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Transcript of Hearing

Date: February 16, 2024

Case: Brookstone Senior Living (CU 23-12)

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Transcript of Hearing
Conducted on February 16, 2024

1 (1 to 4)

1	3
1 OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS	1 A P P E A R A N C E S
2 FOR MONTGOMERY COUNTY, MARYLAND	2 HEARING EXAMINER
3 - - - - -x	3 LYNN ROBESON HANNEN
4 IN RE: :	4 MONTGOMERY COUNTY OFFICE OF ZONING AND
5 OBJECTION TO BROOKSTONE SENIOR : CASE NO.	5 ADMINISTRATION HEARINGS
6 LIVING FACILITY : CU 23-12	6 100 Maryland Avenue
7 RESIDENTIAL CARE FACILITY AT :	7 ROCKVILLE, MARYLAND
8 DINO DRIVE IN BURTONSVILLE :	8 (240) 770-6660
9 APPLICATION OF ELDER HOMELAND,LLC :	9
10 - - - - -x	10 ON BEHALF OF THE APPLICANT
11 HEARING	11 SOO LEE-CHO, ESQUIRE
12 BEFORE HEARING EXAMINER LYNN ROBESON HANNAN	12 BREGMAN, BERBERT, SHCWARTZ & GILDAY
13 Friday, February 16, 2024	13 7315 Wisconsin Avenue
14 9:37 p.m.	14 Suite 800 West
15	15 Bethesda, Maryland 20814
16	16 (310) 770-2707
17	17
18	18
19	19
20	20
21	21
22	22
23 Job No.: 511503	23
24 Pages 1-208	24
25 Transcribed: Tammy Curran	25
2	4
1 Hearing held at the office of:	1 PROCEEDINGS
2	2 HEARING EXAMINER: I'm calling the case of CU 2312,
3 100 Maryland Avenue	3 an application of Brookstone Senior Living, LLC, for
4 County Office Building, Room 200	4 residential care facility at Dino Drive in Burtonsville. Is
5 Rockville, Maryland 20850	5 there anyone here -- well, first off, let the parties
6 (240) 770-6660	6 identify themselves for the record.
7	7 MS. LEE-CHO: Thank you. For the record, Soo
8	8 Lee-Cho with the law firm of Bregman, Berbert, and Schwartz,
9	9 and Gilday, Elder Homeland, LLC. In the room I have my
10	10 witnesses -- expert witnesses. I also have some witnesses
11	11 that I will go through once once we start online as well.
12	12 HEARING EXAMINER: Okay. Is there anyone in the
13 Pursuant to notice, before Cody Handlir, Notary Public	13 hearing that is not going to be called by Ms. Lee-Cho?
14 in and for the State of Maryland.	14 UNIDENTIFIED FEMALE: I assume there are a variety
15	15 of us representing members of the community of Valley Stream
16	16 Estates, neighboring residential properties.
17	17 HEARING EXAMINER: Okay.
18	18 (Discussion held off the record.)
19	19 HEARING EXAMINER: When you're on Zoom, can you
20	20 identify your name and address for the record. The woman
21	21 that just spoke.
22	22 UNIDENTIFIED FEMALE: Sure. Would you like us to
23	23 do that now or later in the hearing?
24	24 HEARING EXAMINER: Well, it can be later. I just
25	25 wanted to tell you can you keep -- we're having

Transcript of Hearing
Conducted on February 16, 2024

2 (5 to 8)

5	<p>1 trouble -- we can hear you better now, but can you either</p> <p>2 speak up or turn your volume up?</p> <p>3 UNIDENTIFIED FEMALE: We will do our best to speak</p> <p>4 up. There's no adjustment on our microphone, unfortunately.</p> <p>5 HEARING EXAMINER: Well, that worked, because we</p> <p>6 could really hear you.</p> <p>7 MR. BOZZONETTI: It's not coming through the</p> <p>8 television speaker. It's coming through the laptop speaker.</p> <p>9 (Discussion held off the record.)</p> <p>10 THE COURT: We're going to take a short recess</p> <p>11 while he with get the technical. Thank you for your</p> <p>12 patience. We have fixed the technical problem. The</p> <p>13 brilliant people, not me, have fixed the technical problem.</p> <p>14 I appreciate your patience.</p> <p>15 Now, we were -- what I heard is that there are</p> <p>16 people that -- from the Valley Stream Estates community that</p> <p>17 wish to testify today, so I'm going to go over a little bit</p> <p>18 about the hearing. It's informal but subject to certain</p> <p>19 formalities. The testimony is under oath and is subject to</p> <p>20 cross-examination. So when -- the Applicant presents its</p> <p>21 case first, and then anyone in opposition has the right to</p> <p>22 question their witnesses. Now, that's just a time to</p> <p>23 question them on what they say. It's not a time to testify.</p> <p>24 After the applicant presents its case, it will be the</p> <p>25 Opposition's turn -- time to testify, and you can see -- at</p>	7	<p>1 HEARING EXAMINER: Okay. And with that, do you</p> <p>2 have the affidavit of posted?</p> <p>3 MS. LEE-CHO: I do.</p> <p>4 HEARING EXAMINER: Okay. I'm going to add that.</p> <p>5 That just states that the signs have been posted</p> <p>6 continuously since the application has been filed.</p> <p>7 MS. LEE-CHO: And will that be Exhibit 43?</p> <p>8 THE COURT: 43.</p> <p>9 MS. LEE-CHO: Uh-huh. And the planner e-mail will</p> <p>10 be 42.</p> <p>11 HEARING EXAMINER: No, this is -- this is another</p> <p>12 one to supplemental. I asked them to spell out the</p> <p>13 boundaries of the existing area -- or the surrounding area.</p> <p>14 Let me see what Exhibit 42 is.</p> <p>15 MS. LEE-CHO: I have the last exhibit number as</p> <p>16 41.</p> <p>17 HEARING EXAMINER: Well, I have 42, e-mail from --</p> <p>18 MS. LEE-CHO: From staff, okay.</p> <p>19 HEARING EXAMINER: Let me make sure that's it. No</p> <p>20 that's -- we've gotten a supplemental one late, late last</p> <p>21 night.</p> <p>22 MS. LEE-CHO: Okay. So then the supplemental is</p> <p>23 43?</p> <p>24 HEARING EXAMINER: No, affidavit -- the affidavit</p> <p>25 of posting, so this supplemental -- so you were copied, I</p>
6	<p>1 that time you can say fully what you wish to say. So -- and</p> <p>2 then after the Opposition puts on its case, the Applicant</p> <p>3 has a chance for what they call rebuttal and will be able to</p> <p>4 have additional witnesses if necessary, and you will get a</p> <p>5 chance to question those, too.</p> <p>6 All right. With that, are there any preliminary</p> <p>7 matters?</p> <p>8 MS. LEE-CHO: Yes.</p> <p>9 HEARING EXAMINER: Well, I have one, an e-mail came</p> <p>10 in last night that was not copied to Nana from the planner</p> <p>11 assigned to this Mark Beall. So that -- it was answering</p> <p>12 some questions of mine. I've have asked Nana to see if she</p> <p>13 can post it. That's a problem, but it takes us some time to</p> <p>14 post it. And I understand you have some exhibits that you</p> <p>15 just submitted, and how are we going to work those so that</p> <p>16 the people on Zoom can see those exhibits?</p> <p>17 MS. LEE-CHO: So I have -- your staff has</p> <p>18 downloaded it to Zoom operator, so he is able -- he will be</p> <p>19 able to pull it out.</p> <p>20 HEARING EXAMINER: To pull them up.</p> <p>21 MS. LEE-CHO: And they have -- they need to be</p> <p>22 entered and an exhibit number assigned.</p> <p>23 HEARING EXAMINER: Okay.</p> <p>24 MS. LEE-CHO: So I was planning to sort of do that</p> <p>25 as we go.</p>	8	<p>1 think, on this e-mail.</p> <p>2 MS. LEE-CHO: Yes.</p> <p>3 HEARING EXAMINER: So that would -- but I need to</p> <p>4 allow other people to see it. Can I e-mail it to you?</p> <p>5 MR. BOZZONETTI: I wouldn't know what e-mail to</p> <p>6 send that to.</p> <p>7 HEARING EXAMINER: Okay. Well, let's get to</p> <p>8 that -- all right.</p> <p>9 With that, is there anything else as a preliminary</p> <p>10 matter?</p> <p>11 MS. LEE-CHO: Well, do you consider my introduction</p> <p>12 a preliminary matter?</p> <p>13 HEARING EXAMINER: No. That's your opening</p> <p>14 statement.</p> <p>15 MS. LEE-CHO: Then no, no other preliminaries.</p> <p>16 HEARING EXAMINER: Okay. Why don't you go ahead.</p> <p>17 Now, it sounds like we're going to have a lot of</p> <p>18 witnesses. So I don't want to rush you, but keep in mind</p> <p>19 that we do have other witnesses that are going to want to</p> <p>20 testify.</p> <p>21 MS. LEE-CHO: Yes, and we will try to run through</p> <p>22 things very quickly. I do have a number of expert</p> <p>23 witnesses. In that regard, I did want to ask -- maybe this</p> <p>24 is a preliminary, if you would prefer to qualify all expert</p> <p>25 witnesses in a group up front or just as we go?</p>

