging and things
 14 like that go along with that, you're going to have some
 15 similar levels whether it's a trash truck or a delivery
 16 truck. So if you're looking at, at the, the levels of
 17 backup alarms of 71 to 96 at the property line, even if we
 18 account for, you know, like a five decibel reduction from
 19 the wooden fence, you know, that's still 66 to, you know, 91
 20 and then, you know, we compare those levels to the noise
 21 code, you can see that there's a substantial amount of sound
 22 level over the noise code. And, and the way it, it works,
 23 the decibel system works is that every time you increase a
 24 level 10 decibels, 10 DBA, the sound is perceived to be
 25 about twice as loud. And every time you reduce something 10

1 DBA, the sound is perceived to be about one-half as loud. A
 2 five decibel difference is definitely a noticeable
 3 difference and it usually takes about a three decibel
 4 difference to be generally perceptible. So, you know, we
 5 can see that if we're looking at a, at, at a level of alarm
 6 at the highest level, at 96, and then reducing it five for
 7 the wooden fence in some areas, we're still ending up with a
 8 91 DBA level at the highest end of this backup alarm range.
 9 And that level relative to a 60 DBA level, which would be
 10 the applicable level during the daytime, is, is about eight
 11 times as loud. So it's, it's, backup alarms are going to be
 12 a lot louder than, than the noise code. And if you go back
 13 to the lower end of that range, even at that end, you know,
 14 we're looking at, you know, 66 which is a noticeable amount
 15 above the noise code. And, you know, I've actually measured
 16 backup alarms that were sort of more in the middle of this
 17 range so, you know, it seems to be kind of confirming my
 18 experience to some extent. The other thing that's
 19 associated with the trucks, the delivery trucks going in and
 20 out is the, the loading and unloading. And, you know, if I
 21 were doing this project for the applicant, what I would
 22 probably do is go to a similar facility and actually measure
 23 the noise levels from the trucks and, and their typical
 24 activities. But, you know, apparently no one has done that
 25 and no one has given us the information on that so again I'm

1 basing some estimated levels on, you know, my experience in
 2 measuring this type of activity. And again, there's a big
 3 range. You know, I've measured unloading/loading noise, you
 4 know, maximum levels. In other words, it's a, a level
 5 that's achieved a brief, for a brief instant at 65 to 95
 6 that would be expected at the property line. And then
 7 average levels over a 15 to 30 second period of
 8 loading/unloading noise, again, ranges from 60 to 80 DBA at,
 9 at 25 feet or about near where the property line is. So,
 10 again, we have the situation where, you know, we, we may, I
 11 mean we would likely have maximum levels over the noise code
 12 of 65 at the property line, even during the daytime. And we
 13 could even have, you know, average levels over, you know, 15
 14 to 30 seconds as, as much as three times louder than the,
 15 the noise code stipulates.
 16 MR. GROSSMAN: Okay.
 17 THE WITNESS: So, yeah, to me it, it, I mean
 18 there's, there's two things. One, you know, the information
 19 available that has been provided to support this project in
 20 terms of the noise is just pretty minimal. I mean there's a
 21 lot more that could have been done and really should have
 22 been done from my opinion, but based on, you know, my
 23 experience and these estimations, it's, it's going to be a
 24 major problem for some of these sources. And the other
 25 thing is there's kind of a maximum reduction you can get

1 from a barrier. It's one of these diminishing returns. So
 2 the higher you go, the less reduction you get per unit foot
 3 increase in height. And about the maximum you're going to
 4 get from a barrier out in this location is probably about 15
 5 DBA. So if you have a level that's going to be, end up
 6 going to be higher than what the level is minus 15 DBA, then
 7 you've got a big problem because, you know, even a 20-foot
 8 barrier is not really going reduce the level enough to meet
 9 the noise code. And part of this is a difference between a
 10 theoretical performance of a noise barrier and the practical
 11 performance. And if you look at the theoretical
 12 performance, yeah, you may be able to get 20, maybe 25, you
 13 know, from certain frequencies of sound on theoretical
 14 performance, but what happens in reality is you have
 15 reflections of sound from the building that hit the building
 16 and get reflected back over the barrier. And you get sound
 17 that goes over the barrier, hits trees and things and that
 18 gets reflected down into what normally would be the
 19 theoretical shadow zone of a barrier. So in reality, you
 20 know, you're not going to get the theoretical performance if
 21 you just do a textbook calculation on, on what would be
 22 provided by a noise barrier. That's why I say about the
 23 maximum you likely get would be about 15 DBA. So you can
 24 see that even with like a 20-foot barrier, you're, you know,
 25 on the high end of these ranges, you're going to have levels

Page 186

1 which are going to exceed the noise code.
2 MR. GROSSMAN: Okay.
3 BY MR. CHEN:
4 Q. Are there other ways of evaluating the impact of
5 noise on a property besides comparison of the noise levels
6 with the noise code?
7 A. Yes. I mean fundamentally the, the impact is
8 based on the difference between the background noise levels
9 and the levels of the noise source. So the quieter the
10 background noise levels, then the more disturbance you get
11 from the noise source at the same level. So, yes, there,
12 there definitely is a way of, of doing that and it, you
13 know, the way that we did that is actually went out to the
14 project to, and, on the Paul property, made the measurements
15 at several different locations, you know, a few hours,
16 several hours during the day and a few hours during the
17 night just to get a feel for what the actual background
18 level is there. And what I found was in taking 15 minute
19 averages, you know, going from these, you know, about four
20 different locations in the vicinity of the property line
21 between the Paul property and this applicant's property that
22 typically the, the background levels were like 40 to 45 DBA.
23 And then if you want to be more inclusive depending on, you
24 know, certain anomalies or things that may not be typical,
25 it was more like 35 to 50. In other words, at 50 there was

Page 187

1 some noise from leaf blowing activities on a, a property
2 that was adjacent to the Paul property, which is not really
3 a typical noise. But generally they were 40 to 45 and as
4 one would expect, they were quieter during the nighttime
5 hours. So you can see that even, you know, the background
6 noise level relative to a nighttime noise code is, you know,
7 10 to 15 times quieter. So something that just meets the
8 noise code although, you know, the noise code has been
9 determined based on a lot of different factors, it still in
10 terms of actual annoyance that level from a source can be
11 three times louder than the background noise even, even
12 meeting the noise code. And that is going to be disturbing
13 potentially. And, and so, basically what you have is just,
14 is just another piece of information that says that there
15 are going to be some disturbances if the project would go
16 through as it is, as is, has now been planned in terms of
17 noise issues.
18 MR. CHEN: No further questions.
19 MR. GROSSMAN: Ms. Lee, any questions?
20 MS. LEE: No.
21 MR. GROSSMAN: Mr. Uhre?
22 MR. UHRE: No. Thank you.
23 MR. GROSSMAN: All right. Ms. Girard.
24 CROSS-EXAMINATION
25 BY MS. GIRARD:

Page 188

1 Q. You, you spoke quite a bit about the potential
2 noise mitigation of the board-on-board fence. I didn't hear
3 you talk about the masonry wall that was talked about this
4 morning. Did you take that into account?
5 A. Yeah, I took, I kind of mentioned that at the
6 beginning on, on, on the ones where the masonry wall
7 mattered. In other words, around the generator and around
8 the chiller. You know, that's primarily what I took into
9 account. But I admitted that I don't know the dimensions of
10 the equipment, you know, relative to the heights of the wall
11 and that sort of thing so I was kind of going on some
12 judgment there. But, yeah, that, that would apply obviously
13 to the generator and chiller, but not to the trucks.
14 Q. I'm referring to the masonry wall --
15 A. Oh --
16 Q. -- that's now proposed at the end of the
17 turnaround.
18 A. Yeah, I mean that's, that's really, from my
19 viewpoint, is not much of a consequence. I mean it's 6 1/2
20 feet. It's, it's like the height of the board, of the wood
21 fence and the fact that it's masonry and so short, it's not
22 really going to provide, you know, anything noticeable above
23 what the wood fence would provide at the same height because
24 the performance is going to be determined by the sound, the
25 fact that over that or by the sound just not even hitting

Page 189

1 the barrier at all. I mean the stacks on trucks at the end
2 of the exhaust are like 12 feet above the road. So what is
3 a, a 6 1/2 foot barrier going to do to stop that, that kind
4 of noise propagation to the Paul property.
5 Q. But you're, the masonry wall that I'm describing
6 is, is at, at grade and much closer to the truck turnaround
7 whereas the board-on-board fence that you said would provide
8 some mitigation is down the slope at the property line.
9 A. Okay. And then I maybe have a different
10 understanding of the, maybe the board-on-board fence doesn't
11 do as much as I thought it would because I thought it was,
12 it was like on the ridgeline of, of the property as opposed
13 down the slope.
14 Q. And what trucks are you, you, you gave some
15 statistics for truck noise and you just referenced where
16 certain things on a truck would be. What trucks are you
17 assuming in your calculations?
18 A. A heavy truck.
19 Q. A heavy truck such as what?
20 A. You know, like a, a tractor trailer truck, dump
21 truck, trash truck.
22 Q. Are you equating, do they all have equal, equal
23 noise generation? When you say tractor trailer, you know,
24 are you assuming that a tractor trailer is going to be able
25 to use that drive and turnaround? I --

Page 190

1 A. Yeah. I, I don't know about that.
2 Q. Do you know can, is it possible for drivers of
3 trucks to turn off their backup beepers when they're turning
4 around?
5 A. It's certainly possible. I don't know that, I
6 mean, there's, I don't know legally, you know, what's
7 involved there. OSHA, I think has recommendations for
8 having warning signals that are audible to people that could
9 be injured by something backing up, but I don't know if
10 there's any county restrictions or anything.
11 Q. But you think there is a way to turn them off?
12 A. Sure. I mean you can, you can always just take
13 them off or cut the wires or, you know, there's always a way
14 to keep them from making noise.
15 Q. And when you were providing measurements of
16 certain things, such as the backup beepers at the property
17 line, where were you measuring from?
18 A. It wasn't a measurement. This was just based on
19 data that I did some research on in terms of, you know, what
20 kind of range backup alarms can make. I did separate
21 emission measurements. That was on a different project. It
22 was associated with a, a grocery store that I worked on and
23 I actually made measurements of the backup alarms and that's
24 where I, I made the comment that the measurements I'd done
25 were kind of, sort of in the middle or, you know, possibly

Page 191

1 middle, upper range of this range that I got just from
2 literature research.
3 Q. So when you're saying that, that it would be X at
4 the property line, you haven't actually tried to figure out
5 where the noise generation source would be on the property
6 in relation to the property line?
7 A. Well, I mean if it's a truck that's backing up, I
8 mean there's, I think, limited areas where the sound can be
9 generated near, near that property line. So anyway, I took
10 a distance of 25 feet. So if you're saying that all of the
11 trucks are going to be generating noise beyond the edge of
12 that curb relative to the property line, then I would have
13 to adjust things a little bit.
14 Q. Right. And noise generally goes down with
15 distance?
16 A. Yes, but not that much. I mean to double the
17 distance, you would be reducing the levels that I calculated
18 about six decibels, which is noticeable but not half as
19 loud.
20 Q. Just one second.
21 MS. GIRARD: That's all we have.
22 MR. GROSSMAN: Any redirect?
23 MR. CHEN: No questions.
24 MR. GROSSMAN: All right. I thank you, sir.
25 MR. HENNING: Thank you.

Page 192

1 MR. GROSSMAN: All right. Who is your next
2 witness?
3 MR. CHEN: I'm trying to move things along.
4 MR. GROSSMAN: And you're doing a good job, Mr.
5 Chen. Thank you.
6 MR. CHEN: I got the feel that you wanted to
7 finish today.
8 MR. GROSSMAN: I do. All right. Will you state
9 your full name and address for the record?
10 MR. NOONAN: James Noonan, 10245 Old Columbia
11 Road, Columbia, Maryland 21046.
12 MR. GROSSMAN: All right, Mr. Noonan. And you're
13 still under oath.
14 MR. NOONAN: Thank you.
15 DIRECT EXAMINATION
16 BY MR. CHEN:
17 Q. Mr. Noonan, you previously testified, and I'm
18 going to try to get you to the down and dirty. There's a
19 provision in the Zoning Ordinance requiring compatibility.
20 Isn't that right, sir?
21 A. Yes.
22 Q. Okay. Do you have an opinion as to whether or not
23 the proposal, with the revised plans now, is compatible with
24 the adjacent and nearby properties? Particularly the Paul
25 property.

Page 193

1 A. I believe it is not compatible with the Pauls'
2 property.
3 Q. Why?
4 A. Well, there are a variety of reasons. We could
5 start with the, the structure itself since that's some,
6 somewhat been addressed. Back in December, I believe we
7 showed some photographs at that time which showed the
8 visibility of existing structures with a leaf-off condition
9 which is the kind of conditions you have right now. It's at
10 least a third, maybe more of the year. The, the existing
11 structure, even though it's 30 feet further back on the lot
12 is also eight, six to eight feet higher in terms of the base
13 elevation. You will be able to see that still from the
14 Pauls' property even, even the ground level or close to it
15 despite the reduction in overall height. In addition, one
16 of the things that hasn't really been, been addressed here
17 is, is, and, and I'm just going to say this. Not that I
18 want to compare it to existing conditions, but to, to talk
19 about the impact of new lights and, and things on the Paul
20 property. The existing storage shed in fact blocks the
21 light from, from the, the, the bubble, the tennis bubble.
22 And if you again look back at the photographs we took, and I
23 can give you the, the numbers, you see very little of the,
24 those, those lighted structures from the Paul property.
25 That obviously, that structure obviously is going to be gone

Page 194

1 and now you're going to be able to see the, the new
2 structure pretty clearly and whatever lighting occurs from
3 that. So, that, that's, that's the first thing. So the
4 bulk of the building is still, is, is visible from the
5 Pauls' residence and still it's a fairly bulky structure
6 when it's, during leaf-off conditions you'll be able to see
7 it quite easily. I think more telling for this, this
8 proposal, however, is, is the, is the site itself and, and
9 the way the, the facility fits on it. I think the applicant
10 has done a, a really good job in a number of ways in which
11 they've maximized the number of units based on the zoning,
12 the, consistent with the zoning. And, and made it fit in
13 here, but, but this is a fairly challenging site. I mean a
14 fairly unique site in the sense that it's, it's almost a
15 perfect even-sided triangle. There are only so many ways to
16 accommodate a lot of different activities and things in a
17 site of this constraint. There are a lot of, you've heard
18 testimony from a lot of folks, or at least questions to a
19 lot of folks regarding a whole variety of, of operational
20 impacts that, that this site has, particularly in terms of
21 its impact on the Paul property. And we just talked about
22 noise. We've talked about truck turnaround. We've talked
23 about lights. We've talked about the operations of the
24 garage doors, the trash receptacle itself has to be big
25 enough to accommodate food waste from, from a 140 resident

Page 195

1 facility, excuse me, that's going to serve food services to
2 existing residents at least three times a day. I said at
3 least. Probably three times a day. So it's going to have a
4 substantial amount of, of waste products that are, are food
5 related which can tend to draw, if not handled
6 appropriately, can draw vermin. There are also going to be
7 potential, at least from my understanding, some potential
8 even medical waste in this facility. And I don't want to be
9 absolutely certain of that, but, but the point I'm making
10 here is that there are a whole litany of different impacts
11 that, that are all located on that corner of the property,
12 on the, on, on the west and the south side immediately
13 adjacent to the Paul property. And when you look at the,
14 the application, you start to see why that, why that is. In
15 addition to the actual constraint of the, of the lot site
16 itself, we have the additional constraint of the proposed
17 easement on the, on the south, excuse me, on the north side
18 of the parcel adjacent to the golf course. Now currently
19 there, there are some existing structures that intrude on,
20 on the proposed area of the easement. And I'll point out
21 that, that in fact the easement, the, isn't in place yet,
22 but it, it, it borders on an easement that the golf course
23 is and with the County on the other side, which is a
24 Category 1 forest conservation easement. And that's what
25 proposed along the north edge of, of this parcel as well.

Page 196

1 And I assume that, that provides some benefits,
2 environmentally in terms of providing a contiguous forested
3 area. Its impact, however, on the Pauls' property is
4 demonstrated by the applicant's response to your request
5 about, you know, you, you said it wouldn't, you know, asked
6 what would be the impact of moving the trash receptacle to
7 the northeast corner. You also briefly mentioned the
8 possibility of putting the driveway on that side of the
9 building. And the reason that can't happen is because of
10 this, this forest conservation easement, which I assume is
11 part of a, part of the overall forest conservation plan I
12 believe that was testified to today.
13 MR. GROSSMAN: But I'm not suggesting that the,
14 that the driveway would have to be moved to the other side
15 of the building in order to move the trash area because
16 there is access --
17 THE WITNESS: No, I, right.
18 MR. GROSSMAN: -- to the, to the, where the
19 turnaround is, the fire turnaround area which, that, that,
20 that little corner which is I was considering the
21 possibility of having the trash receptacle.
22 THE WITNESS: Right. And I wasn't in, saying that
23 that was your, your intent. I, I'm merely pointing out why
24 all of these operational aspects are where they are on the
25 existing proposal. And as the applicant has, has stated,

Page 197

1 because of the, both in response to your request and, and
2 really in the original application as well, it can't be
3 there because they've, they've made a commitment now to, to
4 provide that for a conservation easement.
5 MR. GROSSMAN: The driveway can't be there. Not
6 the trash.
7 THE WITNESS: The driveway can't be.
8 MR. GROSSMAN: Right.
9 THE WITNESS: That, neither can some of the other
10 operational characteristics. I mean we mentioned a
11 potential impact on the roots for, for a major tree to die.
12 I mean, again, but there are also some internal operational
13 characteristics to the structure and according to the
14 applicant's response which, which indicates that there would
15 be problems to locate some of these facilities on that end
16 because the internal structure of the operation of the
17 building is oriented to the back of the building. So, so
18 you have a lot of, of facts here, a lot of operational
19 equipment, operational activities that are located back in
20 the corner of the Pauls' property that, that are normal to
21 the operation of, of this kind of a facility, but are
22 located in that specific area because, as the applicant
23 said, they, they simply can't be located anywhere else. And
24 that, that constraint and that factor is a result of, of the
25 unique shape of, of the parcel, but also the existence of

Page 198

1 the conservation easement which shifts the whole building to
2 the south and, and to the west. And that, that really
3 creates some, some really non-inherent impacts with regard
4 to the Pauls' property because even though these are, are
5 necessary and normal functions for a facility of this kind,
6 there's very little opportunity for, for this application on
7 this site to locate those facilities anywhere else except
8 next to the Pauls' property. The other thing I would kind
9 of point out with regard to this is, is some of the
10 conversation we've had in recent testimony about proposing
11 different fixes to try to resolve some of these individual
12 problems. It, it almost appears like every time we make a,
13 a recommendation or a suggestion, not me, but, you know, the
14 other folks here making suggestions, there are other
15 constraints that pop up, that, that make that, that fix
16 infeasible in a lot of ways. For example, we talked about
17 before the lunch break, making that 6 1/2 foot, foot wall 12
18 feet, but if you look at the Conditional Use Plan, the, the
19 existing which is 131A, the, the portion of the, of that
20 wall that is, that is adjacent to, parallel to the Paul
21 property is still within that 15 foot easement. And the 6
22 1/2 foot is the maximum allowed by the, by the Code. So
23 even that fix for noise, assuming it would work, is, it
24 doesn't work for other provisions in the Code. So the site
25 constraints and the inability to make adjustments to, to the

Page 199

1 operation of this facility are not inherent impacts that
2 are, that are directly impacting the Pauls' property. And
3 that's one of the core reasons why I don't think it's, it's,
4 it's compatible with the, with the residential neighborhood.
5 MR. GROSSMAN: Okay.
6 THE WITNESS: The only other thing I failed to
7 mention. I need to point it out. Is if you look at the
8 Conditional Use Plan, there was some testimony just before
9 lunch about storm water management and the, the riprap area
10 in the far west corner of the property. The testimony then
11 was that, that it would add very little water to the golf
12 course area, if I, if I remember the testimony correctly.
13 One of the follow-up questions was whether there was
14 evidence of erosion at that point and I provided a, a
15 photograph in preparation to the last hearing. It's Exhibit
16 97C(ii) which shows erosion on that, that area, which is,
17 and this eroded area is actually on the golf course
18 property. Okay.
19 MR. GROSSMAN: Well, I don't think the testimony,
20 by the way, wasn't that it would add more storm water runoff
21 to the golf course area.
22 THE WITNESS: No, that wasn't the testimony. I
23 agree with you. That, but it's a part of the point I want
24 to make. Even with the existing limited flow at that lower
25 corner, and there's no structure currently that pushes water

Page 200

1 to that area. There's water, the only water that goes to
2 that area is from the flat practice area for the tennis
3 balls and that kind of thing.
4 MS. GIRARD: Objection. Is he purporting to
5 testify as an expert in storm water all of a sudden?
6 THE WITNESS: No. Actually I'm just, I'm sorry.
7 I shouldn't answer that, should I?
8 MR. GROSSMAN: I'm, I'm going to --
9 MS. GIRARD: I, I, I mean he's answering pretty
10 definitively about drainage patterns on our property.
11 MR. GROSSMAN: Well, I don't know. He hasn't, he
12 hasn't reached a conclusion. He was stating some of the
13 premises. So I'm going to overrule your objection. Let's
14 hear what, what he's trying to say.
15 THE WITNESS: The, the photograph I took shows
16 some erosion which is actually on the golf course property.
17 But it does have an impact for the Pauls. In the foreground
18 on that photograph, you have part, part of the, the Pauls'
19 iron fence has been knocked over because a tree has come
20 down due to the erosion.
21 MR. GROSSMAN: Right.
22 THE WITNESS: I'm not going to testify whether
23 there's more, less storm water there, but if you look at the
24 Conditional Use Plan, there is at least 800 feet of pipes
25 drawing storm water and I'm just saying what's on this

Page 201

1 document. I don't know how much water is going to come.
2 MR. GROSSMAN: Right.
3 THE WITNESS: From various aspects of that
4 building, including the interior courtyard, all of which is
5 going to discharge to this corner. So, you know, no matter
6 how well that storm water management functions, and I assume
7 it will function the way the, the engineer testified, it
8 still has potential for adding through more erosion and
9 damage to the Pauls' property just because of the condition
10 of the stream down on the, on the golf course.
11 MR. GROSSMAN: I don't know that you can say that
12 on your level of expertise, but I also say that the, truly
13 the undisputed evidence here is that this proposed use will
14 reduce the flow of storm water off the site, so I, don't you
15 think that that's really, I don't think there's a, that what
16 you've said can change that.
17 THE WITNESS: Well --
18 MR. GROSSMAN: From, that's what the, that's what
19 the undisputed expert evidence is on storm water management.
20 So, was there anything --
21 THE WITNESS: Well, I'm done with that part.
22 MR. GROSSMAN: Okay.
23 THE WITNESS: I just, I want to look back to that
24 anyway.
25 BY MR. CHEN:

Page 202

1 Q. The forest conservation easement that you just
2 referenced.
3 A. Yes.
4 Q. That's the same forest conservation easement that
5 Mr. Sloan identified this morning. Is that right?
6 A. The proposed one is. Yeah. There's no current
7 forest conservation easement, at least according to the
8 County records that I looked at last night on this parcel.
9 Q. Okay. And that's what --
10 A. Is, the immediate adjacent parcel has a forest
11 conservation easement on it.
12 Q. Okay. But it's the same one. I just want to make
13 sure --
14 A. Yes.
15 Q. -- we're talking about the same one that Mr. Sloan
16 testified that the applicant was going to enter into.
17 A. Yes.
18 Q. Okay.
19 MR. CHEN: I have no further questions.
20 MR. GROSSMAN: All right. Ms. Lee, do you want to
21 brutalize this witness?
22 MS. LEE: No.
23 MR. GROSSMAN: All right. Mr. Uhre?
24 MR. UHRE: No. Thank you.
25 MR. GROSSMAN: All right. Ms. Girard?

Page 203

1 MS. GIRARD: I just, one clarification point.
2 CROSS-EXAMINATION
3 BY MS. GIRARD:
4 Q. When, when you started explaining why you didn't
5 think it was compatible, you talked about the existing shed
6 and how that blocks views and that even though the proposed,
7 and correct, correct me if I'm saying this incorrectly, but
8 that the proposed use would be set back 30 feet more, but it
9 would still be visible?
10 A. Yes.
11 Q. In that sense, are you equating visibility with
12 incompatibility?
13 A. Well, again, it will have lights that will be,
14 will be visible from, from the, the applicant's office.
15 Excuse me, office. Home, excuse me. So in that sense, it
16 will have an impact that currently isn't there or wouldn't
17 be there in the absence of, of, of this facility.
18 Q. Have you visited the property at night?
19 A. The Pauls' property? No, I have not.
20 Q. So you can't speak definitively as to what light
21 they can see now?
22 A. I, I can, by photograph I, I've, I can show that
23 the building blocks the, the white bubble in the, in the
24 back.
25 Q. But there could be other light sources that are

Page 204

1 visible?
2 A. Of course. I don't know what lights are on the
3 existing shed at all.
4 Q. Right. And have you taken, when you're talking
5 visibility, have you taken into account the masonry wall
6 that's now proposed?
7 A. No. And again, that's part of one of the things
8 that, that, that's interesting about this proposal. On the
9 one hand, that's purported as blocking, I assume the
10 blocking potential visual impacts of the trucks and
11 turnarounds. On the other hand, it's another 6 1/2 foot
12 structure that, that will be clearly visible. That's right
13 on the, almost right on the property line, but 15 feet. So,
14 I mean every, every fix you make seems to come up with a
15 different problem because of the site constraints in this
16 parcel.
17 Q. But it, okay. And, and are you familiar with the
18 new landscape plan that's between the masonry wall and the
19 Pauls' property?
20 A. Yes.
21 Q. Okay. And do, do you believe that that's, would
22 provide any screening?
23 A. I think it's, it's certainly better than what was
24 there before. I think I testified before that there, there
25 couldn't, physically you couldn't put anything there. Yeah.

Page 205

1 So, I mean over time that, that might provide some, some
2 screening, but again, yeah, they, the height of the building
3 behind it, you know, shall still be visible. You probably
4 won't be able to see it a ground level at that point if
5 that, if that's planted, but --
6 MS. GIRARD: That's all of I have.
7 MR. GROSSMAN: Any redirect?
8 MR. CHEN: No.
9 MR. GROSSMAN: All right. Thank you, Mr. Noonan.
10 THE WITNESS: Thank you.
11 MR. GROSSMAN: For your return visit. Sir?
12 THE WITNESS: Sorry it took me, sorry it took me a
13 month to testify.
14 MR. GROSSMAN: Mr. Chen, are you suggesting you
15 want to put Dr. Paul back on?
16 MR. CHEN: Again, Dr. Paul would like to, and, and
17 it's very sensitive to the revised plans. We're not
18 rehashing.
19 MR. GROSSMAN: Okay. Dr. Paul. Thank you. Just
20 for the record, state your full name and address, please?
21 DR. PAUL: Ronald A. Paul, M.D., 10827 Lockland
22 Road, Potomac, Maryland.
23 MR. GROSSMAN: All right. Dr. Paul, you're still
24 under oath.
25 DR. PAUL: Okay.

1 MR. GROSSMAN: All right. You may proceed.
 2 DIRECT EXAMINATION
 3 BY MR. CHEN:
 4 Q. Sir --
 5 MR. CHEN: Thank you.
 6 BY MR. CHEN:
 7 Q. Sir, you wanted to explain some of the --
 8 A. Yes. And --
 9 Q. -- consequences of the revised plans?
 10 A. Please. And I, I will be relatively brief, I
 11 promise. You know, you have to understand my wife and I
 12 look at these proceedings a lot different than probably
 13 anybody else in the room. For most of you, it's, it's
 14 either an investment or it's work. And we look at things,
 15 you know, this is our, our life because we're there. You
 16 know, when you, they talk about, I, I mean you can spin it
 17 any way you want that this will not have any economic impact
 18 on our life and on our future and anybody sitting in this
 19 room, I can, has to believe that given equal opportunities
 20 with a big imposing structure behind our house, you know,
 21 it's going to slow them down in terms of wanting to buy our
 22 house or so on and so forth. So I keep hearing that this,
 23 by different experts and different connotations that this
 24 will not have an economic impact on us. Of course it will.
 25 And, you know, I ask any of you sitting here if you had the

1 choice between two equal houses are you going to take the
 2 one with the, with the big imposing structure behind it.
 3 Not, and, you know, also the, the potential with the noise,
 4 the potential with the lights. One other thing I wanted to
 5 bring up about what was just mentioned, someone said that,
 6 that, you know, as you know, I had told you before my
 7 extensive experience working in assisted living homes and as
 8 I said before, everything there is liability. Everybody is
 9 concerned about liability. Rightly so. And they said
 10 something about well, the trucks may not have a backup
 11 warning. Maybe they wouldn't do that. Of course they will.
 12 You know, what if they run over somebody? What, you know,
 13 people who live in these type of things may not have the
 14 best hearing. So on and so forth. And you can imagine what
 15 that would be. Also there was something about trash. What
 16 wasn't brought up is this isn't going to be your normal
 17 trash. This is going to be all the things you think about
 18 plus there's going to be a significant amount of diapers, of
 19 sheets, so on and so forth, that are, that are, that are
 20 dirtied, so on and so forth. To me, you know, we have all
 21 these issues and to me the reason we have all these issues
 22 is the bottom line is to me and to my wife and the project
 23 is just too big for the size and shape of the property.
 24 And, you know, you ask is it compatible with its
 25 surroundings. Of course not. If you go there, you see it's

1 certainly not compatible with its surroundings. We live in
 2 a residential area and they have all these issues because
 3 they're trying to fit in these things that it's the wrong
 4 lot to begin with for what they want to do. Also, and this
 5 doesn't go so much with me, but including the traffic and
 6 the safety concerns there's going to be on Falls Road and so
 7 on and so forth. To me that's what the bottom line is. It,
 8 it's just, it may be a magnificent project, but it's the
 9 wrong, it's wrong for the size and shape of this lot. And
 10 lastly, and please correct me, Mrs. Bacon, if I'm wrong, I
 11 think the first day you said something that it would, the
 12 average price for, to begin with would be \$9,000 to \$10,000
 13 a month because you said it was going to be a luxury places.
 14 Am I getting that correct?
 15 MR. GROSSMAN: Well, you can't ask questions --
 16 THE WITNESS: Oh, okay.
 17 MR. GROSSMAN: -- of, of the audience.
 18 THE WITNESS: Well, I, I'm, that's what I believe
 19 I heard her say. You know, because it's going to be a
 20 luxury place. And I understand something I've heard
 21 throughout this whole project that, you know, Montgomery
 22 County wants these type of things and so on and so forth
 23 because it's good for the County and the County needs it.
 24 You know, at \$9,000 or \$10,000 a month, how many people in
 25 the County are going to be affected by this? How many can

1 afford to do that or want to do that? You know, I would
 2 think if, you know, what are you talking about? Two percent
 3 of the County, four percent of the County. You know, this
 4 is not something that the, a lot of people in the County if
 5 they want to go to a nursing home or an assisted living
 6 place are going to be able to afford. So it's not --
 7 MR. GROSSMAN: Well, any, any comments I made in
 8 that regard are based on two things. One is master plan
 9 language and the second is that the Council has elected to
 10 make this type of facility a conditional use, which means
 11 that it is decided that's allowed in the zone if certain
 12 conditions are met. You know, that's all I would have meant
 13 by that the County finds them desirable that's all.
 14 THE WITNESS: Yeah. Well, my point is how much of
 15 the County is it really going to affect at those prices?
 16 You know, a lot of people who have that kind of money, have
 17 that kind of money and have worked all their life to have
 18 that kind of money and they don't want to throw it away at
 19 the end. Maybe they want to stay at home and have, spend a
 20 portion of that to have 24-hour care for themselves, so on
 21 and so forth. And I think people who've worked all their
 22 life and been lucky enough to be able to do that, you know,
 23 and maybe another thing is maybe they can afford to do it,
 24 but they say well, I'll spend a little less and I'll give
 25 the rest to my grandchildren every month. So I mean, you

Page 210

1 know, that's what people think. And that's what I have to
2 say and I thank you for allowing me to say it.
3 MR. GROSSMAN: Well, certainly. Any cross-
4 examination questions, Ms. Lee?
5 MS. LEE: No.
6 MR. GROSSMAN: Mr. Uhre?
7 MR. UHRE: No.
8 MS. GIRARD: No.
9 MR. GROSSMAN: Okay. No. All right. Thank you,
10 Dr. Paul.
11 DR. PAUL: Thank you.
12 MR. GROSSMAN: All right. Mr. Chen?
13 MR. CHEN: Just, and I know I'm being repetitive,
14 but, Mr., Mr. Grossman, you've recognized we have this
15 ongoing objection based upon the rulings this morning.
16 MR. GROSSMAN: This ongoing objection to what?
17 MR. CHEN: To that the amended application should
18 not be considered.
19 MR. GROSSMAN: Right.
20 MR. CHEN: Yeah, you, okay. I just want to make
21 sure we're --
22 MR. GROSSMAN: You, you've stated that you have an
23 objection today. And the applicant has decided they want to
24 proceed with their amended application.
25 MR. CHEN: And you are going to hear it.

Page 211

1 MR. GROSSMAN: And I'm going to hear it.
2 MR. CHEN: Okay. I just wanted to be clear on
3 that. Okay. We don't have any further witnesses.
4 MR. GROSSMAN: All right. Okay.
5 DR. PAUL: Can I say one other, I forgot to say
6 one thing.
7 MR. GROSSMAN: Yes, Dr. Paul.
8 DR. PAUL: Would you mind?
9 MR. GROSSMAN: No. Not at all.
10 DR. PAUL: I, I just think that, you know, in
11 light of all this and in light of the impact that it's going
12 to have on my wife and I in so many ways, I would hope that,
13 you know, that the possibility would be thought of
14 eliminating the project all together and putting it
15 somewhere else.
16 MR. GROSSMAN: Okay. Well --
17 DR. PAUL: And not --
18 MR. GROSSMAN: -- that's not an option for me.
19 That's a decision, a decision that has to be made by the
20 applicant. They are entitled --
21 DR. PAUL: Yeah.
22 MR. GROSSMAN: -- to have their application
23 reviewed to see if it meets the statutory standards. So
24 that's what's, that's my job.
25 All right. So let me turn to the applicant. Are

Page 212

1 there any rebuttal witnesses?
2 MS. GIRARD: They are. Could we take a quick
3 break before we get to that?
4 MR. GROSSMAN: Okay. Let's take a, five minutes
5 sufficient?
6 MS. GIRARD: Yeah. Sure.
7 MR. GROSSMAN: All right. We'll come back at 20
8 after 3:00.
9 (Off the record.)
10 (On the record.)
11 MR. GROSSMAN: Back on the record. All right.
12 MS. GIRARD: Thank you.
13 MR. GROSSMAN: And who did you wish to call as
14 rebuttal?
15 MS. GIRARD: We are going to call Brenda Bacon.
16 MR. GROSSMAN: Okay. Good afternoon, Ms. Bacon.
17 MS. BACON: Hello. How are you, Mr. Grossman?
18 MR. GROSSMAN: I'm fine. Have a seat.
19 MS. BACON: Thank you.
20 MR. GROSSMAN: And would you state for the record
21 your full name and business address?
22 MS. BACON: Brenda Bacon, 525 Fellowship Road,
23 Suite 360, Mt. Laurel, New Jersey.
24 MR. GROSSMAN: All right. And you are still under
25 oath.

Page 213

1 MS. BACON: Thank you.
2 DIRECT EXAMINATION
3 BY MS. GIRARD:
4 Q. Mrs. Bacon, just a couple of questions. First,
5 you've heard in the earlier proceedings and you heard a
6 little bit about that today, about the accuracy of your
7 numbers regarding employees and traffic to and from the
8 site. Dr. Paul had indicated in his experience residents of
9 assisted living facilities typically have personal aides
10 that would not be included in your employee count. Is that
11 your experience with your other residences?
12 A. No, it's not. And I, I can't speak for the, I did
13 read the testimony. I wasn't here in person the last time.
14 And I know that Dr. Paul referred to communities that he's
15 been involved in. I'm not, I'm not sure of the mixture of
16 the skilled nursing versus assisted living. But in our
17 communities, there is at any given time an average of three
18 private duty aides in addition to our staff. And it may be
19 the way that we staff because we staff more with around-the-
20 clock nurses and the way our aides are trained and the way
21 the assignments are made. But I actually this morning
22 checked with all of our buildings to say tell me how many
23 private duty aides we have in the building. And so, we
24 confirmed that again. So I, it, it, it could be the
25 resident, the residence acuity levels. There are all kinds

Page 214

1 of different, I can't explain or compare to what Dr. Paul's
2 experience has been, but it's not, not the way our 27
3 communities operate.
4 Q. And similarly, you read his testimony about number
5 of employees. You're confident in the numbers that you've
6 submitted?
7 A. I am.
8 Q. And addressing another concern of Dr. Paul from
9 the last time he testified, do you typically designate
10 smoking areas for residents, visitors or employees in your
11 project?
12 A. Very, very few of our residents smoke. Some
13 employees unfortunately do. There is an area, do we still
14 have the pointer thing here?
15 MR. GROSSMAN: Yes. It's right there. It's a
16 gray --
17 THE WITNESS: This?
18 MR. GROSSMAN: Yes. That's it.
19 THE WITNESS: Oh, okay.
20 MR. GROSSMAN: And there's a button on top.
21 THE WITNESS: I got it. All right. On this side
22 here, there's a door back here out of the parking area.
23 MR. GROSSMAN: All right. That's the northeast
24 corner?
25 THE WITNESS: Yes. North --

Page 215

1 MR. CHEN: Northwest, where the --
2 MR. GROSSMAN: Well, no, I think --
3 THE WITNESS: This is --
4 MR. GROSSMAN: Yeah, this is, wait a minute.
5 THE WITNESS: Where is east? East is at the
6 bottom.
7 MR. GROSSMAN: No. West is, isn't west the top
8 tip there? So that would be on the north, well, okay. I
9 guess it's at the northwest corner.
10 THE WITNESS: North --
11 MR. GROSSMAN: I, I stand corrected.
12 THE WITNESS: Okay.
13 MR. GROSSMAN: I meant it was on the north.
14 THE WITNESS: Okay. If I can get this go right
15 there. There is a parking garage back here. On the terrace
16 level there is a door that leads out there. We would put a
17 bench and a little receptacle out there for employees on
18 their break to smoke. So that would be away, on the other
19 side of the building from the, from Dr. and Mrs. Paul.
20 BY MS. GIRARD:
21 Q. We have also had a lot of conversation, oh, I'm
22 sorry. Before I get to the question. There is also an
23 issue from previous testimony about the 16-passenger van.
24 Your testimony, I believe, said that you believed it would
25 park in the parking garage and then the architect said it

Page 216

1 won't fit. So.
2 A. Yeah. He did. He said it's not, it's not tall
3 enough. So.
4 Q. Are you deferring to the architect on that one?
5 A. I am deferring to the architect. The 16-passenger
6 van will park out in front of the building in one of those
7 parking spaces.
8 Q. Okay. And on the issue of the trash enclosure,
9 we've talked about that extensively. Is part, can you just
10 explain for us what your procedure is for removing trash
11 from the site?
12 A. Our procedure is that trash is bagged and the bags
13 are closed and taken out by the employees, put in the, the
14 trash enclosure, the trash container, which is, the lids are
15 always kept closed on those containers. We have, and, and
16 then the trash is picked up three times a week by our, our
17 contractor who is on the site and off within ten minutes.
18 So that three times a, three times a, a week. We have
19 several communities. You know, I, I think about our Seaside
20 Point community in Rehoboth Beach and our Sycamore community
21 in, in Shrewsbury, New Jersey and our Longwood community in
22 Longwood, Pennsylvania. And they are all located, those are
23 just three that are located directly within communities. I
24 mean they're adjacent to communities. There are houses
25 right on both sides of them and we've never had a complaint

Page 217

1 about noise. We've never had a complaint about lights or
2 about odor. We're very careful about that. Again, our
3 residents live in our communities and we would not want them
4 exposed to any of that as well.
5 Q. And the trash enclosure is kept closed at all time
6 at the top. You, do you have any vermin issues? That was
7 raised earlier.
8 A. No.
9 Q. Okay. Did you, do you want to provide examples of
10 typical trash enclosures from projects?
11 A. Sure.
12 Q. Identify that one, please.
13 A. Okay. So this is not Wall. It's Pennington. You
14 tell me? Do you have them --
15 Q. Yes.
16 MR. GROSSMAN: Well, let's, let's get exhibit
17 numbers on them so when she identifies it, we'll know which
18 --
19 THE WITNESS: Yeah. You have to, this is
20 Haddonfield.
21 MR. GROSSMAN: Well, hold on one second. Hold on.
22 You have to, in order that the record is clear as to what
23 you're identifying, this will be Exhibit 143A is the first
24 photo. All right. And what is Exhibit 143A?
25 THE WITNESS: Is that the first one?

Page 218

1 MR. GROSSMAN: Yes.
2 THE WITNESS: I believe that's Pennington. Yes.
3 MR. GROSSMAN: That's the trash enclosure at your
4 Pennington facility.
5 THE WITNESS: Um-hmmm. Yes.
6 MR. GROSSMAN: Pennington where?
7 THE WITNESS: That's in New Jersey. That's
8 Pennington, New Jersey. Yes. Pennington, New Jersey.
9 MR. GROSSMAN: Yes.
10 THE WITNESS: Have you been there, Mr. Chen?
11 MR. CHEN: Native.
12 MR. GROSSMAN: Not in the enclosure.
13 MR. CHEN: Well, well, you know, if my father was
14 still around, you might have some comment on that.
15 MR. GROSSMAN: Pennington, New Jersey. Okay.
16 (Hearing Exhibit No. 143A was
17 marked for identification.)
18 THE WITNESS: And the second one is Haddonfield,
19 New Jersey.
20 MR. GROSSMAN: Okay.
21 THE WITNESS: That's actually an historic home on
22 the front, on the other side of the enclosure just off the
23 picture. And then that's a, a new addition we just put on
24 that property.
25 MR. GROSSMAN: All right. So 143B is a trash

Page 219

1 enclosure in Pennington, in Haddonfield, New Jersey.
2 (Hearing Exhibit No. 143B was
3 marked for identification.)
4 THE WITNESS: Yes.
5 MR. GROSSMAN: Okay.
6 BY MS. GIRARD:
7 Q. And can you review for us the operational
8 considerations that went in to locating the trash enclosure
9 as it's shown now on the plans?
10 A. The, the operational concerns is that you, you
11 really want to make sure that the trash is taken out to an
12 area certainly that's easy and efficient for employees to
13 get to dispose of the trash and that the trash truck can get
14 to them and get back and get off the property in 10 minutes.
15 And certainly that you don't want to have to take the trash
16 through the residence living areas. You know, their living
17 room, their dining room or, or any of their living areas.
18 So we've located for an efficient use for all of those
19 purposes.
20 Q. And with --
21 MR. GROSSMAN: I'm sorry. You're saying getting
22 the trash from the living areas to the trash thing and
23 that's --
24 THE WITNESS: We actually, I'm sorry. We actually
25 don't want to go through the living areas. You know, like

Page 220

1 the living room. You wouldn't normally take the trash out
2 through your living room. It would go out the back of the
3 house. And so that's what we're trying, we were trying to
4 do, is to locate it as far up as we could efficiently and
5 have the truck be able to get into as, you know, as well and
6 get in and out of the property.
7 MR. GROSSMAN: Okay. And how would that, so if
8 we look at, at the Conditional Use Plan in a northeast
9 corner, the lower right, in other words, you have a number
10 of parking spaces there. You have more parking spaces than
11 you're required by law. And if you were to remove a few of
12 those parking spaces. I see two motorcycle spaces and seven
13 other spaces. If you would remove a few of those and put
14 the trash enclosure there, could that, could you satisfy
15 those concerns?
16 THE WITNESS: That, that's exactly what we want to
17 do, Mr. Grossman. We're going to move the trash container.
18 I, I --
19 MR. GROSSMAN: Oh.
20 THE WITNESS: I've listened to Dr. and Mrs. Paul.
21 It, it seems, as I think about, you know, all the things
22 that we've done to move, to make the building smaller on
23 that side and move the units up and, and do the, the wall
24 and all of that, I think what I hear is the major concern no
25 matter how many pictures I may show you or what I can tell

Page 221

1 you about our other experiences that you're worried about
2 the noise, the lights, the odor, all of that associated with
3 the trash enclosure being adjacent to your property. So
4 we're going to move that trash up to that northeast corner.
5 We cannot move the driveway. We simply can't because of
6 the, the storm, stream water buffer. But we can move the
7 trash container down there. It will mean that our employees
8 will have to come out of the side of the building and walk
9 about 200 feet in all kinds of weather to get to that trash
10 container, but, but we want to be good neighbors. We don't
11 want you worried about this and we, we can make it happen.
12 MR. GROSSMAN: Okay. I think that's a lovely
13 offer. I'm not sure where that leaves us in terms of plan
14 amendment.
15 MS. GIRARD: Well, I, I think that we would, you
16 know, submit that we could finish the hearings based on,
17 hearing based on that assumption and then get a revised plan
18 showing that within the next couple days so that the record
19 could close.
20 MR. GROSSMAN: All right. What do you think about
21 that, Mr. Uhre, Ms. Lee and Mr. Chen?
22 MR. CHEN: Well, you know my position on
23 amendments. And --
24 MR. GROSSMAN: Aside from your legal position on
25 that, in terms of practical impact on your clients and

Page 222

1 procedurally?
2 MR. CHEN: I, I we better have another break.
3 MR. GROSSMAN: Pardon me?
4 MR. CHEN: I, I can't consult with my clients at
5 the table.
6 MR. GROSSMAN: Okay. Fair enough. Well, you
7 haven't any more evidence from Ms. Baker?
8 MS. GIRARD: No. That's it.
9 MR. KAUFMAN: Anyway that's a proffer we would
10 make.
11 MR. GROSSMAN: Okay. All right. Thank you.
12 Well, I guess we have to open up cross-examination.
13 MS. LEE: Well, I guess just --
14 MR. GROSSMAN: Ms. Lee, you have questions?
15 MS. LEE: Just, not question. But just on the
16 process then. Since there was such substantial testimony
17 this morning about not wanting to disturb the critical root
18 zone of that tree as part of the Forest Conservation Plan,
19 which I commend very heartily. However, I would think Park
20 and Planning would want to take a peek at what the proposed
21 structure is going to look like and that was why they
22 couldn't put it there this morning so I, I would think they
23 would want to look at it.
24 THE WITNESS: Josh is working diligently on those
25 issues.

Page 223

1 MR. GROSSMAN: Yeah. I don't think they're in the
2 critical root zone if they put it in the parking spaces that
3 I was referring to in the, in the northeast corner and just
4 reduce the number of parking spaces by a few, they could
5 probably do that --
6 THE WITNESS: Yeah.
7 MR. GROSSMAN: -- and not have an issue.
8 THE WITNESS: That's what we're going to do.
9 We're going to take out two parking spaces to do it for
10 sure.
11 MR. GROSSMAN: All right. Mr. Uhre, do you have
12 cross-examination for her?
13 CROSS-EXAMINATION
14 BY MR. UHRE:
15 Q. Yeah. I just have a, I, I think it's much better,
16 a much better location for the trash than where you it at
17 the moment, but are we simply just moving the trash zone
18 itself? Is that going to impact then the turnaround area or
19 any of that? Or you're simply just moving the location of
20 the trash to the northeast corner?
21 A. The trash truck would have no reason to go down
22 that driveway anymore.
23 Q. Okay. So I'm just asking is there any way then to
24 shorten that drive?
25 MS. GIRARD: That'll be --

Page 224

1 THE WITNESS: Just the fire, we've got to have
2 access, fire lane access.
3 BY MR. UHRE:
4 Q. My understanding the testimony was that there's no
5 longer a fire hydrant there and no need for the road.
6 MS. GIRARD: Can I suggest Josh Sloan might be the
7 more appropriate person to ask these questions of?
8 THE WITNESS: That would be fine.
9 MR. UHRE: Okay.
10 MR. GROSSMAN: Okay.
11 THE WITNESS: I, yeah.
12 MR. UHRE: Well, I just would raise that then as a
13 question. I thought that was the testimony.
14 MR. GROSSMAN: I understand, Mr. Uhre. And we'll
15 let, we'll let Mr. Sloan respond to that.
16 MR. UHRE: Okay.
17 MR. GROSSMAN: Mr. Chen, did you have any cross-
18 examination questions?
19 MR. CHEN: Well, I, I did have --
20 CROSS-EXAMINATION
21 BY MR. CHEN:
22 Q. Does, does the proposed facility have any limit on
23 the number of private duty aides that may be at the facility
24 on behalf of the residents? A limit now. Do you have a, a
25 rule that says no more than?

Page 225

1 A. No. It would depend on our residents' needs.
2 Private duty usually only is in our building for a short
3 period of time. If a resident is, for example, coming back
4 from an acute hospital visit or something where they may
5 require more attention than would normally be provided by
6 our staff. And that may gone on for a couple of weeks or,
7 or something like that. The, our, our, our model and kind
8 of our mission has always been to have our staff provide the
9 care. So we, we do provide higher staffing than other
10 assisted livings do. And when you have private duty in your
11 building, you have less control over quality of the care.
12 And we want to have strong control over the quality.
13 Q. But you don't limit it?
14 A. Never had to.
15 Q. Okay.
16 MR. GROSSMAN: Anything else?
17 MR. CHEN: (No audible response.)
18 MR. GROSSMAN: Any redirect as a result of that
19 question?
20 MS. GIRARD: No.
21 MR. GROSSMAN: No. Thank you, Ms. Bacon.
22 THE WITNESS: Thank you.
23 MR. GROSSMAN: Appreciate it. All right. Did you
24 want to call Josh Sloan back then?
25 MS. GIRARD: Yes.

Page 226

1 MR. GROSSMAN: All right.
2 MS. GIRARD: We'll try to make it brief. I know.
3 MR. KAUFMAN: We're doing good.
4 MR. GROSSMAN: All right. Yes.
5 MS. GIRARD: Yeah, we are. I have to say.
6 MR. GROSSMAN: I have to give Mr. Chen credit. He
7 has moved things along as have you, the rest of you.
8 I'm watching you Mr. Sloan, so you don't walk away
9 with my laser pointer.
10 MR. SLOAN: It's nice.
11 MR. GROSSMAN: All right. You're still under
12 oath, sir.
13 MR. SLOAN: It's much, much better than mine.
14 DIRECT EXAMINATION (Resumed)
15 BY MS. GIRARD:
16 Q. Mr. Sloan, I guess, why don't we jump right into
17 it? I know you've probably had all of five minutes to
18 evaluate this option, but with the proffered relocation of
19 the trash enclosure to the northeast corner of the site,
20 what implications, if any, does that have for the
21 turnaround?
22 A. So this is a little bit different exercise than we
23 originally did. And what I've quickly sketched up is
24 basically our, our, using Exhibit 131A, our trash enclosure
25 is 11 by 21.5 feet. And for, it's a little bit more of a

Page 227

1 turning movement than we'd like, but the, the trash truck
2 can come along the drive aisle on the eastern property line
3 and through the parking, back into the fire access drive and
4 we can use this parking area rather than changing any of the
5 fire access, turnaround or critical root zone area. We can
6 remove parking and align that across from the fire access
7 turnaround so that once the truck backs in, go forward,
8 load, put the trash container back down, close up the gates,
9 back up, and then leave through the front again. So
10 removing these, we'll lose three spaces and move our two
11 parking spaces, two, three vehicular spaces, move our two
12 park, motorcycle spaces to the south. So we'll, we'll have
13 a number reduction of three spaces, but Brandywine seems
14 okay with that. You seem okay with that.
15 MR. GROSSMAN: Well, I don't, I haven't reached
16 any conclusions. I'm just saying that I just read your,
17 your development tabulations and it appears that you are
18 offering to provide more parking spaces than are required by
19 law.
20 THE WITNESS: So that will work. I'm, I'm quite
21 sure we'll have, we'll run truck turning movements, make
22 adjustments, but any adjustments, I think, would be slight
23 and we should be able to get that to work without changing
24 our curb line, which is important. And we won't have to
25 change our Forest Conservation Plan then.

Page 228

1 MR. GROSSMAN: You won't, you won't impact the
2 tree roots?
3 THE WITNESS: Any more than, no.
4 MR. GROSSMAN: Okay. And what about, what will be
5 the impact on the design in the extreme western corner where
6 you now have the trash enclosure and a turnaround?
7 THE WITNESS: In, in the western corner of the
8 property, we, it basic, it allows us a little more
9 flexibility now to work with the wall around the generator
10 and chiller. We will have no trash structure or enclosure
11 here. We will need a turnaround. We still need to get
12 deliveries. And we can't, we can't deliver to this area.
13 We need to deliver down here and get our, our vehicles down
14 here. So there'll be a turnaround. It'll be probably be
15 less. It'll accommodate specifically what it needs to,
16 which is the box trucks and things.
17 MR. GROSSMAN: Right.
18 THE WITNESS: We're not, we can't bring semis down
19 here. They just, they'll never fit. So we will have a
20 turnaround, you know, but that cuts our, our turning, our
21 deliveries are, you know, half now what they were with the
22 trash.
23 MR. GROSSMAN: Okay. All right.
24 MS. GIRARD: Mr. Kaufman is trying to design as
25 well.

Page 229

1 MR. GROSSMAN: He's, he's known for that. All
2 right.
3 MR. UHRE: You're going to comment on sound or
4 something?
5 MR. KAUFMAN: That's, I have a planning degree,
6 but not in architecture.
7 BY MS. GIRARD:
8 Q. Mr. Sloan, I believe you heard Ms. Lee's
9 testimony, the, the position of the West Montgomery Citizens
10 Coordinating, no, West Montgomery Citizens, whatever it is.
11 WMCCA. I'm sorry, Ms. --
12 MR. CHEN: Montgomery County Citizens.
13 MS. LEE: Yeah.
14 MS. GIRARD: Yes. West Montgomery County Citizens
15 Association. You're right. The extra C- was throwing me
16 off. I should have just said the acronym.
17 BY MS. GIRARD:
18 Q. Anyway, the, the proposal is inconsistent with the
19 language of the master plan regarding the provision of
20 senior housing. Specifically, the master plan specifies
21 which properties are appropriate for housing and this
22 property is not listed. Can you address that contention?
23 A. Yes. The, there are several properties that are
24 culled out specifically to, to be analyzed for senior
25 housing, but there's no prohibition on looking at senior

Page 230

1 housing on other properties and the master plan does state
2 on page 38 that senior housing is appropriate throughout the
3 sub-region wherever zoning permits this use either by right
4 or as a special exception, which is now the conditional use.
5 So I think that addresses it quite clearly.
6 Q. Okay. And the Hearing Examiner has raised the
7 issue of how the golf net currently on the property and
8 proposed to be relocated is governed. Please review your
9 thoughts on this issue?
10 A. So that the back and forth between DPS Planning
11 Staff and, and --
12 MR. GROSSMAN: And me.
13 THE WITNESS: -- and then the Hearing Examiner
14 addresses this. The conclusion was, seemed to me broadly
15 not really regulated. It's an existing use. It's something
16 that we're maintaining although we'd like to move it so we
17 can get a better planting area for, for trees. If at all
18 necessary, it would be covered under the Alternative
19 Compliance Provisions and we would submit that our plan
20 certainly shows how it complies with those provisions. And
21 there are four specific points that the Code requires that I
22 can run through if that's a fact we need to go, to go on.
23 MR. GROSSMAN: Well, I would say, I mean the, the,
24 I don't know if everybody is familiar with it, but I had an
25 exchange by email and I sent a copy to the parties as to

Page 231

1 whether or not this golf ball net constitutes a fence and
2 therefore is covered by the limits on fence height and so
3 on. Both Technical Staff and the Department of Permitting
4 Services essentially said no, not in their opinion, and it's
5 not really regulated. That's my recollection of the
6 exchange. I'm not so sure that their definition only
7 correct on whether or not it's a fence. It seems to me to
8 fit the definition of a fence in terms of the, the vertical
9 structures and it's planted in the ground permanently and so
10 on, but that's what, that's what they say and, and I don't
11 really have, I haven't gone back to thinking about whether
12 or not that presents a problem. I think there's a certain
13 logic to having a golf ball net next to a golf course. So I
14 don't want to, I don't want to, if this were, if this
15 conditional use is approved, I don't want to have golf balls
16 flying into your windows. So, you know, I guess there's a
17 way to figure it, that, that it would be permitted. And
18 maybe it should be addressed in the, in the zoning
19 ordinance, but it is not presently. You said, now, I'm not
20 sure that, assuming it's a fence under, definitionally,
21 would the Alternative Compliance Provisions apply to it?
22 THE WITNESS: The fence height and setback is
23 specifically listed in 59.8, 59.8.
24 MR. GROSSMAN: Okay.
25 THE WITNESS: So since those provisions are in

Page 232

1 that area and that entire division is covered by the
2 Alternative Compliance, I think so.
3 MR. GROSSMAN: And do you meet the, the criteria
4 to list it in Alternative Compliance?
5 THE WITNESS: Yes.
6 MR. GROSSMAN: They've add, as amended, by the
7 way. They added some more flexibility to that provision in
8 the December, the, the amendments to the Code effective
9 December 21, 2016.
10 THE WITNESS: I think AM Legal's been pretty good
11 about keeping up on it online and so --
12 MR. GROSSMAN: Oh, really. I didn't, I don't
13 think they're up-to-date on it. The last time I looked they
14 didn't have the December, the ones that were effective
15 December 21, 2015 they don't have. What they did was they,
16 they added some language allowing adjustment based on the,
17 the use where that language was not clear before. Because I
18 had a problem with that section before and, and raised that
19 issue. But in any event, the, the four items that are
20 listed there remain the same so how would you, how do they
21 fall within those four items?
22 THE WITNESS: So the first one is that it, it
23 satisfies the intent of the applicable division. In this
24 case, the division is on landscaping and, and outdoor
25 lighting, which is to preserve property values and preserve

Page 233

1 and strengthen the character of communities. I think the
2 golf net speaks to the preserving property values. Quite
3 specifically. The second is to modify the applicable
4 functional results of performance standards, the minimal but
5 not necessary to accommodate the constraints. And we're
6 moving an existing structure, as, if we're going to term it
7 a fence, only enough so that we can accommodate additional
8 plantings. So it's a win, win-win, I guess I'd term it.
9 And the third is providing necessary mitigation alleviating
10 any adverse impacts. There are no adverse impacts for a
11 golf net. It's against the golf course. And for us it's a
12 positive.
13 MR. GROSSMAN: It would alleviate the adverse
14 impact of having golf balls fly through the windows.
15 THE WITNESS: It, it would.
16 MR. GROSSMAN: Or hit senior citizens.
17 MS. GIRARD: And into windshields.
18 THE WITNESS: And in the --
19 MR. GROSSMAN: Especially if I'm on the course.
20 THE WITNESS: And the last one is being in the
21 public interest. In that case, I think that's the really,
22 speaks to protecting property values and allowing, you know,
23 golfers like you and I that play and not worry about ruining
24 other people's car.
25 MR. GROSSMAN: So, in your opinion, would this

Page 234

1 qualify for, would the golf ball net qualify for the
2 Alternative Compliance Provisions?
3 THE WITNESS: It would.
4 MR. GROSSMAN: Okay.
5 BY MS. GIRARD:
6 Q. One last question. You were here a minute ago, if
7 you weren't in the hallway drawing things to relocate the
8 trash enclosure. With Mr. Noonan's conclusions regarding
9 compatibility. Based on the plans as revised and now the
10 additional idea of moving the trash enclosure, how do you
11 think that those modifications, how do those modifications,
12 if at all, impact your compatibility conclusions?
13 A. I, I think they, they, they support my, my
14 previous statements and, and more so. Compatibility is, is
15 an issue of typically use. It's of the, of character of
16 style. All of these kind of things work into it. And these
17 are, these, the structures, the landscaping that we're
18 providing, the fencing, even the, even the wall which, you
19 know, could be an ornamental wall in someone's garden could
20 be placed in any residential backyard. They're, they're not
21 atypical or incompatible in and of themselves. We've
22 increased the distance of our facilities from, from the
23 property line. We've increased the landscaping buffer.
24 We've added additional layers of, of structural mitigation.
25 We have, the turnaround actually, since it's only a, a one

Page 235

1 point, well, you're coming in once, going backing up once
2 and then leaving so it's the three point turn, keeps
3 headlights from pointing towards the Pauls' residence at any
4 time. And I think that really addresses a number of the,
5 the issues that were brought up and further supports our
6 argument of compatibility.
7 Q. And the reduction in height?
8 A. The reduction in height, it, it helps. I mean
9 it's all within the limits of a residential building. And
10 residential to residential is, is, in my mind, de facto
11 compatible. So we're just enhancing the, well, we're
12 decreasing the massing which enhances the compatibility.
13 MS. GIRARD: That's all.
14 MR. GROSSMAN: Okay. Mr. Uhre, do you have any
15 questions?
16 MR. UHRE: Yes, please.
17 CROSS-EXAMINATION
18 BY MR. UHRE:
19 Q. Could you provide a little more clarification? In
20 moving the, the trash facility to the front is basically
21 going to be similar in scope and size to the trash facility
22 that now exists on the plans? But just the location will be
23 different. Is, is that my understanding or what are you
24 proposing?
25 A. I, well, so far, it's, it's gotten this far and

Page 236

1 it's on --
2 MR. GROSSMAN: This far being a little, little
3 hand diagram.
4 THE WITNESS: This far being a little sketch I
5 have. And it's the same size. Again it's 131A. Same size.
6 11 by 21.5. But in line with the, across from the fire
7 access turnaround on the east side of the plan. So it's
8 still, it, what did I say? 11 by 21.5. But in this corner
9 of the parking. What was, well, we've previously shown us
10 parking.
11 BY MR. UHRE:
12 Q. Okay. You also spoke in regard to, I think the
13 master plan. You were asked the question about the, and you
14 enumerated the sentence as it relates to senior housing.
15 That senior housing is appropriate throughout the sub-
16 region. And using that single sentence as a rationale that
17 this particular facility would be allowed at this location.
18 Is that what my understanding was?
19 A. No. That wasn't the sole reason. That was simply
20 a rebuttal response to a specific question about senior
21 housing being restricted to certain properties and it's not.
22 Q. But, but if you, if, if that's what was intended
23 in the master plan, why didn't they just write the single
24 sentence and leave it there? Why spend all of this time
25 with all of these other paragraphs and all of these other

Page 237

1 locations as being appropriate? I mean as a person who
2 write, used to write legislation, I, I mean I'm just trying
3 to understand how you can pick a single sentence out and say
4 that was the intent of the people writing this master plan
5 when they've got hundreds of other words in here as it
6 relates to what's appropriate.
7 A. So you want me to get to the intent of the Council
8 when they adopted this and the Staff that --
9 Q. No. I'm just asking how you just simply picked
10 one single sentence out of the entirety of this and as a
11 justification and, and it is like the rest of it doesn't
12 matter at all. I'm, I'm trying to understand your thinking
13 process and why you believe that that sentence, there, you
14 know, can be read solely without it, without the rest of
15 the, with the plan, I think.
16 MR. GROSSMAN: I think, Mr. Uhre, I raised the
17 same question with Ms. Lee when she testified what about
18 that, that sentence. And it seems to me that it's in there
19 as the general recommendation and the rest are examples of
20 where it could be put. That's what it looks like to me in
21 there. If you're asking me why there's all that other
22 verbiage, that's what it seemed to me in, in reading that
23 language. So.
24 MR. UHRE: But, but I can understand that. I
25 think I would somewhat respectfully disagree with that. I

Page 238

1 think that, I think the intent usually is to try to give
 2 meaning to the entirety and not just a single sentence of --
 3 MR. GROSSMAN: Well, if you show me some history
 4 of that language that points in your direction, I'll be
 5 happy to look at it. But from what I see in --
 6 MR. UHRE: Okay. I was just asking. That was --
 7 MR. GROSSMAN: Sure.
 8 MR. UHRE: I have no other questions.
 9 MR. GROSSMAN: Ms. Lee?
 10 MS. LEE: Yes.
 11 CROSS-EXAMINATION
 12 BY MS. LEE:
 13 Q. With regard to that language, would you say
 14 looking at it that you would consider those to be
 15 recommended areas for the placement of senior housing?
 16 A. The --
 17 Q. From the Council's recommendations.
 18 A. -- properties that are specifically listed?
 19 Q. Um-hmmm.
 20 A. Those are recommended for, for analysis and should
 21 be looked at.
 22 Q. That the Council uses as recommendations then.
 23 A. Right.
 24 Q. Okay.
 25 MR. GROSSMAN: All right. Mr. Chen?

Page 239

1 MR. CHEN: No questions.
 2 MR. GROSSMAN: No questions. All right. Any
 3 redirect based on the cross-examination?
 4 MS. GIRARD: No.
 5 MR. GROSSMAN: All right. Thank you, Mr. Sloan.
 6 All right. That's it on rebuttal?
 7 MS. GIRARD: That's it.
 8 MR. GROSSMAN: All right. So we've completed,
 9 thank you, sir. May the record reflect that Mr. Sloan has
 10 returned my laser pointers, pointer. All right.
 11 So the issue is admission of exhibits before we
 12 get to the closings. Does anybody object to us admitting
 13 all of the exhibits? That's 1 through 143 and their
 14 subparts.
 15 MR. CHEN: I object to the, all exhibits related
 16 to the revised plans.
 17 MR. GROSSMAN: Okay.
 18 MR. CHEN: That come in --
 19 MR. GROSSMAN: So based on your previously stated
 20 objections?
 21 MR. CHEN: Yes. And that includes, I think we saw
 22 some new ones today, today that, that are brand new that
 23 relate to the revisions.
 24 MR. GROSSMAN: Right. And, all right. So that's,
 25 that's noted. Any other objections? All right. Then I, I

Page 240

1 will admit all of the exhibits, 1 through 143 and their
 2 subparts. And I will also admit the anticipated modified
 3 plans that will be submitted to take into account the
 4 movement, proposed movement of the trash enclosure from the
 5 west, western corner to the northeastern corner.
 6 (Hearing Exhibit Nos. 1-143
 7 and subparts were admitted
 8 into evidence.)
 9 MR. CHEN: That would be a modified conditional
 10 use plan. Correct?
 11 MR. GROSSMAN: Yes. So there will be an amended
 12 conditional use plan. I don't know if you have to amend any
 13 other plans. You may have to amend the, the landscape plan.
 14 Whatever has to be amended to show consistently what you are
 15 doing, proposing would have to be amended. And the same
 16 objection would apply that you have standing for that.
 17 MR. CHEN: Yeah.
 18 MR. GROSSMAN: Mr. Uhre?
 19 MR. UHRE: Will we have an opportunity to comment
 20 on this revised plan?
 21 MR. GROSSMAN: Absolutely. I will definitely give
 22 you an opportunity to comment. Okay.
 23 MR. KAUFMAN: Would that be in testimony here?
 24 Could that be --
 25 MR. GROSSMAN: No. I think we can take written

Page 241

1 comments. We, I think we've been over the trash enough so
 2 that written commentary would be sufficient if anybody
 3 wishes to raise it. And we know that we have the legal
 4 objection to any amendments to the plans raised by Mr. Chen.
 5 MR. KAUFMAN: But we'll still let him comment.
 6 MR. GROSSMAN: I think so. Okay. So shall we
 7 start with the applicant? Do you wish to have a closing
 8 statement?
 9 MS. GIRARD: Yes. Just briefly. A couple things.
 10 One --
 11 MR. KAUFMAN: Want some water?
 12 MS. GIRARD: No, I'm fine. A couple things. One,
 13 I wanted to address first off the relevance of the previous
 14 approvals and we've talked about this quite a bit and I, I
 15 specifically spoke to it today in regard to economic impact.
 16 We acknowledge the traffic generation issue, but I think it
 17 is important to know that the existing special exception on
 18 the property, it was approved and found to be compatible by
 19 the Board of Appeals. So to the extent that, you know, the
 20 placement of structures or drive aisles or what have you in
 21 relation to the Pauls' property is relevant, or is, is
 22 continued. I think that it's important to recognize that
 23 the Board found a very similar configuration to be
 24 compatible in the past. That said, we are not at all
 25 relying on that to, to show compatibility in this case and I

Page 246

1 unwritten policy and the written policy would take precedent
2 over any unwritten policy and ought to be the guideline that
3 the Hearing Examiner follows to see whether or not a traffic
4 study in fact should have been performed in this instance.
5 MR. GROSSMAN: Well, it is their own guidelines
6 and they get deference in interpreting their own guidelines
7 as the case law requires.
8 MR. UHRE: True. But they have to meet the
9 standards of the language of their own guidelines.
10 MR. GROSSMAN: Well, they interpreted the
11 language. That's all.
12 MR. UHRE: Well, again, I'm just simply --
13 MR. GROSSMAN: I understand, I understand your
14 point. I understand your point.
15 MR. UHRE: I, okay. My point is that I think that
16 the, whatever this says, it says and I think that's the
17 guideline that needs to be followed. I think I also would
18 go back to what has been our belief or at least the
19 Commission's belief in the beginning that the proper base
20 standard here is in fact RE-2 and we ought to look at this
21 in terms of the residential zoning that currently exists on
22 the property and make the judgments as to whether or not the
23 compatibility and the other standards that need to be met
24 are sufficient when one takes that into consideration. As
25 we looked at the, what is still remaining on the proposal,

Page 247

1 we still have a truck loading zone that is located right
2 into the service area. We still have a steep slope going
3 down to that. It's my suggestion that that's an unsafe
4 situation. And probably most importantly is the master
5 plan. We've touched on senior housing. I don't know that
6 it does a lot of good to go back over the senior housing
7 issue except that I just don't believe that this conforms
8 with the senior housing aspects. But more importantly, the
9 special exception policies, especially as relates to
10 increased scrutiny is applicable to an application not just
11 to, in our opinion, a view from Falls Road. It's applicable
12 to the view from the golf course. It is applicable to the
13 view from, from the other parts of the neighborhood and one
14 simply cannot take that and say it only applies to some kind
15 of narrow view from Falls Road. And we certainly are left
16 with the concentration, I understand there's a special
17 exemption currently there, but this whole area of Falls Road
18 is concentrated special uses. I don't know how we could get
19 any more concentrated. It's like it's 100 percent. And
20 yet, the master plan specifically states that we're supposed
21 to avoid a concentration. And I think we have an ability
22 here to say no to this site at this location. I don't have
23 a problem with this proposal built on another site. And in
24 fact, maybe if they were to lessen the impact on this site.
25 It's just too big. It's too, it covers too, it's too much

Page 248

1 coverage. It's kind of the Costco of the living site,
2 living center site as it relates to this parcel. This
3 parcel, I don't believe, was intended to, to handle a
4 structure of this size in this location. And I, and I
5 really, I just really feel strongly that it's just too much
6 for this site and will provide too many negative impacts.
7 And --
8 MR. GROSSMAN: Let me ask you about your
9 concentration of special exceptions language in the master
10 plan. Is that linked to concentration of special exceptions
11 along the major roadways? Or are you talking about another
12 concentration of special exceptions? What's the specific
13 page you're referencing there?
14 MR. UHRE: It says avoid excessive concentration
15 of special exceptions along major transportation corridors.
16 MR. GROSSMAN: Yes. Along the major
17 transportation. But what was the page on that again?
18 MR. UHRE: Right. 35.
19 MR. GROSSMAN: Page 35. Okay. And does it make
20 any difference in your analysis that this is set way back
21 from the major transportation corridor, which is Falls Road?
22 Does that make a difference in your analysis of this issue?
23 MR. UHRE: It, it doesn't because I think the
24 description of the sites that they were talking about are
25 inclusive of a site location at this, we have in essence a

Page 249

1 location that where the street is a private driveway for
2 two, for two uses. I don't believe so. I think the
3 concentration is along the corridor. I think this is along
4 the corridor. I don't think it had, said, it doesn't say on
5 the highway. It says along the corridor. And my
6 interpretation would be that that's what they were trying to
7 prevent.
8 MR. GROSSMAN: All right. Did you have anything
9 else you wanted to add?
10 MR. UHRE: No, sir. I --
11 MR. GROSSMAN: I may, I didn't want, I didn't mean
12 to cut you off. That's all right.
13 MR. UHRE: No. And I appreciate the opportunity
14 and last, I'd just like to thank the Hearing Examiner for
15 allowing us to participate in this hearing. I am --
16 MR. GROSSMAN: I would have allowed you to
17 participate even if I weren't required to, but I am required
18 to. So I appreciate your coming down here. And that's true
19 of all the members of the community. I think everybody has
20 done a great job here. From the applicant to the members of
21 the community. It's really helpful to have strong
22 participation from members of the community in, in analyzing
23 these cases. Ms. Lee?
24 MS. LEE: I have a couple of things to say about
25 the master plan of course. But just to pick up on a couple

Page 250

1 things that Curt mentioned. It does, it does, with regard
2 to concentrations of special exceptions, it does indicate on
3 particular recommendations along major transportation
4 corridors because they have the high visibility, but I would
5 point out the paragraph before that.

6 MR. CHEN: Page.

7 MS. LEE: On page 35. The second sentence which
8 says a special exception may be denied if the concentration
9 of such uses is deemed to be excessive or inconsistent with
10 master plan recommendations. And I would point that out
11 because you certainly don't want, you certainly don't want
12 them on the major transportation routes, but you certainly
13 don't want them on non-major transportation routes. And as
14 he has pointed out, I don't know how much we could get,
15 about the only thing left is having the Pauls put something
16 on there. It's, it's 99 percent special exceptions at this,
17 at this location. And it's reflected in the amount of
18 traffic we have, the number of accidents, the number of
19 issues that we have there. So with regard to that policy,
20 and then also just, just picking up on what he's indicated
21 about whether it fits the lot. We focused on the impact on
22 the Pauls, but the language and, and the whole idea of what
23 the standard is, whether it's the, the, the existing, the
24 surrounding, the character of the surrounding neighborhood,
25 it really has to be that. I mean the language is about

Page 251

1 whether the height, and I understand that it's because it's
2 an exceptional use, a conditional use, excuse me, it's
3 certainly not going to be what's permitted in an RE-2 zone.
4 But it does have to be compatible with the surrounding uses
5 with regard, for example to density and coverage. And it
6 also has to be compatible with the character of the
7 residential neighborhood. And that's not the Pauls. The
8 Planning Board designated 360 acres as the surrounding
9 neighborhood. It's overwhelmingly RE-2. And the density
10 and the way they've packed this on the site, and we're
11 talking about a conditional use that is for 16 beds or more.
12 Okay. That's, and so all these standards, if we had a 16
13 bed facility in there, I don't think any of us would be
14 here. But the idea that they have taken it and they have
15 absolutely maximized the coverage on that site and the
16 impact it has on the golfers, on, on the whole, on the whole
17 character of the neighborhood around it. So that's just to,
18 just to indicate those couple of things picking up on what,
19 what --

20 MR. GROSSMAN: I wouldn't say it's inconsistent
21 with Manor Care, but with the golf course and other, other
22 residences in the area.

23 MS. LEE: Yeah. And the residentials. And I
24 don't think, and Manor Care was there in '85 under the
25 previous master plan. And even the tennis facility at the

Page 252

1 time it was approved, if I understand correctly, that area
2 was under the master plan designated for recreational uses.
3 So it came in as a tennis facility. I'm not sure if it
4 showed up today whether it would meet the standards. So
5 that's not the standard. The standard is the residential
6 neighborhood which surrounds the 360 acres.

7 But I really wanted to focus on the master plan
8 provisions because those are what our, of, of incredible
9 importance to us because of the precedent it will set if we
10 don't look at language that's in the master plan as
11 recommendations. So it's settled law in the State of
12 Maryland that when the development regulations incorporate
13 master plan compliance that master plan itself becomes a
14 regulatory device rather than a rear guide or a
15 recommendation. The Code at, and I'm not, I'm going to
16 butcher this I'm sure, but it's 7.3.1.E.1.C states that to,
17 in order for you to approve a conditional use application,
18 the Hearing Examiner must find that the proposed development
19 substantially conforms with the recommendations of the
20 applicable master plan. It doesn't say the prohibitions.
21 It doesn't say the limitations. It says the
22 recommendations. And when you look at the language and you
23 also asked me to come with something from the Council that
24 shows what they meant when they did that. I think you just
25 look at the plain language of what they said and as Curt

Page 253

1 has, has pointed out, they started out with a basic
2 statement that says yes, the master plan states that senior
3 housing is appropriate throughout the sub-region whether by,
4 whether under, whether zoning, whenever zoning permits the
5 use either by right or a special exception of use. But then
6 the Council has specifically designated areas. They have
7 made recommendations and even asking Josh what would he say
8 these are. He said it doesn't limit it. It doesn't
9 prohibit it. That's not what the standard is. Master plans
10 have recommendations. And so, it's very clear that they
11 have set out specific areas and it's consistent with what
12 they were doing at the time. They were designated certain
13 areas of the master plan for intense development. There was
14 lots of staff work. All of those plans are here in the
15 master plan. And they were allowing very, very few uses
16 outside of that. No other commercial uses outside the
17 village, outside these concentrated areas. And as a result,
18 what you have is these specific recommendations on page 36,
19 37 and 38 which is what we're looking at now. And they're,
20 and they're very clear about where it should be located. So
21 first on page 36, we've got the, the statement that the sub-
22 region should meet its own senior housing needs within its
23 boundaries. And then see Map 4. Map 4 is on page 37 and
24 includes a list that identifies on the map three existing
25 senior housing facilities, four pending or approved and five

Page 254

1 potential. Cabin John Shopping Center adjacent to the
2 Potomac Village, the Rock Run Advanced Waste Water Treatment
3 site, the Stoneyhurst Quarry, and Fortune Park. Then on
4 page 38, we have the following language. The following
5 locations appear to be appropriate for elderly housing.
6 Cabin John Shopping Center, Stoneyhurst Quarry, Fortune
7 Park. In addition, there may be other sites, including Rock
8 Run Advanced Waste Treatment facility at Avenal and a site
9 adjacent to Potomac Village, including the Habib and Sororra
10 (phonetic sp.) properties west of Falls Road and north of
11 River Road. Then when you go to the rest of the plan, it
12 starts at page 46, Cabin John Shopping Center. States 75
13 units of elderly affordable housing to be generally located
14 at the northeast section of the site. They not even
15 recommended it, they even told on each of those, I don't
16 know whether they're called sector plans, but those
17 specific, you know, very intensive plans have had all kinds
18 of mixed uses where they were to be located. On page 47,
19 the Cabin John map shows the location of the elderly
20 housing. Fortune Park, page 52. This is quote, quoted. A
21 TDR program should be part of this option and housing for
22 the elderly should be a permitted use. Stoneyhurst Quarry,
23 page 56. Because of its unique configuration topography,
24 the site is appropriate for multi-family resident
25 development, including housing for the elderly. This should

Page 255

1 not be considered a precedent for multi-family development
2 in the surrounding area because they do not have the
3 topographic features unique to this site. Recommendation,
4 and these phrases are recommendations. Housing for the
5 elderly is a suitable special exception use for the site.
6 Potomac Village, page 50, page 63. Recommendations, and the
7 phrase is recommendations. Return current, retain current
8 R-200 zoning of transitional areas within the northwest
9 quadrant of the Village Center. Housing for the elderly is
10 an appropriate special exception use. And then barreling
11 down right on that piece of property they're talking about,
12 the Habib-Sororra properties. Property at the northwest
13 quadrant. Says page 57. A zoning change based on the
14 existence of special conditions would be an undesirable
15 precedent for Potomac Village as special exceptions exist as
16 transition used on several other edges of the commercial
17 zone. However, housing for the elderly would be an
18 appropriate special exception use for the site and may
19 facilitate the implementation of a bypass of a pass through.
20 Recommendation. This site is suitable for housing for the
21 elderly. There's not any other place in this master plan
22 that states where elderly housing is supposed to be. This
23 is the extent of the recommendations. Clearly, Brandywine
24 is not listed anywhere near any of these sites. And even if
25 you wanted to step back and, and say what characteristics

Page 256

1 were they looking at when they decided to focus it in those
2 spots? They're mixed use centers of intense development on
3 major transportation corridors, convenient to shopping,
4 medical services, offices and other services. Brandywine
5 has none of those characteristics. None.
6 MR. GROSSMAN: There not, it's not on a major
7 thoroughfare?
8 MS. LEE: I wouldn't consider that to, no. It's
9 not a major thorough -- it's a, River Road is a major
10 thoroughfare.
11 MR. GROSSMAN: Oh, well, I mean I, for Mr. Uhre's
12 argument it's, it is a major thoroughfare. So I, I don't,
13 so --
14 MS. LEE: But, but I, I'm talking about how you're
15 not going to put them on small roads either. So anyway, no.
16 I would say that's not, and if anything it shows it's not
17 because it's backed up at least twice a day.
18 MR. GROSSMAN: I still don't understand, Ms. Lee.
19 I, I hear you and I, and I, clearly they have master plan
20 recommendations here, but I don't understand how you get
21 around the language on page 38 that says senior housing is
22 appropriate throughout the sub-region wherever zoning
23 permits this use either by right or as a special exception
24 use. That's a very general recommendation saying that it's
25 throughout the sub-region wherever the zoning permits or

Page 257

1 it's appropriate for a special exception.
2 MS. LEE: Well --
3 MR. GROSSMAN: And then they say, they list
4 specific areas where it, and it appears to be appropriate
5 and that's some of the ones you went into. And then they
6 say in addition, there may be other sites, including. It's
7 inclusive. It, it doesn't say it's exclusive. I think
8 you're reading it exactly the opposite of the way it's
9 worded. So that's why I said if you had, if the Council in
10 the course of doing this had some language that said this is
11 intended as exclusive and we don't want you having it
12 anywhere other than the ones we listed, well, I'll certainly
13 look at that if the Council or the Planning Board had said
14 that.
15 MS. LEE: But --
16 MS. GROSSMAN: But I, I, nobody has presented that
17 to me.
18 MS. LEE: Well, I guess just two, but two
19 comments. With regard to why that, I, it's the language
20 that says it's, it's okay throughout the, I'm sorry, do I
21 have it right in front of, but it, it, throughout the zone.
22 Whatever zoning it permits. And by right, as a special
23 exception use. But then you have to look at the standards
24 that you have in the special exceptions because, and so --
25 MR. GROSSMAN: Of course. I'm, I'm not saying

Page 258

1 that those don't have to be looked at. I'm just saying that
2 your master plan interpretation --
3 MS. LEE: So you, but what I guess it's going to
4 get down to whether given that they don't, given how you're
5 going to interpret, interpret the phrase recommendations.
6 Because that's, that's what it says. And if you, and how,
7 how inconsistent it would be if you determine that even
8 though those are the recommendations, you are now going to
9 allow and open up the Hearing Examiners to allow anyone to
10 put senior housing anywhere they want in the, in the zone
11 without any regard to where the Council specifically
12 mentioned it should be located. That's, I mean that's --
13 MR. GROSSMAN: Well, that's not what I would be
14 doing. I'd be, I'd be looking at the recommendation in the
15 master plan and to see whether or not the proposed location
16 meets the conditional use requirements. So, but I
17 understand your point.
18 MS. LEE: I think, I think that's, I understand.
19 And because if we don't, I mean really if we, if that's the
20 case, then every time there's language in the master plan
21 that doesn't have a specific limit, that doesn't have a
22 specific prohibition, then we're, I just think it just --
23 MR. GROSSMAN: I'm sorry, but I think you're
24 reading the master plan contrary to the words on the page.
25 MS. LEE: Okay.

Page 259

1 MR. GROSSMAN: That's all I'm saying. That's --
2 MS. LEE: Okay. Well, okay. I don't see how
3 recommendations could be any clearer, but --
4 MR. GROSSMAN: But I, I understand your point of
5 view. But they, well, okay. The recommendation on page 38
6 is what I read. Senior housing is appropriate throughout
7 the sub-region wherever zoning permits this use either by
8 right or as a special exception use. The rest of it are
9 suggestions as to where it might be appropriate. And they
10 use that language. Appears to be appropriate in the, in the
11 locations you suggested. And then they say in addition,
12 there may be other sites including. They don't say don't
13 look at other sites in addition to these. I, it, I don't
14 see how you can read it the way you're reading it. But
15 anyway.
16 MS. LEE: That's it.
17 MR. GROSSMAN: Mr. Chen?
18 MR. CHEN: Thank you very much. I'm going to be a
19 little bit disjointed. Coverage. Take a look at the
20 residential development. Take a look at the Paul property.
21 You've got a map showing other lots. You've heard
22 consistently from witnesses, from lay people, the amount of
23 coverage on this lot. Now, we heard the testimony of the
24 architect to how the façade looks great and it's consistent,
25 Tudor or something like that. You have no properties

Page 260

1 developed in this area, this neighborhood with this
2 extensive coverage. You, you just don't. On the evidence
3 of record and respectfully, I think that's a critical factor
4 in determining compatibility. Jumping around a little bit.
5 Day one, I raised some issues. I'm not going to go back and
6 today I raised some issues. I've not waived any of them.
7 They're still before you. I think you understand that, but
8 I just want to make sure somebody reading the transcript
9 understands that. That we've not waived any of those
10 objections.
11 I think this case goes off on non-inherent. I
12 appreciate your comments about ignoring the underlying pre-
13 existing special exception. What you have here, and
14 everybody has said it again, experts, non-experts. This is
15 a tough site. Part of it, and what I think is driving it is
16 that conservation easement. Right now it is got development
17 on it. That's the evidence of record. And I don't think
18 that's a dispute. Part of the, the bubble is on it. Now,
19 because of the conservation easements now, what happened is
20 when the applicant went down to Park and Planning and the
21 Technical Staff with this proposal, we've got a contract on
22 this property. We're going redevelop it. What they wanted
23 was fine. Now let's get a conservation easement on this
24 property. They voluntarily agreed to do it. There's no
25 legal requirement to do that. This is a voluntary easement

Page 261

1 that they are now saying we'll give you the conservation
2 easement. There's a quid pro quo, I think, but nonetheless,
3 by acknowledging that conservation easement and respecting
4 it, they're pushing everything towards my client. That is
5 not inherent. Okay. That is a, purely a function of this
6 unique property, this triangle and what, what is now what
7 they're going to recognize is a conservation easement.
8 That's not an inherent characteristic of this type of
9 conditional use.
10 MR. GROSSMAN: You don't have to convince me about
11 that. I, I agree that the site conditions here are non-
12 inherent characteristic, as they often are.
13 MR. CHEN: Right.
14 MR. GROSSMAN: Okay.
15 MR. CHEN: And those, and they result in
16 operational aspects and development aspects of this
17 conditional use as having a negative impact on my client's
18 property. I've developed a cold over the last several days.
19 Consequently, off on that area alone I think that this
20 application cannot be approved. I called Danielian --
21 MR. GROSSMAN: Well, just because it's not
22 inherent, just because there are not inherent conditions
23 doesn't mean that it has to be disapproved. It is that it
24 is without, if you don't have any non-inherent conditions --
25 MR. CHEN: Yeah.