Transcript of Hearing
Conducted on February 16, 2024

3 (9 to 12)

9	11
<p>1 HEARING EXAMINER: No, as we go.</p> <p>2 MS. LEE-CHO: Okay.</p> <p>3 HEARING EXAMINER: Go ahead.</p> <p>4 MS. LEE-CHO: Thank you. So Lee-Cho again for the</p> <p>5 Applicants. I just want to give a brief overview of the</p> <p>6 project and address a few legal issues that have been raised</p> <p>7 by the hearing examiner, just some questions that I think</p> <p>8 we -- it would be clarifying just to dispense with early on.</p> <p>9 So this project is a conditional use application</p> <p>10 for a residential care facility for over 16 persons in the</p> <p>11 R-200 TDR zone. The property is known as Outlot A Block B</p> <p>12 of Valley Stream Estates subdivision. It's platted as an</p> <p>13 outlot on platt 23347. It is approximately 5.86 acres and</p> <p>14 located at the intersection of Dino Drive and Valley Stream</p> <p>15 in Burtonsville. We are proposing a four-story senior care</p> <p>16 facility to include 88 independent units, 64 assisted living</p> <p>17 units -- beds, not units -- and 27 memory care. That's with</p> <p>18 133 surface parking spaces.</p> <p>19 Several legal issues that are questions that were</p> <p>20 raised by the hearing examiner, one of which dealt with a</p> <p>21 question regarding a TDR on the zone and whether the master</p> <p>22 plan, which is the 1997 Fairland Master Plan, required its</p> <p>23 removal. I did review it, and I don't think that it</p> <p>24 requires removal. The master plan was trying to address</p> <p>25 something that under the 1981 Fairland Master Plan, there</p>	<p>1 relative to the question you had about MPDU</p> <p>2 compliance, there is a reason why there is not an explicit</p> <p>3 statement on that issue. Currently DHCA is considering a</p> <p>4 proposal to create a new moderately priced --</p> <p>5 HEARING EXAMINER: Wait.</p> <p>6 MS. LEE-CHO: I'm just -- well, okay. I don't have</p> <p>7 to address it but --</p> <p>8 HEARING EXAMINER: That's what I want to hear in</p> <p>9 testimony.</p> <p>10 MS. LEE-CHO: Okay. Do you want to hear who's</p> <p>11 going to sign the surety maintenance agreement?</p> <p>12 HEARING EXAMINER: No.</p> <p>13 MS. LEE-CHO: No, you don't want to hear that.</p> <p>14 HEARING EXAMINER: Testimony.</p> <p>15 MS. LEE-CHO: Okay. I thought I might just</p> <p>16 dispense of that.</p> <p>17 HEARING EXAMINER: No.</p> <p>18 MS. LEE-CHO: Then with that, it's fine. I'm</p> <p>19 flexible. I don't want to testify at all. So for my first</p> <p>20 witness, I would call Chris Hoard, who is with Distinctive</p> <p>21 Living. He is president and chief development officer.</p> <p>22 After Chris Hoard, we would have Chris Palkowitsch. He is</p> <p>23 our architect and expert in land planning. John Nielson</p> <p>24 is -- and Chris Palkowitsch is on Zoom as is Chris Hoard.</p> <p>25 In the room we have John Nielson. He'll be our third</p>
10	12
<p>1 was a number of TDRs is.</p> <p>2 HEARING EXAMINER: Well, wait, this is testimony.</p> <p>3 So, you know, we're going to have to wait on this for your</p> <p>4 land planner.</p> <p>5 My question, except or the master plan, it was also</p> <p>6 in the past we extinguished the TDRs because they aren't</p> <p>7 going to be used.</p> <p>8 MS. LEE-CHO: And that's what I was -- I couldn't</p> <p>9 find any, you know, reference or recommendation in the</p> <p>10 master plan to extinguish TDRs when you're doing special</p> <p>11 exemptions or conditional uses. So I wasn't finding</p> <p>12 anything like that.</p> <p>13 HEARING EXAMINER: Well, because we don't want the</p> <p>14 additional development potential.</p> <p>15 MS. LEE-CHO: Understood, yeah. I think it would</p> <p>16 be appropriate if there was any land left to develop or if</p> <p>17 it were dealing with a different property.</p> <p>18 HEARING EXAMINER: Right, okay.</p> <p>19 MS. LEE-CHO: This is a site where the entire site</p> <p>20 is being encompassed by the conditional use. And I don't</p> <p>21 know that you can, by condition, remove a TDR overlay and</p> <p>22 extinguish it. That's just a concept that I've never heard</p> <p>23 of before.</p> <p>24 HEARING EXAMINER: Okay.</p> <p>25 MS. LEE-CHO: The other note I did want to make</p>	<p>1 witness. He's our landscape architect and urban designer.</p> <p>2 He's with BKV Group. Next will be Carl Wilson with the</p> <p>3 traffic group on traffic engineering, and then fifth we have</p> <p>4 George Draghiceanu also with Distinctive Living to</p> <p>5 testify -- he's the chief operating officer. And then</p> <p>6 finally we have Dean Packard, civil engineer in land</p> <p>7 planning.</p> <p>8 HEARING EXAMINER: Okay. Well, let me just ask</p> <p>9 everyone who testifies that -- what I'm going to ask you to</p> <p>10 do, after I swear you in, is state your name, street</p> <p>11 address, or business address and e-mail. It's really</p> <p>12 important for us to get e-mails because that allows us to</p> <p>13 communicate to you much more quickly. Every communication</p> <p>14 that you submit -- anyone submits to this office has to be</p> <p>15 copied to everyone else who appears -- not the expert</p> <p>16 witnesses, but Ms. Lee-Cho and then everyone else who</p> <p>17 testifies. So I'm going to ask you for your e-mail, too.</p> <p>18 If for some reason I forget to do that, please make sure you</p> <p>19 state it.</p> <p>20 Okay. With that please call Mr. --</p> <p>21 MS. LEE-CHO: Chris Hoard.</p> <p>22 HEARING EXAMINER: Chris Hoard. Okay.</p> <p>23 MS. LEE-CHO: He's On Zoom.</p> <p>24 HEARING EXAMINER: Okay. Please raise your right</p> <p>25 hand.</p>

Transcript of Hearing
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4 (13 to 16)