Page 262

1 MR. GROSSMAN: -- then you can't really --
2 MR. CHEN: Correct.
3 MR. GROSSMAN: -- they don't have a base of a
4 disapproval.
5 MR. CHEN: Correct.
6 MR. GROSSMAN: But, but with non-inherent
7 conditions that can be disapproved.
8 MR. CHEN: That's right. And, and, and I would
9 even go further to, to agree that you have to demonstrate
10 that as a consequence of those non-inherent conditions,
11 there's an adverse impact on my client's property. And I,
12 and I think we have proven that. Now, just on a couple
13 things. I mean to me that's a very big issue that I think
14 it is critical in this case. Danielian. He explained first
15 time he was up where he was coming from and how he got the
16 economic value. There was a lot of exchanges about that, a
17 lot of questioning. Today he got on the stand and he, and I
18 thought he explained pretty clearly that there's a
19 difference between an appraised value and an economic value
20 and how you get to it. Respectfully, and I know that your
21 job on this particular issue is going to have to look at the
22 language in the Zoning Ordinance and determine what that
23 means. My position is our experts has demonstrated that
24 there is a difference. And the undisputed evidence by our
25 expert is that as to economic value, there is an adverse

Page 263

1 impact on my client's property. Leaving that aside.
2 Noise. You heard noise today. Quite frankly, I,
3 I think that Mr. Henning's testimony was, was damming. I
4 think that he demonstrated reasonably the impact of noise on
5 my client's property. I haven't heard it controverted. I,
6 I think that that also alone is, is a killer for this
7 application. Interesting thing happened today. Ms. Bacon
8 testified. At this end of the table over the last couple of
9 months what has become a, a joke on me by clients and
10 consultants, it is how the Examiner and Ms. Girard the first
11 day kept telling me to sit down and stop asking the
12 question. And --
13 MR. GROSSMAN: You haven't been given every
14 opportunity to express yourself, Mr. Chen?
15 MR. CHEN: Dr. Paul pointed out something very
16 interesting. And I forget the, the type of vehicle, but
17 early on in her testimony, she talked about the limitations
18 on the vehicles that would be on the service road. Later on
19 in the testimony, she said, oh, and this type of vehicle
20 will also be on the service road. I forget which type it
21 was, but you, you pointed that out. It'll be in the
22 transcript.
23 DR. PAUL: First day.
24 MR. CHEN: Today we have heard again that there
25 are 27 of these uses. I think this application has been

Page 264

1 pitched to you --
2 MR. GROSSMAN: Twenty-seven of what uses?
3 MR. CHEN: These types of senior living facilities
4 that Brandywine has.
5 MR. GROSSMAN: Right.
6 MR. CHEN: Now what's interesting is on a couple
7 of issues that came, only a couple, we heard very specific
8 information from Ms. Bacon today. You know, we only have
9 three, I can't challenge her on, you know, how, no
10 complaints. There's no problems on other sites. They, they
11 don't get problems. I, I can't obviously challenge it. I
12 didn't cross as, you know, what am I going to do? You know,
13 the lady is going to say we don't have any. I can't prove
14 it. But why don't you have more precise information?
15 You're going to tell me that with 27 of these uses, they
16 couldn't come gangbusters in this room and give you a
17 knockout, drag-out, this is what we have on our vehicles.
18 This is what comes. This is how they come. This is the
19 type that come. Noise. We have trash. This is the, we've
20 taken measurements of the Pennington operation. And this is
21 what our noises are at this distance. Why haven't you heard
22 that kind of precise information with 27 of these uses?
23 It's been a sliding, and I complained at one point and I got
24 told to sit down. That it keeps moving. That something
25 comes up. We say something and then there's a comeback on

Page 265

1 it. Now, respectfully, there's a burden of proof. The
2 burden of proof is on the applicant. And I respectfully
3 submit to you that there has been a failure to provide
4 information, precise, I'm sorry. It has to be precise.
5 This is what it is. These are the standards in the law.
6 Now going through law for a minute and your
7 comments on how these uses are favored because it's a
8 conditional use. And I understand that and I, you cited the
9 Butler case and I understand.
10 MR. GROSSMAN: Right. I didn't say favored. I
11 think that I said that they're, it's desirable in the County
12 based on what the master plan says and what the statutes
13 say.
14 MR. CHEN: Yeah. I, I apologize. Yes, you're
15 correct.
16 MR. GROSSMAN: Right.
17 MR. CHEN: If you go to 59.7.3.1, this is the
18 conditional use section.
19 MR. GROSSMAN: .E, yes.
20 MR. CHEN: Yeah. And you go to E, under necessary
21 findings. All right. I have a, the way you're nodding I
22 have a suspicion you know where I'm going. Subparagraph 2,
23 on my copy it's at the bottom of a page. It says any
24 structure to be constructed, reconstructed or altered under
25 a conditional use in a residential detached zone must be

1 compatible with the character of the residential
2 neighborhood. Sub 3, the fact that, subparagraph 3, or
3 part. The fact that a proposed use satisfies all specific
4 requirements to approve a conditional use does not create a
5 presumption that the use is compatible with the nearby, with
6 nearby properties and in itself is not sufficient to require
7 conditional use approval. Candidly, I, I read this as, and
8 I appreciate where you're coming from, but I think this is a
9 counterbalance to it. I think it's a counterbalance that,
10 use the word, whatever you want, desirable, whatever it is.
11 At the end of the day you've got to get to that equal poise
12 and how it comes down and how the evidence comes down on
13 this without giving a benefit to this particular use.
14 Because I don't think the law allows it, given that
15 language. You may disagree.

16 MR. GROSSMAN: I agree with you. I think that it
17 has to be evaluated based on the evidence.

18 MR. CHEN: Yes.

19 MR. GROSSMAN: And compatibility has to be
20 evaluated based on the evidence before me.

21 MR. CHEN: Yes. Now, finally, and I'm coming back
22 to a case where the applicant has a lot of experience with
23 this type of use. My client, Dr. Paul, has experience and
24 he spent a fair amount of time on that December 7 hearing
25 explaining to you how these uses operate and his personal

1 experience. Today the only, the only challenge that I heard
2 comeback from Ms. Bacon was three, I think it was three
3 private duty aides and that's about it. Now I, I think I
4 know how you're, you're going to operate to a certain extent
5 and that is you're going to get the transcript. Properly
6 so. And when you read this gentleman's testimony and his
7 experience and what he's explaining to you about really what
8 goes on with this type of use, don't you have to wonder why
9 coming back to, and Ms. Bacon said she had the benefit of
10 the transcript of his testimony, what you heard today and
11 what you did not hear today. I think that's important
12 because when you sit in that seat, sir, part of your
13 obligation is to weigh what you're hearing. I'm not saying
14 anybody is a liar in front of you. Please. I'm not saying
15 that. That's not the standard to which I think you have to
16 hold the applicant, but I think it is fair, it is fair for
17 you when you read and see the testimony and you notice that
18 there's no comeback on things that are significant that you
19 can draw a proper conclusion. That's permissible. And I
20 think in this particular case, when you do that and you
21 recognize the type of sophisticated operation that this is,
22 big operation, that why isn't there more. Why can Chen even
23 put on some of these witnesses when you have someone or in
24 a, or an organization that has at its, it's got to be at
25 their fingertips. If they want to know how much noise is

1 being created at all 27 of their operations, if they wanted
2 to find out how many aides at, at every single one. What
3 kind of trucks are coming? Today we heard from the witness
4 that during a week, during a week, there's only going to be
5 three trash trucks during the week and three food deliveries
6 a week. For a 140 people. Those are the only trucks that
7 are going to coming down that service road. Now,
8 respectfully, that is, I'm incredible with that. And I
9 heard testimony from this gentleman saying that's not really
10 how it works. So I guess what I'm asking you, aside from
11 the fact that as, I think as a matter of law this non-
12 inherent aspect is a killer. Please. I think you have to
13 read and weigh this evidence and appreciate what was not
14 presented to you. I think that's important for your
15 analysis in this case. And again, thank you. You and I
16 have butted heads as usual, but, you know, it's what we do.

17 MR. GROSSMAN: Well, I would, speaking of butting
18 heads, I, you, you made an assertion that you were cut off.

19 MR. CHEN: No, oh.

20 MR. GROSSMAN: What are you, what are you --

21 MR. CHEN: Oh, no, no, no. It was one, it was one
22 of those examinations. You've asked that now five times,
23 Mr. Chen. I've heard it. You know. You, when you read it,
24 you'll chuckle. And you'll see.

25 MR. GROSSMAN: All right.

1 MR. CHEN: So will Ms. Girard. She'll --

2 MR. GROSSMAN: Because I certainly don't want to
3 cut anybody off.

4 MR. CHEN: No, I'm not, I'm not make, that's not
5 an accusation.

6 MR. GROSSMAN: And I wanted to make sure that you
7 got an opportunity to express yourself completely and make
8 any objections you have.

9 MR. CHEN: No, that's not an accusation. Yeah.

10 MR. GROSSMAN: Okay. All right. Is there
11 anything further?

12 MS. GIRARD: So, I have one thing.

13 MR. GROSSMAN: Yes.

14 MS. GIRARD: I was slipped a note by Mr. Sloan
15 that there, if with the movement of the trash enclosure.

16 MR. GROSSMAN: Yes.

17 MS. GIRARD: And the fence that will need to go
18 around it will be too close to the property line. So we'll
19 need alternative compliance for that fence. Do you want to
20 handle that, do you want us to handle that in this
21 initially?

22 MR. GROSSMAN: Let me, let see what you're talking
23 about. Which fence are you talking about now?

24 MS. GIRARD: When the trash enclosure moves to the
25 parking spaces.

Page 270

1 MR. GROSSMAN: Oh, I see. Yes.
2 MS. GIRARD: The fence will be right at that curb
3 line and that'll be too close.
4 MR. GROSSMAN: Okay. Too --
5 MS. GIRARD: For a 12-foot fence.
6 MR. GROSSMAN: Okay.
7 MR. KAUFMAN: So we'll need the alternative
8 compliance.
9 MR. GROSSMAN: Okay.
10 MS. GIRARD: I mean I can have him explain it or
11 we can do it in the submission.
12 MR. GROSSMAN: No. I think I understand what you
13 want, but obviously this will have to be looked at by
14 Technical Staff too. So let's talk about what, what date we
15 should set for the record to close. How long will it take
16 you to get the revised plans to me, to all the parties and
17 to Technical Staff?
18 MS. GIRARD: I'm told we can have the plans on
19 Tuesday.
20 MR. GROSSMAN: Okay. Remember Monday is a
21 holiday, by the way. You know that?
22 MS. GIRARD: They're open. As are we.
23 MR. GROSSMAN: No holiday for you? Holiday for us
24 Government types.
25 MR. KAUFMAN: You want to give us until Wednesday?

Page 271

1 MR. GROSSMAN: Sure. All right. So let me get a,
2 all right. All right. 2016. Okay. So Wednesday is the
3 20th. And that'll be the date for submission of hard copies
4 and electronic copies of all revised plans. January 20,
5 '16. To all parties and to Technical Staff and the Hearing
6 Examiner.
7 MR. CHEN: So we'll have them on the, on the 20th?
8 MR. GROSSMAN: On the 20th.
9 MR. CHEN: Okay.
10 MR. GROSSMAN: That, that correct --
11 MR. CHEN: Hard copies on the 20th.
12 MS. GIRARD: We can handle deliver to you. I
13 don't know, I mean I guess I can send a courier over. I'm
14 just a little nervous. We have like --
15 MR. GROSSMAN: Mr. Uhre and Ms. Lee, do you need
16 hard copies or is the electronic copy sufficient?
17 MS. LEE: Electronic should be fine, I think. As
18 long as it's, you can see. It would be nice to see.
19 MR. UHRE: Yeah. Maybe you could do just a, a
20 blow-up for an electronic, just of the, just of that one
21 section and then that will be sufficient.
22 MS. GIRARD: Of where the trash enclosure is
23 going.
24 MR. UHRE: Correct. Yes.
25 MS. LEE: Um-hmmm.

Page 272

1 MS. GIRARD: Okay.
2 MR. GROSSMAN: All right. And how much time do
3 you folks want to submit comments?
4 MR. CHEN: How much time do you want to give us?
5 Seriously. How much time do you want?
6 MR. GROSSMAN: Well, well, I would ordinarily say
7 at least 10 days. It's --
8 MR. CHEN: Yeah. That's what I, that was the
9 number I had.
10 MR. GROSSMAN: Okay. So that would be by January
11 30, which is actually a Saturday. So it gives you actually
12 until February 1, Monday. So any comments by 2/1/16.
13 MR. CHEN: Okay. I, just note.
14 MR. GROSSMAN: Yes.
15 MR. CHEN: I can do that only you may get it on
16 the Friday because I'm --
17 MR. GROSSMAN: Well, you can do it before then.
18 It's just I'm saying --
19 MR. CHEN: I'm supposed to be in depositions
20 Monday at, that, that day is one of three days I'm supposed
21 to be in depositions. But let's, let's go with that.
22 MR. GROSSMAN: Okay.
23 MR. CHEN: Because I'll, I'll just get it done
24 beforehand.
25 MR. KAUFMAN: What was the February date? I'm

Page 273

1 sorry.
2 MR. GROSSMAN: Okay. February 1, '16 is the date
3 for any comments and hopefully by Staff as well as by any of
4 the other parties to the revised plans. And then I'm going
5 to give you a few days to respond to any comments. And we
6 understand that Mr. Chen reserves his overall objection to
7 change.
8 MR. CHEN: Yeah.
9 MR. GROSSMAN: Okay. And so we'll give you until
10 February 5 for any reply to any comments. Is that enough
11 time or do you want more time than that?
12 MS. GIRARD: Friday? Is that that Friday?
13 MR. GROSSMAN: Yes.
14 MS. GIRARD: Yeah, okay.
15 MR. GROSSMAN: Is that, is that sufficient or do
16 you want more time?
17 MS. GIRARD: Yeah. No, that's fine.
18 MR. GROSSMAN: Okay. So February 5, '16 for
19 applicant response to comments. And understand that I'm
20 only keeping the record open for response to comments on
21 this latest proposed change of the trash location. It's no
22 overall response. That's what the hearing is for. And in
23 fairness to everybody here we don't want to have additional
24 comments that, without an opportunity for them being
25 discussed at the hearing. So I think we have, we've had

Page 274

1 lots of --
2 MR. KAUFMAN: So the record is closed today on
3 everything else?
4 MR. GROSSMAN: Pardon me?
5 MR. KAUFMAN: We have a record --
6 MR. GROSSMAN: Yes. Yes. But I, I'll officially
7 close the record. I'm giving you, as I said, until February
8 5th to respond and we'll officially close the record at the
9 close of business on February 5. But, but it's open right
10 now for the purpose of only these, these minor changes in
11 the plans, the trash enclosure location and comments
12 thereon.
13 MR. UHRE: Mr. Grossman?
14 MR. GROSSMAN: Yes.
15 MR. UHRE: Would, would that also, I was a little
16 unclear as to whether or not there's going to be any other
17 changes up on the western part other than simply moving the
18 trash. Is everything else going to stay as is?
19 MR. CHEN: No. You've got the western corner.
20 MR. UHRE: Oh, the western corner. I'm sorry.
21 MR. CHEN: You've got that as, because they're
22 removing it. I mean he's --
23 MR. GROSSMAN: We've, yeah. He's removing the
24 trash location. I don't know whether, I don't think there
25 were any other significant changes mentioned there. There

Page 275

1 might be --
2 MS. GIRARD: I think Mr. Sloan mentioned that the
3 generator enclosure may be able to slide, there may be some
4 adjustments to that paved area.
5 MR. GROSSMAN: So slide a little further away.
6 MS. GIRARD: To the effect we could reduce the
7 turnaround, we would do that too.
8 MR. GROSSMAN: Right. If there's anything that is
9 objectionable in a change up there, then you can certainly
10 comment on that too. Okay. But I'm just talking about the
11 changes of today as opposed to all the other changes that
12 were made.
13 MR. CHEN: Correct.
14 MR. GROSSMAN: Okay. So are we all agreeable on,
15 on those dates?
16 MS. GIRARD: Yes.
17 MR. GROSSMAN: All right. Then the record will
18 close officially on close of business on February 5, 2016.
19 Okay. I think that's it then. And once again, all the, the
20 new exhibits will be admitted, both the comments on them and
21 the, the revised plans.
22 MR. CHEN: Thank you, Mr. Examiner.
23 MR. GROSSMAN: I thank you all and have a great
24 weekend.
25 (Whereupon, at 4:44 p.m., the hearing was

Page 276

1 concluded.)
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Page 277

1 C E R T I F I C A T E
2 DEPOSITION SERVICES, INC., hereby certifies that
3 the attached pages represent an accurate transcript of the
4 electronic sound recording of the proceedings before the
5 Office of Zoning and Administrative Hearings for Montgomery
6 County in the matter of:
7 Case No.: CU 16-01 Application of Brandywine
8 Senior Living at Potomac, LLC
9
10 By:
11
12
13
14 Consuella Miles, Transcriber
15
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17
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	194:16,25;228:15; 233:5,7	32:4;34:23;35:11,16; 36:7,22;39:11;41:12; 44:12;45:17,20,24; 46:4,7,13;50:1;51:3; 62:5;76:16;94:5,25; 102:20;114:6;118:21; 123:13,15;126:15; 142:9;150:7;151:23; 155:2;161:22;172:12; 178:2;179:20;183:15, 22;186:13;190:23; 191:4;199:17;200:6, 16;213:21;218:21; 219:24,24;234:25; 272:11,11	101:20;102:7,13; 105:3;107:9;110:5; 111:12;114:24;115:11; 116:10,13;117:16; 127:5;143:24;162:24; 168:5;187:2;192:24; 195:13,18;198:20; 202:10;216:24;221:3; 254:1,9	afternoon (2) 212:16;243:9 afternoon's (1) 76:6 afterwards (2) 142:14;143:16 again (49) 17:11,12;19:14; 21:12;30:1;41:15;52:6; 54:9;60:3,9;63:19; 64:22;70:24;86:19; 99:4,20;126:21;135:7; 171:20;173:1;176:3; 178:25;179:5,5,10; 180:1,4;181:1;183:25; 184:2,8,10;193:22; 197:12;203:13;204:7; 205:2,16;213:24; 217:2;227:9;236:5; 245:19;246:12;248:17; 260:14;263:24;268:15; 275:19 against (4) 65:22;66:2,4;233:11 agencies (1) 48:2 agency (1) 173:4 agenda (1) 61:5 ago (3) 49:16;96:1;234:6 agree (21) 12:22;14:12;16:3,4; 21:16;48:17;61:15; 120:9;126:14,14; 127:2;157:25;158:11; 161:22;163:20;165:19; 166:5;199:23;261:11; 262:9;266:16 agreeable (1) 275:14 agreed (6) 29:3;47:25;55:18; 58:8;116:23;260:24 agreement (2) 132:8,12 agrees (1) 243:15 ahead (10) 23:13;50:25;103:14, 18;125:5;142:1; 161:23;166:17;168:1; 174:20 aid (3) 13:2;117:25;132:8 aides (7) 213:9,18,20,23; 224:23;267:3;268:2 aisle (13) 28:20,22;30:3;35:4; 39:9;60:8;117:8,8; 125:19;126:10,11;
\$				
\$10,000 (2) 208:12,24	accordance (1) 129:23 according (3) 118:22;197:13;202:7 account (5) 182:18;188:4,9; 204:5;240:3 accumulated (1) 77:6 accuracy (1) 213:6 accurately (1) 97:18 accusation (2) 269:5,9 achieved (1) 184:5 acknowledge (2) 21:1;241:16 acknowledged (1) 242:4 acknowledging (1) 261:3 acoustic (1) 180:9 Acoustical (11) 113:6,7,9,22;114:17, 24;115:5;142:12; 175:10;176:23;178:4 acoustics (1) 8:19 acre (6) 6:8;68:22;71:9; 80:13,21,24 acres (4) 74:5;81:1;251:8; 252:6 acronym (1) 229:16 across (8) 30:17;38:6,7;44:15; 45:20;71:10;227:6; 236:6 activities (11) 64:16;108:7;109:9; 118:1;125:15;127:25; 133:24;183:24;187:1; 194:16;197:19 activity (2) 125:13;184:2 acts (1) 171:13 actual (13) 34:18;122:23;141:2; 151:1;158:5;160:19; 161:22;162:7;168:22; 186:17;187:10;195:15; 243:7 actually (57) 11:11;16:5;20:21; 27:19;28:11,24;30:25;	adjoining (1) 49:21 adjust (1) 191:13 adjustment (1) 232:16 adjustments (4) 198:25;227:22,22; 275:4 administrative (1) 96:3 admission (1) 239:11 admit (2) 240:1,2 admitted (3) 188:9;240:7;275:20 admitting (1) 239:12 adopted (1) 237:8 Advanced (2) 254:2,8 advantage (1) 178:4 adverse (20) 19:17;43:11;84:12; 86:5;117:15;118:6,10, 13;137:8;162:12,24; 164:22;168:5;169:3; 172:9;233:10,10,13; 262:11,25 advisable (1) 143:18 aerial (1) 97:18 aesthetic (4) 65:21,24;68:16; 84:25 affect (2) 102:2;209:15 affected (1) 208:25 affecting (1) 43:3 affirm (4) 96:13;112:22; 147:25;175:2 afford (3) 209:1,6,23 affordable (1) 254:13 afield (1) 63:3		
A		acuity (1) 213:25 acute (1) 225:4 add (6) 32:10;86:24;199:11, 20;232:6;249:9 added (14) 8:18,19,20;87:11; 88:7,9,10,25;139:3; 153:13;232:7,16; 234:24;243:20 adding (3) 88:13;154:16;201:8 addition (8) 193:15;195:15; 213:18;218:23;254:7; 257:6;259:11,13 Additional (16) 8:18;11:24;66:24; 85:13;88:7;91:16;96:5; 108:21;145:7;153:13; 179:25;195:16;233:7; 234:10,24;273:23 address (20) 23:9;25:16;37:23; 66:12,25;96:9;106:8, 13;112:18;118:3; 147:20;156:18;174:23, 24;177:22;192:9; 205:20;212:21;229:22; 241:13 addressed (6) 21:11;85:6;193:6,16; 231:18;243:3 addresses (5) 77:24;118:24;230:5, 14;235:4 addressing (3) 73:20;138:17;214:8 adequate (4) 29:19;32:11;35:20; 36:8 adjacent (43) 20:6;27:13,23;37:8; 69:12;71:7;78:18,20; 84:13;97:19;98:1,11, 21,24;99:15,17;100:8;		
abandoned (1) 64:24 abide (2) 18:9,11 ability (2) 18:1;247:21 able (21) 32:5;64:22;68:20,22; 74:23;75:6;120:17; 133:12;154:12;155:14; 185:12;189:24;193:13; 194:1,6;205:4;209:6, 22;220:5;227:23;275:3 above (12) 43:17;46:22;47:11; 68:23;89:1;120:25; 121:22,24;180:7; 183:15;188:22;189:2 absence (2) 24:15;203:17 absent (1) 114:16 Absolutely (7) 23:10;98:5;171:10; 195:9;240:21;244:8; 251:15 abutting (1) 28:9 accelerating (1) 180:19 accept (5) 97:6;114:16;141:14; 172:22;176:22 acceptable (2) 20:5;244:2 accepted (2) 20:7;41:20 access (16) 25:18;27:20;32:3,4, 6;51:17;53:1;64:15; 85:24;196:16;224:2,2; 227:3,5,6;236:7 accessible (2) 89:20,21 accidents (1) 250:18 accommodate (11) 43:16;60:7;64:22; 87:12;92:3;165:24;				

<p>170:15;227:2 aisles (2) 29:23;241:20 AI (1) 239:2 alarm (5) 181:18,22,24;183:5,8 alarms (8) 177:10;181:4,6; 182:17;183:11,16; 190:20,23 alerting (1) 181:21 align (1) 227:6 alleviate (1) 233:13 alleviating (1) 233:9 alley (1) 45:21 allow (7) 9:25;25:11;31:17; 102:22;120:10;258:9,9 allowance (1) 24:18 allowed (7) 27:23;151:21,23; 198:22;209:11;236:17; 249:16 allowing (6) 9:13;210:2;232:16; 233:22;249:15;253:15 allows (3) 24:16;228:8;266:14 alluded (1) 244:3 almost (7) 22:14;29:18;39:5; 43:22;194:14;198:12; 204:13 alone (3) 36:18;261:19;263:6 along (27) 28:3,7;42:14;58:14; 60:4;61:24;63:8;67:14; 99:10;117:7,8,17; 125:19;172:20;182:14; 192:3;195:25;226:7; 227:2;244:9;248:11, 15,16;249:3,3,5;250:3 alter (1) 19:16 alteration (1) 16:1 altered (1) 265:24 alternative (10) 30:3;35:11;36:12; 230:18;231:21;232:2, 4;234:2;269:19;270:7 Although (4)</p>	<p>33:23;119:7;187:8; 230:16 always (8) 13:17,19;86:21; 160:21;190:12,13; 216:15;225:8 Ambulances (3) 109:20;133:15,16 ameliorated (1) 22:5 amend (12) 12:21;13:8;15:3,5; 18:1;23:23,25,25;24:1, 1;240:12,13 amended (17) 12:1,2,2;13:11,13; 22:17;49:1;59:16; 91:24;92:3;139:5; 210:17,24;232:6; 240:11,14,15 amending (3) 12:5,18;24:13 amendment (17) 12:3,10;14:19,20; 15:8,9,13,13;16:13; 17:10;19:11;20:4; 23:18,21;24:4,10; 221:14 amendments (12) 13:18;24:18;25:4,5; 60:22;82:1,2;92:22; 93:2;221:23;232:8; 241:4 among (2) 17:17;18:7 amount (29) 49:4;59:23;68:21; 72:2,18;73:10,13,16; 74:3,11,16;75:4,16; 76:23;77:12,15,15; 80:18;108:11;135:19; 159:7;180:11;182:21; 183:14;195:4;207:18; 250:17;259:22;266:24 ample (2) 13:20;25:6 analyses (1) 150:15 analysis (17) 70:13;111:19;113:5, 9;114:17;151:9;159:4; 161:14,20;162:15; 165:23;172:5;238:20; 242:16;248:20,22; 268:15 analyst (1) 113:21 analyze (4) 98:2,12;124:15; 166:16 analyzed (5) 35:16;124:6;125:10; 133:16;229:24</p>	<p>analyzing (2) 163:18;249:22 and/or (4) 106:22;139:19; 145:15;170:14 Anderson (1) 243:11 annoyance (1) 187:10 annoying (1) 181:21 anomalies (1) 186:24 answered (3) 63:22;99:20,21 anticipate (3) 118:18;144:7;145:17 anticipated (2) 159:17;240:2 anticipating (1) 14:4 anymore (1) 223:22 apart (1) 243:18 apex (14) 27:10,13;37:25; 43:14,22,23;51:23,24; 52:20;68:25;69:7;70:5; 71:7,15 apologize (14) 8:11;52:21;59:3,7, 17;70:14;80:16;90:16; 125:5;135:10;160:25; 161:1,10;265:14 apparently (2) 61:23;183:24 Appeals (1) 241:19 appear (2) 44:24;254:5 appearance (2) 66:9;148:8 appeared (1) 78:21 appears (5) 73:8;198:12;227:17; 257:4;259:10 applicable (9) 16:13;167:10; 183:10;232:23;233:3; 247:10,11,12;252:20 applicant (45) 6:22;7:14,22;8:3,8, 20;9:25;10:19;11:1; 13:25;15:3;16:18; 18:15;19:2;21:11; 22:13;23:23;91:13; 92:2,4;93:11,13;135:2; 137:6;142:3;155:25; 165:5;168:16;178:5; 183:21;194:9;196:25; 197:22;202:16;210:23;</p>	<p>211:20,25;241:7; 244:3;249:20;260:20; 265:2;266:22;267:16; 273:19 applicants (1) 116:23 applicant's (10) 16:18;91:23,24;92:7, 17;178:17;186:21; 196:4;197:14;203:14 Application (36) 6:4;10:10,11;12:2,5, 10,18;13:3,9,18;15:4; 16:1,11;18:1;20:2; 23:23;61:4,21;69:18; 82:1;91:25;92:4;116:2; 120:24;121:8;195:14; 197:2;198:6;210:17, 24;211:22;247:10; 252:17;261:20;263:7, 25 applications (4) 13:10,13;81:24; 94:21 application's (1) 155:6 applied (3) 18:14;94:15;123:6 applies (2) 167:14;247:14 apply (5) 119:22;182:2; 188:12;231:21;240:16 appraisal (12) 93:12;97:7,25;98:11, 23;99:23,23,25;108:6; 109:7;110:20;111:4 appraisals (5) 101:12,13,14,15; 168:24 appraise (1) 106:6 appraised (3) 101:22;160:22; 262:19 appraiser (17) 8:21;92:13;93:2,9; 96:22,25;98:4,7,17; 111:5;126:16;158:14; 159:19,23;162:8; 163:3;165:22 appraisers (4) 99:13;101:11; 168:23,24 appraising (1) 101:17 appreciate (13) 38:10;82:24;91:10; 156:4,11;166:2; 174:16;225:23;249:13, 18;260:12;266:8; 268:13 appreciative (1)</p>	<p>19:14 appropriate (21) 152:21;154:1,12; 224:7;229:21;230:2; 236:15;237:1,6;243:2; 253:3;254:5,24; 255:10,18;256:22; 257:1,4;259:6,9,10 appropriately (2) 142:7;195:6 approval (9) 60:17;62:14;125:16, 21;142:9;242:17; 244:23;245:5;266:7 approvals (2) 49:7;241:14 approve (2) 252:17;266:4 approved (30) 9:5;12:3;32:7;47:23; 48:7;50:19;59:14; 60:18,19;61:3,7,8,15; 72:9;82:12,16;109:10; 139:13,14;140:11; 143:18,25;144:1; 231:15;241:18;244:24; 245:6;252:1;253:25; 261:20 approves (2) 15:5;23:24 approximate (1) 80:13 approximately (13) 6:10;37:9;38:8,18; 44:5,15;49:16;67:20; 68:11;71:9;79:4;80:13; 244:6 April (1) 102:20 arcane (1) 12:14 architect (6) 34:6;64:21;215:25; 216:4,5;259:24 architects (1) 42:9 architectural (8) 83:15,17;84:20,21; 85:7;90:8,12;142:5 architecture (3) 46:20;155:5;229:6 area (163) 20:20,21;27:24,24; 28:1,1,3,7,17;29:14; 30:8,10,14,15,16,18; 32:5,6,14,19,21,22; 33:1;36:11;37:23; 39:10,23;40:7;44:9; 45:19,24;48:16;51:7, 17;52:11,23;53:3,5,8, 12,13,17,17,19,20,21, 24;54:10,14;55:15,23; 56:2,4,5,7,12,13,25;</p>
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57:3,7,13,24,24;58:4,6; 59:21;60:11;68:1,6,22; 70:18;71:5,10,12,13, 19;72:19,19;73:4,5,13, 13,14;74:1,5,25;75:3; 76:14,20;79:1,21,25; 80:7,23;84:16;85:25; 91:1,4;97:15,19; 101:11,14;115:7; 116:2;117:4,5,17,18, 20,22;118:17;119:17; 120:12;125:14;126:9; 129:13,14,16,16; 130:23;138:7;142:22, 24;143:7,11,13; 150:13;173:21,22,24; 195:20;196:3,15,19; 197:22;199:9,12,16,17, 21;200:1,2,2;208:2; 214:13,22;219:12; 223:18;227:4,5; 228:12;230:17;232:1; 243:1,1;247:2,17; 251:22;252:1;255:2; 260:1;261:19;275:4	268:18 assertions (1) 162:11 assess (1) 162:3 assignments (1) 213:21 assisted (15) 6:7;97:22;102:5; 104:10;105:1;108:25; 110:3,4,5;111:11; 207:7;209:5;213:9,16; 225:10 associated (5) 125:21;177:11; 183:19;190:22;221:2 Association (2) 7:3;229:15 assume (7) 17:2;120:4;173:20; 196:1,10;201:6;204:9 Assuming (9) 17:10;105:19; 111:11;119:9;161:17; 189:17,24;198:23; 231:20 assumption (3) 48:4;134:7;221:17 assumptions (2) 129:12,19 attempt (1) 86:3 attention (1) 225:5 attenuation (4) 178:25;179:12,25; 180:3 attorney (2) 21:25;145:4 atypical (2) 135:19;234:21 audible (2) 190:8;225:17 audience (1) 208:17 authority (8) 12:6,8;13:1;14:7,8; 48:10,20;49:19 authorize (1) 15:9 automobile (2) 133:18,21 automobiles (1) 133:10 available (3) 75:1;108:22;184:19 Avenal (1) 254:8 Avenue (1) 147:22 average (4) 184:7,13;208:12; 213:17	averages (1) 186:19 avoid (3) 33:11;247:21;248:14 aware (14) 66:20;76:8;78:16; 82:5;107:20;108:17, 21,24;117:4,10;118:5, 7;128:14;130:8 away (10) 22:8;26:21;28:1; 31:14;118:1;179:20; 209:18;215:18;226:8; 275:5 awful (1) 167:6	backed (2) 101:22;256:17 background (7) 115:4;186:8,10,17, 22;187:5,11 backing (8) 27:12,17;28:14; 117:20;136:16;190:9; 191:7;235:1 backs (1) 227:7 backside (1) 171:10 backup (24) 117:21;119:4,5,7,9, 10,11,11,12;177:10; 181:4,5,18,22,24;	182:17;183:8,11,16; 190:3,16,20,23;207:10 backyard (3) 169:9;171:7;234:20 Bacon (15) 7:13;208:10;212:15, 16,17,19,22,22;213:1, 4;225:21;263:7;264:8; 267:2,9 bagged (1) 216:12 bags (1) 216:12 Baker (1) 222:7 ball (3) 231:1,13;234:1 balls (3) 200:3;231:15;233:14 banging (2) 121:17;182:13 barreling (1) 255:10 barrier (19) 122:1,2;171:13; 178:21,23;179:7,9,11; 185:1,4,8,10,16,17,19, 22,24;189:1,3 barriers (2) 135:6;138:24 base (5) 46:2,4;193:12; 246:19;262:3 based (52) 13:14;15:20,24;19:1; 51:12;73:20;80:25; 90:12;97:4;99:1;104:2, 8,8;114:14;117:10,13; 124:21;129:6,8; 138:15;141:1,4; 143:21;158:20,20,21; 173:4;176:21;177:4, 13;178:7;179:7,13,20; 184:22;186:8;187:9; 190:18;194:11;209:8; 210:15;221:16,17; 232:16;234:9;239:3, 19;243:13;255:13; 265:12;266:17,20 basement (1) 34:17 basic (2) 228:8;253:1 basically (9) 46:1;86:13;87:9; 120:9;162:1;180:12; 187:13;226:24;235:20 basin (2) 68:20,24 basing (1) 184:1 basis (10) 12:18;13:7;18:19;	54:25;55:2;63:19,20; 69:18;95:23;101:16 Beach (1) 216:20 bearing (2) 88:17,24 become (2) 101:23;263:9 becomes (2) 93:21;252:13 bed (1) 251:13 beds (3) 6:7;86:13;251:11 beeper (4) 119:5,9,10,11 beepers (4) 119:7,13;190:3,16 beforehand (3) 142:13;144:2;272:24 begin (3) 147:7;208:4,12 beginning (2) 188:6;246:19 begins (2) 67:23;80:6 begun (1) 6:13 behalf (3) 6:22;16:14;224:24 Behind (6) 39:13,16;68:2;205:3; 206:20;207:2 belief (5) 19:16;25:3;245:24; 246:18,19 below (4) 30:10;60:5;63:11; 65:4 bench (1) 215:17 beneficial (4) 19:21;20:14,18; 138:23 beneficiary (1) 25:4 benefit (10) 16:2;20:25;21:21; 22:18;25:8;73:19; 94:11;131:15;266:13; 267:9 benefits (1) 196:1 Benjamin (2) 8:24;147:21 Berbert (13) 8:24;145:23;146:1; 147:8,16,19,21,21; 148:2,3,6,13;156:6 besides (2) 134:23;186:5 best (2) 73:21;207:14
		B			

<p>Bethesda (1) 101:18</p> <p>better (13) 22:4;33:21;69:2; 70:10;78:2;181:16; 204:23;222:2;223:15, 16;226:13;230:17; 245:11</p> <p>beyond (3) 46:13;136:19;191:11</p> <p>big (13) 79:1;131:6;181:5; 184:2;185:7;194:24; 206:20;207:2,23; 243:10;247:25;262:13; 267:22</p> <p>bigger (7) 40:12,14,16;47:3; 102:21;103:1;149:11</p> <p>biggest (1) 129:1</p> <p>Bill (1) 7:4</p> <p>bin (1) 21:20</p> <p>biplanter (2) 68:9,17</p> <p>bioretention (2) 68:20,24</p> <p>birth (1) 95:7</p> <p>bit (17) 32:11;39:11;46:4,7, 8;64:20;66:4;86:22; 151:10;188:1;191:13; 213:6;226:22,25; 241:14;259:19;260:4</p> <p>blank (2) 105:20,25</p> <p>Blocher (1) 6:21</p> <p>block (1) 180:8</p> <p>blocked (1) 30:14</p> <p>blocking (4) 117:25,25;204:9,10</p> <p>blocks (3) 193:20;203:6,23</p> <p>blowing (1) 187:1</p> <p>blow-up (1) 271:20</p> <p>Board (23) 9:8;24:4,8;28:25; 29:3;59:14;60:17; 61:11,16,20;62:13; 149:19,23,24;150:9; 152:24;155:10;188:20; 241:19,23;244:24; 251:8;257:13</p> <p>board-on-board (6) 30:4;63:8;179:23;</p>	<p>188:2;189:7,10</p> <p>Board's (2) 29:12;61:4</p> <p>bodies (1) 96:3</p> <p>Bolt (2) 91:9,11</p> <p>Bolton (6) 7:13;83:7,8,11,14,25</p> <p>borders (1) 195:22</p> <p>both (14) 15:19;31:18;36:6; 68:15;93:11;96:2; 111:6;154:21;180:17; 197:1;216:25;231:3; 243:17;275:20</p> <p>bottom (9) 42:19;44:8;46:19,25; 154:13;207:22;208:7; 215:6;265:23</p> <p>Boucher (16) 8:21;96:7,8,10,10,16, 22;97:6,10;101:9; 110:1;111:25;157:11; 165:14,21;242:15</p> <p>Boucher's (3) 96:18;97:5;166:5</p> <p>bought (2) 242:4,13</p> <p>boundaries (1) 253:23</p> <p>boundary (2) 36:4;63:9</p> <p>bounds (2) 35:21;55:5</p> <p>box (2) 49:10;228:16</p> <p>brand (2) 60:25;239:22</p> <p>Brandywine (9) 6:3;97:22;98:20; 124:22;131:9;227:13; 255:23;256:4;264:4</p> <p>break (9) 81:18;112:1;145:21, 25;147:8;198:17; 212:3;215:18;222:2</p> <p>breast (1) 50:10</p> <p>Brenda (3) 7:13;212:15,22</p> <p>brevery (1) 177:21</p> <p>brief (7) 64:18;145:8;184:5,5; 206:10;226:2;245:16</p> <p>briefly (3) 196:7;241:9;245:18</p> <p>bring (8) 43:17;85:11;90:1,1; 149:24;162:9;207:5; 228:18</p>	<p>brings (1) 158:22</p> <p>broad (1) 84:18</p> <p>broadly (1) 230:14</p> <p>broker (1) 165:22</p> <p>brought (3) 182:5;207:16;235:5</p> <p>brutalize (1) 202:21</p> <p>bubble (13) 56:3;102:14,15,17, 19,21,25;103:4; 169:17;193:21,21; 203:23;260:18</p> <p>buffer (18) 28:3;31:14;39:2; 43:21,23;45:19;51:7,7; 57:24;58:1;59:24; 60:15;78:9;152:1; 221:6;234:23;244:17, 21</p> <p>buffering (2) 243:21,25</p> <p>buffers (8) 29:4,10;31:19;35:6, 7;55:20;57:12;60:6</p> <p>build (1) 46:14</p> <p>building (90) 8:5;27:14,14,23; 29:16;30:6;31:2,15; 34:19,21,22,23;35:16; 36:8,10,14,18;39:6; 45:24;47:5;60:9,9,11; 64:16,20,23;83:20,21; 84:25;86:3,6;87:10,10, 12,15,19;88:5,6,8,11, 14,16;90:1,24;106:21; 115:7;116:12,21; 129:15,17;131:8; 132:5;133:1;149:8,8, 25;151:11,14;152:15; 154:13,16,19,22,24; 155:3,15;167:4; 169:10;170:14,25; 171:13;185:15,15; 194:4;196:9,15; 197:17,17;198:1; 201:4;203:23;205:2; 213:23;215:19;216:6; 220:22;221:8;225:2, 11;235:9</p> <p>buildings (2) 115:8;213:22</p> <p>built (6) 44:21,22;45:17; 46:10;106:21;247:23</p> <p>bulk (2) 21:15;194:4</p> <p>bulky (1)</p>	<p>194:5</p> <p>burden (4) 142:3,8;265:1,2</p> <p>burrow (2) 168:11,13</p> <p>business (8) 96:9;98:18;112:18; 156:18;174:24;212:21; 274:9;275:18</p> <p>busy (2) 101:25;106:25</p> <p>butcher (1) 252:16</p> <p>Butler (2) 243:8;265:9</p> <p>butted (1) 268:16</p> <p>butting (1) 268:17</p> <p>button (1) 214:20</p> <p>buy (1) 206:21</p> <p>buyer (7) 111:6;158:10; 160:20;161:21;167:7; 169:20;171:1</p> <p>buyers (1) 169:22</p> <p>bypass (1) 255:19</p>	<p>17:5,22;23:9;27:15,21; 28:19;31:1;33:6,12; 35:20;36:7;37:6;39:3; 41:13,17;42:11,24; 43:24;46:16;49:4,14; 60:7,22,24;67:12,14; 69:18;72:22;75:25; 76:22;79:12;80:12; 82:21;83:14;84:16; 85:5,24;86:21,25; 94:11,17;101:9,23; 102:2;105:6,6;106:9; 107:6,6,7,8,21;111:13, 18;116:13;118:3; 121:10;122:12,18; 124:6,7;127:9;131:9; 132:6;133:25;134:12; 136:17;137:7;139:25, 25;140:17;142:9; 144:3,4,7,9,9,15;146:3, 3,3,7,7,16;147:9; 158:3,6;159:7;160:18; 161:15,17,18,18;162:7; 165:24;169:9;172:6; 173:13;179:16;181:9; 182:13,21;183:5; 184:25;185:23;187:5, 10;190:2,12,12,20; 191:8;193:23;195:5,6; 197:9;201:11,16; 203:21,22,22;206:16, 19;207:14;208:25; 209:23;211:5;215:14; 216:9;219:7,13; 220:25;221:6,11; 224:6;227:2,4,5; 229:22;230:17,22; 233:7;237:3,14,24; 240:25;242:6;243:3; 259:14;262:7;267:19, 22;270:10,11,18; 271:12,13,18;272:15, 17;275:9</p> <p>Candidly (4) 145:18;146:24; 172:18;266:7</p> <p>capable (1) 33:24</p> <p>Capital (1) 148:5</p> <p>capture (1) 39:12</p> <p>car (1) 233:24</p> <p>care (17) 6:6,8;97:16;105:14, 20;110:4,5;135:20; 169:24;171:6;209:20; 225:9,11;242:9; 245:11;251:21,24</p> <p>careful (2) 43:20;217:2</p> <p>carry (1)</p>
C				
<p>C- (1) 229:15</p> <p>Cabin (4) 254:1,6,12,19</p> <p>calculated (3) 129:11,19;191:17</p> <p>calculation (1) 185:21</p> <p>calculations (1) 189:17</p> <p>call (19) 14:9;25:15;26:3; 34:6;40:22;50:10; 66:12,25;76:7;92:20; 93:18;96:5,6;112:3; 159:14;162:21;212:13, 15;225:24</p> <p>called (13) 43:3;51:11;73:22; 92:6,8,17;93:4;114:23; 115:10;147:17;179:14; 254:16;261:20</p> <p>calling (1) 33:11</p> <p>came (3) 62:25;252:3;264:7</p> <p>can (173) 10:5;11:3,16;13:6,6, 8;15:1,13,19,22;16:19;</p>				

<p>83:4 cars (1) 109:17 case (48) 6:18;7:14;8:9,17,23; 9:6;13:16,21;15:7,11, 18,23;16:18,21;18:25; 20:9;24:5;36:5;62:7; 67:11;91:24,24;92:3,7, 17,22;93:4,13,14; 114:7;121:20;123:8; 161:11,12;164:12; 166:15;232:24;233:21; 241:25;242:22;246:7; 258:20;260:11;262:14; 265:9;266:22;267:20; 268:15 cases (5) 36:6;94:21;136:11; 244:4;249:23 castigated (1) 73:24 Category (1) 195:24 cause (4) 123:16;143:4,5; 179:18 caused (2) 8:11;81:23 cc'd (1) 154:9 center (9) 87:12,14,19;111:12; 248:2;254:1,6,12; 255:9 centers (2) 101:25;256:2 centrally (1) 85:24 certain (15) 10:13;11:14;21:11; 67:16;89:13;185:13; 186:24;189:16;190:16; 195:9;209:11;231:12; 236:21;253:12;267:4 certainly (25) 17:14;20:7;21:14,16; 83:17;95:1;155:16; 156:6;163:12;172:21; 190:5;204:23;208:1; 210:3;219:12,15; 230:20;247:15;250:11, 11,12;251:3;257:12; 269:2;275:9 certification (1) 42:10 certify (1) 142:17 cetera (2) 39:15;245:22 chained (1) 156:9 chair (1)</p>	<p>95:25 Chairman's (1) 112:19 chairs (1) 131:7 challenge (4) 20:8;264:9,11;267:1 challenging (2) 173:1;194:13 champion (3) 50:13,14;52:9 champions (1) 61:25 change (41) 9:7;16:11;27:23; 29:20;49:4;57:4,5,7; 67:15;69:1;70:8;74:17; 76:20;86:25;87:24; 94:12;103:4,8;150:19, 23,24,25;151:4,14; 152:14;153:12,17; 154:15;155:4,14,16,17, 20;166:11;180:21; 201:16;227:25;255:13; 273:7,21;275:9 changeable (1) 64:13 changed (10) 8:10;13:14;18:15; 20:25;27:18;57:6,18; 115:19;139:1;150:22 changes (39) 8:8;11:2;13:18,22; 18:12,16,18;19:20,21; 20:5,10,14,17,22; 21:18;24:14,23;25:7, 13,17,19;26:18;28:17; 33:9;43:25;56:17; 62:22;68:8;70:19; 144:21;149:12;150:1; 151:8;155:2;274:10, 17,25;275:11,11 changing (2) 227:4,23 channel (2) 69:7;79:8 character (7) 84:25;233:1;234:15; 250:24;251:6,17;266:1 characteristic (2) 261:8,12 characteristics (4) 197:10,13;255:25; 256:5 characterization (1) 243:13 characterized (1) 55:14 charged (1) 173:5 check (1) 89:17 checked (1)</p>	<p>213:22 Chen (303) 7:4,4,6;8:18,22;9:19; 10:3,7,16;11:7,22; 12:16;13:4,24;14:18, 23;15:2;16:4,7;18:9, 21;19:8,10,24;20:16, 19;21:6,9,22,25;22:5,8; 23:23;33:10,19;40:19; 41:2,17,20,23;45:10; 49:18;50:4,6;51:15; 52:4;53:6,9;54:5; 56:11,16,19,23;57:9, 17,20,22;58:22;59:3,6; 61:14,18;62:23;63:5,6, 24,25;64:8,14;65:12, 14,16,18,25;66:5;69:2, 14,16,23,24;78:13,15; 81:11;82:4,14,18,20, 23;84:15;88:19;89:6,8; 90:25;91:6,21,23;92:2, 11,14;94:1,3,7,9;95:20, 24;96:21;98:3;99:4; 103:10,12,12;107:17, 19;109:24;110:2; 113:2,10,13;114:2,5, 11,13;124:17,19; 125:4;126:20,25; 127:3,14,21;130:11,16, 18,25;131:5,14,17,22; 132:11;134:21;135:17; 136:1,19;137:9; 142:21,25;143:3,9,11, 14;144:17;145:10,13, 17;146:2,6,9,12,20,23; 147:9,17,18;148:7,9, 10,12;153:1;156:12, 13;157:6,7,9;159:10; 160:11,25;161:2,8; 163:7,8,11,19;164:1,4, 7,10,14,17;165:2,6,9, 12,13,24;166:2,4,12, 19;167:12,25;168:2; 171:2,5;172:16,24; 173:1,19,25;174:2,18, 19;175:6,8,14,17,21, 24;176:14,24;186:3; 187:18;191:23;192:3, 5,6,16;201:25;202:19; 205:8,14,16;206:3,5,6; 210:12,13,17,20,25; 211:2,215:1;218:10, 11,13;221:21,22;222:2, 4;224:17,19,21; 225:17;226:6;229:12; 238:25;239:1,15,18,21; 240:9,17;241:4;250:6; 259:17,18;261:13,15, 25;262:2,5,8;263:14, 15,24;264:3,6;265:14, 17,20;266:18,21; 267:22;268:19,21,23; 269:1,4,9;271:7,9,11;</p>	<p>272:4,8,13,15,19,23; 273:6,8;274:19,21; 275:13,22 Chen's (1) 81:23 chief (3) 25:3;93:14;148:22 chiller (15) 129:12,18,19,25; 134:4,7;177:12,24; 178:7,12,19,20;188:8, 13;228:10 Chillers (1) 125:6 chips (1) 86:24 choice (6) 10:1;25:11,12;83:1, 2;207:1 choices (1) 107:2 Christopher (1) 147:21 chuckle (1) 268:24 CIA (1) 73:24 circulation (2) 151:10,19 circumstance (5) 15:12;17:23;18:22; 19:25;92:21 circumstances (1) 154:12 cite (1) 23:22 cited (2) 23:23;265:8 Citizens (6) 7:2;229:9,10,12,14; 233:16 civil (11) 7:15;33:6,7,18; 39:23;42:6,11;49:4; 67:11,12;68:14 clarification (6) 105:7;131:14; 135:11;140:18;203:1; 235:19 clarifies (1) 10:9 clarify (3) 35:2;131:9;153:24 clear (16) 26:10;72:24;74:2; 75:2;78:11;80:1; 144:13;146:8;154:10; 181:15;211:2;217:22; 232:17;242:24;253:10, 20 clearer (1) 259:3 Clearly (12)</p>	<p>25:17;75:3;78:24; 120:8;164:21;181:16; 194:2;204:12;230:5; 255:23;256:19;262:18 clever (1) 21:13 client (9) 16:14;21:1,21;58:8; 140:2,6;141:14;261:4; 266:23 clients (12) 16:2;18:19;19:13,21, 22;20:15,18;22:18; 25:3;221:25;222:4; 263:9 client's (4) 261:17;262:11; 263:1,5 clock (1) 213:20 close (18) 58:12;68:18;80:24; 124:23;170:6;177:5; 181:8;193:14;221:19; 227:8;269:18;270:3, 15;274:7,8,9;275:18,18 closed (4) 216:13,15;217:5; 274:2 closely (1) 137:22 closeness (1) 170:9 closer (4) 27:10,13;31:15; 189:6 closest (1) 51:9 closing (6) 144:24;145:3,6,8; 241:7;245:14 closings (1) 239:12 Club (18) 6:9;50:2;73:4;97:23; 99:3;102:8;104:3,4; 107:25;110:17;126:4; 153:11;166:7;169:5, 24;170:15;242:5,13 cluttering (1) 161:11 Code (36) 23:22;100:5,7; 117:22;124:5,8; 129:24;132:9,20; 134:24;135:1;178:10, 12;181:11,18,19;182:6, 21,22;183:12,15; 184:11,15;185:9; 186:1,6;187:6,8,8,12; 198:22,24;230:21; 232:8;244:8;252:15 coefficient (2)</p>
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73:25;74:3 cold (1) 261:18 collect (2) 45:25;46:1 collection (3) 107:24;108:2;118:24 collects (1) 27:25 colloquy (1) 165:8 Columbia (2) 192:10,11 combined (1) 30:11 COMCOR (2) 118:23,23 comeback (3) 264:25;267:2,18 comfortable (2) 23:6;170:23 coming (24) 14:4;28:13;30:19,24; 35:6;45:18,25;63:12; 91:10;109:18;130:10; 132:23;156:4,10; 174:16;225:3;235:1; 249:18;262:15;266:8, 21;267:9;268:3,7 commend (2) 8:8;222:19 comment (11) 16:25;38:9;141:19; 173:19;190:24;218:14; 229:3;240:19,22; 241:5;275:10 commentary (3) 25:6,14;241:2 comments (25) 14:1;61:7;69:2; 145:7;148:14,18; 164:25;167:13;172:17; 174:6;209:7;241:1; 257:19;260:12;265:7; 272:3,12;273:3,5,10, 19,20,24;274:11; 275:20 commercial (4) 111:10;116:11; 253:16;255:16 Commission (4) 56:1;148:5,15; 245:20 Commission's (1) 246:19 commitment (1) 197:3 common (1) 67:15 communicate (1) 123:5 communities (8) 213:14,17;214:3;	216:19,23,24;217:3; 233:1 community (7) 13:16;216:20,20,21; 249:19,21,22 compact (2) 20:20;21:20 company (1) 129:5 comparable (1) 168:24 comparative (4) 172:4,24;173:13; 242:16 compare (6) 152:5;170:22; 182:20;193:18;214:1; 242:6 compared (6) 105:7,9,10;149:10; 170:21;172:13 comparing (3) 104:7;126:16;171:23 comparison (4) 126:24;134:23; 170:13;186:5 compatibility (37) 7:25;8:9;13:2;18:17; 19:13;21:10;22:19; 36:21;126:23;153:15; 155:5,11,21;171:22; 172:3,7;173:9,11,15, 22;174:4;192:19; 234:9,12,14;235:6,12; 241:25;242:18,19; 243:3,20;244:15; 245:12;246:23;260:4; 266:19 compatible (17) 150:7;173:18; 192:23;193:1;199:4; 203:5;207:24;208:1; 235:11;241:18,24; 243:15;245:3;251:4,6; 266:1,5 complain (1) 123:2 complained (1) 264:23 complaint (2) 216:25;217:1 complaints (1) 264:10 complete (2) 28:2;42:9 completed (3) 7:12,14;239:8 completely (2) 91:18;269:7 compliance (9) 125:11;230:19; 231:21;232:2,4;234:2; 252:13;269:19;270:8	complicated (1) 45:17 complies (1) 230:20 comply (8) 28:8;29:15;30:1; 31:18;32:6;39:2;135:3; 177:14 component (2) 65:21,24 components (1) 89:20 compose (3) 65:21;66:2,3 computer (2) 86:23,24 concentrated (4) 70:9;247:18,19; 253:17 concentration (8) 247:16,21;248:9,10, 12,14;249:3;250:8 concentrations (1) 250:2 concept (4) 48:8;75:7;79:4; 161:3 concepts (3) 159:11;164:11,15 concern (17) 10:8,13;18:21;19:1; 20:19;48:13,15;49:14; 102:21;119:7;132:18; 136:15;139:21;153:18; 164:6;214:8;220:24 concerned (5) 20:5;49:24;51:9; 76:22;207:9 concerns (9) 10:20;15:25;19:3; 32:13;36:21;155:8; 208:6;219:10;220:15 concluded (1) 276:1 conclusion (9) 101:10,17;102:4; 104:2;111:1;124:3; 200:12;230:14;267:19 conclusions (4) 140:10;227:16; 234:8,12 concrete (3) 32:11;51:25;65:13 condensing (1) 125:7 condition (19) 9:6;57:16,18,20; 68:6;70:8;71:11,24; 73:20;75:10;80:3; 103:23;139:14;140:21; 141:3,15;162:5;193:8; 201:9 Conditional (60)	6:4,5;9:5;22:21; 28:9;37:14,16;38:21, 22;61:4,20;62:15; 81:24;94:21;97:17; 109:10;114:23;115:16, 21;118:6;125:16,22; 126:1;127:5;128:23; 135:14;139:13;142:20; 143:17;148:16;149:7; 150:16;152:6,9; 165:16;166:7;176:25; 198:18;199:8;200:24; 209:10;220:8;230:4; 231:15;240:9,12; 242:14,21;245:5; 251:2,11;252:17; 258:16;261:9,17; 265:8,18,25;266:4,7 conditions (33) 71:9,13,17;73:3; 74:14,20;75:4,6,7,10; 79:9;97:15;98:19,19; 106:24;110:9,10,17; 111:6;126:13;142:16; 152:8;172:11;193:9, 18;194:6;209:12; 255:14;261:11,22,24; 262:7,10 conduct (1) 8:17 confer (2) 140:2,6 confident (3) 75:25;137:6;214:5 configuration (3) 37:4;241:23;254:23 confirmed (1) 213:24 confirming (1) 183:17 conform (1) 24:13 conforming (1) 36:17 conforms (2) 247:7;252:19 confronting (4) 20:6;49:21;99:15; 100:8 confused (2) 13:4;172:20 connotations (1) 206:23 consequence (3) 125:25;188:19; 262:10 consequences (1) 206:9 Consequently (1) 261:19 conservation (26) 29:15;30:2;58:5,19; 59:22;61:10;62:14;	150:12;152:15;195:24; 196:10,11;197:4; 198:1;202:1,4,7,11; 222:18;227:25;260:16, 19,23;261:1,3,7 consider (21) 22:20;52:2;64:12,15; 65:1;86:7,19;98:1,12, 18,24;106:2,3;109:6; 111:6;145:1,2;153:12; 162:16;238:14;256:8 consideration (11) 16:15;61:4;64:3; 123:14;129:9;150:19, 20;151:18;152:3; 155:20;246:24 considerations (5) 51:22;142:6,6; 152:13;219:8 considered (5) 61:20;62:14;67:4; 210:18;255:1 considering (4) 64:17;91:17;153:14; 196:20 consist (1) 83:17 consistent (4) 194:12;242:15; 253:11;259:24 consistently (2) 240:14;259:22 consisting (1) 6:7 consolation (1) 27:4 constant (1) 180:19 constantly (1) 136:4 constitutes (2) 6:8;231:1 constraint (5) 68:13;194:17; 195:15,16;197:24 constraints (4) 198:15,25;204:15; 233:5 constructed (1) 265:24 consult (2) 151:6;222:4 consultant (4) 55:3;175:10;178:4; 244:3 consultants (2) 20:24;263:10 consulted (1) 50:3 consulting (1) 115:6 contain (2) 79:8;137:18
--	--	--	--	--

<p>contained (1) 164:24</p> <p>container (5) 216:14;220:17; 221:7,10;227:8</p> <p>containers (2) 182:12;216:15</p> <p>contemplate (1) 12:9</p> <p>contemplates (1) 81:25</p> <p>contention (1) 229:22</p> <p>context (5) 11:4;24:2;134:25; 166:4;245:8</p> <p>contiguous (1) 196:2</p> <p>continuation (1) 6:2</p> <p>continue (1) 151:25</p> <p>continued (1) 241:22</p> <p>continues (2) 46:2;87:23</p> <p>continuing (1) 104:3</p> <p>contour (6) 39:4,15;41:7,8; 45:18,23</p> <p>contoured (2) 43:12,12</p> <p>contours (3) 43:2,12,13</p> <p>contract (1) 260:21</p> <p>contractor (1) 216:17</p> <p>contrary (2) 173:16;258:24</p> <p>control (10) 64:13;68:20;75:22, 23,24;77:4;116:5; 179:17;225:11,12</p> <p>controlled (2) 69:3;70:11</p> <p>controls (3) 69:8;118:23,24</p> <p>controverted (1) 263:5</p> <p>contumacious (1) 18:11</p> <p>convenient (1) 256:3</p> <p>conversation (3) 64:18;198:10;215:21</p> <p>conversations (1) 149:16</p> <p>conveyed (1) 79:21</p> <p>convince (1) 261:10</p>	<p>convinced (1) 174:14</p> <p>cook (1) 130:18</p> <p>cooling (1) 125:7</p> <p>Coordinating (1) 229:10</p> <p>copies (6) 11:15,21;271:3,4,11, 16</p> <p>copy (8) 16:9;48:21;70:15; 96:19;175:18;230:25; 265:23;271:16</p> <p>core (1) 199:3</p> <p>corner (32) 31:24;32:10;42:20; 51:4;53:3;68:10; 117:22,22;195:11; 196:7,20;197:20; 199:10,25;201:5; 214:24;215:9;220:9; 221:4;223:3,20; 226:19;228:5,7;236:8; 240:5,5;244:13,19,19; 274:19,20</p> <p>corrected (1) 215:11</p> <p>correctly (3) 44:4;199:12;252:1</p> <p>corridor (4) 248:21;249:3,4,5</p> <p>corridors (3) 248:15;250:4;256:3</p> <p>corroborated (1) 15:15</p> <p>cost (1) 68:15</p> <p>Costco (1) 248:1</p> <p>Council (13) 17:15;82:11,13,15, 16;209:9;237:7; 238:22;252:23;253:6; 257:9,13;258:11</p> <p>Council's (1) 238:17</p> <p>counsel (3) 57:12;58:23;174:20</p> <p>count (1) 213:10</p> <p>counterbalance (2) 266:9,9</p> <p>counterpoints (1) 177:22</p> <p>counties (1) 115:7</p> <p>County (30) 7:2;17:15;48:5,6; 101:11;116:4;119:21; 120:16;123:5;128:7;</p>	<p>129:24;132:3;135:3; 153:11;177:15;190:10; 195:23;202:8;208:22, 23,23,25;209:3,3,4,13, 15;229:12,14;265:11</p> <p>couple (16) 61:9;76:20;110:13; 149:13;213:4;221:18; 225:6;241:9,12; 249:24,25;251:18; 262:12;263:8;264:6,7</p> <p>coupled (1) 68:21</p> <p>courier (1) 271:13</p> <p>course (70) 10:24;13:11,12,19; 14:8,14;17:4;18:13; 20:2,13;24:19;25:15; 29:3;30:18;47:22,24; 48:16;51:8;67:18;69:4, 9,9;70:9,10,11;72:20, 21;73:10;74:17;75:17; 76:7,12,16,21,24; 77:13,16;78:6,19,23; 80:4;98:18;109:6; 110:20;111:4;115:9; 155:17;195:18,22; 199:12,17,21;200:16; 201:10;204:2;206:24; 207:11,25;231:13; 233:11,19;242:7,8; 245:10,17;247:12; 249:25;251:21;257:10, 25</p> <p>courses (1) 41:24</p> <p>Court (3) 112:20;165:16; 243:11</p> <p>courts (1) 102:23</p> <p>courtyard (3) 29:11;154:20;201:4</p> <p>courtyards (2) 154:14,22</p> <p>cover (2) 168:8,8</p> <p>coverage (12) 169:7,9;170:2,2,3,5; 248:1;251:5,15; 259:19,23;260:2</p> <p>covered (6) 74:21;119:18; 151:14;230:18;231:2; 232:1</p> <p>covers (1) 247:25</p> <p>coy (1) 17:3</p> <p>cramp (1) 8:14</p> <p>Crazy (1)</p>	<p>78:2</p> <p>create (3) 75:9,10;266:4</p> <p>created (5) 28:12;69:1;70:17; 121:22;268:1</p> <p>creates (2) 70:10;198:3</p> <p>credit (1) 226:6</p> <p>criteria (1) 232:3</p> <p>critical (11) 29:21,24;31:25; 32:19;51:11;53:13; 222:17;223:2;227:5; 260:3;262:14</p> <p>cross (2) 63:1;264:12</p> <p>cross- (5) 56:16;153:2;167:17; 210:3;224:17</p> <p>cross-examination (31) 25:15;34:11,14; 47:18;50:5;72:15; 78:14;85:17;89:7; 103:20;107:18;110:14; 119:25;120:2;123:11; 124:18;136:19;153:4, 22;155:24;168:15,18; 187:24;203:2;222:12; 223:12,13;224:20; 235:17;238:11;239:3</p> <p>cross-examine (4) 14:9;42:6;57:13; 72:11</p> <p>cross-examined (1) 172:4</p> <p>cross-section (1) 69:8</p> <p>crystal (1) 242:24</p> <p>CU (1) 116:2</p> <p>cubic (4) 74:1,6,7,9</p> <p>culled (1) 229:24</p> <p>curb (7) 38:24,25;39:7,10; 191:12;227:24;270:2</p> <p>current (11) 57:15,18,20;71:16; 73:3;74:16;103:6; 170:15;202:6;255:7,7</p> <p>currently (10) 7:1;72:19;73:5; 88:15;195:18;199:25; 203:16;230:7;246:21; 247:17</p> <p>Curt (2) 250:1;252:25</p> <p>Curtis (2)</p>	<p>6:24;7:19</p> <p>customized (1) 69:17</p> <p>cut (4) 190:13;249:12; 268:18;269:3</p> <p>cuts (1) 228:20</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>dam (3) 46:1,2,5</p> <p>damage (1) 201:9</p> <p>damming (1) 263:3</p> <p>Dancer (1) 156:20</p> <p>Danielian (15) 7:19;156:13,16,16, 17,19,19,24;157:1,4, 10;165:22;174:16; 261:20;262:14</p> <p>Darnestown (1) 156:20</p> <p>data (4) 129:9;135:9;179:5; 190:19</p> <p>date (5) 24:23;270:14;271:3; 272:25;273:2</p> <p>dated (1) 148:15</p> <p>dates (1) 275:15</p> <p>day (17) 11:9;60:18;61:3,19; 83:4;172:17;181:25; 186:16;195:2,3; 208:11;256:17;260:5; 263:11,23;266:11; 272:20</p> <p>days (8) 16:24;92:5;99:12; 221:18;261:18;272:7, 20;273:5</p> <p>days' (2) 15:5;24:25</p> <p>daytime (6) 178:15;181:9,10,17; 183:10;184:12</p> <p>DBA (20) 129:21;134:1,4; 178:14,22;179:8,12,13; 180:13;181:6,19; 182:24;183:1,8,9; 184:8;185:5,6,23; 186:22</p> <p>DC (1) 115:6</p> <p>de (1) 235:10</p>
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<p>deal (3) 50:2;177:25;245:18</p> <p>dealing (5) 31:12;99:14,16; 100:1;162:1</p> <p>dealings (2) 136:8,12</p> <p>dealt (1) 151:10</p> <p>December (24) 6:13,14,7:14,18; 11:12,18,24;13:22; 16:9;23:18;24:6,7; 26:19,20;71:25;83:15; 149:5;164:21;193:6; 232:8,9,14,15;266:24</p> <p>decibel (5) 181:3;182:18,23; 183:2,3</p> <p>decibels (8) 134:9,14,16,17; 178:18;180:3;182:24; 191:18</p> <p>decide (2) 22:24;142:13</p> <p>decided (3) 209:11;210:23;256:1</p> <p>deciding (1) 169:20</p> <p>decision (5) 6:18;147:3;170:23; 211:19,19</p> <p>decisions (1) 145:20</p> <p>declined (1) 152:21</p> <p>decrease (6) 75:20;77:3,12; 107:12,12;173:8</p> <p>decreases (1) 60:3</p> <p>decreasing (1) 235:12</p> <p>deemed (2) 242:21;250:9</p> <p>defense (1) 42:9</p> <p>defer (1) 64:20</p> <p>deference (1) 246:6</p> <p>deferring (2) 216:4,5</p> <p>defined (1) 137:4</p> <p>definitely (3) 183:2;186:12;240:21</p> <p>definition (5) 99:18;100:5,6;231:6, 8</p> <p>definitionally (1) 231:20</p> <p>definitions (1)</p>	<p>158:7</p> <p>definitively (2) 200:10;203:20</p> <p>deflect (3) 54:18,25;55:11</p> <p>deflected (1) 28:15</p> <p>deflects (1) 55:8</p> <p>degree (1) 229:5</p> <p>delay (1) 8:11</p> <p>delegation (1) 17:18</p> <p>deliver (3) 228:12,13;271:12</p> <p>deliveries (12) 9:9;53:21,23;117:8; 125:18;128:16;132:24; 135:13;171:10;228:12, 21;268:5</p> <p>delivering (1) 109:18</p> <p>delivery (15) 90:2;119:3;123:14, 21,22;125:18;132:25; 133:5,13;177:8; 180:15;182:10,10,15; 183:19</p> <p>demonstrate (1) 262:9</p> <p>demonstrated (5) 68:5;160:16;196:4; 262:23;263:4</p> <p>demonstrates (1) 71:8</p> <p>denied (1) 250:8</p> <p>density (2) 251:5,9</p> <p>Department (8) 48:2,4,12,24;49:7; 136:8,12;231:3</p> <p>depend (4) 104:16;106:23; 111:15;225:1</p> <p>Depending (7) 110:9,10;179:1,25; 180:4;181:25;186:23</p> <p>depends (5) 107:3;122:4;178:24; 179:10;180:18</p> <p>depict (1) 97:19</p> <p>depicted (1) 79:2</p> <p>depositions (2) 272:19,21</p> <p>deprived (1) 24:24</p> <p>derived (1) 161:14</p>	<p>describe (1) 56:12</p> <p>described (2) 47:4;57:3</p> <p>describing (4) 56:18;100:12;167:3; 189:5</p> <p>description (3) 33:18;56:21;248:24</p> <p>design (18) 30:3;31:11;55:4; 63:20;68:8;75:8;79:14; 132:6,8;137:22;142:4, 9,18;143:21,24;150:7; 228:5,24</p> <p>designate (1) 214:9</p> <p>designated (4) 251:8;252:2;253:6, 12</p> <p>designed (10) 46:21;75:20;77:2; 79:15,16;85:1;124:7, 14;132:5,7</p> <p>desirable (4) 209:13;242:20; 265:11;266:10</p> <p>despite (2) 193:15;243:6</p> <p>detached (1) 265:25</p> <p>detail (3) 11:20;39:23;179:6</p> <p>detailed (1) 40:6</p> <p>details (1) 179:24</p> <p>determination (4) 153:9;160:14;164:8; 172:11</p> <p>determine (5) 75:8;123:15;169:22; 258:7;262:22</p> <p>determined (6) 48:7;143:16;159:15; 187:9;188:24;244:1</p> <p>determines (1) 51:12</p> <p>determining (2) 160:14;260:4</p> <p>detract (1) 172:12</p> <p>develop (3) 115:11;116:23; 132:19</p> <p>developed (2) 260:1;261:18</p> <p>developers (2) 115:10,13</p> <p>development (11) 109:15;227:17; 252:12,18;253:13; 254:25;255:1;256:2;</p>	<p>259:20;260:16;261:16</p> <p>device (1) 252:14</p> <p>devices (2) 77:3,6</p> <p>diagram (2) 58:16;236:3</p> <p>diagrams (1) 149:8</p> <p>diameter (4) 50:10,10;51:12; 52:15</p> <p>diameters (1) 52:6</p> <p>diapers (1) 207:18</p> <p>die (1) 197:11</p> <p>differ (3) 158:12;160:7;178:17</p> <p>difference (29) 100:2,13,14,25; 104:12;111:1,14; 159:11;161:19;162:16, 21;163:6,13,22;164:3, 14;165:15;166:6; 179:1,10;183:2,3,4; 185:9;186:8;248:20, 22;262:19,24</p> <p>differences (1) 164:9</p> <p>different (29) 102:16;119:18; 129:5;151:21;159:11, 12;160:18;161:3,16; 169:16;173:4,9,9; 182:3;186:15,20; 187:9;189:9;190:21; 194:16;195:10;198:11; 204:15;206:12,23,23; 214:1;226:22;235:23</p> <p>differs (1) 88:12</p> <p>difficulty (1) 117:21</p> <p>diligently (1) 222:24</p> <p>dimension (1) 52:6</p> <p>dimensions (1) 188:9</p> <p>diminishing (2) 121:21;185:1</p> <p>dining (1) 219:17</p> <p>direct (17) 19:25;26:15;43:1; 67:6;69:25;83:12;97:8; 99:21;113:15;119:15; 148:11;157:8;175:7; 192:15;206:2;213:2; 226:14</p> <p>directed (4)</p>	<p>30:14,17;56:1;63:13</p> <p>directing (3) 43:13;46:8;69:11</p> <p>direction (1) 238:4</p> <p>directly (17) 27:11,13,16,22; 30:25;38:6,7;40:2; 43:21,22;46:6;48:23; 51:4;73:9;152:7;199:2; 216:23</p> <p>directs (3) 49:4;69:8;70:6</p> <p>dirtied (1) 207:20</p> <p>dirty (1) 192:18</p> <p>disagree (3) 52:16;237:25;266:15</p> <p>disagreement (2) 82:8,24</p> <p>disapproval (1) 262:4</p> <p>disapproved (2) 261:23;262:7</p> <p>discharge (6) 39:21;70:11;77:3,16; 79:25;201:5</p> <p>disclosed (2) 92:5;145:19</p> <p>discuss (1) 10:20</p> <p>discussed (6) 28:24;86:2;89:25; 90:3;149:23;273:25</p> <p>discussing (2) 86:14;128:3</p> <p>discussion (1) 117:2</p> <p>disease (1) 62:7</p> <p>disjointed (1) 259:19</p> <p>dispose (1) 219:13</p> <p>dispositive (1) 143:20</p> <p>dispute (1) 260:18</p> <p>disregard (1) 126:22</p> <p>distance (7) 38:13,14;191:10,15, 17;234:22;264:21</p> <p>distinction (8) 100:10;159:13; 160:12;161:19;163:5, 15;164:2;165:25</p> <p>distinctions (1) 166:15</p> <p>distinguishing (1) 157:14</p> <p>disturb (2)</p>
--	---	---	---	--

<p>34:24;222:17 disturbance (3) 60:2,15;186:10 disturbances (1) 187:15 disturbing (1) 187:12 diverted (1) 73:8 divide (1) 68:4 divided (1) 74:5 diving (1) 107:5 divisibility (1) 155:10 division (4) 148:22;232:1,23,24 dock (1) 125:13 docks (1) 116:16 document (3) 15:20;148:25;201:1 documents (3) 14:10;20:24;149:10 Don (2) 7:15;66:12 Donald (3) 8:20;96:6,10 done (39) 13:16;14:5;32:12; 54:22;56:20;66:24; 67:2,3;79:4;87:3; 93:19;94:18;95:1,2,3, 5;101:14,15;103:24; 107:25;111:19;118:19, 25;123:22;128:21,24; 133:14,19;144:5; 170:13;183:24;184:21, 22;190:24;194:10; 201:21;220:22;249:20; 272:23 door (11) 85:23;86:4;90:9; 106:10;125:19;132:17, 18,19;169:23;214:22; 215:16 doors (2) 132:16;194:24 double (2) 89:17;191:16 down (61) 18:23;26:8,24;27:16; 28:22;29:19;30:5,7,24; 35:21;36:6,9,12;37:10; 38:1,39:6,13,15,21; 44:1,2;46:9,11;52:2; 60:8;63:12;65:4,5; 83:24;105:12;119:4; 134:17;156:10;167:3; 168:11,13;170:9;</p>	<p>185:18;189:8,13; 191:14;192:18;200:20; 201:10;206:21;221:7; 223:21;227:8;228:13, 13,18;247:3;249:18; 255:11;258:4;260:20; 263:11;264:24;266:12, 12;268:7 downhill (1) 41:8 downward (4) 37:11,11;44:21,23 DPS (2) 49:25;230:10 Dr (26) 7:4,19;205:15,16,19, 21,23,25;210:10,11; 211:5,7,8,10,17,21; 213:8,14;214:1,8; 215:19;220:20;243:9; 263:15,23;266:23 drafting (1) 148:17 drag-out (1) 264:17 drain (7) 68:23;69:6;70:4; 71:6;74:9,22,23 drainage (42) 27:24,24;40:8,23,24; 41:1,24;42:11;43:16, 18;67:13,16;68:1,4,6, 15,22;69:8,11,17; 70:18,20;71:5,12,13; 72:4,19;73:4,13,14; 74:1,5,25,25;75:4,5; 76:14,20;80:7,14,23; 200:10 draining (1) 69:4 drains (1) 39:7 dramatic (1) 151:8 draw (4) 180:6;195:5,6; 267:19 drawing (5) 31:4;42:15,19; 200:25;234:7 drawings (1) 149:5 drawn (1) 178:23 drinks (1) 131:10 drive (36) 10:18;28:20,22; 29:23;30:3;35:4;39:8, 9;55:18;58:13;60:8; 106:11,13,15,20; 110:21,21;117:3,7,8, 19;125:19;126:10,11;</p>	<p>133:5,9;138:6;151:23; 170:15;174:25;189:25; 223:24;227:2,3; 241:20;244:10 drivers (1) 190:2 driveway (22) 7:23;19:7;27:25; 28:13;29:16;35:23; 40:17;46:23;52:13,17, 17;55:14;57:10;64:4; 65:6;196:8,14;197:5,7; 221:5;223:22;249:1 driving (2) 153:17;260:15 dropping (1) 83:24 drove (1) 110:24 due (2) 17:22;200:20 dump (1) 189:20 dumping (1) 151:2 dumpster (9) 7:22;8:5;52:19,23; 68:12,13;121:15,16,18 Duncan (1) 7:17 during (27) 10:24;14:14;15:16; 17:10;20:2;24:10;82:1, 2;92:6;94:8;139:16; 145:21;178:13,15; 181:10,12,17;183:10; 184:12;186:16,16; 187:4;194:6;245:17; 268:4,4,5 Dutch (1) 62:6 duty (6) 213:18,23;224:23; 225:2,10;267:3</p>	<p>easily (2) 85:24;194:7 east (12) 30:12;85:5,14,25; 86:4;87:17;153:10; 154:19;174:25;215:5, 5;236:7 easterly (2) 36:15;43:24 eastern (10) 30:16;34:19;35:22, 22,25;36:1,4;88:18; 155:3;227:2 easy (2) 136:25;219:12 economic (47) 99:15,17;100:1,3,5, 10,12;101:1,4;102:7; 105:2,17;157:14,21; 158:4,6,19;159:4,6,12, 14;160:13,14,15; 161:13;162:17,18,22; 163:2,10;164:19,22; 166:4;168:20,22; 169:3;172:9;173:12, 25;206:17,24;241:15; 242:3,6;262:16,19,25 edge (7) 37:9;38:15;45:7; 60:11;87:18;191:11; 195:25 edges (2) 170:2;255:16 editorial (1) 148:21 effect (6) 44:14;70:19;83:22; 98:20;107:1;275:6 effective (4) 36:13;87:6;232:8,14 effectiveness (1) 68:16 efficient (2) 219:12,18 efficiently (1) 220:4 effort (2) 8:8;35:19 egress (1) 89:20 eight (10) 30:12;52:1;79:11; 137:24;138:15;139:6, 9;183:10;193:12,12 either (23) 13:15;34:23;36:5; 52:5,8;62:10;64:11; 107:12;124:13;139:18; 140:13;141:10;149:21; 160:14;161:16;171:11; 180:16;206:14;230:3; 253:5;256:15,23;259:7 elaborated (1)</p>	<p>110:2 elderly (10) 254:5,13,19,22,25; 255:5,9,17,21,22 elected (2) 8:3;209:9 electronic (5) 11:14;271:4,16,17, 20 electronically (2) 11:11;16:9 elevation (11) 36:7;40:1;45:10; 47:11,12;83:22;87:20; 88:2,15;155:3;193:13 elevations (1) 149:8 elevators (2) 85:10;86:2 eliminated (1) 7:25 eliminating (1) 211:14 elm (3) 62:5,6,7 else (16) 7:7;10:4;12:25; 57:25;141:18;154:8; 172:15;179:19;197:23; 198:7;206:13;211:15; 225:16;249:9;274:3,18 email (4) 11:18,20;12:22; 230:25 emanating (1) 132:16 emergencies (1) 9:8 emergency (12) 109:20;119:8;125:6; 128:25;129:1,3,18; 130:1,2;134:3,6,8 emission (1) 190:21 emitted (1) 127:10 employee (1) 213:10 employees (8) 213:7;214:5,10,13; 215:17;216:13;219:12; 221:7 empty (2) 105:24;106:1 emptying (1) 182:11 enacted (1) 17:15 enclosed (1) 129:11 enclosure (37) 20:21;26:21;27:10; 29:22;31:24;51:20;</p>
		E		
		<p>earlier (7) 57:4;77:8;85:3; 169:16;177:20;213:5; 217:7 early (3) 13:21,22;263:17 easement (23) 29:15;56:6;58:5,5; 195:17,20,21,22,24; 196:10;197:4;198:1, 21;202:1,4,7,11; 260:16,23,25;261:2,3,7 easements (1) 260:19 easiest (1) 177:24</p>		

<p>68:12;129:7;140:15; 141:12;151:21;179:14, 15;216:8,14;217:5; 218:3,12,22;219:1,8; 220:14;221:3;226:19, 24;228:6,10;234:8,10; 240:4;244:12,12; 269:15,24;271:22; 274:11;275:3</p> <p>Enclosures (3) 135:5;179:16;217:10</p> <p>encroach (1) 54:14</p> <p>encroaching (1) 29:17</p> <p>end (34) 11:5;30:6;44:10; 51:21;55:15;59:15; 61:12;74:4;89:11; 106:19,20;111:9; 127:25;129:16;138:6, 7;151:22;167:4;179:2, 3;181:7,13;183:8,13, 13;185:5,25;188:16; 189:1;197:15;209:19; 243:7;263:8;266:11</p> <p>ended (1) 26:17</p> <p>ending (1) 183:7</p> <p>ends (4) 29:22;35:22;37:24; 158:9</p> <p>enforceable (2) 122:11,19</p> <p>enforced (3) 122:5,12,19</p> <p>enforcement (2) 122:9;123:6</p> <p>engineer (10) 7:15;33:18;42:7,11; 67:11;113:6,22;115:6; 175:10;201:7</p> <p>engineered (2) 70:11;79:3</p> <p>engineering (7) 67:13;68:14;113:7,9; 114:18;142:6;176:23</p> <p>enhancement (1) 244:18</p> <p>enhances (1) 235:12</p> <p>enhancing (2) 235:11;244:20</p> <p>enough (19) 12:12;16:25;21:14; 22:3;31:18;36:9;64:5; 78:2;147:11;151:9; 178:10;185:8;194:25; 209:22;216:3;222:6; 233:7;241:1;273:10</p> <p>enter (3) 181:9,17;202:16</p>	<p>entering (1) 181:14</p> <p>enters (1) 43:23</p> <p>entertained (1) 36:20</p> <p>entire (3) 36:11,14;232:1</p> <p>entirely (1) 60:6</p> <p>entirety (2) 237:10;238:2</p> <p>entitled (4) 15:6;57:13;63:1; 211:20</p> <p>entrance (6) 34:18;65:1;85:5,12; 86:4;89:10</p> <p>entrances (1) 85:4</p> <p>entry (1) 34:21</p> <p>enumerated (1) 236:14</p> <p>Environment (1) 136:12</p> <p>environmental (14) 29:4,10,13;31:12,19; 32:13;34:24;35:6,7; 55:20;57:11;75:8; 136:9;244:20</p> <p>Environmentally (2) 56:13;196:2</p> <p>equal (6) 98:20;189:22,22; 206:19;207:1;266:11</p> <p>equating (2) 189:22;203:11</p> <p>equipment (21) 116:19,21,24; 123:20;128:18,20,22; 130:1,4;135:7,12; 137:4;142:7;178:1,6, 24;179:11,21;180:5; 188:10;197:19</p> <p>equivalent (1) 74:16</p> <p>erected (1) 102:17</p> <p>Erin (1) 6:21</p> <p>eroded (1) 199:17</p> <p>erosion (6) 78:16;199:14,16; 200:16,20;201:8</p> <p>ES (1) 75:21</p> <p>especially (6) 94:23;129:2;162:5; 233:19;244:11;247:9</p> <p>essence (2) 77:25;248:25</p>	<p>essentially (9) 10:10;16:17;83:21; 87:11;94:22;100:24; 110:6;151:7;231:4</p> <p>establish (3) 6:6;29:18;56:6</p> <p>established (1) 19:17</p> <p>estate (7) 8:21;93:12;96:25; 97:6;99:23,24;126:16</p> <p>estimate (2) 111:13;178:17</p> <p>estimated (1) 184:1</p> <p>estimations (1) 184:23</p> <p>et (2) 39:15;245:22</p> <p>evaluate (8) 11:4;28:19;115:8; 126:23;163:25;171:21; 172:7;226:18</p> <p>evaluated (4) 136:10,11;266:17,20</p> <p>evaluating (5) 114:22;134:22; 171:22;173:5;186:4</p> <p>evaluation (7) 110:16;116:9; 126:22;128:21;152:10; 159:17;172:24</p> <p>even (52) 15:10;16:20;19:15; 21:12;27:12;29:21; 30:7;32:10;33:2;35:11; 40:16;72:22;77:9; 117:2;139:6;146:2; 150:7;153:15;158:13; 160:4;182:17;183:13; 184:12,13;185:7,24; 187:5,11,11;188:25; 193:11,14,14;195:8; 198:4,23;199:24; 203:6;234:18,18; 243:16;245:3,11; 249:17;251:25;253:7; 254:14,15;255:24; 258:7;262:9;267:22</p> <p>even-sided (1) 194:15</p> <p>event (16) 75:19,19,20;76:5; 77:1,2,17;79:9,12,16; 82:7;95:18;114:7; 174:15;182:8;232:19</p> <p>events (2) 76:2;77:4</p> <p>eventually (1) 77:16</p> <p>everybody (7) 12:25;33:12;207:8; 230:24;249:19;260:14;</p>	<p>273:23</p> <p>everyone (4) 24:7;119:13;242:10; 243:15</p> <p>evidence (16) 6:17;11:5;14:10; 199:14;201:13,19; 222:7;240:8;243:14; 260:2,17;262:24; 266:12,17,20;268:13</p> <p>exacerbate (1) 36:20</p> <p>exact (1) 74:24</p> <p>exactly (11) 11:3;96:2;101:21; 117:21;119:20;123:16; 131:11,13;140:25; 220:16;257:8</p> <p>exam (1) 42:10</p> <p>EXAMINATION (22) 26:15;56:17;67:6; 83:12;87:2;97:8; 113:15;119:15;135:25; 137:16;138:10;148:11; 153:3;157:8;167:18; 175:7;192:15;206:2; 210:4;213:2;224:18; 226:14</p> <p>examinations (1) 268:22</p> <p>examine (2) 8:23;14:9</p> <p>Examiner (50) 6:16;9:19;10:12,19; 12:3,11,17;13:1,6,15; 14:7,8,12;15:4,14,25; 16:16,24;17:12,13,18, 22;18:5;21:17;23:24; 24:22;51:18;53:1;70:1, 21;95:6,10;96:3;114:3; 127:1;140:20;148:16; 152:25;172:20;174:19; 175:14,21;230:6,13; 246:3;249:14;252:18; 263:10;271:6;275:22</p> <p>Examiners (1) 258:9</p> <p>Examiner's (2) 15:24;18:10</p> <p>examining (2) 57:15;63:4</p> <p>example (7) 29:22;73:6;86:9; 134:12;198:16;225:3; 251:5</p> <p>examples (2) 217:9;237:19</p> <p>exceed (3) 132:2;178:9;186:1</p> <p>Except (7) 9:8;144:13;167:2;</p>	<p>170:18;182:10;198:7; 247:7</p> <p>Exception (20) 63:5;107:25;115:16, 17,22;126:5;165:16; 230:4;241:17;247:9; 250:8;253:5;255:5,10, 18;256:23;257:1,2,3; 259:8;260:13</p> <p>exceptional (1) 251:2</p> <p>exceptions (9) 114:23;248:9,10,12, 15;250:2,16;255:15; 257:24</p> <p>excessive (2) 248:14;250:9</p> <p>exchange (2) 230:25;231:6</p> <p>exchanges (1) 262:16</p> <p>exclusive (2) 257:7,11</p> <p>excuse (15) 17:8;90:16;99:4; 125:2,14;131:14; 132:22;144:15;160:25; 177:13;195:1,17; 203:15,15;251:2</p> <p>exempt (6) 119:8;120:5,5,8; 139:22;182:5</p> <p>exempted (1) 118:22</p> <p>exemption (1) 247:17</p> <p>exercise (3) 43:20;86:10;226:22</p> <p>exercised (1) 136:2</p> <p>exhaust (3) 125:9;130:6;189:2</p> <p>Exhibit (68) 8:7,10,17,19,21,22, 24;11:10,13,15,16,24; 15:23;16:10;26:22; 27:7;31:1,6,34;1; 37:13,19;39:4,22;40:4, 6,10,18,20,22,25;41:1, 4;46:25;50:20;58:20; 59:2;67:9;68:5;69:1; 70:14,17,22;71:4,8,18, 18,23;72:3;73:17;79:2; 80:6;88:19,19,20; 97:18;102:12,13; 113:1;114:15;175:22; 199:15;217:16,23,24; 218:16;219:2;226:24; 240:6</p> <p>Exhibits (11) 8:7;11:19,23;12:19; 13:5;80:16;239:11,13, 15;240:1;275:20</p>
--	--	--	---	--