<p>13</p> <p>1 CHRIS HOARD</p> <p>2 after having being duly sworn or affirmed testified as</p> <p>3 follows:</p> <p>4 MS. LEE-CHO: I'm not seeing him. Oh, there he</p> <p>5 is.</p> <p>6 HEARING EXAMINER: You're not -- you're muted,</p> <p>7 okay. Please state your name, business address, and e-mail</p> <p>8 address for the record. And can you spell your last name?</p> <p>9 THE WITNESS: It's H O A R D, my name is</p> <p>10 Christopher Hoard.</p> <p>11 HEARING EXAMINER: Wait. Can you turn your volume</p> <p>12 up or speak up?</p> <p>13 THE WITNESS: I can try and speak up. Is that any</p> <p>14 better?</p> <p>15 HEARING EXAMINER: We've never had all these</p> <p>16 technical difficulties.</p> <p>17 MR. BOZZONETTI: This is only my second time doing</p> <p>18 this. I'm still figuring this out.</p> <p>19 (Discussion held off the record.)</p> <p>20 HEARING EXAMINER: Mr. Hoard, can you speak again?</p> <p>21 THE WITNESS: I can. Christopher Hoard.</p> <p>22 HEARING EXAMINER: That's much better. Thank</p> <p>23 you.</p> <p>24 THE WITNESS: No problem.</p> <p>25 MS. LEE-CHO: That's not much better.</p>	<p>15</p> <p>1 Living is to bring excitement, inspiration, meaning and</p> <p>2 impact to the senior living industry by offering deliberate</p> <p>3 comprehensive care for our residents by providing impactful</p> <p>4 work environments for our team members and rigorously return</p> <p>5 -- excuse me, rigorously working towards rewarding returns</p> <p>6 for our investors. Currently we are in 11 states operating</p> <p>7 with almost 40 assets under a contract, and we have a</p> <p>8 pipeline and development of about 12 projects with about</p> <p>9 four to break ground this year.</p> <p>10 Q And can you tell us a little bit about sort of why</p> <p>11 you are in this industry, or how you got started here?</p> <p>12 A Certainly. I'll back it up just a little bit. For</p> <p>13 me, I grew up in a -- my father was a deputy sheriff, and in</p> <p>14 my early teenage years, moved into construction. Had the</p> <p>15 opportunity to grow up as an 80s kids finding opportunity,</p> <p>16 specifically to work with family which led us, at that time,</p> <p>17 into senior housing, which was really nursing homes back</p> <p>18 then as a place where almost it felt as though you -- you</p> <p>19 put somebody. You placed somebody.</p> <p>20 And when we hit -- when we had to -- as I began my</p> <p>21 career or when it was time for me to kind of take off and</p> <p>22 decide which way I wanted to go, I got into the construction</p> <p>23 a little bit more than what our family business was, which</p> <p>24 was mostly finishes. I became a general contractor. And</p> <p>25 because we had been around nursing homes, I had a lot of</p>
<p>14</p> <p>1 HEARING EXAMINER: We need to -- The last hearings</p> <p>2 have gone very well. I don't know why this one is having so</p> <p>3 many -- try this, Mr. Hoard. Can you state your address,</p> <p>4 business address, and e-mail for the record, please?</p> <p>5 THE WITNESS: Yes, ma'am. It's 1 West Main</p> <p>6 Street, Freehold, New Jersey 07728.</p> <p>7 HEARING EXAMINER: Okay. Did you say your e-mail?</p> <p>8 THE WITNESS: I will. It's Chris, C-H-R-I-S at</p> <p>9 distinctivedev, D-I-S-T-I-N-C-T-I-V-E-D-E-V, dot com</p> <p>10 HEARING EXAMINER: Okay. Thank you.</p> <p>11 THE WITNESS: Yes, ma'am.</p> <p>12 THE COURT: Go ahead, Ms. Lee-Cho.</p> <p>13 BY MS. LEE-CHO:</p> <p>14 Q All right. Mr. Hoard, can you please give us your</p> <p>15 title and role at the company?</p> <p>16 A Yes. I'm president and co-founder of Distinctive</p> <p>17 Living Development and chief operating -- excuse me, chief</p> <p>18 development officer for Distinctive Living.</p> <p>19 Q And how many years of experience do you have in</p> <p>20 senior housing?</p> <p>21 A Almost 25 now.</p> <p>22 Q And can you give us some background on Distinctive</p> <p>23 Health Care Distinction Living, its corporate mission, other</p> <p>24 locations that you serve?</p> <p>25 A Absolutely. Our mission statement at Distinctive</p>	<p>16</p> <p>1 ends, a lot of people knew who I was, and it allowed me to</p> <p>2 expand with some pretty large companies. Worked all over</p> <p>3 the country.</p> <p>4 But one of the first projects I ever did was some</p> <p>5 room turns. In those room turns, I happened to -- this is</p> <p>6 just to kind of set the story of the why so bear with me one</p> <p>7 moment. But these room turns, as I came into a room, I was</p> <p>8 probably 21, 22 at the time, my dad was a World War II</p> <p>9 buff, and I noticed on the wall a hat that said U.S.S.</p> <p>10 Indianapolis. I knew that story. It was a pretty famous</p> <p>11 story. It was battleship that went down during World War</p> <p>12 II. It had 1900 crew men, and 900 went into the water when</p> <p>13 it was hit, and 300 survived.</p> <p>14 I looked over into this bed and saw a man and asked</p> <p>15 him if he served. He said he did. And then he said -- I</p> <p>16 said on the U.S.S. Indianapolis, he said I did. I said only</p> <p>17 300 survived. I said you're one of the 300. He said 333</p> <p>18 actually. And for the next couple days, I got to hear</p> <p>19 personal story after personal story of this man who I had</p> <p>20 never met before, didn't know him, but grew very quickly to</p> <p>21 appreciate and to really respect him and all he had done.</p> <p>22 What that led to is, as we were renovating his room</p> <p>23 and moving him back into his room, noticed him getting a</p> <p>24 little bit emotional. And I thought, oh my gosh, maybe we</p> <p>25 messed something up, what did we break, what did we lose.</p>