<p>exist (1) 255:15</p> <p>existence (3) 52:21;197:25;255:14</p> <p>existing (56) 43:21;64:2,5;69:9, 11,23;70:18;71:5,8; 74:20,21;75:3,6;78:16; 84:6;85:14;87:13;88:1; 89:1;90:5;97:11,13,15, 23;98:18;99:3;102:8; 104:3,4;110:17,22; 126:4,10,13;149:13; 169:5;170:13,20; 172:10;193:8,10,18,20; 195:2,19;196:25; 198:19;199:24;203:5; 204:3;230:15;233:6; 241:17;250:23;253:24; 260:13</p> <p>exists (5) 70:4;104:23,24; 235:22;246:21</p> <p>expand (1) 67:12</p> <p>expect (3) 79:10;179:7;187:4</p> <p>expected (3) 151:4;180:13;184:6</p> <p>expecting (1) 112:3</p> <p>experience (22) 63:20;69:10;96:2; 101:11,17;104:8; 146:8;176:22;178:6,7; 179:7;183:18;184:1, 23;207:7;213:8,11; 214:2;266:22,23; 267:1,7</p> <p>experiences (1) 221:1</p> <p>expert (31) 8:19,22;41:21;54:23; 93:2;94:14,23;95:3,22; 96:20;97:6;98:15; 112:3;113:3,3,11,12; 114:17,21;168:13; 172:3;176:1,8,12,22, 23;178:11,17;200:5; 201:19;262:25</p> <p>expertise (5) 41:24;96:24;113:21; 176:19;201:12</p> <p>experts (6) 17:1;93:3;206:23; 243:14;260:14;262:23</p> <p>explain (14) 10:1;25:13;28:19; 42:4;72:17;155:7; 158:3;163:22;177:18, 23;206:7;214:1; 216:10;270:10</p> <p>explained (3) 164:20;262:14,18</p> <p>explaining (4) 11:20;203:4;266:25; 267:7</p> <p>explanation (4) 7:11;158:8;163:24; 177:22</p> <p>explicates (1) 82:10</p> <p>explore (1) 101:9</p> <p>exposed (3) 68:17,23;217:4</p> <p>express (3) 84:16;263:14;269:7</p> <p>expression (1) 20:1</p> <p>extended (3) 87:13,21;88:2</p> <p>extends (1) 87:19</p> <p>extensive (3) 207:7;243:22;260:2</p> <p>extensively (1) 216:9</p> <p>extent (13) 17:24;19:4;21:11; 25:12;75:9;127:4; 150:6;155:9;179:17; 183:18;241:19;255:23; 267:4</p> <p>exterior (1) 125:6</p> <p>extra (1) 229:15</p> <p>extreme (1) 228:5</p> <p>extremely (2) 68:18;244:11</p>	<p>F</p> <p>façade (4) 27:14,15,21;259:24</p> <p>faces (1) 7:10</p> <p>facilitate (1) 255:19</p> <p>facilities (13) 98:1,12;101:21; 108:25;109:16;110:22; 150:20;197:15;198:7; 213:9;234:22;253:25; 264:3</p> <p>facility (63) 6:6;7:23;8:6;21:5; 27:25;28:11;39:13; 43:14;97:13,16,17,17, 22;98:20;101:21; 102:5;104:5,10;105:2, 14,17,19,22;106:3; 108:3,15,18;110:4,5; 127:23;128:5,6,10;</p>	<p>135:20,21;142:7; 152:6;153:11;167:14; 169:24;171:7;177:1; 183:22;194:9;195:1,8; 197:21;198:5;199:1; 203:17;209:10;218:4; 224:22,23;235:20,21; 236:17;242:9;245:11; 251:13,25;252:3;254:8</p> <p>facing (3) 68:18;83:22;243:16</p> <p>fact (34) 10:21;13:8;18:12; 25:2;32:12;35:19;69:5; 70:8;94:14,24;95:4,21; 97:5;116:22;118:3; 129:9;131:25;142:17; 152:13;181:22;188:21, 25;193:20;195:21; 244:5;245:1,23,24; 246:4,20;247:24; 266:2,3;268:11</p> <p>facto (1) 235:10</p> <p>factor (3) 89:20;197:24;260:3</p> <p>factors (2) 160:19;187:9</p> <p>facts (2) 158:22;197:18</p> <p>fail (1) 50:19</p> <p>failed (1) 199:6</p> <p>failure (1) 265:3</p> <p>fair (42) 33:20;34:2;67:5; 93:24;94:4;98:4;99:5, 6,9,11,11,25;100:3,10, 13;101:1;102:6; 128:23;130:12;147:11; 157:14,21;158:12,25; 159:1,12,16,21;160:7, 8,13,15;161:3,12; 162:17,22;163:10; 168:21;222:6;266:24; 267:16,16</p> <p>fairly (6) 121:9,11;136:24; 194:5,13,14</p> <p>fairness (2) 22:21;273:23</p> <p>fall (3) 77:15;79:24;232:21</p> <p>Falls (14) 6:11;47:21,24;76:7, 24;79:20;80:10; 155:11;208:6;247:11, 15,17;248:21;254:10</p> <p>familiar (10) 67:8;97:10,21; 113:17;116:1,4,18;</p>	<p>128:12;204:17;230:24</p> <p>familiarity (1) 114:22</p> <p>famous (2) 145:12,13</p> <p>fans (2) 125:10;130:6</p> <p>far (16) 19:13;30:6;43:14; 57:15;63:2;68:23; 82:22;117:23;158:7; 182:1;199:10;220:4; 235:25,25;236:2,4</p> <p>farther (3) 34:24;76:19;88:2</p> <p>father (1) 218:13</p> <p>favored (2) 265:7,10</p> <p>favorite (1) 27:3</p> <p>fear (1) 243:12</p> <p>fears (1) 243:8</p> <p>feasibility (1) 28:20</p> <p>feasible (3) 32:9;35:19;64:19</p> <p>features (1) 255:3</p> <p>February (8) 272:12,25;273:2,10, 18;274:7,9;275:18</p> <p>feedback (1) 55:2</p> <p>feeds (1) 74:25</p> <p>feel (13) 21:19;30:3;120:11; 140:25;149:20,23; 151:3,8;152:21; 153:16;186:17;192:6; 248:5</p> <p>feels (1) 24:22</p> <p>feet (66) 6:10;21:23;26:21; 28:3;30:12;38:9,18,25, 25;39:1,6,9,14;43:22; 44:1,6,9,10,12,13,15, 16;46:4,6,14,22;47:1, 11;50:11;60:10;68:3; 71:9,13;74:6,9,9; 76:20;79:11;80:2,20; 83:23,24;89:1;121:4, 16,19;134:16,17; 137:24;153:14;180:7; 184:9;188:20;189:2; 191:10;193:11,12; 198:18;200:24;203:8; 204:13;221:9;226:25; 243:18;244:6,7</p>	<p>Fellowship (1) 212:22</p> <p>felt (1) 23:4</p> <p>fence (28) 30:4,11;43:4;63:8, 11;179:23;180:8; 181:1;182:19;183:7; 188:2,21,23;189:7,10; 200:19;231:1,2,7,8,20, 22;233:7;269:17,19, 23;270:2,5</p> <p>fencing (1) 234:18</p> <p>fertile (1) 82:22</p> <p>few (11) 22:22;141:17;148:8; 186:15,16;214:12; 220:11,13;223:4; 253:15;273:5</p> <p>field (2) 70:5;78:21</p> <p>figure (4) 71:17,19;191:4; 231:17</p> <p>figured (2) 9:2;34:9</p> <p>figures (1) 74:16</p> <p>figuring (1) 163:9</p> <p>file (1) 146:2</p> <p>filed (3) 11:10;16:8;177:2</p> <p>filing (6) 11:8;15:6;16:8,10; 19:2;24:10</p> <p>final (6) 58:18;59:22;61:10; 79:3;145:20;165:2</p> <p>finally (1) 266:21</p> <p>find (12) 56:25;69:21;100:5,6, 16;115:11;119:20; 130:11;162:15;167:5; 252:18;268:2</p> <p>findings (4) 118:5;149:21;155:4; 265:21</p> <p>finds (2) 209:13;243:2</p> <p>fine (11) 34:1;143:9;144:10; 168:12,14;212:18; 224:8;241:12;260:23; 271:17;273:17</p> <p>fingertips (1) 267:25</p> <p>finish (4) 120:12;125:3;192:7;</p>
--	--	--	---	---

<p>221:16 finished (2) 7:20;174:15 fire (19) 32:3,4,6,11,14; 51:17;53:1,5,7,24; 54:1;196:19;224:1,2,5; 227:3,5,6;236:6 firm (1) 33:7 first (24) 8:13;16:8;29:3; 48:15;72:24;103:10, 22;116:14;140:14; 147:18;153:24;172:17; 194:3;208:11;213:4; 217:23,25;232:22; 241:13;245:18;253:21; 262:14;263:10,23 fit (5) 194:12;208:3;216:1; 228:19;231:8 Fitness (1) 97:23 fits (2) 194:9;250:21 Five (21) 38:25;43:22;50:11; 79:11;81:17;112:2,5; 140:4;178:25;179:12; 180:3,7;181:2,19; 182:18;183:2,6;212:4; 226:17;253:25;268:22 fix (3) 198:15,23;204:14 fixes (1) 198:11 flat (3) 46:17,17;200:2 flexibility (2) 228:9;232:7 flip (1) 77:5 floor (10) 7:24;34:5;83:24; 84:7,8;87:18;88:1; 89:1;109:15;148:9 flow (25) 40:8,25;41:1,24; 42:7;43:19;47:24; 48:17;67:24,25;68:24; 69:3;70:9;73:16;74:2; 75:16;76:1;77:12; 79:25;80:2,18;81:4,5; 199:24;201:14 flowing (4) 47:21;71:14;74:12, 17 flows (6) 67:17;68:7;70:18; 71:10,10;76:16 fly (1) 233:14</p>	<p>flying (2) 170:4;231:16 focus (3) 108:6;252:7;256:1 focused (2) 245:9;250:21 folks (8) 47:22;76:7;138:13; 142:12;194:18,19; 198:14;272:3 follow (2) 17:14;18:5 followed (1) 246:17 following (4) 9:6;111:8;254:4,4 follows (1) 246:3 follow-up (4) 25:1;124:11;138:12; 199:13 food (14) 90:1;117:8;125:18; 128:16;131:2,3,17,21; 132:1,24;194:25; 195:1,4;268:5 foot (25) 28:14;30:4,10;37:6; 39:2;46:13,16,18,18; 74:1,7,10;79:4;121:1, 22,24;138:15;139:6; 185:2;189:3;198:17, 17,21,22;204:11 force (1) 153:17 foreground (1) 200:17 forest (17) 29:15;30:1;56:25; 58:18;59:22;61:10; 62:14;152:15;195:24; 196:10,11;202:1,4,7, 10;222:18;227:25 forested (1) 196:2 forests (1) 56:6 forget (6) 100:17;104:22; 105:22;114:7;263:16, 20 forgot (2) 80:17;211:5 form (3) 41:7,8;104:22 Formal (2) 6:14;73:24 forming (1) 46:1 forth (11) 24:3;206:22;207:14, 19,20;208:7,22; 209:21;230:10;242:23;</p>	<p>245:20 Fortune (3) 254:3,6,20 forward (11) 11:2,3;17:25;18:3; 22:13,16;23:6;66:23; 146:21;147:6;227:7 found (8) 71:3;153:15;158:7; 159:7;186:18;241:18, 23;245:3 foundation (2) 98:6;101:10 foundational (1) 114:20 four (9) 44:15;50:11;81:1; 186:19;209:3;230:21; 232:19,21;253:25 frankly (1) 263:2 Frederick (1) 112:20 frequencies (1) 185:13 frequently (1) 117:4 Friday (5) 9:10,12;272:16; 273:12,12 front (14) 36:4,7;38:24;46:7; 80:22;87:15;132:25; 171:12;216:6;218:22; 227:9;235:20;257:21; 267:14 full (9) 96:9;112:18;142:9; 147:19;156:18;174:23; 192:9;205:20;212:21 fully (3) 142:4;143:20;170:20 function (7) 65:8;75:11,19;90:8; 121:18;201:7;261:5 functional (1) 233:4 functions (2) 198:5;201:6 fundamental (1) 28:16 fundamentally (1) 186:7 further (45) 6:15;7:23;16:16; 22:8;24:22;26:21;28:1; 29:18;30:7;31:13; 34:22;36:24;38:2;49:5, 6;51:6;54:16;58:14; 64:24;66:5;81:11; 82:10;91:12;109:24; 118:1;135:17;138:9; 144:15,20;151:9;</p>	<p>153:1;155:23;167:12; 174:6,17;179:20; 187:18;193:11;202:19; 211:3;235:5;244:7; 262:9;269:11;275:5 furthest (1) 46:3 future (1) 206:18</p>	<p>125:6;136:2;144:4 gentleman (5) 84:16;109:25; 163:14;177:20;268:9 gentleman's (1) 267:6 geographic (1) 76:13 George's (1) 128:7 Georgia (1) 147:22 Gerald (3) 8:19;174:19,24 gets (1) 185:18 Girard (179) 6:21,21;9:15;11:10, 18;14:2;22:24;23:4,9, 11,14;26:3,16;27:6; 28:18;31:7,22;33:5,11, 14,16,22,25;34:3,6,9; 37:14,20;40:5,11,22, 23,25;42:1;50:21,23, 25;59:8,10,16,19; 62:18;66:7,12,21;67:5, 7;70:12,16,25;71:22; 72:10;81:13;83:6,7,13, 25;84:3,21;85:2,15; 89:9;91:14,17;92:19, 25;93:6,15,18,25;96:6, 18;97:9;98:10,22;99:8; 101:8;102:11,18; 105:6,11,14;111:24; 112:1,5,8,12,13,15; 113:1,6,16,19;114:19; 115:25;118:14;120:6; 126:12;130:9,13,20,22; 131:9;135:24;136:23; 137:13;138:18;141:25; 142:2,15,19;156:1; 165:10,21;166:9; 168:17,19;171:18; 172:8;173:10;174:9; 176:11;187:23,25; 191:21;200:4,9; 202:25;203:1,3;205:6; 210:8;212:2,6,12,15; 213:3;215:20;219:6; 221:15;222:8;223:25; 224:6;225:20,25; 226:2,5,15;228:24; 229:7,14,17;233:17; 234:5;235:13;239:4,7; 241:9,12;263:10; 269:1,12,14,17,24; 270:2,5,10,18,22; 271:12,22;272:1; 273:12,14,17;275:2,6, 16 Girard's (1) 15:15 Given (26)</p>
---	--	--	--	---

<p>13:8,12;22:24;24:19, 25:46;20:63;3:85;8; 89:10,23;90:5;128:25; 129:2,3;161:11,12; 175:18;178:1;183:25; 206:19;213:17;245:23; 258:4,4;263:13;266:14</p> <p>gives (3) 13:1;98:4;272:11</p> <p>giving (5) 15:5;165:8;176:3; 266:13;274:7</p> <p>Glad (1) 66:17</p> <p>glare (1) 30:25</p> <p>Glen (1) 106:15</p> <p>goal (1) 60:5</p> <p>God's (1) 76:2</p> <p>goes (15) 20:22;41:9;45:21; 46:12;67:18;80:4,8; 98:6;164:23;172:16; 185:17;191:14;200:1; 260:11;267:8</p> <p>golf (48) 30:18;47:21,24; 48:16;51:8;69:4,9; 70:9;72:20,21;73:9; 74:17;75:17;76:7,12, 16,17,21,24;77:13,16; 78:6,19,23;80:4; 155:17;195:18,22; 199:11,17,21;200:16; 201:10;230:7;231:1, 13,13,15;233:2,11,11, 14;234:1;242:7,8; 245:10;247:12;251:21</p> <p>golfers (2) 233:23;251:16</p> <p>Good (24) 9:23;19:12;23:5; 29:2;31:11;55:15,18; 57:11;60:16,16,16; 66:16;75:10;104:15; 140:25;141:21;192:4; 194:10;208:23;212:16; 221:10;226:3;232:10; 247:6</p> <p>goods (3) 85:11;86:1;90:1</p> <p>governed (1) 230:8</p> <p>Government (1) 270:24</p> <p>governs (1) 81:25</p> <p>grade (27) 29:19;30:6,8,9,11,20, 24;35:20;36:6,9,12;</p>	<p>38:1,12;41:10;43:11, 24;46:8,11,22;58:24; 60:10,12;65:3,5;68:23; 89:1;189:6</p> <p>graded (5) 41:9;43:13,15,15; 68:19</p> <p>grades (1) 60:8</p> <p>grading (13) 29:17;35:19,21;41:7; 42:2,4,11;43:1,4,20; 69:5;85:6;90:23</p> <p>grandchildren (1) 209:25</p> <p>grass (1) 73:21</p> <p>gravity (1) 71:10</p> <p>gray (1) 214:16</p> <p>great (7) 26:25;171:13; 243:23;244:15;249:20; 259:24;275:23</p> <p>greater (5) 75:4;76:1;77:4; 121:17,19</p> <p>green (1) 71:20</p> <p>grocery (1) 190:22</p> <p>GROSSMAN (641) 6:2,16,25;7:6,9:17, 23;10:15;11:6,16; 12:14,25;13:10,25; 14:15,22,24;16:2,6; 18:8,12;19:6,9,19; 20:12,17;21:4,7,19,24; 22:2,7,11;23:8,10,13; 24:11;25:22,25;26:2,5, 7,12,23;27:1,3;28:5; 29:6,9;30:15,21;31:3,5, 9;32:8,17,21,23,25; 33:4,13,15,17,20,23; 34:2,4,8,11;35:1,24; 36:1,24;37:18,21; 38:12,17,20,23;39:17, 20;40:9,21;41:1,3,12, 15,19,22;42:3;43:7; 44:17,25;45:3,9,12; 46:24;47:3,7,17;49:11, 14,20;50:4;51:18,23; 53:1,5,11;54:1;56:7,9, 16,20;57:2,14,18,21; 58:16,20;59:1,9,12,18, 20;61:13,15;62:21; 63:2,22;64:6;65:11,13, 15,24;66:3,6,8,11,14, 15,16,18,21;67:21; 69:15,20;70:3,23;71:2, 16;72:7,11,14;74:12, 15;75:13;77:8,18,20,</p>	<p>24;78:13;81:12,15,17, 21;82:9,15,19,21;83:1, 8;84:2,19,23;85:16; 86:18;88:22;89:4,6; 90:18,20,22;91:7,9,12, 15,19,22;92:1,9,12,15, 24;93:5,8,17,21;94:2,4, 13,19;95:2,7,11,15,18, 21;96:4,8,12,17,23; 97:2,4;98:8,14;99:6,10, 19;100:2,9,17,21,24; 101:3,7;102:12,24; 103:3,9,12,14,17; 104:15,21;105:9,15,22; 106:1,13,17;107:7,14, 17;110:1,9,11;111:23, 25;112:1,4,6,11,14,17, 21,25;113:5,7,9,14,18, 20,24;114:1,4,6,10,12, 14;115:3,15,18,21,24; 118:15;119:14,24; 120:9;121:3,6;122:13, 17,22;123:3,10;124:3, 9,17;125:3;126:14,21; 127:11,16,20;130:17, 21,24;131:1,8,12,16, 20,23;132:10;134:12, 20;135:18,23;136:21; 137:10,12,14;138:1,5, 8,17;139:11,23;140:3, 5,9,19,24;141:5,9,16, 18;142:23;143:1,10, 15;144:3,14,18;145:1, 10,14,22;146:5,7,11, 18,21;147:5,11,15,24; 148:3,7;153:2,20; 155:24;156:3,5,9,14, 17,22,25;157:2,5; 158:19,23;159:1,4,9, 20,24;160:6,10,24; 161:7,17,25;162:10,20; 163:4,9,17,23;164:2,5, 8,11,16,25;165:4,7,11; 166:1,3,13;167:13,17, 21,23;168:1,15; 171:19;172:14,23,25; 173:3,24;174:1,5,10, 12,22;175:1,5,16,23; 176:13,15,18,21; 178:16;180:14,23; 182:2,7;184:16;186:2; 187:19,21,23;191:22, 24;192:1,4,8,12; 196:13,18;197:5,8; 199:5,19;200:8,11,21; 201:2,11,18,22;202:20, 23,25;205:7,9,11,14, 19,23;206:1;208:15, 17;209:7;210:3,6,9,12, 14,16,19,22;211:1,4,7, 9,16,18,22;212:4,7,11, 13,16,17,18,20,24; 214:15,18,20,23;215:2,</p>	<p>4,7,11,13;217:16,21; 218:1,3,6,9,12,15,20, 25;219:5,21;220:7,17, 19;221:12,20,24;222:3, 6,11,14;223:1,7,11; 224:10,14,17;225:16, 18,21,23;226:1,4,6,11; 227:15;228:1,4,17,23; 229:1;230:12,23; 231:24;232:3,6,12; 233:13,16,19,25;234:4; 235:14;236:2;237:16; 238:3,7,9,25;239:2,5,8, 17,19,24;240:11,18,21, 25;241:6;245:13; 246:5,10,13;248:8,16, 19;249:8,11,16; 251:20;256:6,11,18; 257:3,16,25;258:13,23; 259:1,4,17;261:10,14, 21;262:1,3,6;263:13; 264:2,5;265:10,16,19; 266:16,19;268:17,20, 25;269:2,6,10,13,16, 22;270:1,4,6,9,12,20, 23;271:1,8,10,15; 272:2,6,10,14,17,22; 273:2,9,13,15,18; 274:4,6,13,14,23; 275:5,8,14,17,23</p> <p>Grossman's (2) 54:10;111:8</p> <p>ground (8) 36:14;50:1,12;71:10; 180:7;193:14;205:4; 231:9</p> <p>Grove (1) 156:21</p> <p>grumpy (1) 8:12</p> <p>Gude (1) 174:25</p> <p>guess (38) 12:16;22:8;30:7; 32:23;34:19;42:8; 48:13;49:24;52:16; 64:12;72:19;73:13; 76:6;105:10;113:3; 123:13;124:11;131:24; 138:12;141:20;142:10; 143:22,22;144:5,16; 160:12;162:10;172:20; 215:9;222:12,13; 226:16;231:16;233:8; 257:18;258:3;268:10; 271:13</p> <p>guessing (1) 39:23</p> <p>guide (1) 252:14</p> <p>guideline (2) 246:2,17</p> <p>guidelines (7)</p>	<p>29:13;31:12;245:20, 24;246:5,6,9</p> <p>guy (1) 146:18</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>Habib (1) 254:9</p> <p>Habib-Sororra (1) 255:12</p> <p>Haddonfield (3) 217:20;218:18;219:1</p> <p>Hal (2) 7:13;83:7</p> <p>half (10) 47:11;50:11;71:9; 87:5,5;134:18,18; 146:13;191:18;228:21</p> <p>hallway (1) 234:7</p> <p>hand (7) 96:13;112:21; 147:24;175:1;204:9, 11;236:3</p> <p>handle (7) 9:24;79:13,16;248:3; 269:20,20;271:12</p> <p>handled (1) 195:5</p> <p>handles (1) 82:17</p> <p>hands (1) 7:8</p> <p>happen (8) 9:14;15:1,22;16:19; 17:9;161:11;196:9; 221:11</p> <p>happened (12) 8:14;13:16,21,22; 15:7,18;24:5,24;33:8; 142:19;260:19;263:7</p> <p>happening (3) 15:21;16:17;24:16</p> <p>happens (1) 185:14</p> <p>Happy (3) 66:10;96:19;238:5</p> <p>hard (8) 11:15,21;16:9; 140:24;168:10;271:3, 11,16</p> <p>harm (2) 18:19;19:22</p> <p>Harvey (12) 8:22;112:16,17,19, 19,24;113:3,17; 114:20;124:20;127:4, 16</p> <p>Harvey's (2) 113:1;114:14</p> <p>hate (1) 112:1</p>
--	---	---	---	---

<p>head (4) 19:4;49:25;109:3; 171:2</p> <p>headlight (2) 30:13,25</p> <p>headlights (3) 46:16;63:18;235:3</p> <p>heads (2) 268:16,18</p> <p>healthy (1) 66:17</p> <p>hear (21) 6:17;65:23;69:21; 92:20;120:11;127:6,9, 12,13;161:5;166:13, 14;180:9;188:2; 200:14;210:25;211:1; 220:24;244:8;256:19; 267:11</p> <p>heard (37) 7:7,16,18;11:5; 16:24;19:2;67:11; 69:16;85:5;90:14; 92:18;93:9;98:7; 146:25;147:2;163:16; 165:14;177:19;194:17; 208:19,20;213:5,5; 229:8;243:23;259:21, 23;263:2,5,24;264:7, 21;267:1,10;268:3,9,23</p> <p>hearing (76) 6:3,12,15,16;10:20; 12:4,5,9;13:1,12,15,15, 19;14:7,8,12,14,20; 15:1,4,4,9,13;17:11,18; 18:13;20:3;22:12; 23:17,24,24;24:2,19, 21,22,23;25:1,7;26:19, 20;41:4;49:15;61:11; 62:13;82:1,3;83:16; 95:6,10;100:1;127:7; 142:12;148:16;152:25; 172:17;199:15;206:22; 207:14;218:16;219:2; 221:17;230:6,13; 240:6;245:18;246:3; 249:14,15;252:18; 258:9;266:24;267:13; 271:5;273:22,25; 275:25</p> <p>hearings (10) 14:9;15:16,17;24:10, 16;57:4;115:16,16,17; 221:16</p> <p>heart (1) 8:12</p> <p>heartily (1) 222:19</p> <p>heavy (3) 180:17;189:18,19</p> <p>height (35) 36:8,17,22,23;37:6; 44:15,16;50:11;64:22;</p>	<p>87:24;121:16,17; 137:1,19;138:23,25; 140:14;142:22;150:10; 151:14;153:14;154:14, 22;170:11;185:3; 188:20,23;193:15; 205:2;231:2,22;235:7, 8;243:19;251:1</p> <p>heights (3) 179:1,10;188:10</p> <p>Hello (1) 212:17</p> <p>help (5) 12:17;116:23;127:1; 128:19;151:25</p> <p>helpful (2) 121:21;249:21</p> <p>helps (1) 235:8</p> <p>Henning (10) 8:19;174:20,22,24, 24;175:4,9,18;176:11; 191:25</p> <p>Henning's (2) 176:21;263:3</p> <p>hesitant (1) 127:8</p> <p>high (10) 65:4;101:22;104:1; 106:25;108:20;158:8; 178:24;179:3;185:25; 250:4</p> <p>high-end (1) 101:15</p> <p>higher (14) 30:9,20,24;39:11; 46:4,8;72:2;121:4; 161:16,18;185:2,6; 193:12;225:9</p> <p>highest (4) 158:10;180:22; 183:6,8</p> <p>highway (1) 249:5</p> <p>hill (3) 46:12,12;96:10</p> <p>historic (1) 218:21</p> <p>history (2) 114:21;238:3</p> <p>hit (2) 185:15;233:16</p> <p>hits (1) 185:17</p> <p>hitting (1) 188:25</p> <p>hmmm (2) 90:16,20</p> <p>Hold (6) 70:23;113:18; 156:22;217:21,21; 267:16</p> <p>holiday (3)</p>	<p>270:21,23,23</p> <p>holidays (1) 119:3</p> <p>Home (10) 97:16;111:9,10; 162:12,13,14;203:15; 209:5,19;218:21</p> <p>homeowner (1) 143:24</p> <p>homes (4) 104:9;108:25; 111:11;207:7</p> <p>honest (1) 23:5</p> <p>Honestly (1) 92:19</p> <p>hope (4) 36:23;114:11; 152:19;211:12</p> <p>hopefully (1) 273:3</p> <p>hospital (1) 225:4</p> <p>hour (2) 140:7;146:13</p> <p>hours (6) 9:13;119:1;186:15, 16,16;187:5</p> <p>house (17) 97:25;98:11;104:17, 17,18;106:10,12; 118:7;122:10,24; 123:2;160:3,4;206:20, 22;220:3;243:18</p> <p>houses (14) 101:15,15,16,18,20, 22,24,24,25;102:1; 104:12;106:19;207:1; 216:24</p> <p>housing (28) 229:20,21,25;230:1, 2,236:14,15,21; 238:15;247:5,6,8; 253:3,22,25;254:5,13, 20,21,25;255:4,9,17, 20,22;256:21;258:10; 259:6</p> <p>hundred (1) 76:20</p> <p>hundreds (2) 101:14;237:5</p> <p>hundredth (1) 68:21</p> <p>hydrant (1) 224:5</p> <p>hypothesizing (1) 120:7</p>	<p>73:18;123:17;234:10; 250:22;251:14</p> <p>identical (3) 106:18,19;111:11</p> <p>identification (3) 41:5;218:17;219:3</p> <p>identified (9) 6:9;9:21;10:16; 12:24;15:14;128:15; 133:24;135:12;202:5</p> <p>identifies (3) 217:17;242:25; 253:24</p> <p>identify (6) 6:19;37:13;59:1; 74:23;132:12;217:12</p> <p>identifying (1) 217:23</p> <p>ignoring (1) 260:12</p> <p>illumination (1) 63:16</p> <p>imagine (2) 171:14;207:14</p> <p>immediate (1) 202:10</p> <p>immediately (1) 195:12</p> <p>impact (87) 19:17;25:17;31:24; 33:3;35:5;43:12;53:12; 64:11;67:1;76:9;86:5; 99:3,15,17;100:7; 102:6,6;105:2,3,16,17, 17;106:4,22;107:8,8; 110:6;111:3;114:24; 115:8,12;116:13; 119:5;122:24;123:2; 134:23;143:24;149:21, 22;150:24;153:7,8; 155:3;162:12,24; 163:17;164:16,22; 165:15;166:6;168:5,9; 169:3;172:9;173:6,12, 25;186:4,7;193:19; 194:21;196:3,6; 197:11;200:17;203:16; 206:17,24;211:11; 221:25;223:18;228:1, 5;233:14;234:12; 241:15;242:3,10,14; 244:20;247:24;250:21; 251:16;261:17;262:11; 263:1,4</p> <p>impactful (2) 170:24;171:1</p> <p>impacting (1) 199:2</p> <p>impacts (28) 25:17;34:24;60:5; 84:12;98:2,13;104:24; 116:9;117:16;118:7, 11,13;137:8;155:11;</p>	<p>163:19;164:13,17; 171:15;173:5,14; 194:20;195:10;198:3; 199:1;204:10;233:10, 10;248:6</p> <p>impeded (1) 32:3</p> <p>impermissible (1) 20:4</p> <p>impermissibly (1) 17:19</p> <p>impervious (2) 73:1,1</p> <p>impinging (2) 32:13,14</p> <p>implementation (1) 255:19</p> <p>implication (2) 127:5;166:6</p> <p>implications (2) 150:21;226:20</p> <p>implied (1) 119:15</p> <p>implies (1) 131:11</p> <p>implying (1) 168:21</p> <p>importance (1) 252:9</p> <p>important (8) 67:19;227:24; 241:17,22;244:14; 245:8;267:11;268:14</p> <p>importantly (2) 247:4,8</p> <p>imposing (3) 206:20;207:2;243:10</p> <p>improper (2) 25:5;120:12</p> <p>improve (4) 7:25;8:9;77:11,19</p> <p>improved (1) 142:5</p> <p>improvement (5) 21:14,15;72:5;77:21; 180:11</p> <p>improvements (8) 19:13,16;55:22;56:3; 58:4;97:11;170:20; 244:16</p> <p>inability (1) 198:25</p> <p>inch (5) 30:4,11;51:5,5;52:7</p> <p>inches (8) 21:3;39:9;50:10; 52:1,15,15;68:9;72:23</p> <p>include (3) 132:15;141:10;177:8</p> <p>included (2) 176:6;213:10</p> <p>includes (4) 59:24;117:11;</p>
--	---	--	---	---

239:21;253:24 including (9) 48:2;201:4;208:5; 243:21;254:7,9,25; 257:6;259:12 inclusive (3) 186:23;248:25;257:7 incompatibility (2) 203:12;243:7 incompatible (1) 234:21 inconsistent (4) 229:18;250:9; 251:20;258:7 incorporate (1) 252:12 incorporated (1) 145:9 incorrectly (1) 203:7 increase (7) 75:16;76:23,25; 154:14;173:8;182:23; 185:3 increased (8) 28:7;47:24;48:17; 76:11,14;234:22,23; 247:10 increases (1) 60:3 increasing (3) 53:12;54:10;107:9 incredible (2) 252:8;268:8 indeed (3) 11:9;15:10;60:25 indicate (3) 26:22;250:2;251:18 indicated (9) 20:13;38:8,16;59:21; 153:8,24;154:4;213:8; 250:20 indicates (2) 163:12;197:14 indicating (1) 140:21 individual (1) 198:11 individuals (1) 148:23 indoors (1) 130:17 industry (1) 115:8 infeasible (1) 198:16 infiltrate (1) 77:7 influence (1) 168:4 information (24) 11:14;55:1,2;75:1; 80:17;123:15;124:13;	125:20;132:15,16,22; 141:21;142:12;158:17; 159:19;178:1,11; 183:25;184:18;187:14; 264:8,14,22;265:4 informed (2) 86:23;135:13 in-ground (2) 68:19,22 inherent (9) 128:5,13;199:1; 261:5,8,12,22,22; 268:12 initial (1) 72:3 initially (1) 269:21 injured (1) 190:9 inlet (2) 74:9,10 inlets (1) 74:24 inquired (1) 51:18 inquiry (1) 98:7 inside (5) 64:16,19;127:24; 129:17;131:8 insight (1) 85:7 instance (4) 18:24;125:10; 245:21;246:4 instant (1) 184:5 instead (4) 35:12;75:13;78:4; 181:24 institutional (2) 104:11;105:20 insure (1) 137:7 intellectual (1) 164:6 intend (1) 172:6 intended (7) 111:5;171:24;172:1, 2;236:22;248:3;257:11 intense (2) 253:13;256:2 intensity (2) 73:25;74:4 intensive (1) 254:17 intent (6) 100:7;196:23; 232:23;237:4,7;238:1 interchange (1) 85:21 interest (2)	177:21;233:21 interested (2) 66:22;164:12 interesting (5) 62:7;204:8;263:7,16; 264:6 interior (1) 201:4 Internal (6) 99:12;100:11; 149:17;151:19;197:12, 16 interpret (3) 164:13;258:5,5 interpretation (3) 173:6;249:6;258:2 interpreted (1) 246:10 interpreting (1) 246:6 interrupt (1) 42:17 intersection (1) 6:11 into (58) 14:10;17:23;29:14; 30:18,25;31:16;35:6; 39:7;41:9,17;43:19,21; 46:11,11;54:14,16; 57:15;59:23;64:3; 69:11;71:11;72:22; 73:15;76:11;78:24; 81:5;85:7;86:24;87:2; 89:20;90:1;100:4; 121:15;123:14;129:9; 133:10;142:2;145:9; 147:2;158:7,17;162:8; 185:18;188:4,8; 202:16;204:5;220:5; 226:16;227:3;231:16; 233:17;234:16;240:3, 8;246:24;247:2;257:5 intrigued (1) 118:15 introduce (1) 14:10 intrude (1) 195:19 invalid (2) 17:16;18:6 inventory (3) 50:20;51:4,11 investment (3) 158:5;159:15;206:14 involve (1) 160:18 involved (3) 125:9;190:7;213:15 involvement (1) 148:13 iron (1) 200:19 issue (37)	8:12;17:23;19:10; 21:10,22;25:18;82:17; 101:23;104:6;141:25; 142:2,15,21;143:16,19, 21;153:15;162:16,22; 166:10;173:9;215:23; 216:8;223:7;230:7,9; 232:19;234:15;239:11; 241:16;242:3,11; 244:1;247:7;248:22; 262:13,21 issued (2) 6:14;60:18 issues (23) 14:13;18:17;31:25; 32:2;36:17,22;48:5; 50:2;93:12;116:15; 117:14;136:11;187:17; 207:21,21;208:2; 217:6;222:25;235:5; 250:19;260:5,6;264:7 items (2) 232:19,21	justification (1) 237:11 justifying (1) 19:22
K				
Kaufman (56) 6:23,23;9:16;10:6, 22;11:9;22:23;23:2; 25:21,22,24;26:1; 70:21,24;81:14;91:8; 94:7,10,17,25;95:5,8,9, 13,16,25;140:1,4,8,17, 20;141:3,8,13,17; 142:18;143:8,13; 156:2,4,8;166:11; 174:7,11;222:9;226:3; 228:24;229:5;240:23; 241:5,11;270:7,25; 272:25;274:2,5				
Kaufman's (1) 245:7				
keep (5) 27:1;60:5,6;190:14; 206:22				
keeper (1) 244:24				
keeping (2) 232:11;273:20				
keeps (4) 45:20;84:24;235:2; 264:24				
kept (4) 216:15;217:5;243:9; 263:11				
killer (2) 263:6;268:12				
kind (42) 12:11;13:11;46:20; 50:15;56:21,25;57:3; 62:7;71:18;100:8; 107:3;140:11;142:11; 143:16;144:4;145:3; 158:8;162:13;178:1, 23;181:5;183:17; 184:25;188:5,11; 189:3;190:20,25; 193:9;197:21;198:5,8; 200:3;209:16,17,18; 225:7;234:16;247:14; 248:1;264:22;268:3				
kinds (8) 21:18;102:1;103:25; 104:12;179:15;213:25; 221:9;254:17				
Kip (1) 148:24				
kitchen (2) 85:11;90:2				
kitchens (1) 109:16				
knew (1)				
J				
James (2) 7:20;192:10				
January (6) 6:15;13:22;148:15; 149:1;271:4;272:10				
Jersey (8) 212:23;216:21; 218:7,8,8,15,19;219:1				
job (5) 192:4;194:10; 211:24;249:20;262:21				
jobs (1) 178:6				
John (4) 254:1,6,12,19				
joke (1) 263:9				
joking (1) 113:10				
Josh (6) 7:13;26:3;222:24; 224:6;225:24;253:7				
judgment (9) 158:15,16,18,21; 159:22,24,25;169:19; 188:12				
judgments (1) 246:22				
jump (4) 26:24;146:17;147:2; 226:16				
Jumping (1) 260:4				
junction (1) 93:9				
jurisdictions (1) 176:7				

24:6 knocked (1) 200:19 knockout (1) 264:17 knowledge (2) 48:19;131:25 known (2) 161:23;229:1 knows (1) 95:25	latitude (1) 63:3 Laurel (1) 212:23 law (26) 12:5,9;14:3;15:11, 12:17;13,15,16;18:5; 29:15;30:2;82:6,10; 120:7;144:1;171:21; 172:6;173:16;220:11; 227:19;246:7;252:11; 265:5,6;266:14;268:11	113:24,25;114:8; 123:10,12;124:10; 138:11,19;139:21; 141:20;142:1,10; 143:22;144:13,21,22, 23;145:6;153:2,5,19; 167:19,20;176:15,17; 187:19,20;202:20,22; 210:4,5;221:21; 222:13,14,15;229:13; 237:17;238:9,10,12; 249:23,24;250:7; 251:23;256:8,14,18; 257:2,15,18;258:3,18, 25;259:2,16;271:15,17, 25	154:16;171:9;179:13; 180:13,21;181:9,11,20; 182:22,24;183:5,6,8,9, 9,10;184:4;185:5,6,8, 186:11,18;187:6,10; 193:14;201:12;205:4; 215:16 levels (27) 127:9;129:4;132:3; 133:12;134:24;141:1; 177:14;178:3;180:22; 181:5;182:15,16,20; 183:23;184:1,4,7,11, 13;185:25;186:5,8,9, 10,22;191:17;213:25 liability (2) 207:8,9 liar (1) 267:14 license (1) 96:19 licensed (1) 8:21 licensure (1) 42:10 lids (1) 216:14 lie (1) 114:11 life (4) 206:15,18;209:17,22 light (10) 144:21;150:16; 167:18,23,25;193:21; 203:20,25;211:11,11 lighted (1) 193:24 lighting (3) 63:16;194:2;232:25 lights (15) 30:10;63:11,12;64:1, 4;102:22;103:1; 107:20;193:19;194:23; 203:13;204:2;207:4; 217:1;221:2 likely (4) 181:4;184:11; 185:23;243:7 limit (5) 224:22,24;225:13; 253:8;258:21 limitations (2) 252:21;263:17 limited (4) 9:9,11;191:8;199:24 limits (3) 60:2;231:2;235:9 line (83) 21:3;28:4,6;29:12, 18;30:5,9,17,18;31:16; 38:25;40:2;41:9;42:14; 43:10,25;45:22;51:5, 20;58:12,15;59:23;	60:1,5,12;63:9;67:15, 23;68:3,19;120:18; 121:22;122:2,3,6,10, 12,19,20,25;124:4,23; 129:3,20,21;133:13,23; 134:2;169:13;177:6,6, 12;178:9,22;180:4,6,8, 13,25;181:7;182:17; 184:6,9,12;186:20; 189:8;190:17;191:4,6, 9,12;204:13;207:22; 208:7;227:2,24; 234:23;236:6;243:18; 244:6,9;269:18;270:3 lines (6) 41:7,8;71:19;101:23; 106:25;170:7 linked (1) 248:10 Linowes (2) 6:21,23 Lionel (1) 7:19 list (7) 8:18;11:17;49:20; 176:6;232:4;253:24; 257:3 listed (9) 91:16;92:10;114:15; 229:22;231:23;232:20; 238:18;255:24;257:12 listened (1) 220:20 litany (1) 195:10 literally (2) 15:24;21:3 literature (2) 163:12;191:2 little (36) 8:11;39:11;42:8; 43:17;46:4,7,8;64:20; 66:9;76:18;135:24; 136:4;137:21;151:10, 25;165:8;191:13; 193:23;196:20;198:6; 199:11;209:24;213:6; 215:17;226:22,25; 228:8;235:19;236:2,2, 4;259:19;260:4; 271:14;274:15;275:5 live (5) 169:21,23;207:13; 208:1;217:3 Living (32) 6:3,7;97:22;102:5; 104:10;105:2;108:3, 15,25;109:16;111:12; 124:22;127:23,24; 128:5,6;152:6;177:1; 207:7;209:5;213:9,16; 219:16,16,17,22,25; 220:1,2;248:1,2;264:3
L	lawful (1) 18:1 Lawrence (1) 156:19 lawyer (1) 96:3 lay (1) 259:22 layers (1) 234:24 layout (7) 34:25;85:23,24;86:5; 90:13;126:9;151:21 lead (1) 151:12 leads (1) 215:16 leaf (1) 187:1 leaf-off (2) 193:8;194:6 leap (1) 8:14 least (24) 10:10;14:16;20:8; 24:17;44:13;46:22; 50:9;52:1;60:14;64:21; 93:9;121:18;163:16; 178:8;193:10;194:18; 195:2,3,7;200:24; 202:7;246:18;256:17; 272:7 leave (9) 22:15;27:17;46:17; 75:16;119:24;181:10, 17;227:9;236:24 leaves (1) 221:13 leaving (5) 16:7;35:11;181:14; 235:2;263:1 led (1) 244:22 LEE (89) 7:1,1,17;10:21,23; 40:18,20;47:17,19; 49:15,24;72:14,16; 74:15;76:4;78:1,3; 89:4,5;97:2,3;103:13, 14,15,19,21;104:15; 105:1,13;107:15,16;	Lee's (1) 229:8 left (10) 10:11,17;11:7;27:12; 42:15,20;85:19;128:2; 247:15;250:15 legal (9) 12:6,8,18;13:6; 17:21;138:14;221:24; 241:3;260:25 legally (1) 190:6 Legal's (1) 232:10 legislation (1) 237:2 legislative (1) 17:18 legislatively (1) 244:1 legislature (1) 242:20 legitimate (3) 82:24;92:16;98:14 length (5) 79:5;137:2;138:22, 25;140:14 less (15) 72:5,7,8;74:5;107:2; 129:21;134:4,4,10; 162:19;185:2;200:23; 209:24;225:11;228:15 lessen (1) 247:24 lesser (1) 155:9 letter (5) 11:19,21;12:11,23; 149:1 level (60) 34:17;36:23;54:19; 55:4;65:5;75:7;83:19, 20,24;85:11,13;86:6, 15;87:11,14;88:7,9,10, 12,13;89:25;121:1,23, 24;122:8,11;129:11,12, 20;133:22;134:1,13;	liability (2) 207:8,9 liar (1) 267:14 license (1) 96:19 licensed (1) 8:21 licensure (1) 42:10 lids (1) 216:14 lie (1) 114:11 life (4) 206:15,18;209:17,22 light (10) 144:21;150:16; 167:18,23,25;193:21; 203:20,25;211:11,11 lighted (1) 193:24 lighting (3) 63:16;194:2;232:25 lights (15) 30:10;63:11,12;64:1, 4;102:22;103:1; 107:20;193:19;194:23; 203:13;204:2;207:4; 217:1;221:2 likely (4) 181:4;184:11; 185:23;243:7 limit (5) 224:22,24;225:13; 253:8;258:21 limitations (2) 252:21;263:17 limited (4) 9:9,11;191:8;199:24 limits (3) 60:2;231:2;235:9 line (83) 21:3;28:4,6;29:12, 18;30:5,9,17,18;31:16; 38:25;40:2;41:9;42:14; 43:10,25;45:22;51:5, 20;58:12,15;59:23;	

<p>livings (1) 225:10</p> <p>LLC (1) 6:4</p> <p>load (2) 27:20;227:8</p> <p>loading (7) 116:16;125:13,14; 138:7;177:10;183:20; 247:1</p> <p>loading/unloading (1) 184:8</p> <p>local (2) 115:14,14</p> <p>locate (3) 197:15;198:7;220:4</p> <p>located (25) 6:10;51:14;68:13; 70:5;81:8;83:19;84:8; 85:14,23;104:12; 118:18;122:4;168:4; 195:11;197:19,22,23; 216:22,23;219:18; 247:1;253:20;254:13, 18;258:12</p> <p>locating (2) 52:23;219:8</p> <p>location (36) 31:20;42:18;53:18; 68:15;70:6;76:14; 84:11;85:10;86:14; 90:2;129:2,5,6;149:25; 150:4;151:16;152:14; 154:15;168:3;179:25; 185:4;223:16,19; 235:22;236:17;245:12; 247:22;248:4,25; 249:1;250:17;254:19; 258:15;273:21;274:11, 24</p> <p>locational (2) 102:2;103:25</p> <p>locations (6) 122:3;186:15,20; 237:1;254:5;259:11</p> <p>Lockland (6) 106:11,13,15,20; 111:10;205:21</p> <p>logic (1) 231:13</p> <p>logical (1) 243:4</p> <p>long (5) 24:19;95:9;175:11; 270:15;271:18</p> <p>longer (4) 21:9;24:17;152:23; 224:5</p> <p>long-standing (2) 173:6;245:23</p> <p>Longwood (2) 216:21,22</p> <p>look (56)</p>	<p>11:16;15:19;18:22; 19:11,15;24:14;35:18; 44:14;49:7;80:23; 81:23,25;100:7; 110:16;116:8,10,11; 132:17;137:21;140:14; 152:9,13;162:2; 168:24;169:4;172:1, 10;173:7,13,13,16,21; 179:6;185:11;193:22; 195:13;198:18;199:7; 200:23;201:23;206:12, 14;220:8;222:21,23; 238:5;246:20;252:10, 22,25;257:13,23; 259:13,19,20;262:21</p> <p>looked (20) 19:4;28:24;30:2; 35:4,16;48:6;100:4; 109:15;110:22,25,25; 117:2;149:4,6;202:8; 232:13;238:21;246:25; 258:1;270:13</p> <p>looking (30) 14:2,12;31:6;37:3; 55:3;58:16,18,23; 100:19,22;138:22; 143:22;163:1,6;169:3, 20;170:4;171:25; 178:21,25;180:1; 182:8,16;183:5,14; 229:25;238:14;253:19; 256:1;258:14</p> <p>looks (5) 47:20,23;131:6; 237:20;259:24</p> <p>lose (1) 227:10</p> <p>lot (36) 63:3;86:25;103:24; 111:15;127:25;142:5; 160:18;167:6;168:8,8; 169:16;170:7;183:12; 184:21;187:9;193:11; 194:16,17,18,19; 195:15;197:18,18; 198:16;206:12;208:4, 9;209:4,16;215:21; 247:6;250:21;259:23; 262:16,17;266:22</p> <p>lots (3) 253:14;259:21;274:1</p> <p>loud (8) 134:18,18;179:4; 182:13,25;183:1,11; 191:19</p> <p>louder (3) 183:12;184:14; 187:11</p> <p>lounge (1) 109:22</p> <p>lovely (1) 221:12</p>	<p>low (1) 179:2</p> <p>low-end (1) 101:15</p> <p>lower (13) 30:14;39:12;44:13; 45:10,24;72:3;106:19; 161:16,18;168:9; 183:13;199:24;220:9</p> <p>lowest (3) 77:2;158:11;181:7</p> <p>L-shape (1) 28:12</p> <p>luck (1) 66:9</p> <p>lucky (1) 209:22</p> <p>lunch (6) 9:2;140:6;144:19; 146:1;198:17;199:9</p> <p>luncheon (1) 145:21</p> <p>luxury (2) 208:13,20</p>	<p>245:11;251:21,24</p> <p>manufactured (1) 179:16</p> <p>many (15) 73:23;96:1;101:17; 108:14,17;116:14; 194:15;208:24,25; 211:12;213:22;220:25; 244:25;248:6;268:2</p> <p>Map (5) 253:23,23,24; 254:19;259:21</p> <p>March (1) 102:19</p> <p>marked (4) 41:5;67:9;218:17; 219:3</p> <p>market (54) 98:4;99:5,6,9,11,13, 24,25;100:3,10,13,20; 101:1,1,4,14;103:5,5; 106:5,24;107:4,4,5; 110:6,9,10;111:14,16, 17;157:14,15,21,23; 158:12,13,25;159:1,12, 13,16,21;160:6,7,8,8, 13,15;161:3,12;162:4, 17,22;163:10;168:21</p> <p>marketability (2) 106:22;107:13</p> <p>markets (3) 106:24;107:1,2</p> <p>Martin (1) 6:16</p> <p>Maryland (11) 6:11,12;112:20; 120:16;147:22;148:4; 156:20;174:25;192:11; 205:22;252:12</p> <p>masonry (35) 28:14;39:1;44:19,22; 45:6;54:18;65:14,15, 16,17;67:23;68:2; 117:11,25;118:2; 121:20;129:10,17; 138:3,4;139:3,19; 140:13;141:11;143:2; 151:2;180:5;188:3,6, 14,21;189:5;204:5,18; 243:21</p> <p>mass (1) 151:17</p> <p>massing (5) 151:11,13;153:13; 155:15;235:12</p> <p>massings (1) 149:8</p> <p>master (33) 209:8;229:19,20; 230:1;236:13,23; 237:4;242:22,24; 244:25;247:4,20; 248:9;249:25;250:10;</p>	<p>251:25;252:2,7,10,13, 13,20;253:2,9,13,15; 255:21;256:19;258:2, 15,20,24;265:12</p> <p>match (2) 47:5;75:10</p> <p>material (5) 15:25;16:10,11; 72:25;166:16</p> <p>materials (1) 243:24</p> <p>matter (12) 6:3;9:20;24:21; 49:25;52:18;95:17; 138:25;169:19;201:5; 220:25;237:12;268:11</p> <p>mattered (1) 188:7</p> <p>matters (4) 7:12;9:18;20:25; 176:7</p> <p>maximize (1) 17:20</p> <p>maximized (2) 194:11;251:15</p> <p>maximum (12) 75:9;142:22;158:6; 159:7;181:11,20; 184:4,11,25;185:3,23; 198:22</p> <p>may (66) 14:18;15:3,20;18:24, 25;19:12;23:23,25; 24:1,1,6;32:3;41:17; 42:17;53:10;77:22; 91:21;95:3;96:17; 110:6;119:7;125:7; 126:21;127:1;136:9; 143:9;146:3,14,14; 157:5;161:9,12; 162:12;166:17;175:5; 178:9,9;180:10;181:1; 182:5;184:10;185:12; 186:24;206:1;207:10, 13;208:8;213:18; 220:25;224:23;225:4, 6;239:9;240:13; 242:14;245:22;249:11; 250:8;254:7;255:18; 257:6;259:12;266:15; 272:15;275:3,3</p> <p>maybe (21) 21:17,23;25:12; 43:22;101:20;119:18; 128:20;165:24;178:25; 181:2;185:12;189:9, 10;193:10;207:11; 209:19,23,23;231:18; 247:24;271:19</p> <p>MD (1) 205:21</p> <p>mean (75) 28:5;30:21;38:7;</p>
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<p>39:17;78:8,18;79:15; 82:11,18;84:19;85:20; 86:21;89:12;90:10; 91:15;92:21;94:17; 104:17;105:7;109:1, 22;121:3,9;130:17; 131:18;142:5;143:15; 144:3,8,9;145:23; 163:21;170:5;174:2; 179:15;180:16,18; 184:11,17,20;186:7; 188:18,19;189:1; 190:6,12;191:7,8,16; 194:13;197:10,12; 200:9;204:14;205:1; 206:16;209:25;216:24; 221:7;230:23;235:8; 237:1,2;242:4,10; 249:11;250:25;256:11; 258:12,19;261:23; 262:13;270:10;271:13; 274:22</p> <p>meaning (2) 29:6;238:2</p> <p>means (5) 6:17;43:3;126:13; 209:10;262:23</p> <p>meant (6) 89:22;93:6;155:7; 209:12;215:13;252:24</p> <p>measure (2) 122:14;183:22</p> <p>measured (2) 183:15;184:3</p> <p>measurement (2) 139:15;190:18</p> <p>measurements (6) 186:14;190:15,21, 23,24;264:20</p> <p>measuring (2) 184:2;190:17</p> <p>mechanical (15) 116:14,14,19,21,24; 123:20,23;124:4,24; 125:1,9;128:18,20,22; 135:7</p> <p>medical (3) 109:17;195:8;256:4</p> <p>meet (28) 10:19,20;43:11; 115:14;118:18,20; 120:17;132:19;138:13, 20;139:7;142:18; 149:14;152:17,20; 154:12;172:9;178:12, 14;181:25;182:1; 185:8;232:3;242:17; 244:8;246:8;252:4; 253:22</p> <p>meeting (14) 10:22;11:12;117:14, 21;118:16;119:16; 132:9;152:22;153:25,</p>	<p>25;154:1,5,11;187:12</p> <p>Meetinghouse (1) 106:16</p> <p>meets (7) 22:20;45:22;135:6; 144:1;187:7;211:23; 258:16</p> <p>member (1) 148:4</p> <p>members (5) 13:15;148:19; 249:19,20,22</p> <p>memory (2) 6:8;50:18</p> <p>mention (3) 16:23;66:21;199:7</p> <p>mentioned (30) 10:18,24;16:12; 31:23;50:7;53:2;54:17; 58:12;61:23;62:24,25; 63:7;73:2,2,9;84:4; 103:24;107:21;128:5; 129:25;145:18;147:16; 188:5;196:7;197:10; 207:5;250:1;258:12; 274:25;275:2</p> <p>merely (2) 118:25;196:23</p> <p>met (7) 10:23;11:9;209:12; 244:4;245:4,21;246:23</p> <p>method (1) 73:22</p> <p>middle (9) 7:21;30:8;88:6; 92:22;145:11;154:23; 183:16;190:25;191:1</p> <p>mid-line (1) 68:2</p> <p>mid-part (1) 35:15</p> <p>mid-point (1) 83:21</p> <p>mid-section (6) 34:22;88:5,10,14,16; 154:16</p> <p>might (28) 15:22;64:1;66:24; 67:2;80:23;104:18,19; 115:12;117:21;118:16; 119:16;122:3,8;123:1; 135:7;138:23,23; 140:14;143:18;144:11, 11;161:11;162:9; 205:1;218:14;224:6; 259:9;275:1</p> <p>million (1) 104:18</p> <p>mind (7) 41:12;100:25; 159:21;177:19;211:8; 235:10;242:10</p> <p>mindful (1)</p>	<p>177:19</p> <p>mine (2) 167:19;226:13</p> <p>minimal (3) 184:20;233:4;244:11</p> <p>minimum (4) 16:16;17:9;18:4; 89:19</p> <p>minor (2) 244:10;274:10</p> <p>minus (1) 185:6</p> <p>minute (16) 16:7;56:23;74:2; 81:18;101:10;112:2; 128:19;140:2,4;147:9; 152:4;186:18;215:4; 234:6;242:2;265:6</p> <p>minutes (12) 22:23;112:5;141:17; 145:24;146:1,3,8,10; 212:4;216:17;219:14; 226:17</p> <p>miss (1) 42:12</p> <p>missed (1) 128:20</p> <p>mission (1) 225:8</p> <p>misstate (1) 127:1</p> <p>mistaken (4) 53:2,14;143:9; 173:23</p> <p>Mitchell (8) 7:15;66:12,14,15,16, 17,20;67:8</p> <p>mitigate (2) 115:13;244:7</p> <p>mitigated (2) 116:25;136:17</p> <p>mitigation (4) 188:2;189:8;233:9; 234:24</p> <p>mixed (2) 254:18;256:2</p> <p>mixture (1) 213:15</p> <p>model (1) 225:7</p> <p>modest (2) 180:11;181:2</p> <p>modification (3) 59:15;137:20;139:19</p> <p>modifications (7) 11:19;23:5;71:24; 81:24;141:10;234:11, 11</p> <p>modified (4) 8:3;29:25;240:2,9</p> <p>modify (4) 13:2;17:22;137:19; 233:3</p>	<p>modifying (2) 24:6;140:13</p> <p>moment (2) 175:14;223:17</p> <p>Monday (5) 9:9,11;270:20; 272:12,20</p> <p>money (3) 209:16,17,18</p> <p>Montgomery (11) 7:2;116:4;120:16; 123:5;129:24;177:15; 208:21;229:9,10,12,14</p> <p>month (6) 23:19;49:16;205:13; 208:13,24;209:25</p> <p>months (3) 61:9;149:13;263:9</p> <p>more (66) 24:25;26:21;28:8; 32:11;36:15;60:14; 61:24;73:8,9;75:1,14; 77:9;80:21;87:19;93:3; 102:5,6;104:10;107:1; 110:23;137:21;144:7; 150:7;151:25;158:4; 159:3;160:5;167:23; 170:24;179:6;180:2; 181:21,21;183:16; 184:21;186:10,23,25; 193:10;194:7;199:20; 200:23;201:8;203:8; 213:19;220:10;222:7; 224:7,25;225:5; 226:25;227:18;228:3, 8;232:7;234:14; 235:19;243:16;245:3; 247:8,19;251:11; 264:14;267:22;273:11, 16</p> <p>morning (11) 10:17;66:15,16; 117:3;157:10;188:4; 202:5;210:15;213:21; 222:17,22</p> <p>mortgages (1) 160:2</p> <p>most (9) 24:13;30:12,13;49:1; 51:13,13;129:15; 206:13;247:4</p> <p>motion (2) 15:5;23:24</p> <p>motions (1) 23:16</p> <p>motorcycle (2) 220:12;227:12</p> <p>move (30) 27:24,24;29:16; 30:19;31:13,14,15,17, 17;32:4,4;35:4;39:13, 13;43:21;68:1;86:3; 91:19;179:19;192:3;</p>	<p>196:15;220:17,22,23; 221:4,5,6;227:10,11; 230:16</p> <p>moved (12) 7:23;19:6;21:7; 27:13;64:4;68:10;87:9; 151:17,20;170:10; 196:14;226:7</p> <p>movement (7) 27:16,17,22;227:1; 240:4,4;269:15</p> <p>movements (4) 27:12,19;28:14; 227:21</p> <p>moves (2) 46:6;269:24</p> <p>moving (22) 8:5;23:6;28:20; 29:21;30:21,23;35:12, 18;55:17;64:23;85:4; 89:10;155:15;180:18; 196:6;223:17,19; 233:6;234:10;235:20; 264:24;274:17</p> <p>Mrs (5) 7:4;208:10;213:4; 215:19;220:20</p> <p>Mt (1) 212:23</p> <p>much (48) 20:19;24:17;51:14; 55:10,12;60:3;71:20; 78:2,2;79:20;80:9,15; 81:15;108:10,12; 110:22;113:13;123:16; 137:19;150:23;151:9; 153:12;156:5;169:9; 170:4;171:16;176:14; 184:14;188:19;189:6, 11;191:16;201:1; 208:5;209:14;223:15, 16;226:13,13;244:18; 247:25;248:5;250:14; 259:18;267:25;272:2, 4,5</p> <p>multi-family (2) 254:24;255:1</p> <p>multiple (1) 78:7</p> <p>must (4) 23:16;123:17; 252:18;265:25</p> <p>myriad (1) 125:9</p> <p>myself (3) 10:21;111:6;174:21</p>
N				
name (13) 6:16;96:9;112:18; 131:11,13;147:19; 152:20;156:15,18;				

174:23;192:9;205:20; 212:21 Nancy (1) 7:15 narrow (1) 247:15 narrowed (1) 9:13 National (1) 148:4 native (3) 29:25;156:20;218:11 natural (4) 50:19;51:3,10;56:15 nature (2) 110:18;116:17 near (10) 27:11,11;71:6; 177:11;178:8,9;184:9; 191:9,9;255:24 nearby (4) 109:7;192:24;266:5, 6 nearest (2) 68:10;129:20 necessarily (8) 39:11;79:10;110:3; 139:9;160:2,21; 161:13,23 necessary (15) 25:12;27:19;93:23; 94:15;135:7;137:20; 140:16;141:11;147:8; 149:24;198:5;230:18; 233:5,9;265:20 necessity (1) 119:9 need (31) 10:4;12:16;25:16,22; 27:22;33:7,12;37:13; 45:23,25;46:9,15;60:8; 65:5;118:5;135:11; 137:21;139:20;164:6; 199:7;224:5;228:11, 11,13;230:22;242:25; 246:23;269:17,19; 270:7;271:15 needed (1) 85:10 needing (1) 6:7 needs (6) 118:19;208:23; 225:1;228:15;246:17; 253:22 negative (4) 106:4;111:3;248:6; 261:17 neighborhood (11) 106:11;180:2;199:4; 247:13;250:24;251:7, 9,17;252:6;260:1; 266:2	neighborhoods (1) 168:25 neighboring (2) 150:25;152:2 neighborly (1) 31:11 neighbors (1) 221:10 neighbor's (1) 162:24 neither (2) 197:9;245:21 nervous (1) 271:14 net (11) 44:14;70:19;71:12; 77:20;83:21;230:7; 231:1,13;233:2,11; 234:1 new (60) 7:10;9:21;10:1,10, 11;11:8,10,14;12:15; 16:15,20;17:6;22:25; 23:2;37:4;38:20;40:4, 5,10,11,18,20;45:6; 48:17;49:1,3;57:6; 60:25;67:1;68:14; 72:21,21;87:11,20; 88:10,13;98:19; 106:21;117:24;149:7, 9;151:2,16;160:24; 193:19;194:1;204:18; 212:23;216:21;218:7, 8,8,15,19,23;219:1; 239:22,22;242:14; 275:20 next (20) 9:1;66:11;81:22; 83:6;104:9,12;106:10; 110:5;111:10;112:15; 144:16;156:12;162:19; 167:15;169:21,23; 192:1;198:8;221:18; 231:13 nice (3) 226:10;243:25; 271:18 night (8) 8:13;63:12;102:23; 181:12;182:1;186:17; 202:8;203:18 nighttime (4) 129:23;178:13; 187:4,6 nobody (2) 171:20;257:16 nod (3) 109:3,3;171:2 nodding (2) 19:5;265:21 noise (185) 8:22;21:22;28:15; 54:18,19,22,23,25;	55:8,11;92:12;93:2,11; 112:3;113:3,5,11,12, 21;114:17;115:12,14; 116:5,9,12,14,14,15, 25;117:14,15,21,25; 118:3,6,11,13,16,18,20, 24;119:6,16;120:15,16, 17,22,25;121:4,17,20, 21,22,24;122:5,8,9,11; 123:2,6,16;124:4,23, 25;125:21,24;126:4; 127:5,9;128:4,12,21; 129:7,11,12,19,20,24; 130:12;132:2,3,9,13, 16;133:12,23;134:2,22, 23,24,24,25;135:3,14, 19;136:5,9;137:8,19; 138:24;139:5,12,15,18, 22;140:10,25;141:22; 142:16,16,17;143:19; 150:21,22;151:1,4; 176:1;177:5,14,15; 178:3,10,12,21;179:4, 5,8,13,17;181:11,16, 18,19;182:20,22; 183:12,15,23;184:3,8, 11,15,20;185:9,10,22; 186:1,5,5,6,8,9,10,11; 187:1,3,6,6,8,8,11,12, 17;188:2;189:4,15,23; 190:14;191:5,11,14; 194:22;198:23;207:3; 217:1;221:2;244:1,2,2, 7;263:2,2,4;264:19; 267:25 noises (2) 182:11;264:21 nomenclature (1) 115:19 non- (3) 68:10;261:11;268:11 none (4) 98:5;106:4;256:5,5 non-erosive (1) 75:11 nonetheless (2) 22:9;261:2 non-experts (1) 260:14 non-inherent (5) 198:3;260:11; 261:24;262:6,10 non-major (1) 250:13 Noonan (11) 7:20;10:2;145:15,19, 24;192:10,10,12,14,17; 205:9 Noonan's (3) 7:21;145:11;234:8 normal (13) 17:4;74:9,10;75:19; 98:17;99:22;109:6;	110:20;111:4;134:15; 197:20;198:5;207:16 normally (4) 110:19;185:18; 220:1;225:5 north (21) 6:11;10:18;28:20; 39:8;45:18;51:3,8; 67:24;68:11;69:4;88:5; 90:24;154:23;155:17; 195:17,25;214:25; 215:8,10,13;254:10 northeast (10) 31:24;196:7;214:23; 220:8;221:4;223:3,20; 226:19;244:13;254:14 northeastern (7) 29:23;32:10,24; 34:25;51:4;53:3;240:5 northern (31) 27:15,21;29:7,11,23; 30:6,23;32:23;35:5,6; 36:18;37:6;43:10; 45:19;46:5;51:23,24; 52:14,20;55:15,20; 56:8;58:14;59:23,25; 60:1;61:24;63:13;65:2; 81:8;86:9 Northwest (4) 215:1,9;255:8,12 northwester (1) 71:7 northwesterly (2) 68:25;69:7 northwestern (5) 36:19;49:12,13;70:5; 71:14 Nos (1) 240:6 note (6) 8:16;23:21;82:10; 245:8;269:14;272:13 noted (4) 63:5;151:20;239:25; 242:18 notes (1) 146:20 notice (13) 6:14;15:5,6;24:3,25, 25;49:15,17;82:2,7; 139:15;141:6;267:17 noticeable (5) 155:17;183:2,14; 188:22;191:18 noticed (2) 49:23;102:12 November (2) 6:13;7:13 number (28) 18:2;31:6;40:9;41:2; 45:13;59:5,6,7;70:24; 80:12,17,22;87:5; 89:13,15;111:20;	142:19;194:10,11; 214:4;220:9;223:4; 224:23;227:13;235:4; 250:18,18;272:9 numbering (1) 12:14 numbers (11) 75:14;128:24;129:6; 162:6;175:15;179:20; 180:23;193:23;213:7; 214:5;217:17 numeral (2) 88:22,23 nurses (1) 213:20 Nursing (6) 97:16;104:10; 108:25;153:11;209:5; 213:16
O				
				oak (4) 51:5,6,16;62:4 oaks (6) 51:10;52:11,15,22; 54:15;62:9 oath (8) 26:13;66:19;83:10; 157:3;192:13;205:24; 212:25;226:12 object (12) 16:14;17:25;35:20; 91:23;92:6;139:14; 141:20;142:10;167:6; 176:11;239:12,15 objected (2) 34:10;171:20 objecting (4) 25:3,8;174:7,11 objecting (39) 18:20;19:23;20:13; 22:24;23:21;25:9; 33:10,17;42:5;62:18; 69:14,15;81:23;82:19, 25;83:2,3;84:15;97:5; 98:3,16;120:6;126:12; 130:9,20;136:22,22; 137:9;165:21;166:9, 14;200:4,13;210:15,16, 23;240:16;241:4;273:6 objectively (1) 275:9 objections (7) 114:7,16;176:15; 239:20,25;260:10; 269:8 obligation (1) 267:13 oblige (1) 66:10 observations (3) 13:14;15:24;18:25

<p>obvious (2) 22:18;36:16</p> <p>obviously (12) 21:10;107:11; 131:20;137:5;138:13; 164:19;188:12;193:25; 25:244:15;264:11; 270:13</p> <p>occlude (1) 122:3</p> <p>occluding (1) 122:1</p> <p>occupation (2) 175:9,11</p> <p>occupied (1) 170:5</p> <p>occur (2) 109:9;125:25</p> <p>occurred (1) 94:5</p> <p>occurrence (1) 13:17</p> <p>occurring (2) 149:12;155:15</p> <p>occurs (1) 194:2</p> <p>o'clock (3) 8:25;102:23;107:21</p> <p>October (1) 61:12</p> <p>odd (1) 60:10</p> <p>odor (2) 217:2;221:2</p> <p>off (36) 20:23,24;21:3;29:24; 43:2,3;49:5,13;50:11; 51:4,7,7;60:6;64:9; 81:19;85:19;102:25; 103:4;112:9;147:13, 16;190:3,11,13; 201:14;212:9;216:17; 218:22;219:14;229:16; 241:13;249:12;260:11; 261:19;268:18;269:3</p> <p>offending (1) 178:8</p> <p>offer (1) 221:13</p> <p>offering (3) 174:17;180:10; 227:18</p> <p>office (8) 13:7;123:6;141:9; 147:19;149:6;154:8; 203:14,15</p> <p>offices (1) 256:4</p> <p>officially (3) 274:6,8;275:18</p> <p>often (2) 136:2;261:12</p> <p>Old (1)</p>	<p>192:10</p> <p>once (16) 12:3,5,8;43:19; 86:19,22;108:4; 126:21;136:3;140:23; 141:8;171:20;227:7; 235:1,1;275:19</p> <p>one (108) 9:4;10:17;12:3; 15:12;21:1;23:15; 27:17;29:22;36:5;40:9, 11,13,15,16;42:9;45:4; 46:25;47:20;49:1,3; 52:8,14,24,25;55:2,19; 61:2;68:7;70:23;77:5; 78:6;92:13;95:2; 103:13;104:18;106:12, 19,20;109:1;111:11, 15;113:18;118:5; 128:8;129:7;133:20; 134:3;136:16;140:12; 141:13;152:12;153:6; 154:7;155:8,13; 156:22;167:23;168:20; 171:17;173:14;175:14; 177:25,25;178:7; 180:16;183:24,25; 184:18;185:1;187:4; 191:20;193:15;199:3, 13;202:6,12,15;203:1; 204:7,9;207:2,4;209:8; 211:5,6;216:4,6; 217:12,21,25;218:18; 232:22;233:20;234:6, 25;237:10;241:10,12; 246:24;247:13;260:5; 264:23;268:2,21,21; 269:12;271:20;272:20</p> <p>one-half (1) 183:1</p> <p>ones (9) 51:9;67:4;87:4; 128:15;188:6;232:14; 239:22;257:5,12</p> <p>one-year (1) 77:1</p> <p>ongoing (2) 210:15,16</p> <p>online (1) 232:11</p> <p>only (54) 14:19;15:1,12;17:25; 23:14;24:1,1;27:17; 36:10;40:13;41:10; 44:15;65:20;82:7;85:8; 99:12;102:15,19; 123:13,23;125:20; 130:3;133:4;146:24; 149:17;154:19;164:12; 171:11;172:1;173:16; 181:9;194:15;199:6; 200:1;225:2;231:6; 233:7;234:25;242:21;</p>	<p>243:16,18;244:5,7; 247:14;250:15;264:7, 8;267:1,1;268:4,6; 272:15;273:20;274:10</p> <p>on-site (2) 74:24;151:10</p> <p>open (8) 26:17;92:3;119:24; 222:12;258:9;270:22; 273:20;274:9</p> <p>opening (1) 172:17</p> <p>operate (3) 214:3;266:25;267:4</p> <p>operates (1) 48:12</p> <p>operation (10) 127:23;141:2,8; 151:1;197:16,21; 199:1;264:20;267:21, 22</p> <p>operational (11) 51:21;139:17; 194:19;196:24;197:10, 12,18,19;219:7,10; 261:16</p> <p>operations (5) 111:2;117:7;121:14; 194:23;268:1</p> <p>opine (1) 139:25</p> <p>opinion (23) 22:3;70:10;84:17; 98:4;101:17;102:9,16; 103:4,8;104:8;119:20; 120:17;135:18;137:20; 159:10;164:21;165:15; 166:5;184:22;192:22; 231:4;233:25;247:11</p> <p>opinions (1) 167:10</p> <p>opportunities (1) 206:19</p> <p>opportunity (15) 13:13,20;14:1;24:20; 25:6,15;42:6;165:8; 198:6;240:19,22; 249:13;263:14;269:7; 273:24</p> <p>opposed (6) 44:16;127:18; 178:14;189:12;242:13; 275:11</p> <p>opposing (1) 20:5</p> <p>opposite (1) 257:8</p> <p>opposition (8) 7:17,18;16:25;18:18; 25:14;93:19;153:18; 162:11</p> <p>opposition's (2) 92:22;93:4</p>	<p>option (5) 139:10,11;211:18; 226:18;254:21</p> <p>options (2) 34:16;135:5</p> <p>Orange (1) 96:11</p> <p>order (10) 13:2;118:20;134:8; 135:3;138:20;139:7; 143:25;196:15;217:22; 252:17</p> <p>Ordinance (33) 6:5;12:15;14:18,19; 18:3,6;24:14;39:3; 82:7,11,12;100:18; 116:5;117:15;118:16, 19,20;119:16;120:16; 122:5,9;135:3;139:18; 152:9;164:18,24; 173:20,22;174:3; 177:15;192:19;231:19; 262:22</p> <p>ordinances (1) 119:22</p> <p>ordinarily (2) 49:17;272:6</p> <p>organization (2) 147:4;267:24</p> <p>oriented (2) 51:3;197:17</p> <p>original (9) 15:6;22:13;48:1; 72:7,8;149:22;151:12; 154:18;197:2</p> <p>originally (3) 22:17;150:8;226:23</p> <p>ornamental (1) 234:19</p> <p>OSHA (1) 190:7</p> <p>others (1) 115:9</p> <p>otherwise (1) 65:20</p> <p>ought (2) 246:2,20</p> <p>ours (1) 44:1</p> <p>ourselves (1) 51:1</p> <p>out (59) 10:17;32:19;36:14; 43:15;49:15;51:10,14; 56:25;69:21;70:22; 75:12,24;77:7;80:24; 81:6;92:20;103:22; 109:18;111:20;119:20; 130:11;145:23;150:12; 162:15;163:9;167:5; 173:10;179:19;183:20; 185:4;186:13;191:4; 195:20;196:23;198:9;</p>	<p>199:7;214:22;215:16, 17;216:6,13;219:11; 220:1,2,6;221:8;223:9; 229:24;237:3,10; 250:5,10,14;253:1,1, 11;263:15,21;268:2</p> <p>outdoor (4) 127:25;129:16; 154:14;232:24</p> <p>outdoors (1) 128:2</p> <p>outfall (9) 43:18;69:6;70:4; 71:6;75:11;76:15;78:6; 80:8,22</p> <p>outfalls (4) 74:23;78:7,10;81:6</p> <p>outside (6) 60:2;109:21;243:22; 253:16,16,17</p> <p>outskirts (1) 243:1</p> <p>over (39) 23:18;24:14,17; 32:19;35:21;41:15; 58:5,6;62:19;77:7; 81:1;86:11,12;101:18; 119:12;128:7;140:6; 149:6;169:4;170:4; 175:13;182:22;184:7, 11,13;185:16,17; 188:25;200:19;205:1; 207:12;225:11,12; 241:1;246:2;247:6; 261:18;263:8;271:13</p> <p>overall (6) 77:21;84:25;193:15; 196:11;273:6,22</p> <p>overlap (1) 146:14</p> <p>overlook (1) 107:3</p> <p>overly (1) 84:18</p> <p>overrule (10) 25:9;42:5;69:20; 82:6,9,10;98:15; 136:21;166:14;200:13</p> <p>Overruled (1) 137:10</p> <p>overrun (1) 76:2</p> <p>overstepped (1) 55:5</p> <p>overwhelmingly (1) 251:9</p> <p>own (7) 62:24;87:7;133:20; 246:5,6,9;253:22</p> <p>owners (2) 20:6;49:21</p> <p>owns (2) 48:6;69:13</p>
---	---	---	---	---

<p>OZAH (5) 14:6;15:17;24:13; 82:6,12 OZAH's (1) 81:23</p>	<p>54:11 participants (1) 114:16 participate (2) 249:15,17 participated (2) 15:17;148:20 participation (2) 25:7;249:22 particular (16) 18:25;20:9;76:13; 109:1;110:3;114:24; 116:7;119:19;143:2; 162:22;236:17;242:3; 250:3;262:21;266:13; 267:20 particularly (4) 17:19;177:6;192:24; 194:20 parties (19) 6:19;8:11;9:5,24; 13:12,20;15:6;20:8; 24:3,6,19;25:2;49:16; 139:15;141:5;230:25; 270:16;271:5;273:4 parts (1) 247:13 party (3) 25:3,8;152:23 pass (2) 99:10;255:19 past (3) 94:25;167:9;241:24 patients (1) 87:5 pattern (2) 42:25;67:13 patterns (1) 200:10 Paul (47) 7:5,19,19;63:13; 64:2,8;80:19;107:22; 127:6;166:7;177:7; 180:1;186:14,21; 187:2;189:4;192:24; 193:19,24;194:21; 195:13;198:20;205:15, 16,19,21,21,23,25; 210:10,11;211:5,7,8, 10,17,21;213:8,14; 214:8;215:19;220:20; 243:9;259:20;263:15, 23;266:23 Pauls (12) 8:16;30:18;78:19,20; 83:23;120:18;200:17; 242:4;243:17;250:15, 22;251:7 Pauls' (68) 7:24;8:1;26:22;28:2; 31:1,16;37:8,10,12; 38:6,15;40:1,15;41:10; 42:14;43:1,25;49:5;</p>	<p>67:15,19,25;68:10; 69:4;70:18,20;71:8,11, 14;72:6;73:5;74:13; 76:15,17;78:4,22;80:3; 105:4,18;106:5,6,7,8, 14;111:3;118:7; 121:21;122:8;153:9; 167:15;169:9;170:17; 171:7;193:1,14;194:5; 196:3;197:20;198:4,8; 199:2;200:18;201:9; 203:19;204:19;235:3; 241:21;244:5;245:9 Paul's (3) 68:7,18;214:1 paved (4) 32:6;54:11;244:18; 275:4 pavement (3) 32:18;51:17;53:12 pay (1) 160:20 peak (3) 76:1;77:16,21 peek (1) 222:20 penalty (4) 96:14;112:23;148:1; 175:3 pending (1) 253:25 Pennington (9) 217:13;218:2,4,6,8,8, 15;219:1;264:20 Pennsylvania (1) 216:22 people (19) 17:2;36:21;107:2; 127:24;136:9;154:11; 167:3,6;181:24;190:8; 207:13;208:24;209:4, 16,21;210:1;237:4; 259:22;268:6 people's (1) 233:24 per (9) 74:1,6,7,10;117:7,9; 125:18,19;185:2 perceived (2) 182:24;183:1 percent (6) 60:6;71:12;209:2,3; 247:19;250:16 percentage (5) 76:23;79:24;80:10; 104:11;111:20 perceptible (1) 183:4 perception (1) 163:15 perfect (1) 194:15 perfectly (2)</p>	<p>33:24;46:17 perform (1) 165:23 performance (7) 185:10,11,12,14,20; 188:24;233:4 performed (1) 246:4 perimeter (1) 138:2 period (5) 15:16;77:7;92:6; 184:7;225:3 periods (1) 169:18 perjury (4) 96:15;112:23;148:1; 175:3 permanently (1) 231:9 permissible (4) 17:10;181:11,20; 267:19 permit (1) 14:19 permits (7) 14:20;230:3;253:4; 256:23,25;257:22; 259:7 permitted (3) 231:17;251:3;254:22 Permitting (7) 48:3,4,5,12,24;49:7; 231:3 person (4) 148:17;213:13; 224:7;237:1 personal (2) 213:9;266:25 perspective (2) 68:14;155:13 pertinent (2) 57:8,9 Petition (1) 6:5 phone (1) 149:16 phonetic (1) 254:10 photo (1) 217:24 photograph (4) 199:15;200:15,18; 203:22 photographs (2) 193:7,22 phrase (4) 87:13;88:12;255:7; 258:5 phrases (1) 255:4 physically (1) 204:25</p>	<p>physics (1) 55:5 pick (4) 27:16;179:24;237:3; 249:25 pick- (1) 132:23 picked (2) 216:16;237:9 picking (4) 76:13;109:19; 250:20;251:18 pick-up (8) 9:11;118:17,22,25; 119:21;133:21;139:16, 20 pick-ups (2) 125:17;128:16 picture (2) 149:11;218:23 pictures (1) 220:25 piece (6) 105:25;106:1; 143:25;167:3;187:14; 255:11 pieces (1) 130:3 Piney (1) 106:16 pipes (1) 200:24 pitched (2) 65:6;264:1 place (9) 32:9;142:7;156:20; 161:24;195:21;208:20; 209:6;243:5;255:21 placed (2) 104:9;234:20 placement (2) 238:15;241:20 places (1) 208:13 plain (1) 252:25 plan (98) 11:2,19;20:22,23; 27:8,9,9;30:1;37:15,17, 24;38:21;39:3;41:7; 47:4;48:22;52:22;54:9; 57:10;58:19;59:22; 60:19,19,25;61:8,10; 62:14,22;67:3;72:4,7,9, 21;74:22;117:11; 118:17;124:22;128:1; 139:1,5;141:23; 145:16;149:7,7,9; 152:15,18;179:9; 196:11;198:18;199:8; 200:24;204:18;209:8; 220:8;221:13,17; 222:18;227:25;229:19,</p>
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<p>20;230:1,19;236:7,13, 23;237:4,15;240:10,12, 13,20;242:23,24; 244:25;247:5,20; 248:10;249:25;250:10; 251:25;252:2,7,10,13, 13,20;253:2,13,15; 254:11;255:21;256:19; 258:2,15,20,24;265:12</p> <p>planned (1) 187:16</p> <p>planner (4) 7:16,20;41:21,23</p> <p>Planning (34) 9:7;24:4,8;28:25,25; 29:2,12,56:1;58:3; 59:14;60:17,61:3,11, 16,20;62:13;93:1; 148:5,15;149:19,24; 150:8;152:24;155:10; 222:20;229:5;230:10; 243:1,1;244:24; 245:20;251:8;257:13; 260:20</p> <p>plans (84) 8:3,10;9:22;10:1; 11:3,8,10,14,24;13:14, 18;16:15;17:6;18:16; 22:13,16,17,25;23:3,7; 24:7,7;47:25;48:1,2; 57:6,7,19;60:23;66:23; 67:1,3;86:19;87:1,3; 88:15;97:21;99:2; 109:14,15;110:25; 116:23;117:13;145:12; 149:13,18;150:1,16,17; 151:5,12,24;152:4,5, 10,14,20;154:18,20; 177:1,5,14;192:23; 205:17;206:9;219:9; 234:9;235:2;239:16; 240:3,13;241:4; 243:21;245:2;253:9, 14;254:16,17;270:16, 18;271:4;273:4; 274:11;275:21</p> <p>plant (3) 65:22;66:2,3</p> <p>planted (2) 205:5;231:9</p> <p>planter (1) 39:8</p> <p>planting (3) 39:1;60:11;230:17</p> <p>plantings (5) 28:3,7;33:2;233:8; 243:22</p> <p>plausible (1) 155:19</p> <p>play (2) 167:9;233:23</p> <p>please (28) 6:19;9:19;12:11;</p>	<p>21:3;82:23;96:9,13; 112:22,25;143:3,5; 147:25;155:7;158:3; 163:14;174:20,23; 175:2;177:18,23; 205:20;206:10;208:10; 217:12;230:8;235:16; 267:14;268:12</p> <p>pleasure (1) 10:3</p> <p>plopped (1) 105:12</p> <p>plot (1) 34:25</p> <p>plus (6) 28:3,3;30:12;48:2; 89:19;207:18</p> <p>pm (7) 9:10,11,12,13;119:1, 2;275:25</p> <p>point (70) 12:19;13:9;15:18; 18:14,23;19:12;21:1; 33:20;34:2;35:22;36:7, 9,15;39:3;40:12;41:7, 8;42:13;46:3,9,10; 47:1;49:13;52:3;53:1; 54:4;66:22;67:5,16,19, 24;68:2;71:6;78:17; 79:25;80:2,5,11;88:17; 92:16;94:4;136:16; 143:21;145:18;147:1, 10;152:25;172:15; 178:10;195:9,20; 198:9;199:7,14,23; 203:1;205:4;209:14; 216:20;235:1,2;245:7; 246:14,14,15;250:5,10; 258:17;259:4;264:23</p> <p>pointed (5) 173:10;250:14; 253:1;263:15,21</p> <p>pointer (5) 26:23;41:13;214:14; 226:9;239:10</p> <p>pointers (1) 239:10</p> <p>pointing (4) 37:24;45:4;196:23; 235:3</p> <p>points (7) 23:14;42:7;44:13; 118:1;177:21;230:21; 238:4</p> <p>poise (1) 266:11</p> <p>policies (1) 247:9</p> <p>policy (6) 87:7;245:23;246:1,1, 2;250:19</p> <p>ponding (1) 79:18</p>	<p>pop (1) 198:15</p> <p>portion (9) 70:7;83:19;87:17; 88:25;102:15;151:15; 154:19;198:19;209:20</p> <p>position (7) 12:6;180:6,7;221:22, 24;229:9;262:23</p> <p>positive (2) 106:4;233:12</p> <p>possibility (7) 85:4;138:24;139:17; 141:10;196:8,21; 211:13</p> <p>possible (9) 23:16;34:16;51:14; 120:19,19,20;170:19; 190:2,5</p> <p>possibly (1) 190:25</p> <p>posted (1) 102:13</p> <p>potential (16) 8:20;30:25;111:2,9; 140:12;141:19;178:8; 188:1;195:7,7;197:11; 201:8;204:10;207:3,4; 254:1</p> <p>potentially (3) 140:15;180:3;187:13</p> <p>Potomac (14) 6:4,9,10,12;97:23; 101:14,18;110:17; 155:12;205:22;254:2, 9;255:6,15</p> <p>power (5) 17:18;101:23; 106:25;129:8,8</p> <p>practicable (1) 75:9</p> <p>practical (3) 49:25;185:10;221:25</p> <p>practice (6) 14:16;15:14;16:12; 68:11;99:23;200:2</p> <p>pre- (1) 260:12</p> <p>precedence (1) 94:20</p> <p>precedent (6) 140:22;245:23; 246:1;252:9;255:1,15</p> <p>preceding (1) 140:22</p> <p>precise (4) 264:14,22;265:4,4</p> <p>preclude (4) 14:5;23:25;24:12; 52:22</p> <p>precludes (1) 24:10</p> <p>predict (1) 132:6</p>	<p>pre-hearing (1) 17:8</p> <p>prejudice (1) 25:2</p> <p>preliminary (3) 7:12;9:18;128:24</p> <p>premises (1) 200:13</p> <p>preparation (1) 199:15</p> <p>prepare (2) 70:13;149:3</p> <p>prepared (3) 40:8;71:23;148:25</p> <p>preparing (3) 97:25;98:11;148:14</p> <p>present (8) 16:20;55:22;62:13; 118:17,19;126:17; 157:10;172:5</p> <p>presentation (1) 16:19</p> <p>presented (4) 149:19;150:8; 257:16;268:14</p> <p>presently (1) 231:19</p> <p>presents (1) 231:12</p> <p>preserve (3) 52:14;232:25,25</p> <p>preserving (1) 233:2</p> <p>president (1) 7:2</p> <p>pressure (1) 129:4</p> <p>presume (2) 121:10;133:10</p> <p>presuming (1) 121:9</p> <p>presumption (3) 242:19,20;266:5</p> <p>pretend (1) 242:8</p> <p>pretrial (1) 17:7</p> <p>pretty (12) 26:17;37:11;151:9; 164:21;182:13;184:20; 194:2;200:9;232:10; 242:24;244:18;262:18</p> <p>prevent (1) 249:7</p> <p>previous (10) 27:9;68:5,17;71:24; 74:21;89:25;215:23; 234:14;241:13;251:25</p> <p>previously (14) 38:16;68:12,13;71:4; 83:9,18;84:8;87:22,23; 167:9;175:25;192:17;</p>	<p>236:9;239:19</p> <p>price (14) 158:5,10,10,11; 159:16,17,25;160:1,3, 4;161:22;162:13; 168:22;208:12</p> <p>prices (1) 209:15</p> <p>pride (1) 243:23</p> <p>primarily (5) 51:7;83:18;127:24; 151:10;188:8</p> <p>primary (9) 28:10;51:19;68:8; 75:22;93:7;139:21; 148:17;153:17;155:8</p> <p>Prince (1) 128:7</p> <p>printed (1) 40:15</p> <p>prior (6) 90:3;95:5,7;149:13; 151:5;164:20</p> <p>private (7) 213:18,23;224:23; 225:2,10;249:1;267:3</p> <p>prize (1) 27:4</p> <p>pro (1) 261:2</p> <p>probably (29) 24:17;29:18;46:20; 50:19;52:1;55:5;79:10; 121:15,16;129:1,14; 144:17;145:20;146:13; 147:10;150:25;169:12; 177:24;178:8;180:2; 183:22;185:4;195:3; 205:3;206:12;223:5; 226:17;228:14;247:4</p> <p>probative (1) 243:13</p> <p>problem (21) 22:6,10;69:12;82:5; 93:15;96:21;98:3; 103:2;113:2;119:16; 143:4,5;144:5,11; 146:24;184:24;185:7; 204:15;231:12;232:18; 247:23</p> <p>problems (8) 17:17;64:21;118:16; 146:9;197:15;198:12; 264:10,11</p> <p>procedural (1) 23:16</p> <p>procedurally (4) 9:20,22;25:10;222:1</p> <p>Procedure (6) 14:6;15:9;23:15; 82:15;216:10,12</p> <p>procedures (2)</p>
---	---	--	--	---