<p>17</p> <p>1 And turned that into -- I turned to him and asked him, you 2 know, what did we do? Did we mess something up? He said 3 no. I said, well, how come you're so emotional? And he 4 said you're the first person in two years to come see me or 5 to spend time with me. And again, I was young 21, 22 years 6 of age. But it hit me where I was already had an impact 7 from this man's stories for the last couple days, but I 8 realized that even as a young contractor who worked in this 9 building, I all of a sudden had an impact personally on this 10 man's life and he on mine.</p> <p>11 From that day forward, I chased that feeling, 12 always wanting to have some kind of ultimate decision making 13 in how we supported, how we housed, how we respected and 14 revered those who were in our senior living.</p> <p>15 So for the last 25 years, that's what we've done. 16 As a company, we're just about three years old actually at 17 the end of this month. And Distinctive Living itself has 18 leadership top, each one of us have been in this 19 specifically for over 20 years. My partners Joe, George, 20 and Lisa all have very similar stories as to mine, and it 21 comes down to we do -- it is real estate. We are doing a 22 real estate transaction. However, it's really -- that 23 building doesn't really function or doesn't become an asset 24 to anybody until we actually serve the people who are in 25 that community.</p>	<p>19</p> <p>1 demand in this area. And with that, we really felt like we 2 can make a bigger impact on the lives of the seniors in this 3 space or in the community to allow them to stay closer to 4 family so that they didn't have to move too far away from 5 them.</p> <p>6 Q We're going to be hearing a lot more from other 7 witnesses about the project itself, and I will save the 8 interior organization of the space.</p> <p>9 Is there anything, while we have you, that you want 10 to share that may be is -- is this a typical Distinctive 11 Living project, or is there something unique about this 12 particular building?</p> <p>13 A I think for us, it's uniqueness in going into it, 14 it's a larger asset. It's on the larger side for us and one 15 that we really like, because it brings what we call a full 16 continuum of care. It allows for very nice grounds for the 17 residents to enjoy. We look at natural creeks behind us 18 that are going to provide not only a visual but even -- 19 probably even more so a peaceful setting that will allow 20 residents and their family members to enjoy what we believe 21 is going to come to -- to be one of our most favorite 22 locations.</p> <p>23 Q And this is my final question and it's just we see 24 senior projects in varying degrees of unit mix, and here we 25 have independent units and then we have also assisted living</p>
<p>18</p> <p>1 One of the other things that we recognize is that 2 we're building within it, so we come almost like a woven 3 tapestry where we all come together and paint a beautiful 4 picture.</p> <p>5 That's really kind of the why behind what 6 personally drives me but also us as a company, is being able 7 to serve those seniors, their residents, family members and 8 those who serve them, which are our team members. So I hope 9 that gives a little flavor of the why for us as at 10 Distinctive Living.</p> <p>11 Q Thank you. It did. And so what about the 12 Burtonsville are generally and the subject site specifically 13 did Distinctive Living find attractive for one of your 14 projects?</p> <p>15 A I think the biggest reason first and foremost is we 16 saw a need. We think there are seniors who need our help. 17 It's a high bearing entry market. That's one that we love 18 to participate in specifically because in the high bearing 19 in the field it's more patient. It's a lot bit longer of a 20 process, and not everybody can hang in there during that 21 process. So that's one that we felt we were very good at. 22 It's also a very good strategic location for us as we're 23 expanding beyond our New Jersey and Pennsylvania locations 24 to provide a little more variety to our residents and their 25 family members, and probably most importantly there's a high</p>	<p>20</p> <p>1 beds and memory care beds, is that a typical grouping of 2 service levels that you provide?</p> <p>3 A It is. Not only is it a typical, it's probably one 4 of our favorites. We don't always have the ability to put 5 in independent living as part of the model. But that's 6 really important for us. Personally, I have my parents 7 both -- my father has early onset dementia or alzheimer's, 8 and my mother is aging. So this is a type community 9 specifically that we have looked for for my parents where, 10 although my father needs a lot more care. a lot more 11 attention, a lot more support and time that my mother not 12 only doesn't have the energy for, but the capabilities to 13 help him with what his needs are today. And then in 14 turn, hers. So in this type of community setting, my mother 15 would be able to, and other seniors, aging adults would have 16 the opportunity to come in and still live an active 17 lifestyle, an engaging lifestyle. But as they progress or 18 as their needs arise to higher levels, they actually have 19 the chance in this community to not have to be uprooted and 20 moved but actually be close to the loved one and find 21 additional levels of care that we can provide.</p> <p>22 In this type of setting, everything is provided. 23 There is engagement. There is activities. Fitness is a 24 very high priority for us and focus on wellness. But even 25 the little things like getting your nails done. This</p>

Transcript of Hearing
Conducted on February 16, 2024

6 (21 to 24)

<p>21</p> <p>1 community that we're -- we want to build will bring more 2 activities to allow all the generations places to gather 3 together as family and really enjoy some of the best years 4 of their lives. 5 Q I know I said final question, but I just thought of 6 one more. What you said kind of triggered a question. 7 So what is the average or typical age entry age for 8 a community with this mix of levels of service? 9 A Depending on -- 10 Q Yeah, in particular the independent units? 11 A So independent living -- and George my business 12 partner is on so he can correct me if I'm wrong. But I 13 think at the independent level we're seeing average age 14 around 78 to 80. That starts to go up progressively, 82 to 15 84 in the assisted living and the memory care. 16 MS. LEE-CHO: Okay. Thank you. That is all I have 17 for him. 18 HEARING EXAMINER: Thank you. Does anyone on the 19 Zoom meeting remotely have any questions for Mr. Hoard. 20 Again, this is your time for questions. Okay, hearing 21 none. 22 MS. TAYLOR: Yes. 23 HEARING EXAMINER: Before you ask the question, can 24 -- I'm going to have you identify yourself now, because it 25 gets confusing. Can you just state your -- I'm not putting</p>	<p>23</p> <p>1 weeks ago -- it provides not only the total population, but 2 it breaks it down by, you know, 65 plus, 75 plus, 85 plus, 3 and then based on those determinations it gives you. 4 it gives you -- after it factors in all the inventory that's 5 currently built or even in the pipeline that's coming on 6 line over the next three years. So it's a forward looking 7 algorithm. And based on those data, currently there is 8 today a demand of almost 600 units -- excuse me, over 600 9 units for independent living. There is -- excuse me, I'm 10 sorry, 500 units is what it was. 600 units of assisted 11 living, and just under 600, about 580 for memory care. 12 That's what it's based on as well as we pull market studies 13 with larger national groups, and then those market studies 14 that also supports that data 15 MS. TAYLOR: How does that compare to housing needs 16 for, say, starter homes or things like that? What is the 17 greatest need? 18 THE WITNESS: I'm not a residential builder, so I 19 can't tell you exactly how that is. What I can tell you is 20 for the last 25 years, I've served in senior living 21 specifically. I feel like, and I might -- I'm over 50 now, 22 and I'm losing some of my -- but I feel like I've listened 23 in the industry reports and conferences, which we attend 24 literally every month for the last 20 years, we've talked 25 about what we call the silver tsunami where the generation,</p>
<p>22</p> <p>1 you under oath, so don't testify, just ask a question. 2 MS. TAYLOR: Okay. 3 THE COURT: But please state your name, street 4 address, and e-mail for the record. 5 MS. TAYLOR: My name is Eileen Taylor. I live at 6 4320 Valley Stream Avenue in Burtonsville, Maryland. And my 7 e-mail is taylora74@hotmail.com. 8 THE COURT: Thank you. Okay, go ahead. 9 MS. TAYLOR: My question for Mr. Hoard was he said 10 that there is a need in this community for senior housing. 11 Based on what statistics is that? Because when I was 12 looking at the census, census.gov, it says the Montana 13 county Maryland has only 17.2 percent over age 65, and 14 Burtonsville only has 13.4 percent. So how is that -- what 15 are you using to base that assumption on. 16 THE WITNESS: That's a great question. Thank you 17 for it. So we use a -- we have a partnership with Nic data 18 which is the largest investment data in seniors housing that 19 provides that. There's a lot of algorithms and everything 20 else that goes that I'm not smart enough to know, but I do 21 know how to read the data and input and ask questions. 22 So we look at a radius around this specific site 23 that we're looking at. And for this specific site, within a 24 -- I believe it was a seven mile radius in the individual 25 report that I pulled -- the most recent was just a couple</p>	<p>24</p> <p>1 right, coming into our space. It's very interesting, as you 2 look at the data, it's very -- it goes from the greatest 3 generation which we're serving and losing now, right? So I 4 looked at a report the other day on another area, and the 5 numbers are, I would say, almost double from that when we 6 see the boomer generation coming in, which is now just 7 starting to happen. 8 So I think when you say what is the greatest 9 need, I think there's a lot of -- there's a lot of baby 10 boomers. There was recently a report by the Nic Association 11 as well organization that came out early in January said 12 that we'll be nationwide, almost 2500 units is what we'll 13 have to produce by the year 2025 to meet the demand that's 14 coming. By 2030 it's over 8,000. And so I don't know how 15 to answer the question about, you know, which one's the 16 greatest need, but there is a humongous need. 17 Just to put that in perspective, an average 18 community is 150 units on average, let's say. It's almost 19 800 communities that has to be -- would have to be built per 20 year just to maintain that. And right now we probably 21 average around 50 to 75 a year. So there's an enormous jump 22 that's getting ready to happen. 23 MS. TAYLOR: Thank you. 24 THE WITNESS: Yes, ma'am. 25 HEARING EXAMINER: Anyone else? Okay, hearing</p>

Transcript of Hearing
Conducted on February 16, 2024

7 (25 to 28)