<p>18:10;144:24 proceed (10) 22:25;23:2;82:25; 96:17;112:12,25; 157:5;175:5;206:1; 210:24 proceeding (4) 10:24;17:25;18:2; 20:7 proceedings (4) 7:11;156:7;206:12; 213:5 process (7) 17:23;24:12;79:14; 132:8;137:22;222:16; 237:13 produced (2) 134:3;135:19 products (1) 195:4 proffer (1) 222:9 proffered (1) 226:18 program (6) 85:8;89:11,23,24; 90:11;254:21 programming (3) 85:13;86:1;89:25 prohibit (1) 253:9 prohibition (2) 229:25;258:22 prohibitions (1) 252:20 project (22) 67:17;69:3;71:7; 78:25;90:13;116:7,19; 136:10;140:23;177:17; 183:21;184:19;186:14; 187:15;190:21;207:22; 208:8,21;211:14; 214:11;244:8,16 projection (2) 144:10,10 projects (1) 217:10 promise (1) 206:11 promptly (1) 23:16 pronounce (2) 152:20;156:15 proof (2) 265:1,2 propagation (1) 189:4 proper (3) 113:11;246:19; 267:19 properly (3) 20:3;116:24;267:5 properties (26)</p>	<p>19:17;84:13;98:21; 99:16,17;100:8; 114:25;115:11,12; 116:13;117:16;122:15, 16;150:25;162:2; 168:25;192:24;229:21, 23;230:1;236:21; 238:18;254:10;255:12; 259:25;266:6 property (256) 6:9;8:1;20:6;21:3; 28:4,6,21,23;29:8,12, 18;30:5,9,17,18;31:16; 36:4;37:9,10,12;38:1,6, 15,25;40:2;41:10,10; 42:14;43:1,2,9,10,15, 25;45:20,22;49:13,21; 51:5,7,8,20;56:10,18; 58:12,14;59:22,23,25; 60:1,4,12;63:14;64:2,8, 9,10;67:14,15,19,23, 25;68:1,3,7,10,18,19; 69:5,9;70:10,18,20; 71:8,11,14;72:6;73:5, 11;74:13;75:17;76:16, 17;77:13;78:5,17,17, 22,25;79:21,24;80:3, 11,19;81:1,9;97:10,11, 12;98:5,24;102:7,13, 14;103:6;105:2,3,17; 106:5,8,8,23;107:9,12, 22;108:8;109:7,9; 110:20;111:3;115:13; 116:1;117:18,18; 120:18;121:22;122:3, 6,10,12,19,20,25; 124:4,23;127:6,10; 128:1;129:2,20,21; 133:13,23;134:2,23; 152:2;153:10;158:6,9, 16;160:17;161:4; 162:4,19;164:23; 166:8;167:7;168:4,6; 169:4,6,7,13;170:15, 17,18;172:11,12;177:6, 6,7,12;178:9,22;180:1, 13,25;181:7,10,14; 182:17;184:6,9,12; 186:5,14,20,21,21; 187:1,2;189:4,8,12; 190:16;191:4,5,6,9,12; 192:25;193:2,14,20,24; 194:21;195:11,13; 196:3;197:20;198:4,8, 21;199:2,10,18;200:10, 16;201:9;203:18,19; 204:13,19;207:23; 218:24;219:14;220:6; 221:3;227:2;228:8; 229:22;230:7;232:25; 233:2,22;234:23; 241:18,21;242:5,12; 243:17;244:6,9;</p>	<p>245:10;246:22;255:11, 12;259:20;260:22,24; 261:6,18;262:11; 263:1,5;269:18 proportionality (2) 73:18;74:8 proposal (10) 34:17;90:5;192:23; 194:8;196:25;204:8; 229:18;246:25;247:23; 260:21 proposed (95) 8:4;11:19;18:18; 20:18;25:4,13,20; 40:23,24;41:1;42:18; 45:7;67:17;68:6,12; 69:3,5,17;70:7,17;71:5, 11,19,25;73:20;74:17; 75:7,15,21;77:10; 78:25;80:3;88:15; 90:13;97:17,22;98:19; 99:1,2;102:5;103:6; 104:25;105:1,16,24; 106:3,21;108:3,3; 109:8,14;110:3; 111:12;116:18;119:21; 126:23;127:4,19,20; 128:22;131:25;135:20; 137:7;143:6;144:21; 150:1,15;162:11,23; 165:16;166:7;170:14, 21;173:17;176:25; 177:13,17;179:9; 188:16;195:16,20,25; 201:13;202:6;203:6,8; 204:6;222:20;224:22; 230:8;240:4;252:18; 258:15;266:3;273:21 proposing (4) 138:14;198:10; 235:24;240:15 propriety (1) 23:20 protect (1) 29:5 protected (2) 62:8,9 protecting (1) 233:22 protocol (2) 140:12;143:19 prove (1) 264:13 proved (1) 242:1 proven (1) 262:12 provide (21) 12:10;28:14;64:19; 73:11;75:22,23;139:6; 180:10;188:22,23; 189:7;197:4;204:22; 205:1;217:9;225:8,9;</p>	<p>227:18;235:19;248:6; 265:3 provided (10) 61:2;108:25;151:25; 154:7,9;179:6;184:19; 185:22;199:14;225:5 provides (1) 196:1 providing (7) 52:13;85:9;89:14; 190:15;196:2;233:9; 234:18 provision (6) 12:4;17:21;24:15; 192:19;229:19;232:7 provisions (7) 198:24;230:19,20; 231:21,25;234:2;252:8 proximate (1) 101:25 proximity (1) 106:25 pub (5) 130:15,16,23;131:5; 132:2 public (7) 6:2;23:17;75:1;82:3; 155:6,9;233:21 published (1) 245:25 purchase (1) 160:16 pure (2) 104:25;173:15 purely (1) 261:5 purest (1) 104:21 purported (1) 204:9 purporting (1) 200:4 purpose (4) 75:22;110:21;111:5; 274:10 purposes (6) 100:1,23;139:4,4; 164:12;219:19 pursue (1) 82:21 push (1) 51:20 pushes (1) 199:25 pushing (1) 261:4 put (36) 32:5,9;51:11,20; 53:17;54:24;57:11; 86:8,11,12;92:4;93:11, 13;121:15;145:24; 158:17;179:12,16; 180:9,23;204:25;</p>	<p>205:15;215:16;216:13; 218:23;220:13;222:22; 223:2;227:8;237:20; 242:8,9;250:15; 256:15;258:10;267:23 puts (1) 163:3 putting (9) 29:14;31:23;32:1; 45:7;53:2;64:15;75:13; 196:8;211:14</p>
Q				
				<p>quadrant (2) 255:9,13 qualification (1) 146:12 qualifications (2) 96:20;114:15 qualified (1) 176:12 qualify (2) 234:1,1 quality (3) 68:16;225:11,12 quantitative (1) 73:16 quantities (1) 75:11 quantity (3) 75:22,23;77:4 Quarry (3) 254:3,6,22 questionable (1) 126:18 quick (2) 73:19;212:2 quickly (3) 14:3;64:25;226:23 quid (1) 261:2 quiet (2) 134:15,19 quieter (3) 186:9;187:4,7 quite (9) 85:21;121:13;188:1; 194:7;227:20;230:5; 233:2;241:14;263:2 quo (1) 261:2 quote (9) 11:5;55:15,16;89:11; 132:2;243:7,7;245:25; 254:20 quoted (1) 254:20 quotes (1) 54:24</p>
R				

<p>R-200 (1) 255:8</p> <p>rains (1) 77:6</p> <p>raise (9) 36:14;60:9;96:12; 112:21;121:14;147:24; 175:1;224:12;241:3</p> <p>raised (20) 18:17;22:25;57:12, 12;85:3;88:3;93:13; 105:1;131:2;153:16; 155:8,9,10;217:7; 230:6;232:18;237:16; 241:4;260:5,6</p> <p>raises (1) 36:16</p> <p>raising (2) 23:20;36:18</p> <p>Randall (1) 7:15</p> <p>range (14) 76:19;109:22; 137:23;179:3;181:5,6, 8;183:8,13,17;184:3; 190:20;191:1,1</p> <p>ranges (2) 184:8;185:25</p> <p>rare (4) 52:11;62:2,6,10</p> <p>rather (11) 9:2;52:13;67:2; 122:24;126:17;142:14; 169:23;171:25;227:4; 243:9;252:14</p> <p>rational (1) 73:22</p> <p>rationale (1) 236:16</p> <p>re- (2) 56:5,24</p> <p>RE-2 (4) 6:12;246:20;251:3,9</p> <p>reached (2) 200:12;227:15</p> <p>reaching (1) 170:23</p> <p>read (16) 10:12;20:24;24:2; 41:6;159:7;213:13; 214:4;227:16;237:14; 259:6,14;266:7;267:6, 17;268:13,23</p> <p>reading (7) 20:23;44:4;237:22; 257:8;258:24;259:14; 260:8</p> <p>ready (1) 112:12</p> <p>real (7) 8:21;25:1;93:12; 96:24;97:6;126:16; 161:19</p>	<p>reality (2) 185:14,19</p> <p>realize (1) 170:7</p> <p>really (48) 10:9;16:12;35:16; 36:5;55:7;68:25;76:22; 93:1;104:19;108:13; 149:20;152:22;153:12, 17;164:5;166:16; 171:8,8;173:14;179:6; 184:21;185:8;187:2; 188:18,22;193:16; 194:10;197:2;198:2,3; 201:15;209:15;219:11; 230:15;231:5,11; 232:12;233:21;235:4; 248:5,5;249:21; 250:25;252:7;258:19; 262:1;267:7;268:9</p> <p>rear (5) 29:11;34:21;35:13; 87:10;252:14</p> <p>reason (19) 29:20;30:2;34:9; 51:19;52:24;56:21; 58:11,13,24;90:5; 92:17;94:17;149:18; 151:6;178:16;196:9; 207:21;223:21;236:19</p> <p>reasonably (1) 263:4</p> <p>reasons (13) 18:4,7;29:1;31:21; 51:16;52:14,25;55:19; 167:8;180:10;193:4; 199:3;244:22</p> <p>rebuttal (11) 8:20;91:16;92:10; 93:6,19,22,23;212:1, 14;236:20;239:6</p> <p>Rebuttals (1) 91:17</p> <p>recall (16) 9:25;10:4;12:3; 25:11,16;26:3;33:6; 50:18;55:16;62:17; 63:9;76:15;145:15; 157:13,17;176:3</p> <p>receive (5) 74:9;85:11;132:21; 141:6;163:20</p> <p>received (6) 12:20;48:21,23; 132:15;149:5;152:19</p> <p>receiving (6) 79:1;86:1;122:15,16; 129:21;180:6</p> <p>recent (3) 24:13;49:1;198:10</p> <p>recently (2) 61:8;177:2</p> <p>receptacle (4)</p>	<p>194:24;196:6,21; 215:17</p> <p>recess (2) 22:22;25:23</p> <p>recessed (1) 147:12</p> <p>recharge (1) 48:8</p> <p>recognize (6) 83:3;94:1;241:22; 244:14;261:7;267:21</p> <p>recognized (6) 17:14;20:3,11; 175:25;176:8;210:14</p> <p>recognizing (3) 82:25;96:21;113:2</p> <p>recollect (1) 54:11</p> <p>recollection (2) 174:3;231:5</p> <p>recommendation (10) 62:15;198:13; 237:19;244:23;252:15; 255:3,20;256:24; 258:14;259:5</p> <p>recommendations (21) 60:19;135:2;190:7; 238:17,22;250:3,10; 252:11,19,22;253:7,10, 18;255:4,6,7,23; 256:20;258:5,8;259:3</p> <p>recommended (3) 238:15,20;254:15</p> <p>recommending (2) 139:7,9</p> <p>reconfiguration (1) 35:4</p> <p>reconfigured (2) 8:5;48:14</p> <p>reconfiguring (1) 34:17</p> <p>reconstructed (1) 265:24</p> <p>record (50) 6:20;8:10;10:16; 14:10;16:14,22;17:16, 24;18:4;74:22;75:2; 81:19,20,22;82:4;94:1; 95:24;96:18;112:9,10, 11;114:22;130:13; 139:24;147:13,14,16, 16;152:23;175:22; 192:9;205:20;212:9, 10,11,20;217:22; 221:18;239:9;243:5, 14;260:3,17;270:15; 273:20;274:2,5,7,8; 275:17</p> <p>records (1) 202:8</p> <p>recreational (1) 252:2</p> <p>recross (3)</p>	<p>137:14,16;138:10</p> <p>rectangle (2) 31:2,3</p> <p>red (11) 51:5,5,10,16;52:11, 15,22;54:15;62:4; 71:17;96:10</p> <p>redevelop (1) 260:22</p> <p>redirect (11) 66:6;81:12;91:7; 111:23;135:23,25; 137:15;191:22;205:7; 225:18;239:3</p> <p>reduce (10) 18:17;75:15;76:1,9; 86:21;182:25;185:8; 201:14;223:4;275:6</p> <p>reduced (4) 71:12;77:17,21; 86:20</p> <p>reducing (7) 36:22;73:10;83:22; 86:7;107:9;183:6; 191:17</p> <p>reduction (14) 72:2;84:9,10;151:1; 181:2,3,19;182:18; 184:25;185:2;193:15; 227:13;235:7,8</p> <p>refer (2) 50:17;59:4</p> <p>reference (3) 12:12,23;181:18</p> <p>referenced (2) 189:15;202:2</p> <p>referencing (3) 44:17;46:25;248:13</p> <p>referred (3) 61:8;71:5;213:14</p> <p>referring (8) 59:13;80:1;83:25; 154:17;158:24;188:14; 223:3;243:9</p> <p>reflect (2) 63:12;239:9</p> <p>reflected (4) 79:10;185:16,18; 250:17</p> <p>reflections (1) 185:15</p> <p>reflects (1) 55:10</p> <p>reforesting (1) 29:14</p> <p>refuse (2) 118:24,24</p> <p>regard (20) 103:25;104:6,9; 116:7;151:13;153:7,9, 10;198:3,9;209:8; 236:12;238:13;241:15; 242:18;250:1,19;</p>	<p>251:5;257:19;258:11</p> <p>regarding (15) 10:4;42:7;56:17; 69:2;90:24;93:10; 96:24;104:24;113:21; 145:12;176:19;194:19; 213:7;229:19;234:8</p> <p>regardless (1) 242:17</p> <p>region (2) 236:16;253:22</p> <p>regional (1) 244:20</p> <p>regionally (1) 244:14</p> <p>regrade (2) 27:24;58:14</p> <p>regraded (1) 30:7</p> <p>regrading (1) 58:11</p> <p>regular (3) 9:9,9;71:19</p> <p>regulate (1) 14:8</p> <p>regulated (2) 230:15;231:5</p> <p>regulation (1) 119:19</p> <p>regulations (5) 116:5;123:7;139:22; 182:3;252:12</p> <p>regulatory (1) 252:14</p> <p>rehab (1) 8:13</p> <p>rehashing (1) 205:18</p> <p>Rehoboth (1) 216:20</p> <p>re-identify (1) 17:5</p> <p>reiterate (1) 137:3</p> <p>relate (2) 96:2;239:23</p> <p>related (4) 116:5;149:12;195:5; 239:15</p> <p>relates (8) 111:2;120:22;155:5, 21;236:14;237:6; 247:9;248:2</p> <p>relation (4) 118:8;170:14;191:6; 241:21</p> <p>relative (19) 67:16;68:21;76:19; 103:5;104:24;107:6; 122:9;125:20;151:19; 152:15,18;155:4; 157:13,19;178:24; 183:9;187:6;188:10;</p>
--	--	--	---	--

<p>191:12 relatively (4) 64:25;70:6,6;206:10 relevance (3) 126:12,18;241:13 relevant (3) 103:5;162:16;241:21 relocate (3) 51:17;58:13;234:7 relocated (7) 26:20;52:19;84:5,6, 12;90:6;230:8 relocating (5) 10:17;65:1;83:20; 84:4;140:15 relocation (7) 21:20;55:14,17; 139:19;141:11;150:20; 226:18 rely (1) 120:11 relying (2) 17:12;241:25 remain (5) 77:11,22;80:18; 173:8;232:20 remaining (1) 246:25 remains (1) 22:9 Remedied (1) 56:2 remedies (1) 140:12 remember (6) 15:17;26:8;53:2; 108:5;199:12;270:20 remind (5) 22:11;26:12;66:18; 83:9;171:19 reminisce (1) 86:22 remotely (1) 153:15 removal (2) 34:4;55:17 remove (6) 56:5;68:8;94:7; 220:11,13;227:6 removed (7) 21:2,7;52:3;56:3; 58:4;95:4;151:24 removing (7) 8:4;21:13;29:13; 216:10;227:10;274:22, 23 rendered (2) 27:7,9 renovation (1) 245:22 re-open (1) 16:24 reopened (1)</p>	<p>92:3 re-opening (1) 16:17 repeat (1) 98:8 repetitive (1) 210:13 rephrase (2) 77:8;120:14 replace (1) 97:23 replaced (1) 171:24 replant (2) 56:5,24 replanting (1) 29:14 reply (1) 273:10 report (4) 6:17;149:3,22;162:8 reported (1) 141:6 reports (1) 158:17 representative (2) 68:6;73:25 represented (2) 71:17;73:18 representing (1) 7:4 request (7) 8:16;11:8;140:2; 152:19;196:4;197:1; 245:5 requested (2) 153:25,25 requests (1) 152:17 require (8) 60:14,17;64:23; 139:15;142:4,8;225:5; 266:6 required (16) 17:7;24:22;39:2; 75:1,8;82:2;85:13; 86:1;119:12;139:7; 142:13;170:8;220:11; 227:18;249:17,17 requirement (2) 178:14;260:25 requirements (12) 13:2;28:8;36:17; 85:9;89:11;90:12; 120:17;138:21;144:1; 152:5;258:16;266:4 requires (3) 181:19;230:21;246:7 requiring (2) 139:18;192:19 research (2) 190:19;191:2 reserve (1)</p>	<p>93:18 reserves (1) 273:6 resetting (1) 6:14 residence (21) 7:24;26:22;28:2; 31:1;40:15;42:14; 43:25;49:5;105:4,18; 106:5,7,14;110:5; 167:15;169:23;194:5; 213:25;219:16;235:3; 244:5 residences (3) 122:24;213:11; 251:22 resident (5) 167:14;194:25; 213:25;225:3;254:24 residential (28) 6:6;28:9;83:18;84:7; 102:7;104:5,13,13; 105:3,13,14,16;116:11; 135:20;169:24;199:4; 208:2;234:20;235:9; 10,10;242:9;246:21; 251:7;252:5;259:20; 265:25;266:1 residential (1) 251:23 residents (13) 108:14;109:21; 123:1;131:4,18,23; 132:1;195:2;213:8; 214:10,12;217:3; 224:24 residents' (1) 225:1 resistant (1) 179:15 resolution (1) 82:16 resolve (1) 198:11 resolved (1) 166:10 resources (3) 50:20;51:3,10 respect (2) 15:21;95:1 Respectfully (12) 10:7;13:5;16:11; 18:5;56:24;82:23; 237:25;260:3;262:20; 265:1,2;268:8 respecting (1) 261:3 respective (2) 98:2,13 respond (14) 12:12;13:13,20,21; 14:1;19:3;24:20;62:23; 69:2;94:20;165:7;</p>	<p>224:15;273:5;274:8 responding (2) 12:23;19:19 response (18) 14:13;25:7;42:4; 53:11;89:9;119:17; 154:5,8,9;165:11; 196:4;197:1,14; 225:17;236:20;273:19, 20,22 responses (1) 24:20 responsive (2) 62:22;93:3 rest (13) 80:3;81:4,5;92:20; 117:23;170:11;209:25; 226:7;237:11,14,19; 254:11;259:8 restaurant (4) 108:22;130:8,14; 131:6 restrict (1) 33:2 restricted (1) 236:21 restriction (1) 118:25 restrictions (4) 31:12,17;64:22; 190:10 result (9) 18:13;33:9;74:18; 125:16;133:23;197:24; 225:18;253:17;261:15 results (3) 72:5;74:1;233:4 resume (9) 81:22;96:18;97:5; 113:1;114:15;175:19; 176:3,4,22 resumed (4) 6:13;26:15;49:15; 226:14 resumption (1) 6:15 retain (1) 255:7 retention (2) 39:8;45:24 rethink (1) 80:20 return (2) 205:11;255:7 returned (1) 239:10 returns (1) 185:1 Revenue (5) 48:10,20;49:18; 99:12;100:11 reverses (1) 67:18</p>	<p>review (16) 8:9;24:5,8;26:18; 87:3;117:13;124:21; 148:21;149:1;150:2; 152:4;177:4;219:7; 230:8;242:1;244:25 reviewed (4) 149:13;176:25; 211:23;245:2 reviewer (1) 8:23 reviewing (3) 34:16;150:17;151:12 revised (43) 11:18;15:20;23:6; 24:7;37:14,16;38:20, 22;48:22;72:4;88:15; 124:22;149:7,7,18,25; 150:4,16;152:4,10,14, 18;154:20;166:22,24, 24,25;177:1,5,13; 192:23;205:17;206:9; 221:17;234:9;239:16; 240:20;243:20;245:2; 270:16;271:4;273:4; 275:21 revision (1) 15:22 revisions (7) 11:20;20:2;64:17; 83:15,17;149:20; 239:23 revisit (1) 152:11 Reynolds (1) 148:24 rezoning (1) 94:15 rhythm (1) 112:2 Richard (1) 148:24 ridge (5) 41:9;43:17;45:18,25; 46:5 ridgeline (1) 189:12 ridges (3) 41:7;42:25,25 right (267) 7:9;8:13,15;9:17; 10:15;11:6;14:15;19:8, 9;21:16;22:2,11,13,19; 23:8,11;25:9,20;26:2,5, 12;30:4;34:8,11;36:3, 24;37:18;38:20,23; 40:21;42:1,3,13;47:3; 48:11;49:23;50:4; 53:15;54:12;55:23; 56:2,4;57:14;58:2,6,9; 59:12,18;60:20,21; 61:1,6,22;63:15;65:15; 66:11,14;67:20,21,22;</p>
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<p>70:25;72:11;73:3; 77:24;78:13;81:3,17, 21;82:16;83:5,8;85:16; 86:24;89:2;90:7,8; 91:2,3,7,9,12,19;92:1; 93:5,8,18,22,25;95:18; 96:4,12,17,23;97:4; 101:6;103:9,14; 105:15;106:17;107:7, 14,17;110:11,11; 111:25;112:3,6,14,17, 21,25;113:6;114:1,10, 12,14;115:15,18,24; 117:22;119:24;122:14; 123:3;124:9;129:16; 130:24;131:12;132:10; 137:14;138:8;140:24; 141:3,5,14,18,23; 144:3,14,16;145:22; 146:17,21;147:5,11,15, 24;148:3,7;153:2; 156:3,11,14,22;157:2, 5,22,24;161:1,15,25; 164:25;165:17;166:1; 167:17;168:22;169:13, 22;170:2;171:9; 172:23,25;174:13; 175:1,5;176:21; 187:23;191:14,24; 192:1,8,12,20;193:9; 196:17,22;197:8; 200:21;201:2;202:5, 20,23,25;204:4,12,13; 205:9,23;206:1;210:9, 12,19;211:4,25;212:7, 11,24;214:15,21,23; 215:14;216:25;217:24; 218:25;220:9;221:20; 222:11;223:11;225:23; 226:1,4,11,16;228:17, 23;229:2,15;230:3; 238:23,25;239:2,5,6,8, 10,24,24,25;242:10; 244:18;245:7;247:1; 248:18;249:8,12; 253:5;255:11;256:23; 257:21,22;259:8; 260:16;261:13;262:8; 264:5;265:10,16,21; 268:25;269:10;270:2; 271:1,2,2;272:2;274:9; 275:8,17</p> <p>Rightly (1) 207:9</p> <p>riprap (6) 43:15;79:1,3,25; 80:6;199:9</p> <p>River (2) 254:11;256:9</p> <p>Road (37) 6:11;29:19;34:20; 37:3,8,10,12;38:15; 47:21,24;60:11;76:7,</p>	<p>24;86:8,16;96:11; 106:16;119:12;155:12; 156:21;170:9;189:2; 192:11;205:22;208:6; 212:22;224:5;247:11, 15,17;248:21;254:10, 11;256:9;263:18,20; 268:7</p> <p>roads (3) 155:6,14;256:15</p> <p>roadway (1) 25:19</p> <p>roadways (1) 248:11</p> <p>Rock (2) 254:2,7</p> <p>Rockville (2) 156:21;174:25</p> <p>Roman (2) 88:22,23</p> <p>Ron (1) 156:13</p> <p>Ronald (4) 7:5,19;156:19; 205:21</p> <p>roof (6) 87:21,22;88:1,16,17, 24</p> <p>roofline (4) 83:23;87:23,25; 124:12</p> <p>rooftop (3) 124:7;125:7;135:6</p> <p>room (9) 131:6;151:25; 206:13,19;219:17,17; 220:1,2;264:16</p> <p>root (11) 29:21,24;31:25; 32:19;33:3;51:11; 53:13;54:14;222:17; 223:2;227:5</p> <p>roots (3) 51:13;197:11;228:2</p> <p>roughly (1) 74:7</p> <p>Round (1) 74:7</p> <p>routes (2) 250:12,13</p> <p>routine (1) 13:17</p> <p>routinely (3) 13:10,11;14:13</p> <p>rudimentary (1) 55:5</p> <p>ruining (1) 233:23</p> <p>rule (9) 15:11;24:11;81:24, 25;82:6;94:14,22; 95:23;224:25</p> <p>Rules (9)</p>	<p>14:6,7;15:8;17:8; 23:15;24:13;81:23; 82:11,12</p> <p>ruling (3) 25:4;95:19;96:2</p> <p>rulings (2) 18:11;210:15</p> <p>run (10) 29:10;31:16;34:20; 142:2;158:7;207:12; 227:21;230:22;254:2,8</p> <p>running (4) 39:4;72:5;136:4; 178:13</p> <p>runoff (5) 48:8;72:5;73:25; 74:3;199:20</p> <p>runs (3) 48:4;68:4;106:15</p>	<p>saw (2) 239:21;245:1</p> <p>Sawyer (1) 243:11</p> <p>saying (49) 12:21;19:20;47:10; 75:25;77:20;82:1; 86:13;89:10;90:4,11; 93:16;104:20;107:8; 110:7,24;118:15; 119:13;122:23,25; 127:16;139:10,11; 144:22;154:11;158:19; 159:1,6,14,16;163:24; 169:8;170:19;172:19; 191:3,10;196:22; 200:25;203:7;219:21; 227:16;256:24;257:25; 258:1;259:1;261:1; 267:13,14;268:9; 272:18</p> <p>scale (1) 21:15</p> <p>scales (1) 40:15</p> <p>scheduled (1) 8:24</p> <p>scheduling (1) 181:14</p> <p>schematic (1) 149:8</p> <p>school (1) 94:11</p> <p>schools (2) 101:24;104:1</p> <p>scope (1) 235:21</p> <p>Scott (3) 8:22;112:15,19</p> <p>scrambling (1) 14:2</p> <p>screen (2) 65:9;118:3</p> <p>screened (2) 116:25,25</p> <p>screening (5) 28:8;31:16;39:2; 204:22;205:2</p> <p>screenings (1) 31:18</p> <p>scrutiny (1) 247:10</p> <p>Seaside (1) 216:19</p> <p>seat (2) 212:18;267:12</p> <p>seating (1) 109:21</p> <p>second (25) 25:21,24;29:20;45:5, 23;70:23;74:1,6,8,10; 83:19,24;103:16; 113:18;120:4;141:13;</p>	<p>156:22;171:17;184:7; 191:20;209:9;217:21; 218:18;233:3;250:7</p> <p>Secondly (1) 23:21</p> <p>seconds (1) 184:14</p> <p>Section (17) 6:5;12:12,23;13:1; 15:2;18:3,6,13,14; 42:9;79:3;154:23; 174:3;232:18;254:14; 265:18;271:21</p> <p>sector (1) 254:16</p> <p>sedimentation (1) 78:24</p> <p>seeing (1) 24:9</p> <p>seem (3) 140:11;150:22; 227:14</p> <p>seeded (3) 150:23;230:14; 237:22</p> <p>seems (11) 14:6;30:13;142:11; 143:19;163:5;183:17; 204:14;220:21;227:13; 231:7;237:18</p> <p>segue (1) 124:20</p> <p>select (2) 132:19;142:6</p> <p>sell (2) 160:3,4</p> <p>seller (2) 158:11;161:21</p> <p>selling (1) 159:15</p> <p>semis (1) 228:18</p> <p>send (2) 49:18;271:13</p> <p>Senior (30) 6:3;108:3,15;109:16; 124:22;127:23;128:5, 6,10;152:5;177:1; 229:20,24,25;230:2; 233:16;236:14,15,20; 238:15;247:5,6,8; 253:2,22,25;256:21; 258:10;259:6;264:3</p> <p>seniors (1) 6:7</p> <p>sense (8) 9:2;10:5;84:20;94:3; 149:11;194:14;203:11, 15</p> <p>sensitive (1) 205:17</p> <p>sent (3) 12:11;49:15;230:25</p>
--	---	--	---	---

<p>sentence (11) 41:15;154:13; 236:14,16,24;237:3,10, 13,18;238:2;250:7</p> <p>separate (4) 91:18;144:25; 163:16;190:20</p> <p>series (4) 149:6;158:16,22; 162:6</p> <p>Seriously (1) 272:5</p> <p>serve (4) 68:24;131:3,10; 195:1</p> <p>served (2) 131:17,23</p> <p>service (24) 10:17;34:20;37:3,8, 10,12;38:15;45:21; 58:13;64:16;85:10; 86:8,16;99:12;100:11; 117:3;133:5,9;151:23; 244:9;247:2;263:18, 20;268:7</p> <p>Services (13) 48:3,4,13,24;49:7; 108:21,23,24;109:17; 195:1;231:4;256:4,4</p> <p>serving (3) 132:1;152:23,24</p> <p>session (2) 8:13;29:1</p> <p>sessions (1) 7:8</p> <p>set (10) 66:23;182:3;203:8; 244:5,6;245:20; 248:20;252:9;253:11; 270:15</p> <p>setback (10) 31:16,18;46:13; 142:22,24;143:7,11,13; 231:22;243:17</p> <p>sets (1) 24:3</p> <p>setting (2) 111:10;137:7</p> <p>settled (2) 31:19;252:11</p> <p>seven (1) 220:12</p> <p>seven-foot (1) 46:14</p> <p>several (7) 29:1;186:15,16; 216:19;229:23;255:16; 261:18</p> <p>shadow (1) 185:19</p> <p>Shady (1) 156:21</p> <p>shaking (1)</p>	<p>144:22</p> <p>shall (3) 24:1;205:3;241:6</p> <p>shape (4) 168:3;197:25; 207:23;208:9</p> <p>shed (4) 170:14;193:20; 203:5;204:3</p> <p>sheet (1) 59:10</p> <p>sheets (1) 207:19</p> <p>shielded (1) 64:2</p> <p>shift (2) 85:12,20</p> <p>shifting (3) 35:14,15,15</p> <p>shifts (1) 198:1</p> <p>shining (1) 103:1</p> <p>shopping (5) 101:25;254:1,6,12; 256:3</p> <p>short (3) 188:21;225:2;245:16</p> <p>shorten (1) 223:24</p> <p>shorthand (1) 101:4</p> <p>show (12) 40:7;54:9;162:3; 167:5,7;169:18;172:6; 203:22;220:25;238:3; 240:14;241:25</p> <p>showed (4) 154:20;193:7,7; 252:4</p> <p>showing (6) 11:19;68:4;70:16,17; 221:18;259:21</p> <p>shown (11) 69:7;71:7;80:5; 87:23;109:12,14; 151:3;179:9;219:9; 236:9;243:3</p> <p>shows (13) 39:22;40:15;71:5; 128:1;129:17;171:21; 173:16;199:16;200:15; 230:20;252:24;254:19; 256:16</p> <p>Shrewsbury (1) 216:21</p> <p>side (78) 7:25;8:4;10:18; 21:14;27:11,15;28:13, 20,23;29:4,6,7,16,23, 23;30:19,21,23;31:13; 32:3;34:23;35:5,6,12, 22,24,25;36:4,19;39:5;</p>	<p>42:15;43:4,5,7,8,10; 45:19,22;46:5,6;52:14; 55:15,18,20;56:8; 57:11;58:25;59:25; 60:7,13;61:24;63:13; 64:11;65:2;78:8,9,23; 81:8;85:14;86:9;87:10; 90:24;154:20,21; 171:11;195:12,17,23; 196:8,14;214:21; 215:19;218:22;220:23; 221:8;236:7</p> <p>sides (4) 15:19;154:21; 216:25;245:10</p> <p>sight (2) 180:4,6</p> <p>signals (1) 190:8</p> <p>significance (1) 150:5</p> <p>significant (13) 29:4,21;37:11;49:9; 69:1;118:12;150:6; 207:18;243:17,21; 244:17;267:18;274:25</p> <p>significantly (5) 27:18;28:16;29:17; 31:15;36:14</p> <p>silt (1) 43:4</p> <p>Silver (1) 147:22</p> <p>similar (15) 36:5;71:23;99:3; 101:18,21;128:8; 134:13;136:11;166:21; 178:6,6;182:15; 183:22;235:21;241:23</p> <p>similarly (1) 214:4</p> <p>simple (4) 35:18;41:6;69:22; 77:9</p> <p>simpler (2) 27:16,19</p> <p>simplified (1) 27:18</p> <p>simply (11) 52:18;77:14;197:23; 221:5;223:17,19; 236:19;237:9;246:12; 247:14;274:17</p> <p>single (8) 27:16;171:9;236:16, 23;237:3,10;238:2; 268:2</p> <p>sit (5) 18:22;95:25;263:11; 264:24;267:12</p> <p>site (73) 6:8;8:17;27:7,9,12; 43:23,24;48:18;59:24;</p>	<p>67:16;68:25;70:7; 71:15;74:21;75:8; 77:13;78:21;97:19; 102:17;104:23;116:16; 117:23;118:8;122:2,3; 126:8,8;128:1;132:23; 139:1,5;152:1;170:4; 171:25;172:5;180:8; 194:8,13,14,17,20; 195:15;198:7,24; 201:14;204:15;213:8; 216:11,17;226:19; 244:14,17,18;245:8; 247:22,23,24;248:1,2, 6,25;251:10,15;254:3, 8,14,24;255:3,5,18,20; 260:15;261:11</p> <p>sites (9) 106:19;243:2; 248:24;254:7;255:24; 257:6;259:12,13; 264:10</p> <p>sits (1) 29:16</p> <p>sitting (3) 26:7;206:18,25</p> <p>situation (9) 10:9;20:9;110:18; 145:3;173:4,9;184:10; 245:19;247:4</p> <p>situations (2) 69:10,19</p> <p>six (27) 21:3;28:14;30:4,4, 10,10;37:6;39:9;44:12, 16;46:16,18,18,22; 47:1,10,11;65:12;68:9; 120:25;121:4,19,22,24; 137:24;191:18;193:12</p> <p>six- (1) 46:12</p> <p>six-foot (3) 44:24;54:17;63:8</p> <p>six-inch (1) 46:13</p> <p>size (21) 81:2;86:7,13,21; 87:1,5;89:19;121:7; 162:4;167:16;168:3,7, 7;170:1;178:2;207:23; 208:9;235:21;236:5,5; 248:4</p> <p>sizes (2) 166:21,21</p> <p>sketch (1) 236:4</p> <p>sketched (1) 226:23</p> <p>skilled (2) 104:10;213:16</p> <p>slant (1) 46:19</p> <p>slide (2)</p>	<p>275:3,5</p> <p>sliding (1) 264:23</p> <p>slight (2) 151:1;227:22</p> <p>slightly (1) 151:21</p> <p>slipped (1) 269:14</p> <p>Sloan (30) 7:14;26:4,6,10,12,14, 17;33:23;34:16;41:12, 20;45:4;50:7;66:8; 85:5;202:5,15;224:6, 15;225:24;226:8,10,13, 16;229:8;239:5,9; 243:23;269:14;275:2</p> <p>Sloan's (1) 67:12</p> <p>slope (11) 37:9,11;39:14,15; 44:14,22,23;46:11; 189:8,13;247:2</p> <p>slopes (2) 39:6;44:2</p> <p>slow (1) 206:21</p> <p>slowly (1) 60:3</p> <p>small (5) 74:11;88:22;121:9, 11;256:15</p> <p>smaller (6) 40:12;71:20;77:4; 121:11;168:9;220:22</p> <p>smoke (2) 214:12;215:18</p> <p>smoking (1) 214:10</p> <p>soggy (2) 48:16;49:8</p> <p>sold (2) 158:10;162:3</p> <p>sole (1) 236:19</p> <p>solely (1) 237:14</p> <p>somebody (9) 10:4;50:1;86:22; 155:13;160:16;171:21; 173:15;207:12;260:8</p> <p>somehow (1) 24:9</p> <p>someone (4) 35:20;154:8;207:5; 267:23</p> <p>someone's (1) 234:19</p> <p>somewhat (6) 9:7;119:7;140:10; 193:6;237:25;243:19</p> <p>somewhere (2) 178:18;211:15</p>
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<p>sophisticated (1) 267:21</p> <p>Sororra (1) 254:9</p> <p>sorry (35) 19:24;37:7;38:10; 39:14,19;42:17;45:2, 15;59:3,16;65:23; 72:18;86:17;105:6; 113:19;124:12;130:2; 133:25;141:25;144:24; 171:4,4;174:10;200:6; 205:12,12;215:22; 219:21,24;229:11; 257:20;258:23;265:4; 273:1;274:20</p> <p>sort (13) 28:12;45:21;73:16; 103:22;104:1;135:21; 143:18;149:9;151:23; 180:17;183:16;188:11; 190:25</p> <p>sorting (1) 103:22</p> <p>sound (19) 129:4,8,8,8;134:13; 171:13;181:20,21,22; 182:21,24;183:1; 185:13,15,16;188:24, 25;191:8;229:3</p> <p>source (7) 134:13;178:8,8; 186:9,11;187:10;191:5</p> <p>sources (14) 116:12;124:22,24; 125:1,24;128:2,4,14; 130:12;132:12;177:5, 14;184:24;203:25</p> <p>south (11) 42:14;45:18;67:25; 68:19;88:6;154:23; 195:12,17;198:2; 227:12;245:11</p> <p>south/southeastern (1) 28:4</p> <p>South/southwestern (3) 28:5,6,23</p> <p>southerly (2) 67:22;68:3</p> <p>southern (9) 28:13;30:5,17;35:5; 43:7,10;45:22;46:6; 60:7</p> <p>southern/southwesterly (1) 67:14</p> <p>southwest (1) 67:18</p> <p>southwesterly (1) 68:1</p> <p>southwestern (1) 63:8</p> <p>sp (1) 254:10</p>	<p>space (6) 89:11,19,23;90:12; 127:25;179:18</p> <p>spaces (20) 85:25;89:13,21,21; 216:7;220:10,10,12,12, 13;223:2,4,9;227:10, 11,11,12,13,18;269:25</p> <p>speak (5) 15:15;33:25;128:10; 203:20;213:12</p> <p>speaking (6) 22:1;42:1;134:16; 158:9;178:5;268:17</p> <p>speaks (3) 233:2,22;243:19</p> <p>special (32) 85:8;107:25;114:23; 115:16,17,21;126:4; 165:16;230:4;241:17; 247:9,16,18;248:9,10, 12,15;250:2,8,16; 253:5;255:5,10,14,15, 18;256:23;257:1,22, 24;259:8;260:13</p> <p>specific (18) 13:1;14:25;25:19; 135:8,9;145:18; 197:22;230:21;236:20; 248:12;253:11,18; 254:17;257:4;258:21, 22;264:7;266:3</p> <p>specifically (20) 24:16;25:16;29:24; 37:23;40:7;59:24; 106:8;115:7;136:10; 228:15;229:20,24; 231:23;233:3;238:18; 241:15;242:18;247:20; 253:6;258:11</p> <p>specifics (2) 137:4,5</p> <p>specified (1) 129:7</p> <p>specifies (1) 229:20</p> <p>specimen (12) 50:7,8,9,16;51:6; 52:15;53:13,16;54:15; 60:4;61:24;65:2</p> <p>speculating (1) 130:22</p> <p>spend (3) 209:19,24;236:24</p> <p>spent (3) 244:15;245:9;266:24</p> <p>spin (2) 92:19;206:16</p> <p>spoke (3) 188:1;236:12;241:15</p> <p>spots (1) 256:2</p> <p>Spring (1)</p>	<p>147:22</p> <p>square (4) 71:9,12;80:2,20</p> <p>stacks (1) 189:1</p> <p>Staff (38) 8:9,23;9:8;24:8; 28:25;29:2;51:9;55:25; 58:3;141:7;144:17,19; 147:17;148:4,14,19; 149:17,22;152:22,24; 155:9;213:18,19,19; 225:6,8;230:11;231:3; 237:8;244:22,25; 245:2;253:14;260:21; 270:14,17;271:5;273:3</p> <p>staffing (1) 225:9</p> <p>stage (1) 49:6</p> <p>stand (7) 10:2;12:7;40:12,14; 145:24;215:11;262:17</p> <p>standard (9) 104:6;164:23;172:9; 246:20;250:23;252:5, 5;253:9;267:15</p> <p>standards (20) 17:20,20,21,22; 18:15;22:20;103:24; 115:14;138:13,14; 211:23;233:4;242:17; 245:4;246:9,23; 251:12;252:4;257:23; 265:5</p> <p>standing (2) 169:8;240:16</p> <p>standpoint (8) 67:13;84:21;85:6; 87:7;114:20;163:2; 181:16;244:2</p> <p>start (7) 35:7;41:15;85:19; 145:23;193:5;195:14; 241:7</p> <p>started (4) 12:4;89:10;203:4; 253:1</p> <p>starts (6) 12:5,9;14:20;15:10, 13;254:12</p> <p>State (14) 50:15;56:15;96:8; 99:19;112:18;132:6; 147:19;156:17;174:23; 192:8;205:20;212:20; 230:1;252:11</p> <p>stated (7) 11:1;18:4,7;163:21; 196:25;210:22;239:19</p> <p>statement (10) 128:23;144:25; 145:3,9;153:6;155:12;</p>	<p>241:8;245:14;253:2,21</p> <p>statements (2) 15:15;234:14</p> <p>states (5) 247:20;252:16; 253:2;254:12;255:22</p> <p>stating (1) 200:12</p> <p>statistics (2) 158:17;189:15</p> <p>statute (1) 122:13</p> <p>statutes (1) 265:12</p> <p>statutory (3) 18:20;138:21;211:23</p> <p>stay (8) 29:24;46:22;51:14; 91:4;147:1;156:6; 209:19;274:18</p> <p>stayed (1) 150:12</p> <p>staying (2) 51:10;146:24</p> <p>steep (1) 247:2</p> <p>steeply (2) 36:9,12</p> <p>step (3) 46:19,21;255:25</p> <p>stepping (1) 41:13</p> <p>Steve (1) 6:23</p> <p>Stick (1) 166:24</p> <p>still (39) 22:9;26:13;53:22; 66:19;80:1,18;83:9; 86:12;103:22;144:23; 157:2;167:2,4,9,10; 182:19;183:7;187:9; 192:13;193:13;194:4, 5;198:21;201:8;203:9; 205:3,23;212:24; 214:13;218:14;226:11; 228:11;236:8;241:5; 246:25;247:1,2; 256:18;260:7</p> <p>stipulates (1) 184:15</p> <p>Stoneyhurst (3) 254:3,6,22</p> <p>stop (4) 86:18;171:20;189:3; 263:11</p> <p>storage (2) 77:5;193:20</p> <p>store (1) 190:22</p> <p>stories (3) 170:12;243:16,19</p> <p>storm (75)</p>	<p>7:22;8:6,6;21:4; 27:25;28:11;31:14; 33:9;39:7,8,13,22; 45:24;47:21,25;48:7,9, 14,25;49:2,6;66:13; 68:20,23;69:6,17;70:4; 71:6;74:9,22,23,24; 75:5,15,16,19,19,20,20, 21,23,24;76:1,1,5,11; 77:1,2,3,4,10,12,17; 79:9,12,15,16,17,20, 23;80:10,15,18;81:4,5, 6;199:9,20;200:5,23, 25;201:6,14,19;221:6</p> <p>story (3) 8:4;21:13;153:14</p> <p>straightforward (2) 142:11;143:23</p> <p>stream (19) 43:21,23;45:19; 49:10;57:24;58:1;69:9, 11,13;70:7,11;76:18, 18;78:9,24;201:10; 221:6;244:17,21</p> <p>streams (1) 48:8</p> <p>street (1) 249:1</p> <p>streets (2) 102:1;106:25</p> <p>strengthen (1) 233:1</p> <p>strengthened (1) 242:22</p> <p>strong (3) 225:12;244:22; 249:21</p> <p>stronger (3) 107:1,2,5</p> <p>strongly (1) 248:5</p> <p>struck (1) 12:20</p> <p>structural (4) 68:9,11,17;234:24</p> <p>structure (28) 21:2;42:18;51:25; 86:8;118:19;129:15; 150:1,4,20;151:15; 162:19;193:5,11,25; 194:2,5;197:13,16; 199:25;204:12;206:20; 207:2;222:21;228:10; 233:6;243:10;248:4; 265:24</p> <p>structures (9) 29:13;43:16;75:21; 193:8,24;195:19; 231:9;234:17;241:20</p> <p>study (3) 54:22;71:6;246:4</p> <p>stuff (2) 109:19;124:7</p>
---	---	--	---	---