<p>25</p> <p>1 none, Ms. Lee-Cho, do you want to proceed with your next 2 witness? 3 MS. LEE-CHO: Yes. Let me upon. 4 HEARING EXAMINER: Let the Zoom operator do it. 5 MS. LEE-CHO: I have to do it for this computer. 6 He does it for everybody else. 7 HEARING EXAMINER: Oh, okay. 8 MS. LEE-CHO: I'm not doing it for everyone. 9 Our next witness is Chris Palkowitsch. He is our 10 architect and land planner, and he is on line as well. I 11 have his resume'. 12 I think is resume' -- is his resume' already in the 13 record? 14 MS. LEE-CHO: It is not. I provided it to your 15 Zoom operator so he can call it up for others as well. 16 HEARING EXAMINER: Mr. Palkowitsch, while we're 17 waiting for the Zoom operator to bring it up, can you please 18 raise your right hand. 19 CHRIS PALKOWITSCH 20 after having been duly sworn or affirmed testified as 21 follows: 22 HEARING EXAMINER: Okay. It's going to come up. 23 And then I'm going to ask does anybody have an objection to 24 admitting his resume' in the record, but we're going to wait 25 until it comes up.</p>	<p>27</p> <p>1 you briefly describe your experience? 2 A Yes. Education first, I've got a Masters in 3 Architecture from Clemson University. A Bachelor Of Science 4 an architecture from the University of Minnesota, and 5 additionally active and continue my education through 6 courses, participation, professional organizations, and 7 through conference attendance. And moreover, I've been on 8 panels or spoken for panels over dozen times in relation to 9 architecture and design. 10 Q And what is your years of experience? 11 A I've got 21 years total experience, and 12 years of 12 that focused on senior housing. 13 Q And can you give us a sense of the type of -- a 14 sampling of your projects and jurisdictions? 15 A Sure. I've worked on over 20 completed senior 16 housing projects across the United States overall, that 17 within the senior realm. That includes age restrictive, 18 active adult, independent living, assisted living, memory 19 care, and skill -- and to just pick a few that are quite 20 similar to the Brookstone Project, the Anthology of 21 Tuckahoe, Richmond, Virginia; Anthology of Novi, Novi, 22 Michigan; and (inaudible) in Minneapolis, Minnesota. And 23 those three have similar and there's overlapping 24 relationships but inaudible. 25 And lastly I worked on two previous Montgomery</p>
<p>26</p> <p>1 Please state your name, business address, and 2 e-mail address for the record. 3 THE WITNESS: Yes. Good morning. Thank you. My 4 name is Chris or Christopher Palkowitsch, 5 P-A-L-K-O-W-I-T-S-C-H, and I work at BKV Group Architects 6 and Engineers, and my office is located at 222 North Second, 7 Minneapolis, Minnesota. 8 HEARING EXAMINER: And did you say your e-mail? 9 THE WITNESS: I did not, thank you. Cpalkowitsch 10 -- I'll spell it again, P-A-L-K-O-W-I-T-S-C-H and that's at 11 BKVgroup.com. 12 HEARING EXAMINER: Okay. Now his resume' is 13 showing on the screen. Does anyone have an objection to 14 admitting this as Exhibit 45? Okay, hearing none, Exhibit 15 45 will be resume' of Chris Palkowitsch. I hope I said that 16 right. 17 THE WITNESS: You did. Thank you. 18 HEARING EXAMINER: Okay. Go ahead, Ms. Lee-Cho. 19 BY MS. LEE-CHO: 20 Q Mr. Palkowitsch, can you state your profession for 21 the record? 22 A Yes. I am architect and senior design lead. 23 Q And based on your resume', it's evident that you 24 have considerable experience and expertise in the design and 25 development of senior housing projects in particular. Can</p>	<p>28</p> <p>1 County located projects but neither -- some experience but 2 did not complete that. But can I share from BKV Group 3 that's done a handful of projects within the county as -- 4 HEARING EXAMINER: May I ask, have you ever 5 qualified before a court or an administrative agency as an 6 expert in architecture? 7 THE WITNESS: I have routinely testified in other 8 jurisdictions that city councils planning commissions or 9 supervisory treasure, but not quite at the state process to 10 become an expert. But that's going to end up for these 11 different jurisdictions. 12 HEARING EXAMINER: Okay. 13 MS. LEE-CHO: Based on Mr. Palkowitsch's experience 14 and resume', in particular in the senior housing field, I 15 would offer him up as an expert in the field of 16 architecture. I also would like -- well, let me ask you a 17 further question Mr. Palkowitsch. 18 Q In your representation of these projects, have you 19 considered -- or does land planning principles come into 20 play when you evaluate projects? 21 A Yes, absolutely it does. It's part of -- go ahead. 22 HEARING EXAMINER: Are you -- 23 MS. LEE-CHO: I'm trying to qualify him in land 24 planning as well based on his experience and ability to 25 evaluate land planning principles for projects.</p>

Transcript of Hearing
Conducted on February 16, 2024

8 (29 to 32)

<p>29</p> <p>1 HEARING EXAMINER: Well, I haven't heard any of 2 that. 3 MS. LEE-CHO: That's why I'm asking him to explain 4 further. 5 THE COURT: Okay. Go ahead. 6 Q So can you specify, when you evaluate a project and 7 design a project, how land planning is -- how you employ 8 land planning in your practice? 9 A Yes. It's part of my standard process to review 10 land planning principle prior to (inaudible) paper. And 11 where we start the project, it's critical to understand 12 there are multiple factors. We review comprehensive plans, 13 we review master plans and how the Zoning Department to 14 understand their goals policies. And then further when 15 reviewing you this, you look at few key items that are 16 really focused on that we look at the local contacts, 17 whether that be historical, with the building offers that 18 the interstate the sight. We look at the local character, 19 we look at connectivity of the site to the general. And 20 that's, you know, automobile, pedestrian, travel paths. And 21 beyond that within like architecture practice, I work on a 22 few different master plans projects and brought this to 23 fruition. One would be the Viking Lakes Project in Eagan, 24 Minnesota that was -- there was Minnesota Viking football 25 training facility that collected apartments and some other</p>	<p>31</p> <p>1 Department? 2 A Yes, I have. 3 Q And do you agree with the neighborhood delineation 4 indicated in that report on Page 4? 5 A Yes, I do. I generally agree with the delineation. 6 There are a couple of holes I wouldn't that could have also 7 been considered, but they are at a distance that maybe -- 8 you know, that our project would not be (inaudible). 9 Q All right. What about the other boundaries of the 10 neighborhood delineation? Do you agree with that? 11 A Sure. I do. 12 HEARING EXAMINER: Well -- can I stop you a minute? 13 What were the part that you think could have been included? 14 THE WITNESS: On the east side of the delineation, 15 there are a few homes just by the eastside, prior to getting 16 to those lots, and those white bulbs could have interest in 17 standard (indiscernible) 18 HEARING EXAMINER: Well, I think I know where 19 you're -- are you looking at the southern boundary or the -- 20 MS. LEE-CHO: Eastern I believe. 21 THE WITNESS: The eastern as you come up to -- next 22 as it approaches Sandy Spring. 23 HEARING EXAMINER Okay. Can you pull up exhibit -- 24 what is the staff report? 25 THE WITNESS: Is it Exhibit 36? And then it's Page</p>
<p>30</p> <p>1 commercial areas or land development, but we were primary 2 planner for the buildings -- 3 HEARING EXAMINER: When you said we, you mean your 4 firm or you? 5 THE WITNESS: I make the effort but the firm as 6 well. 7 HEARING EXAMINER: Okay. Let me ask, is there 8 anyone that objects to qualifying Mr. Palkowitsch as an 9 expert in architecture and land planning? Okay, hearing 10 none, I will qualify him as that. 11 Go ahead, Ms. Lee-Cho. 12 MS. LEE-CHO: Thank you. 13 BY MS. LEE-CHO: 14 Q So proceeding with your testimony, we'll start by I 15 will ask you if you reviewed the applicable portion of the 16 county zoning map and applicable master plan in this case? 17 A Yes, I have. 18 Q What is the property zoning? 19 A It is R-200, and the -- depending on what's going 20 on with the transfer of the rights, it's TDR 3. -- but, 21 again, we're not (inaudible). 22 Q What is the applicable master plan? 23 A It is the 1997 Fairland Master Plan. 24 Q And in the case, have you reviewed planning staff 25 report issued by the Montgomery Land and Planning</p>	<p>32</p> <p>1 4, the staff report. 2 HEARING EXAMINER: Okay. Using this delineation -- 3 it doesn't have a -- 4 THE WITNESS: Page 4. 5 HEARING EXAMINER: Okay, that's the correct exhibit 6 now. If you could go to the -- I need to have the witness 7 pinned on one side and the exhibit up on the other. There 8 you go. Okay, now go to page -- 9 THE WITNESS: I'll share that we cannot see your 10 video at this point. 11 HEARING EXAMINER: Okay. Go to page -- no, go -- 12 click on the exhibit. You're fine right there. Go to page 13 4. 14 MR. BOZZONETTI: It's on Page 4.. 15 THE WITNESS: I'm sorry, maybe it's Page 5. 16 HEARING EXAMINER: It is Page 5 of the PDF. It's 17 Page 4 from the document, Page 5 of the PDF. There we go. 18 Okay, can you be more specific. 19 MS. LEE-CHO: Is it being shared? Because it's not 20 coming up here. 21 THE WITNESS: It's not being shared at this point. 22 HEARING EXAMINER: Okay, this is fine. This is 23 fine. Just leave it there. Okay, now. 24 THE WITNESS: So on the east side, if you can 25 scroll down --</p>

Transcript of Hearing
Conducted on February 16, 2024

9 (33 to 36)

<p>33</p> <p>1 HEARING EXAMINER: Just a second. This isn't 2 coming out on the Zoom. 3 THE WITNESS: We're seeing it. 4 MS. LEE-CHO: You are seeing it now? 5 THE WITNESS: Yes. 6 MS. LEE-CHO: Okay. They have it now. 7 HEARING EXAMINER: Okay. Using this exhibit, where 8 is the part you would have added? 9 THE WITNESS: On the east side of the site just 10 south of Sandy Spring Road. 11 HEARING EXAMINER: Wait, I couldn't understand you. 12 THE WITNESS: There is a wedge of homes that could 13 have been considered between the delineation line and Moose 14 Lodge that's -- 15 HEARING EXAMINER: I don't know where the Moose 16 Lodge is. 17 THE WITNESS: Whoever has the curser, if they could 18 move to the right just to the commercial building. That's 19 the larger building. 20 MS. LEE-CHO: This is the Moose Lodge. 21 HEARING EXAMINER: Okay. 22 THE WITNESS: So that is the Moose Lodge there. 23 HEARING EXAMINER: Is that a road there? 24 MS. LEE-CHO: That is Wooden. 25 HEARING EXAMINER: No, is the boundary a road?</p>	<p>35</p> <p>1 Page 70 or Page 83. Those are the plan pages, not the PDF 2 pages. 3 HEARING EXAMINER: Now, I read, and I didn't look 4 at this because, when I went through the staff report, the 5 land use map in Chapter 4, I think, says it's single-family 6 zoning. 7 THE WITNESS: That is correct. It is single-family 8 zoning but, within the Fairland Master Plan, it lists that 9 elder homes is one of the key goals of master plan, and it 10 says the elder housing can be placed within any residential 11 district with approval. And that further beyond that, it 12 has drawings on that page -- if we're able to find it here 13 -- that shows the site that's in this exhibit here. 14 HEARING EXAMINER: Is that the record Page 70? 15 THE WITNESS: The record may not, but in the 16 statement of qualifications here. 17 HEARING EXAMINER: You're looking at the staff 18 report again? 19 THE WITNESS: Yes. 20 MS. LEE-CHO: So we are -- 21 HEARING EXAMINER: Just a second. Don't interrupt. 22 I want to hear what he says. 23 MS. LEE-CHO: Okay. 24 HEARING EXAMINER: Go ahead. 25 THE WITNESS: Our Exhibit 7, our statement of</p>
<p>34</p> <p>1 THE WITNESS: The boundary is part of the road, and 2 that the road curves and then turns back. 3 HEARING EXAMINER: Why not the houses on 4 the -- looks like there's some houses down further south on 5 that eastern boundary. Why not down? 6 THE WITNESS: The -- that's what I'm suggesting is 7 sticks homes on the other side that -- 8 HEARING EXAMINER: Boundary. 9 THE WITNESS: -- further south you switch to the 10 townhome developments overall, I feel like those are -- 11 would be far enough away that -- 12 HEARING EXAMINER: Where the impacts are more 13 attenuated? 14 THE WITNESS: Yes. 15 HEARING EXAMINER: Yea. All right, thank you. Go 16 ahead. 17 BY MS. LEE-CHO: 18 Q Okay. I've lost track where I am 19 Turning to the 1997 Fairland Master Plan, what does 20 the plan recommend in terms of the property? 21 A The plan recommends that for the use of elder homes 22 on property. 23 Q Can you direct the hearing examiner to a particular 24 page in the master plan? 25 A Yes. It's located in the few different spots, but</p>	<p>36</p> <p>1 qualifications, you can switch to that - 2 HEARING EXAMINER: Exhibit 7? 3 THE WITNESS: Yes. 4 MS. LEE-CHO: I would -- there is an additional 5 exhibit that I provided to the Zoom operator that would be 6 easier. 7 HEARING EXAMINER: Let's just go through this. 8 THE WITNESS: So this and Page 7 of this. So 9 again, this figure 30, it's from the Fairland Master Plan, 10 the site -- our site identified in yellow, and it's listed 11 as an elder housing use. 12 HEARING EXAMINER: Okay. Is the site on that 13 exhibit identified in yellow? 14 THE WITNESS: It is, correct. 15 HEARING EXAMINER: Okay. I see that. Okay. 16 MS. LEE-CHO: I had -- like I said, I provided the 17 Zoom operator with another file. It's called Fairland 18 Master Plan relevant -- excerpt to relevant pages. I 19 believe Mr. Palkowitsch also has that available to him if he 20 wants to refer to that. If you want to enter that into the 21 record, I have highlighted various pages to indicate 22 where -- 23 HEARING EXAMINER: All right. Can we display that 24 on Zoom? 25 MR. BOZZONETTI: I'm trying to pull it up. This</p>

Transcript of Hearing
Conducted on February 16, 2024

10 (37 to 40)