<p>style (1) 234:16</p> <p>Sub (1) 266:2</p> <p>sub- (2) 236:15;253:21</p> <p>subgrade (1) 52:1</p> <p>subject (21) 6:8;20:8;43:9;75:17; 77:12;78:17;79:21,24; 80:10;81:9;91:15; 102:14,17;104:23; 108:8;109:9;116:1; 120:15,15;159:17; 172:5</p> <p>subjective (4) 158:18,21;159:2,5</p> <p>submission (4) 17:8;48:15;270:11; 271:3</p> <p>submissions (2) 12:7;24:21</p> <p>submit (9) 8:3;11:25;16:11,16; 19:17;221:16;230:19; 265:3;272:3</p> <p>submitted (5) 11:25;48:1;72:8; 214:6;240:3</p> <p>submitting (1) 11:18</p> <p>Subparagraph (2) 265:22;266:2</p> <p>subparts (3) 239:14;240:2,7</p> <p>sub-region (5) 230:3;253:3;256:22, 25;259:7</p> <p>subsequent (2) 140:22;141:3</p> <p>subsequently (1) 11:23</p> <p>substantial (4) 151:4;182:21;195:4; 222:16</p> <p>substantially (3) 48:14;73:10;252:19</p> <p>sudden (1) 200:5</p> <p>suffice (1) 36:6</p> <p>sufficient (8) 212:5;241:2;243:11; 246:24;266:6;271:16, 21;273:15</p> <p>suggest (5) 130:14;136:24; 224:6;243:6;245:4</p> <p>suggested (7) 9:7;10:13,19;42:23; 122:23;140:12;259:11</p> <p>suggesting (6)</p>	<p>22:14;77:11;140:9; 143:17;196:13;205:14</p> <p>suggestion (2) 198:13;247:3</p> <p>suggestions (3) 145:12;198:14;259:9</p> <p>suitable (2) 255:5,20</p> <p>Suite (3) 112:20;174:25; 212:23</p> <p>summarized (1) 8:7</p> <p>summary (4) 17:5,8;20:23;114:21</p> <p>summer (1) 128:7</p> <p>superior (1) 68:15</p> <p>superiors (1) 149:1</p> <p>supersede (1) 245:25</p> <p>supervisor (1) 148:21</p> <p>supplement (1) 154:13</p> <p>support (2) 184:19;234:13</p> <p>Supported (1) 159:18</p> <p>supports (1) 235:5</p> <p>supposed (6) 161:6;172:7;247:20; 255:22;272:19,20</p> <p>sure (64) 10:8;16:4;18:21; 20:14;23:13;24:4; 25:22,25;32:11;33:23; 35:3;37:22;44:25; 45:12,14;70:25;79:22; 84:15;85:21;96:6; 112:4,6;116:24; 117:15;125:11;132:8; 135:5;140:3,3;142:1,1; 143:25;144:6,8; 145:18;146:7,25; 149:10,11;154:5; 163:8;165:9;166:12; 175:16;181:13;190:12; 202:13;210:21;212:6; 213:15;217:11;219:11; 221:13;223:10;227:21; 231:6,20;238:7;244:4; 252:3,16;260:8;269:6; 271:1</p> <p>surface (8) 71:10,13;72:5,19,25; 73:4;75:2,5</p> <p>surprise (1) 181:22</p> <p>surrounding (8)</p>	<p>115:7;116:2;155:6; 250:24,24;251:4,8; 255:2</p> <p>surroundings (6) 171:25;172:1,2; 173:18;207:25;208:1</p> <p>surrounds (1) 252:6</p> <p>survived (1) 62:6</p> <p>suspect (1) 80:25</p> <p>suspension (1) 147:2</p> <p>suspicion (1) 265:22</p> <p>Sustained (1) 62:21</p> <p>Suzanne (2) 7:1,17</p> <p>swale (1) 39:12</p> <p>swales (2) 41:8;42:25</p> <p>swear (4) 96:13;112:22; 147:25;175:2</p> <p>switching (1) 86:16</p> <p>sworn (2) 156:24;157:1</p> <p>Sycamore (1) 216:20</p> <p>system (10) 12:14;69:6,17;74:25; 75:5,15;77:10;78:25; 119:21;182:23</p> <p>systems (3) 68:24;76:3;81:7</p>	<p>23:19;37:23;44:19; 45:3,6,13,14;53:23,23; 65:11;75:3;80:5;88:4; 90:9;92:9;97:12,13; 99:4,6,9;101:5;111:9; 121:8;127:17;129:14; 131:3;134:16;136:15; 138:1,2;140:21;143:1, 2;154:15;166:22,22; 168:20;180:14;202:15; 204:4;209:2;248:11, 24;251:11;255:11; 256:14;269:22,23; 275:10</p> <p>talks (1) 82:7</p> <p>tall (2) 46:16;216:2</p> <p>TDR (1) 254:21</p> <p>Technical (22) 8:9,23;9:8;55:25; 58:3;62:6;72:18;73:12; 141:7;144:19;147:17; 148:4,14;152:22,24; 231:3;244:25;245:2; 260:21;270:14,17; 271:5</p> <p>Ted (1) 7:17</p> <p>tee (1) 49:10</p> <p>telling (3) 146:6;194:7;263:11</p> <p>tells (2) 122:14,14</p> <p>ten (3) 75:23;134:17;216:17</p> <p>tend (3) 69:12;106:25;195:5</p> <p>Tennis (30) 6:9,10;73:4;97:13, 16,23;99:3;102:8,14, 22;104:3,4;105:19,22; 107:25;110:17;126:4; 155:12;165:16;166:7; 169:5,17,24;170:15; 193:21;200:2;242:5, 13;251:25;252:3</p> <p>tension (2) 101:23;106:25</p> <p>tentative (1) 140:10</p> <p>tenth (1) 74:7</p> <p>term (9) 60:16;62:6;88:4; 99:11;100:11,12; 160:24;233:6,8</p> <p>termed (1) 162:14</p> <p>terminology (1) 164:18</p>	<p>terms (38) 22:18;25:2;75:14; 77:9;94:6;98:20;99:22; 100:12;126:22,23; 158:5;161:11,16,19; 162:14;169:6,19; 170:1;173:11,12,15; 178:2,17;181:13; 182:13;184:20;187:10, 16;190:19;193:12; 194:20;196:2;206:21; 221:13,25;231:8; 245:12;246:21</p> <p>terrace (1) 215:15</p> <p>test (3) 120:21;141:4;142:16</p> <p>tested (1) 120:23</p> <p>testified (17) 62:19;73:9;83:9; 115:15;133:6;157:11; 163:14;192:17;196:12; 201:7;202:16;204:24; 214:9;237:17;242:15; 243:14;263:8</p> <p>testify (11) 7:8;17:2;41:24; 127:8,9;137:5;163:12, 14;200:5,22;205:13</p> <p>testimony (69) 7:16,18,21,21;10:3; 19:1;47:9;55:16;57:10; 58:3;62:24;63:9,12,19; 67:12;74:21;87:6;90:1, 14,23;94:8,12;102:15; 128:11;131:22;138:15; 139:13;141:1;143:20; 144:20;145:2,4,11; 157:13,17,25;164:20; 165:14;166:5;167:9; 169:17;174:17;177:19; 180:9;194:18;198:10; 199:8,10,12,19,22; 213:13;214:4;215:23, 24;222:16;224:4,13; 229:9;240:23;243:6; 259:23;263:3,17,19; 267:6,10,17;268:9</p> <p>testing (3) 133:19;140:12; 143:18</p> <p>tests (2) 63:16,17</p> <p>textbook (1) 185:21</p> <p>Thanks (1) 153:19</p> <p>that'll (4) 108:8;223:25;270:3; 271:3</p> <p>theoretical (5) 185:10,11,13,19,20</p>
T				
<p>table (2) 222:5;263:8</p> <p>tables (1) 131:6</p> <p>tabulations (1) 227:17</p> <p>tact (1) 230:22</p> <p>talk (13) 22:23;39:24;42:11; 49:4;101:3;106:7,9; 135:6;137:1;188:3; 193:18;206:16;270:14</p> <p>talked (15) 37:3,5;135:4;188:3; 194:21,22,22,23; 198:16;203:5;216:9; 241:14;244:10;245:1; 263:17</p> <p>talking (53) 14:3,25;16:20;17:20;</p>				

<p>theory (1) 54:8</p> <p>therefore (6) 12:19;60:13;155:4; 179:1,18;231:2</p> <p>there'll (1) 228:14</p> <p>thereon (1) 274:12</p> <p>thinking (5) 103:17;143:23; 147:3;231:11;237:12</p> <p>third (15) 7:24;8:4;30:2;34:4; 83:20;84:6,8;87:14,18; 88:1,9;89:1;153:14; 193:10;233:9</p> <p>thorough (1) 256:9</p> <p>thoroughfare (3) 256:7,10,12</p> <p>though (9) 10:25;19:20;27:1; 76:15;139:6;193:11; 198:4;203:6;258:8</p> <p>thought (19) 31:10;41:20;53:3,6, 10;54:9,13;59:7;73:18; 114:4;131:18,22; 150:6;173:14;189:11, 11;211:13;224:13; 262:18</p> <p>thoughts (1) 230:9</p> <p>three (36) 7:12;74:4;78:7; 117:7,8;125:17,18; 128:16,16;132:23,24; 135:13;170:11;183:3; 184:14;187:11;195:2, 3;213:17;216:16,18,18, 23;227:10,11,13; 235:2;244:11,11; 253:24;264:9;267:2,2; 268:5,5;272:20</p> <p>three-point (1) 151:24</p> <p>three-story (3) 154:19,21,22</p> <p>throat (1) 146:8</p> <p>throttle (1) 180:21</p> <p>throughout (9) 208:21;230:2; 236:15;253:3;256:22, 25;257:20,21;259:6</p> <p>throw (2) 111:20;209:18</p> <p>throwing (1) 229:15</p> <p>thumbnail (1) 73:19</p>	<p>tied (1) 43:2</p> <p>timeframe (1) 107:6</p> <p>times (19) 73:25;74:1,4,6; 101:23;116:14;139:17; 163:16;170:18;183:11; 184:14;187:7,11; 195:2,3;216:16,18,18; 268:22</p> <p>timing (2) 23:20;94:6</p> <p>tip (3) 32:23,24;215:8</p> <p>toaster (1) 86:24</p> <p>today (46) 6:15;7:7;8:12;22:16; 23:7;26:8;50:17;62:24; 70:5;75:25;76:17; 77:11;80:25;90:15; 107:5;111:17;146:25; 147:2;167:3;172:13; 173:21;174:17;177:20; 192:7;196:12;210:23; 213:6;239:22,22; 241:15;244:3;245:1,2; 252:4;260:6;262:17; 263:2,7,24;264:8; 267:1,10,11;268:3; 274:2;275:11</p> <p>today's (1) 111:18</p> <p>together (2) 134:9;211:14</p> <p>token (1) 19:14</p> <p>told (9) 8:25;76:9;109:11; 154:4,8;207:6;254:15; 264:24;270:18</p> <p>tolerant (4) 146:14,16,18,19</p> <p>tonal (2) 181:20,20</p> <p>tongue (1) 66:4</p> <p>Toni (1) 7:19</p> <p>took (9) 129:9,9;188:5,8; 191:9;193:22;200:15; 205:12,12</p> <p>top (15) 31:4,5;42:15;43:17; 46:17,18,21;47:14; 87:20;88:16;179:10; 180:5;214:20;215:7; 217:6</p> <p>topo (1) 80:25</p> <p>topographic (1) 255:3</p>	<p>topography (1) 254:23</p> <p>touch (2) 47:22;245:16</p> <p>touched (1) 247:5</p> <p>tough (1) 260:15</p> <p>toward (4) 34:18;37:10,25; 87:19</p> <p>towards (15) 42:15,19;43:14; 47:21;63:13;67:18,18, 24,25;74:12,17;75:17; 153:9;235:3;261:4</p> <p>towers (1) 125:7</p> <p>toy (1) 27:3</p> <p>track (1) 147:1</p> <p>tractor (3) 189:20,23,24</p> <p>tradeoffs (1) 18:24</p> <p>traffic (19) 25:18;30:13;108:9; 171:12;172:21;173:3, 3,5,6,6,8;208:5;213:7; 241:16;244:9,13; 245:18;246:3;250:18</p> <p>trailer (3) 189:20,23,24</p> <p>trained (1) 213:20</p> <p>transcript (8) 8:1;10:12,25;114:11; 260:8;263:22;267:5,10</p> <p>transition (2) 67:24;255:16</p> <p>transitional (1) 255:8</p> <p>translate (3) 72:22;73:15;76:11</p> <p>transmitted (1) 11:11</p> <p>transpire (1) 108:8</p> <p>transport (1) 86:2</p> <p>transportation (10) 7:16;116:15,16; 248:15,17,21;250:3,12, 13;256:3</p> <p>trash (120) 7:22;8:5;9:11;20:20, 21;21:20,20;26:21; 27:10,17,20;29:22; 31:23;51:20;52:19,23; 53:17,20;54:2;107:24; 108:2;109:19;117:7, 20;118:17,21,22,25; 119:17,19,21;120:4,5, 14,15,25;121:14;123:7, 14,18;125:17;128:16; 132:23;136:7;139:16, 20,22;140:15;141:11; 144:6;151:2,20;177:9; 180:15;182:2,4,9,12, 15;189:21;194:24; 196:6,15,21;197:6; 207:15,17;216:8,10,12, 14,14,16;217:5,10; 218:3,25;219:8,11,13, 13,15,22,22;220:1,14, 17;221:3,4,7,9;223:16, 17,20,21;226:19,24; 227:1,8;228:6,10,22; 234:8,10;235:20,21; 240:4;241:1;244:12, 12,13;264:19;268:5; 269:15,24;271:22; 273:21;274:11,18,24</p>	<p>20;118:17,21,22,25; 119:17,19,21;120:4,5, 14,15,25;121:14;123:7, 14,18;125:17;128:16; 132:23;136:7;139:16, 20,22;140:15;141:11; 144:6;151:2,20;177:9; 180:15;182:2,4,9,12, 15;189:21;194:24; 196:6,15,21;197:6; 207:15,17;216:8,10,12, 14,14,16;217:5,10; 218:3,25;219:8,11,13, 13,15,22,22;220:1,14, 17;221:3,4,7,9;223:16, 17,20,21;226:19,24; 227:1,8;228:6,10,22; 234:8,10;235:20,21; 240:4;241:1;244:12, 12,13;264:19;268:5; 269:15,24;271:22; 273:21;274:11,18,24</p> <p>Treatment (2) 254:2,8</p> <p>tree (12) 50:7,8,9,9,13,14; 51:12;52:3;197:11; 200:19;222:18;228:2</p> <p>trees (15) 29:25;31:25;50:16; 51:6,16;52:5,11;53:13, 16;60:4,14;61:24;65:2; 185:17;230:17</p> <p>triangle (7) 27:10;71:18;167:3; 170:10,11;194:15; 261:6</p> <p>tributary (1) 76:18</p> <p>tried (1) 191:4</p> <p>truck (45) 32:14;47:11;53:5,7, 20,24;54:1;117:3,7,20; 119:6,17;121:14,15,15; 123:18;128:16;132:23; 133:21;139:16,22; 144:6;177:9;180:12, 18;181:14;182:15,16; 189:6,15,16,18,19,20, 21,21;191:7;194:22; 219:13;220:5;223:21; 227:1,7,21;247:1</p> <p>trucks (65) 27:12,15;65:7; 109:18,19;119:3,10,11, 12,19;120:4,5,14,15, 21,23,25;121:8,9,10, 11;123:7,14,15,21,22; 132:25;133:4,5,13; 136:8,16;177:8,8,9,9, 11;180:11,15,15,17; 181:4,9,16;182:2,4,9,9, 10,10;183:19,19,23; 188:13;189:1,14,16; 190:3;191:11;204:10; 207:10;228:16;268:3, 5,6</p> <p>true (5) 93:21,21;163:6; 246:8;249:18</p> <p>truly (1) 201:12</p> <p>truth (12) 96:13,14,14;112:22, 23,23;147:25;148:1,1; 175:2,3,3</p> <p>try (12) 31:14;36:12;50:18; 146:3,3,4;162:3; 192:18;198:11;226:2; 238:1;245:15</p> <p>trying (28) 15:19;21:12;33:11; 56:25;59:1;62:23;75:9; 85:21;90:10;100:16; 104:19;119:19;130:11; 143:4,4,5;162:15; 163:4;173:2;192:3; 200:14;208:3;220:3,3; 228:24;237:2,12;249:6</p>	<p>Tudor (1) 259:25</p> <p>Tuesday (1) 270:19</p> <p>Tuesdays (1) 136:3</p> <p>turn (10) 7:12;86:24;119:4; 151:22,24;180:20; 190:3,11;211:25;235:2</p> <p>turnaround (44) 20:19;27:11;28:12; 30:8,9;32:12,14;37:5, 24;44:9,13,23;45:8; 47:12;53:3,5,8,17,19, 20,21,24;54:1,4;59:15; 117:4,19;188:17; 189:6,25;194:22; 196:19,19;223:18; 226:21;227:5,7;228:6, 11,14,20;234:25; 236:7;275:7</p> <p>turnarounds (1) 204:11</p> <p>turning (5) 27:18;190:3;227:1, 21;228:20</p> <p>Twelve (1) 95:12</p> <p>Twenty-seven (1) 264:2</p> <p>twice (3) 179:4;182:25;256:17</p> <p>twister (1) 66:4</p>
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<p>two (58) 8:20;18:2;40:12,15; 44:13;51:9,10,16;52:5, 14,22;53:13,16;54:15; 55:4;60:14;62:9,9; 81:6;91:16;92:2,10; 94:8,11;106:18,19; 111:2;130:3;134:16, 17;154:14;155:13; 160:12;163:13,15,16, 22;164:11,15;168:10, 17;170:18;184:18; 207:1;209:2,8;220:12; 223:9;227:10,11,11; 243:16,19;245:10; 249:2,2;257:18,18</p> <p>tying (1) 43:3</p> <p>type (34) 17:10,23;50:16; 56:13;57:23;98:7; 104:17;111:13;127:11, 17,19,20;128:12; 129:4;161:14;162:5; 179:23;181:20,22; 182:12;184:2;207:13; 208:22;209:10;242:25; 243:5;261:8;263:16, 19,20;264:19;266:23; 267:8,21</p> <p>types (4) 108:23;133:8;264:3; 270:24</p> <p>typical (9) 48:9;77:1;111:5; 135:20;183:23;186:24; 187:3;217:10;243:10</p> <p>typically (9) 51:13;116:8;121:14; 177:9;180:7;186:22; 213:9;214:9;234:15</p>	<p>210:6,7;221:21; 223:11,14;224:3,9,12, 14,16;229:3;235:14,16, 18;236:11;237:16,24; 238:6,8;240:18,19; 245:13,15;246:8,12,15; 248:14,18,23;249:10, 13;271:15,19,24; 274:13,15,20</p> <p>Uhre's (2) 42:4;256:11</p> <p>ultimate (3) 71:13;74:14;79:9</p> <p>ultimately (1) 29:3</p> <p>ultimatum (1) 160:13</p> <p>Um-hmmm (7) 73:7;74:19;90:14; 91:11;218:5;238:19; 271:25</p> <p>unable (3) 74:19;85:12,20</p> <p>unanimously (1) 244:23</p> <p>uncertain (1) 80:12</p> <p>uncertainties (1) 143:21</p> <p>unclear (2) 139:24;274:16</p> <p>uncontrolled (1) 68:7</p> <p>under (41) 6:5;14:6;15:12;17:7, 21;18:3;23:15;26:13; 31:13;36:8,10,11,11; 46:2;64:16;66:19;73:3; 83:9;96:14;112:23; 118:19;139:22,22; 148:1;154:12;157:3; 172:8;173:22;174:4; 175:3;192:13;205:24; 212:24;226:11;230:18; 231:20;251:24;252:2; 253:4;265:20,24</p> <p>underlying (1) 260:12</p> <p>underneath (1) 64:19</p> <p>understandings (1) 33:8</p> <p>understands (1) 260:9</p> <p>understood (7) 11:23;35:10;131:19; 137:18;149:11;163:24; 172:18</p> <p>undertake (1) 150:15</p> <p>undesirable (1) 255:14</p> <p>undisputed (3)</p>	<p>201:13,19;262:24</p> <p>unfair (2) 142:3,8</p> <p>unfortunately (1) 214:13</p> <p>unique (5) 194:14;197:25; 254:23;255:3;261:6</p> <p>unit (1) 185:2</p> <p>units (19) 83:18,20;84:4,5,6,7, 9,10,12;87:9,12;88:7,9, 25;108:17;125:7; 194:11;220:23;254:13</p> <p>unlawful (1) 17:17</p> <p>Unless (5) 98:6;99:23;171:8,21; 173:15</p> <p>unloading (2) 177:10;183:20</p> <p>unloading/loading (1) 184:3</p> <p>unprecedented (1) 142:16</p> <p>unqualified (1) 124:25</p> <p>unreasonable (1) 93:10</p> <p>unsafe (1) 247:3</p> <p>unusual (2) 92:21,25</p> <p>unwritten (2) 246:1,2</p> <p>up (81) 8:14;13:14;14:4,13; 22:15;26:7,8,24;27:17; 28:13;30:11;32:1; 35:14,18;36:14;39:9; 45:25;46:11,11,12,12; 51:3;53:3,17;60:9; 62:25;64:24;74:4,7; 76:7;82:13;85:11; 101:22,24;102:19,21; 106:16;109:19;110:21; 111:8;117:20;136:16; 140:23;147:18;152:4; 156:10;158:9;169:17; 179:17,24;181:13; 182:5;183:7;185:5; 190:9;191:7;198:15; 204:14;207:5,16; 216:16;220:4,23; 221:4;222:12;226:23; 227:8,9;232:11;235:1, 5;249:25;250:20; 251:18;252:4;256:17; 258:9;262:15;264:25; 274:17;275:9</p> <p>uphill (1) 41:7</p>	<p>upon (14) 15:20,24;17:12;19:1; 32:14;73:20;90:12; 124:21;141:4;158:11, 20,22;177:4;210:15</p> <p>upper (3) 106:20;117:22;191:1</p> <p>ups (1) 132:24</p> <p>up-to-date (1) 232:13</p> <p>Use (129) 6:4,5;9:5;17:19; 20:1;22:17,21;28:9,10, 10;37:14,16;38:21,22; 54:3;60:16;61:4,20; 62:15;65:20;81:24; 86:5;94:21;97:17; 99:13;103:6,7;109:10; 111:5;115:16,21; 116:12,13;118:6; 125:16,22;126:1,17,23; 127:5,10,11,17,17,19, 20;128:13,23;131:25; 133:5,8;135:14; 139:14;142:4;143:17; 148:16;149:7;150:16; 152:1,6;155:11; 162:12,23;165:17; 166:7;168:4;171:23, 24;172:1,2,5;173:17; 177:1;189:25;198:18; 199:8;200:24;201:13; 203:8;209:10;219:18; 220:8;227:4;230:3,4, 15;231:15;232:17; 234:15;240:10,12; 242:14,20,21,25;243:5; 245:5,12;251:2,2,11; 252:17;253:5,5; 254:22;255:5,10,18; 256:2,23,24;257:23; 258:16;259:7,8,10; 261:9,17;265:8,18,25; 266:3,4,5,7,10,13,23; 267:8</p> <p>used (12) 12:1;69:18;95:25; 99:12;100:11;114:23; 129:4,6;160:1;164:18; 237:2;255:16</p> <p>uses (23) 98:24;104:11,13; 114:23;116:10;142:20; 152:9;238:22;243:24; 247:18;249:2;250:9; 251:4;252:2;253:15, 16;254:18;263:25; 264:2,15,22;265:7; 266:25</p> <p>using (10) 26:6;33:18;41:13; 42:3;99:24,25;117:5;</p>	<p>129:6;226:24;236:16</p> <p>usual (1) 268:16</p> <p>usually (7) 24:20;94:15;144:4; 180:22;183:3;225:2; 238:1</p> <p>utility (1) 149:7</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>vacuum (1) 242:7</p> <p>vague (1) 17:19</p> <p>valley (8) 43:21,23;45:19;58:1; 70:7;78:25;244:17,21</p> <p>value (114) 98:2,5,13,21;99:3,5, 7,7,9,11,13,15,17,20, 24,25;100:1,3,3,5,8,10, 11,12,13,20;101:1,1,1, 4,4,4;102:2,7;103:5,5, 25;104:4,9;105:3,17; 106:5,5,22;107:9,12; 111:3,14;157:14,14,15, 21,21,23;158:4,4,5,6,6, 8,12,13,15,25;159:2,4, 6,12,12,13,14,15,16,21; 160:6,7,8,9,13,13,14, 15,15,22;161:4,12,13; 162:12,14,17,17,18,22, 22,25;163:2,3,10,10; 164:19,23;166:4; 168:20,21,22;171:15; 173:12,25;242:6,12; 262:16,19,19,25</p> <p>values (5) 105:3;172:12; 232:25;233:2,22</p> <p>valuing (1) 162:4</p> <p>van (3) 133:17;215:23;216:6</p> <p>variable (1) 59:23</p> <p>variables (1) 144:7</p> <p>variance (1) 60:14</p> <p>variety (2) 193:4;194:19</p> <p>various (2) 201:3;244:19</p> <p>vary (1) 180:17</p> <p>vegetation (3) 64:2,5,10</p> <p>vehicle (2) 263:16,19</p> <p>vehicles (10)</p>
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<p>109:20;117:4; 123:25;132:22;133:2, 8;151:22;228:13; 263:18;264:17 vehicular (2) 108:9;227:11 velocity (1) 180:19 verbiage (1) 237:22 vermin (2) 195:6;217:6 version (2) 11:14;86:20 versus (10) 46:19;72:20;104:4, 13,13,25;135:20; 160:8;163:10;213:16 vertical (1) 231:8 vertically (2) 44:15;86:3 vicinity (2) 108:20;186:20 view (9) 25:18;139:12; 140:10;160:9;247:11, 12,13,15;259:5 viewed (1) 13:5 viewing (1) 174:13 viewpoint (1) 188:19 views (1) 203:6 viii (1) 88:23 village (6) 253:17;254:2,9; 255:6,9,15 Vincent (1) 112:19 violate (1) 119:21 violations (1) 139:18 Virginia (1) 96:11 virtually (1) 14:21 vis-à-vis (1) 108:8 visibility (5) 155:6;193:8;203:11; 204:5;250:4 visible (8) 155:16;171:7;194:4; 203:9,14;204:1,12; 205:3 visibly (1) 44:24 visit (4)</p>	<p>8:17;126:8;205:11; 225:4 visited (1) 203:18 visitors (1) 214:10 visual (5) 150:24,25;153:7; 155:3;204:10 voice (1) 134:16 voluntarily (1) 260:24 voluntary (1) 260:25</p> <p style="text-align: center;">W</p> <p>waffle (1) 122:22 Wait (4) 45:4,5,6;23;105:6; 215:4 waiting (1) 59:6 waived (2) 260:6,9 walk (5) 126:8;169:11,12; 221:8;226:8 walked (1) 78:21 wall (99) 28:11,14,15;37:5; 39:1,7,10,14,16;42:22, 23,24;44:5,12,14,17, 18,19,20,21,22,24; 45:3,7,14,17;46:3,3,10, 13,14,17,18,18,19,19, 19,24;47:1,5,10,10,14; 54:18,25;55:4,8,17; 65:8,13,14,15,17; 67:23;68:2,17;117:11, 25;121:20;129:10,17; 137:1,19;138:2,3,4,15, 22;139:3,6,10,19; 140:13;141:11;142:22; 143:2,6;151:2;178:23, 24;179:19,21;180:5; 188:3,6,10,14;189:5; 198:17,20;204:5,18; 217:13;220:23;228:9; 234:18,19;243:22,22 walls (3) 45:13;55:11;118:3 wants (4) 103:12,15;160:20; 208:22 warn (1) 181:24 warning (2) 190:8;207:11 warrant (1)</p>	<p>151:9 waste (7) 63:4;163:9;194:25; 195:4,8;254:2,8 watch (1) 156:7 watching (1) 226:8 water (75) 7:22;8:6;21:4;27:25; 28:11;31:14;33:9;39:7, 8,12,13,22;41:25;42:7; 43:1,13,16,18,21; 45:24;46:1,9;47:21,25; 48:7,9,14,25;49:2,5,6, 9,66;13;68:20;70:9; 73:16;74:3,11,12; 75:15,16,21,24;76:11, 17;77:3,5,10,12,15,15; 79:20,23;80:10,15,18; 81:4,5,6;199:9,11,20, 25;200:1,1,5,23,25; 201:1,6,14,19;221:6; 241:11;254:2 way (55) 9:24;11:1,7;13:12; 14:11;15:11;16:23; 22:21;27:19;29:11; 30:5,7;32:15;34:21,23; 41:6;44:1;46:2;50:25; 60:12;61:23;73:19,22; 77:22;78:5;79:14; 82:21;84:17;92:25; 106:16;172:7;174:13; 181:23;182:22;186:12, 13;190:11,13;194:9; 199:20;201:7;206:17; 213:19,20,20;214:2; 223:23;231:17;232:7; 248:20;251:10;257:8; 259:14;265:21;270:21 ways (7) 92:2;134:22;186:4; 194:10,15;198:16; 211:12 weaker (1) 106:24 weather (2) 179:15;221:9 weatherproof (1) 179:14 Weaver (1) 148:24 Wednesday (2) 270:25;271:2 week (16) 26:11;117:7,9; 125:18,19;128:16,17; 132:24;136:3;216:16, 18;244:11;268:4,4,5,6 weekdays (1) 119:2 weekend (1)</p>	<p>275:24 weekends (1) 119:2 weeks (1) 225:6 weigh (2) 267:13;268:13 welcome (2) 156:6;174:22 weren't (4) 112:3;177:25;234:7; 249:17 West (23) 7:1,2;21:13;34:5; 36:2;38:2;67:17;68:4; 76:19;84:7;87:17;88:2; 153:9;195:12;198:2; 199:10;215:7,7;229:9, 10,14;240:5;254:10 western (35) 7:25;8:4;27:11,14, 15;28:12;35:24;36:19; 37:4,7,7,25,25;39:5; 43:14;59:25;64:6,9; 78:17,18;83:19,22; 87:10,18;117:18,18; 129:14,16;151:15; 228:5,7;240:5;274:17, 19,20 wetland (3) 59:24;60:6,15 wetlands (1) 49:9 what's (35) 10:8;14:5;18:2; 24:16,24;40:9;50:13, 13;51:11;54:25;56:2; 69:15;75:12;76:6; 80:24;89:15;100:2; 104:22;106:2;124:3; 126:12,13;130:22; 142:13;145:16,16; 158:23;190:6;200:25; 211:24;237:6;244:2; 248:12;251:3;264:6 whenever (1) 253:4 Whereas (2) 30:19;189:7 Whereupon (1) 275:25 wherever (4) 230:3;256:22,25; 259:7 whichever (1) 119:22 white (3) 62:9;169:18;203:23 whole (20) 18:23;19:15,15; 96:14;109:22;112:22; 147:25;158:16,22; 168:8,8;175:2;194:19;</p>	<p>195:10;198:1;208:21; 247:17;250:22;251:16, 16 wholesale (3) 19:11;20:1,1 who've (1) 209:21 wide (1) 79:11 width (6) 38:10,11,19,24;79:7, 8 wife (3) 206:11;207:22; 211:12 willing (2) 173:12;174:13 win (1) 233:8 windows (2) 231:16;233:14 windshields (1) 233:17 wing (1) 151:23 win-win (1) 233:8 wires (2) 104:1;190:13 wish (6) 42:7;77:14;145:14; 212:13;241:7;245:14 wishes (4) 7:7,8;10:3;241:3 withdraw (1) 126:25 withdrawn (1) 8:16 within (27) 32:5;61:9;64:13; 68:9,21;69:3;84:16,24; 85:24,25;124:5,7; 142:22,23,23;149:21; 173:21;198:21;216:17, 23;221:18;232:21; 235:9;242:25;243:2; 253:22;255:8 without (15) 32:12,13;43:1;68:22; 141:1;161:19;163:5; 179:7;227:23;237:14, 14;258:11;261:24; 266:13;273:24 witness (239) 9:1,25;25:11;26:25; 27:2,4;28:6;29:7,10; 30:16,23;31:4,6,8,10; 32:15,18,22,24;33:1, 13,21;35:2,25;36:3; 37:16,22;38:22,24; 39:19,21;40:4,6,10,14, 24;41:6,14,16;42:8; 43:9;44:20;45:16;47:2,</p>
--	--	---	--	--

<p>6;49:12,23;50:22,24; 51:2,24;53:7;54:3; 56:8,10;58:18,21;59:4, 13,21;61:17;64:7,9; 65:17;66:10,11;67:22; 69:22;70:4;71:1,4,21; 72:8;74:14,19;75:18; 77:14,19,23;81:16,22; 83:6;84:24;88:20,24; 90:19,21,23;92:12; 95:3,4;98:15,17;99:11, 22;100:4,15,19,22; 101:2,6;102:18,25; 103:8,11;104:16; 105:5,19,25;106:6,15, 18;107:11;110:8,10; 112:15;113:8,12; 114:3;115:5,10,17,20, 23;118:21;119:23; 121:7;122:15,21; 123:1;124:5;127:12, 19;132:4;134:15; 135:22;137:11;138:4, 6,16;140:13;143:20; 144:9,15,16;147:7,10; 156:12;158:20,25; 159:3,6,18,22;160:1,8; 161:21;162:1,18; 163:1,13;164:20; 166:18;167:16;171:4; 172:3,4;174:15;176:1; 178:20;180:16,25; 182:4,8;184:17;192:2; 196:17,22;197:7,9; 199:6,22;200:6,15,22; 201:3,17,21,23;202:21; 205:10,12;208:16,18; 209:14;214:17,19,21, 25;215:3,5,10,12,14; 217:19,25;218:2,5,7, 10,18,21;219:4,24; 220:16,20;222:24; 223:6,8;224:1,8,11; 225:22;227:20;228:3, 7,18;230:13;231:22, 25;232:5,10,22;233:15, 18,20;234:3;236:4; 268:3</p> <p>witnesses (38) 7:13,17,18;8:18,20; 14:9;16:20;17:7;25:12, 16;66:25;91:13,16; 92:5,10;93:7,7;94:6,8, 11,14,14,15,22,23,24; 95:22,22,23;96:5; 145:15,17,20;173:11; 211:3;212:1;259:22; 267:23</p> <p>witness's (3) 96:24;113:21;176:19</p> <p>WMCCA (1) 229:11</p> <p>wonder (1)</p>	<p>267:8</p> <p>wondered (5) 32:8;47:22;72:17; 73:11;104:5</p> <p>wood (3) 180:8;188:20,23</p> <p>wooden (3) 181:1;182:19;183:7</p> <p>woods (1) 75:10</p> <p>word (5) 17:19;56:2;73:12; 124:25;266:10</p> <p>worded (1) 257:9</p> <p>words (14) 9:13;12:1;34:20; 57:4;72:18;77:5; 100:25;140:22;184:4; 186:25;188:7;220:9; 237:5;258:24</p> <p>work (19) 28:25;51:13;60:9; 103:25;113:4;115:13; 116:22;132:18;137:6; 147:22;198:23,24; 206:14;227:20,23; 228:9;234:16;244:3; 253:14</p> <p>worked (7) 43:2;55:3;64:25; 115:10;190:22;209:17, 21</p> <p>working (3) 36:22;207:7;222:24</p> <p>works (4) 79:14;182:22,23; 268:10</p> <p>worried (2) 221:1,11</p> <p>worry (3) 114:5,5;233:23</p> <p>worse (4) 22:2,7,9;77:22</p> <p>wrapping (1) 154:21</p> <p>write (4) 6:17;236:23;237:2,2</p> <p>writing (1) 237:4</p> <p>written (6) 24:21;82:2;240:25; 241:2;245:24;246:1</p> <p>wrong (4) 208:3,9,9,10</p>	<p>102:2;115:6;175:13</p> <p style="text-align: center;">Z</p> <p>zero (1) 80:2</p> <p>Zone (19) 6:12;29:25;32:20; 33:3;51:11;54:14; 105:16;185:19;209:11; 222:18;223:2,17; 227:5;247:1;251:3; 255:17;257:21;258:10; 265:25</p> <p>zones (2) 29:21;31:25</p> <p>Zoning (38) 6:5;12:15;14:18,19, 24;18:3;24:14;36:17; 82:6,11,12;94:21; 99:14;100:4,7,17; 152:9;164:18,24; 170:8;173:20,22; 174:3;192:19;194:11, 12;230:3;231:18; 246:21;253:4,4;255:8, 13;256:22,25;257:22; 259:7;262:22</p> <p style="text-align: center;">0</p> <p>02 (1) 74:6</p> <p>06 (1) 74:6</p> <p>08 (1) 107:4</p> <p style="text-align: center;">1</p> <p>1 (5) 195:24;239:13; 240:1;272:12;273:2</p> <p>1/2 (7) 74:9;137:24;188:19; 189:3;198:17,22; 204:11</p> <p>1/2-foot (3) 65:8,16;67:23</p> <p>1:00 (1) 9:3</p> <p>1:45 (2) 147:7,12</p> <p>10 (13) 15:5;24:25;30:12; 74:10;134:18;179:1, 12;182:24,24,25; 187:7;219:14;272:7</p> <p>100 (3) 108:19;244:5;247:19</p> <p>100's (1) 108:20</p> <p>10245 (1)</p>	<p>192:10</p> <p>105A (2) 97:18;102:13</p> <p>107 (1) 112:20</p> <p>10800 (1) 6:10</p> <p>10827 (1) 205:21</p> <p>10-year (5) 75:20;76:1,5;79:15, 17</p> <p>11 (5) 11:12,18;226:25; 236:6,8</p> <p>11:30 (1) 81:18</p> <p>1-143 (1) 240:6</p> <p>11th (3) 16:8;23:18;24:7</p> <p>12 (11) 14:17;24:17;52:1; 83:23,24;95:11; 137:24;138:15;139:6; 189:2;198:17</p> <p>12/15 (1) 8:1</p> <p>12:10 (1) 112:6</p> <p>12:15 (1) 112:7</p> <p>123 (1) 8:17</p> <p>124 (4) 11:13,13,17;12:20</p> <p>12605 (1) 156:19</p> <p>129 (6) 8:7;11:11,15,21; 12:20;16:10</p> <p>129A (2) 8:7;70:25</p> <p>129C (1) 71:2</p> <p>129D (2) 71:2,2</p> <p>129G (3) 70:14;71:2,18</p> <p>12-foot (2) 139:10;270:5</p> <p>13 (2) 95:11;121:16</p> <p>131 (3) 8:7;11:24;12:20</p> <p>131A (6) 37:20;47:4,4;198:19; 226:24;236:5</p> <p>131Dviii (2) 84:1;88:21</p> <p>132 (1) 8:19</p> <p>132A (1)</p>	<p>175:22</p> <p>133 (1) 8:10</p> <p>134 (2) 8:7;12:20</p> <p>134A (3) 27:7;31:7,8</p> <p>135 (1) 8:21</p> <p>135A (1) 96:19</p> <p>135B (1) 96:19</p> <p>136 (1) 8:24</p> <p>138 (2) 8:22;114:15</p> <p>138A (1) 113:1</p> <p>138B (1) 114:22</p> <p>140 (4) 6:7;86:13;194:25; 268:6</p> <p>142 (7) 40:22;41:3,4;67:9; 69:1;79:2;80:6</p> <p>143 (2) 239:13;240:1</p> <p>143A (3) 217:23,24;218:16</p> <p>143B (2) 218:25;219:2</p> <p>14955 (1) 156:20</p> <p>14-foot (1) 129:10</p> <p>15 (23) 6:15;11:18;13:22; 28:2,3;38:9,18;39:1,2; 145:24;146:3,8,10; 147:9;184:7,13;185:4, 6,23;186:18;187:7; 198:21;204:13</p> <p>150 (2) 244:6,7</p> <p>16 (5) 251:11,12;271:5; 273:2,18</p> <p>16-01 (2) 6:4;116:2</p> <p>1688 (1) 174:25</p> <p>16-passenger (3) 133:17;215:23;216:5</p> <p>18 (2) 89:16,17</p> <p>189 (1) 6:11</p> <p>196 (1) 108:19</p> <p>1D3a (1) 15:3</p>
--	--	---	---	--

	26B (3) 59:11,13,13	394 (3) 39:14,19;44:9	129:21;178:14; 181:12,25	747 (4) 71:12;74:5;80:2,20
2	27 (5) 214:2;263:25; 264:15,22;268:1	394-foot (1) 39:4	56 (1) 254:23	75 (2) 179:13;254:12
2 (3) 8:25;59:10;265:22	274 (2) 8:2;10:25	396 (1) 39:19	57 (1) 255:13	7th (8) 6:14;10:12;11:7; 24:6;26:19,20;83:16; 164:21
2.02 (1) 74:6	287 (1) 243:18	398 (3) 39:15,17,18	59.3.3.2E2C (1) 6:6	
2/1/16 (1) 272:12	3	39Gii (2) 59:19,20	59.3.3.2E2cii (2) 12:13;17:12	8
2:00 (2) 9:1;146:1		4	59.7.3 (1) 15:2	
20 (8) 28:3;38:18,25;46:14; 60:10;185:12;212:7; 271:4	3 (5) 6:13;7:14;74:6; 266:2,2	4 (2) 253:23,23	59.7.3.1 (1) 265:17	8:30 (1) 9:10
20,400 (2) 73:4;76:10	3.9 (1) 23:15	4.02 (1) 6:8	59.7.3.1D3a (1) 23:22	80 (2) 179:8;184:8
20,473 (1) 71:9	3:00 (1) 212:8	4.2 (1) 14:7	59.8 (2) 231:23,23	800 (1) 200:24
200 (1) 221:9	30 (12) 16:24;21:23;50:9; 59:16;60:6;92:5; 175:13;184:7,14; 193:11;203:8;272:11	4:00 (1) 9:13	5th (1) 274:8	85 (3) 180:13,25;251:24
2015 (3) 6:13,14;232:15	302 (1) 174:25	4:44 (1) 275:25	6	8787 (1) 147:22
2016 (6) 6:16;13:23;148:15; 232:9;271:2;275:18	32 (3) 51:5;52:7,15	40 (4) 48:2;178:18;186:22; 187:3	6 (14) 6:13;7:13;65:8,16; 67:23;74:4;137:24; 148:15;149:1;188:19; 189:3;198:17,21; 204:11	9
20850 (1) 174:25	32-inch (1) 62:5	42 (3) 101:13;102:2;134:9	6.5 (1) 47:1	9 (2) 102:23;107:21
20910 (1) 147:23	35 (4) 186:25;248:18,19; 250:7	43 (1) 95:14	6.5-foot (1) 47:5	9:00 (6) 9:10,12,12;119:1,2,2
20-foot (2) 185:7,24	36 (6) 51:5;52:7,15;89:1; 253:18,21	44 (4) 134:6,8,9,9	60 (6) 153:13;178:22; 179:13;182:1;183:9; 184:8	900 (1) 76:10
20th (4) 271:3,7,8,11	360 (3) 212:23;251:8;252:6	45 (3) 146:1;186:22;187:3	600 (1) 6:10	91 (2) 182:19;183:8
21 (2) 232:9,15	37 (3) 50:22;253:19,23	46 (2) 178:19;254:12	63 (1) 255:6	95 (2) 181:6;184:5
21.5 (3) 226:25;236:6,8	370B (1) 50:21	47 (2) 134:9;254:18	65 (8) 134:16,17;178:14; 179:2;181:11,25; 184:5,12	96 (2) 182:17;183:6
21046 (1) 192:11	376 (1) 50:20	48 (3) 134:9,14;178:18	66 (2) 182:19;183:14	96.4 (1) 71:12
214 (1) 96:10	378 (1) 44:1	48.00.02 (1) 118:23	7	97Cii (1) 199:16
21703 (1) 112:20	37B (3) 50:23,24;51:2	483,560 (1) 74:5	7 (3) 7:18;74:9;266:24	99 (1) 250:16
22 (2) 79:4;81:24	38 (5) 230:2;253:19;254:4; 256:21;259:5	5	7.3.1E1C (1) 252:16	
22.3 (1) 81:25	388 (1) 39:19	5 (5) 74:4;273:10,18; 274:9;275:18	7:00 (2) 119:1,1	
22960 (1) 96:11	390 (4) 39:14,15,19;43:25	5:00 (3) 9:10,11,12	70 (4) 153:13;178:22; 179:8;181:6	
22nd (1) 11:24	390.8 (1) 39:17	50 (8) 26:21;134:4,10; 179:2;182:1;186:25, 25;255:6	700 (1) 76:10	
23rd (1) 149:5	392 (5) 44:5;46:4,6,9,10	52 (1) 254:20	71 (1) 182:17	
24-hour (2) 77:7;209:20	392.4 (3) 39:6,9;44:10	5216 (1) 112:19		
25 (5) 68:3;115:6;184:9; 185:12;191:10	392-foot (3) 39:14;45:18,23	525 (1) 212:22		
259 (1) 8:2		55 (4)		
26 (1) 59:8				