<p>37</p> <p>1 document you're referring to? The Fairland Master Plan?</p> <p>2 MS. LEE-CHO: Yes. Those are just various pages</p> <p>3 excerpts.</p> <p>4 HEARING EXAMINER: Please scroll through it so the</p> <p>5 people in the audience. We want exhibits two days in</p> <p>6 advance, because we can't -- we don't have the staffing to</p> <p>7 post them on the website, especially this many exhibits.</p> <p>8 Okay. Why don't you -- before we go through</p> <p>9 this, is this all, except for highlighting, is this all from</p> <p>10 the 1997 Fairland Master Plan?</p> <p>11 MS. LEE-CHO: Yes, correct.</p> <p>12 THE COURT: Does anyone have an objection to these</p> <p>13 pages of the master plan with the highlights being admitted</p> <p>14 into the record? Okay, hearing none, I'm going to say</p> <p>15 excerpts from Fairland Master Plan, and I will get the</p> <p>16 exhibit numbers to everyone. We've had so many come in at</p> <p>17 the last minute, we haven't been able to update the exhibit</p> <p>18 numbers -- coordinate the exhibit numbers.</p> <p>19 Okay, Mr. Palkowitsch, do you want to testify about</p> <p>20 this?</p> <p>21 THE WITNESS: Yes, for just one moment. If you can</p> <p>22 volume back up, please, right there where the highlighted</p> <p>23 portion. So this is Page 30 of the document, and I had</p> <p>24 mentioned there's an encouraged use of elderly housing</p> <p>25 appropriate locations. And that first highlighted sentence</p>	<p>39</p> <p>1 exhibit? Because I don't see 19. No, the other way. Other</p> <p>2 way, scroll down. Okay, that's better.</p> <p>3 Q So by this image, it looks like it's not within 19</p> <p>4 but mostly adjacent to 19?</p> <p>5 A That is correct. If you'll see additional</p> <p>6 information on that in the way that they got back -- the 19</p> <p>7 was an area to identify the development, but there's -- with</p> <p>8 their drawing, it (inaudible).</p> <p>9 Q But the Area 19 itself is identified in the master</p> <p>10 plan as what type of area?</p> <p>11 A An industrial area.</p> <p>12 Q Okay. And the -- our subject site is zoned</p> <p>13 residential TDR, but it's immediately adjacent to this</p> <p>14 industrial pocket? Is that what you're --</p> <p>15 A That is correct.</p> <p>16 Q Okay.</p> <p>17 MR. SINGH: There's a technical issue, but can I</p> <p>18 object to her using this, because there was a special</p> <p>19 exception that was granted for this to be elderly care back</p> <p>20 then, and that was removed like in about 2003 or 2004. This</p> <p>21 is --</p> <p>22 HEARING EXAMINER: Okay. Thank you. Let me do</p> <p>23 this just for the court reporter. Can you identify your</p> <p>24 name, address, and e-mail address for the record, please.</p> <p>25 MR. SINGH: Piara Singh, P-I-A-R-A, last name</p>
<p>38</p> <p>1 is saying that elderly housing with special exemptions can</p> <p>2 be located (indiscernible).</p> <p>3 With that, if we can scroll down a little more.</p> <p>4 There are more that we had shown than one image of the</p> <p>5 master plan calling up the spike for elderly housing, but it</p> <p>6 in fact goes more in depth with -- if can you scroll down</p> <p>7 another few pages -- it goes a little more in depth with a</p> <p>8 few more drawings of what it could be. So we are -- scroll</p> <p>9 down.</p> <p>10 MS. LEE-CHO: Can you go back up.</p> <p>11 THE WITNESS: So just to familiarize ourselves</p> <p>12 here, there's the site there, the highlighted orange color,</p> <p>13 and we are at the edge of the Area 19 for development.</p> <p>14 BY MS. LEE-CHO:</p> <p>15 Q Now, Mr. Palkowitsch, this particular figure -- if</p> <p>16 you could scroll up a little bit to the top of the page</p> <p>17 -- can you just -- what area of the master plan in</p> <p>18 particular is it being identified as part of?</p> <p>19 A So within the master plan in the land use area,</p> <p>20 it's projecting future uses upon sites. And what they've</p> <p>21 done is they've identified a number of locations throughout</p> <p>22 the area, and they create sub -- and 19 is one of those</p> <p>23 submers that they provided additional information in about</p> <p>24 the development.</p> <p>25 HEARING EXAMINER: Can you scroll up on that</p>	<p>40</p> <p>1 Singh, S-I-N-G-H. E-mail, piara99@gmail.com</p> <p>2 HEARING EXAMINER: I didn't get the -- I got P-I-A</p> <p>3 and then I didn't get what came after that.</p> <p>4 MR. SINGH: I'll start over. P I A R A 99 at</p> <p>5 Gmail.com</p> <p>6 HEARING EXAMINER: Now I got it. Okay.</p> <p>7 MR. SINGH: Thank you.</p> <p>8 HEARING EXAMINER: Ms. Lee-Cho, do you have</p> <p>9 any -- he's made an objection, because this used to -- this</p> <p>10 was designated as a special exception -- or this did have a</p> <p>11 special exception on it that's since been either expired --</p> <p>12 MS. LEE-CHO: Well, that's why we have a new</p> <p>13 application here.</p> <p>14 HEARING EXAMINER: No, just get to the objection.</p> <p>15 MS. LEE-CHO: I challenge the objection. There's</p> <p>16 no basis for it. I don't know what you want me to --</p> <p>17 HEARING EXAMINER: What I think, Mr. Singh, is that</p> <p>18 you have a -- that's a good point to raise -- objections go</p> <p>19 to whether the exhibit is relevant. Now, I guess it could</p> <p>20 go to that, but -- or accurate, and I think that's a good</p> <p>21 point that you would raise in your testimony. But it</p> <p>22 doesn't -- this is just a page from the master plan, so I</p> <p>23 think, at this point, I'm going to let the exhibit in</p> <p>24 because it's an official document and then you can raise you</p> <p>25 your point in the testimony, okay?</p>

Transcript of Hearing
Conducted on February 16, 2024

11 (41 to 44)

<p>41</p> <p>1 MR. SINGH: Okay. Is there not a more correct, 2 like, master plan? 3 HEARING EXAMINER: We're going to hear from Mr. 4 Palkowitsch on that I'm sure. 5 Mr. Palkowitsch, are you going to testify about 6 that? 7 THE WITNESS: I never tested the use of the 8 document that Mr. Singh is speaking to. 9 HEARING EXAMINER: You don't have any information 10 on the. I think the -- there's a currently pending master 11 plan -- it's not adopted -- from, I think it's 2024. 12 MR. SINGH: If you look at the lining of 29, like 13 that's not how it is anymore. Like that whole area has 14 changed, like 29 was rerouted around the other side of 15 Zimmerman. Everything in that area is changed from where it 16 was in '97, including the fact that this exception was 17 removed. 18 MS. LEE-CHO: Okay. So the characterization that 19 it's removed is inaccurate, so I would object to that 20 characterization. This is the current master plan, the 21 1997. 22 HEARING EXAMINER: Okay. I think what we are just 23 for the purpose, Mr. Singh, I think you're bringing in good 24 points, but they really go to the merits of the case rather 25 than admitting just this exhibit, because it is a page from</p>	<p>43</p> <p>1 hold on. I apologize. 2 In looking at Page 80 to 84, of the master plan and 3 that image area of 19, what is your observations in terms of 4 the site's location relative to the surrounding uses? 5 A So what I observed the site was that the -- with 6 the industrial uses to the west and the residential homes to 7 the east, that the planners were thoughtfully using the 8 elderly housing as a buffer between the two areas, that it 9 gives you a bigger building in essence that has a 10 residential -- has a residential (inaudible) so again 11 experience in this master plan review and in other master 12 plan, we did not (inaudible) that the elder housing was 13 often used as a home. 14 Q So you're saying that a use in and of itself could 15 serve as a transition between -- 16 A Correct. Rather than being a traditional 17 industrial site and having hard edge to single-family homes, 18 it's used as a transitional use in use of the building and 19 the scale between the larger industrial to the smaller. 20 Q And -- but the zoning is R- 200, so it could have 21 gone to a single-family use; however, the master plan 22 allowed for special exceptions for elderly housing, is that 23 your testimony? 24 A That is my testimony. 25 Q Okay. Moving on from the master plan. What is</p>
<p>42</p> <p>1 an official document. So I'm going to let it in. And then 2 I think you should point out -- I think I understand what 3 you're your point would be in your testimony, but you should 4 bring it out in your testimony. Okay? 5 MR. SINGH: When will the testimony be? 6 HEARING EXAMINER: That's after the Applicant's 7 case. So I'm trying to get through the Applicant's 8 witnesses so we can get to your testimony. 9 MR. SINGH: Okay. 10 HEARING EXAMINER: So please hang in there. 11 Ms. Lee-Cho, do you have any abbreviations in the 12 testimony that we can look at or -- well, let's jut proceed 13 and try to get as much done so people aren't hanging out all 14 day. But I'll tell you this, if at some point someone has 15 to leave, please let me know -- someone in the opposition, 16 please let me know, and we will try to fit you in before the 17 end of the applicant's case. But you might want to hear the 18 applicant's case because then you know what they're saying. 19 So anyway, with that, Mr. Palkowitsch, please continue. 20 BY MS. LEE-CHO: 21 Q Okay. So let me see, I lost my place. 22 A Sorry. So after you established this area, the sub 23 area, if you scroll up a couple pages, please. 24 Q Okay. So, Mr. Palkowitsch, if you could maybe 25 speak to the conformants of -- no, I don't want to go to</p>	<p>44</p> <p>1 your understanding of the site and surrounding area analysis 2 undertaken by Distinctive Living in determining the 3 viability desirability of the site for senior living use? 4 A Yes, thank you. The -- 5 HEARING EXAMINER: What exhibit are you talking -- 6 just a second. What exhibit are you talking about? 7 MS. LEE-CHO: I'm just asking him to testify. 8 HEARING EXAMINER: Okay. 9 A If we did have that an exhibit, that can be shared. 10 Q We do. There is an aerial? 11 A The Brookstone area map. 12 Q It's what we provided. 13 HEARING EXAMINER: So this is a new exhibit? 14 MS. LEE-CHO: It's just an aerial view of the -- 15 THE WITNESS: The bottom center image. 16 HEARING EXAMINER: We can't use the staff report 17 surrounding area? 18 MS. LEE-CHO: It doesn't go up far enough. 19 HEARING EXAMINER: Okay. 20 THE WITNESS: So as it's loading, I will speak to 21 it. 22 HEARING EXAMINER: Wait, I haven't admitted it yet. 23 People have to see it before we can admit it. 24 THE WITNESS: Sure. 25 HEARING EXAMINER: This is why we don't allow this</p>

Transcript of Hearing
Conducted on February 16, 2024

12 (45 to 48)

<p style="text-align: right;">45</p> <p>1 typically. We get to see why we're not robots. You better 2 get right. You better get all the pictures right. 3 THE WITNESS: The bottom image. 4 MS. LEE-CHO: No, not that one. The bottom center. 5 HEARING EXAMINER: Now, you know that we have to 6 adjourn at 4:00? Okay, go ahead, Mr. Palkowitsch. 7 THE WITNESS: All right. So this Mr. Hoard's 8 testimony he spoke to one layer of home second houses, but 9 there's also -- we spoke to demographics -- there's also 10 another lawyer, and it's really on the east side looking at 11 the -- looking at the site in general through those areas I 12 mentioned previously of -- that the connectivity is one 13 example there is (inaudible) that this will -- this site is 14 very connected between area that really creates access for 15 families to visit. Additionally nearby is the UM Medical 16 Center. They have that with a variety of your residents 17 and buildings that that's definite to the site -- the 18 selection of the site, and the shopping districts if you 19 live in Burtonsville as well, (inaudible) you just want 20 pizza, the living residents are able to, you know, go up to 21 be part of the public that the (inaudible). So it's 22 desirable site for a multiple of things. 23 MS. LEE-CHO: All right. We want to just move on 24 to describing the project, and for that, all of the exhibits 25 are in the record already that we'll be referring to.</p>	<p style="text-align: right;">47</p> <p>1 plan east side of this as well where those trees are at the 2 edge of Dino Drive. 3 Q So using this exhibit, can you please describe the 4 proposed project? 5 A Yes. So we are proposing primarily a four-story 6 building with -- we have a two story centralized resident 7 entry at the east center and within the -- within the ways 8 we have the north wing plant -- wing it's 88 independent 9 living units. The south wing that's more U-shaped. It's 10 the first floor of that is 27 memory care units and then 64 11 assisted living. Within the site plan, when we're laying 12 out the site, just to give a perspective. The first thing 13 we're procuring where the point of entry can be. We 14 looked -- we looked at Dino Drive, we looked at Valley 15 Stream, and the traffic engineer will ask speak to this 16 more, but we found in order to create the best buffer 17 between ourselves and the single-family, we're really with 18 the drive parking toward the plant side to separate 19 ourselves from the homes the best we can. And we have site 20 section we can show if we have to provide additional. 21 Additionally, the site of the building you can see 22 is placed pretty far to the plant door. So we're putting 20 23 feet from the property. 24 HEARING EXAMINER: Wait, you're saying plan nor -- 25 you mean plan the top of the plan</p>
<p style="text-align: right;">46</p> <p>1 HEARING EXAMINER: Good. Now is he speaking as an 2 architect. 3 MS. LEE-CHO: Yes, mostly. 4 HEARING EXAMINER: Okay. Go ahead, Mr. 5 Palkowitsch. 6 Q So using relevant exhibits, can you please describe 7 the proposed project? 8 A Yes. 9 HEARING EXAMINER: Well, what exhibit -- they're in 10 the record, okay. Are we looking at the architecture 11 sheets? 12 13 A We are looking many architecture sheets that you 14 call them to look at Exhibit 12A to the planting plan. 15 HEARING EXAMINER: Okay, 17A. 16 MS. LEE-CHO: If you can zoom in as close as 17 possible to just the plan view. 18 HEARING EXAMINER: Zoom in mode on the exhibit. 19 MS. LEE-CHO: Yeah. 20 HEARING EXAMINER: So to begin. 21 Q Is to begin can you orient us where to where Dino 22 Drive is and Valley Stream? 23 A So the plan is to turn clockwise 90 degree so the 24 Valley Stream is on the right edge of this if you are 25 (inaudible) drive comes out and then Dino Drive is along the</p>	<p style="text-align: right;">48</p> <p>1 THE WITNESS: The top of the page, yes. 2 Q And to that point, where is the industrial area 3 relative to this? 4 A The industrial area is just to the north of -- I'm 5 going to direct us to one different exhibit that I think 6 will clarify. This is one of the new exhibits. If you can 7 open up the new exhibit. 8 MR. BOZZONETTI: Which exhibit? 9 MS. LEE-CHO: It's in the download. 10 THE WITNESS: In the share file. The one that your 11 curser that -- the 2024, the second to the left. 12 HEARING EXAMINER: What is this called? Updated 13 site building sections? 14 THE WITNESS: Yes. Okay. This is the same 15 orientation of the landscape plan we were just reviewing. I 16 will state that the -- 17 MS. LEE-CHO: Can we enter this into the record? 18 HEARING EXAMINER: Does anyone have any objection 19 to having this in the record? Hearing none, I'm going to 20 get you the exhibit numbers updated, but we'll admit it. 21 MS. LEE-CHO: Can we zoom into the building? 22 HEARING EXAMINER: Did you have a pre-hearing 23 statement. 24 MS. LEE-CHO: No. 25 HEARING EXAMINER: That's typically required.</p>

Transcript of Hearing
Conducted on February 16, 2024

13 (49 to 52)

<p>49</p> <p>1 MS. LEE-CHO: I know.</p> <p>2 HEARING EXAMINER: Okay. So how -- let me -- I'm</p> <p>3 concerned about time and the questions we're going to get.</p> <p>4 So how many witnesses do you have?</p> <p>5 MS. LEE-CHO: We have our traffic engineer and</p> <p>6 landscape architect and a civil engineer.</p> <p>7 HEARING EXAMINER: Now, why do you have -- is there</p> <p>8 something that Mr. -- is the landscape architect just on the</p> <p>9 landscape plan?</p> <p>10 MS. LEE-CHO: Correct.</p> <p>11 HEARING EXAMINER: All right. Can we really try to</p> <p>12 move? Unfortunately pulling up these exhibits that aren't</p> <p>13 in the record take time. So I suspect that people are going</p> <p>14 to have a lot of questions from the traffic engineer.</p> <p>15 MS. LEE-CHO: We can --</p> <p>16 HEARING EXAMINER: Having read their -- the letter.</p> <p>17 So let's keep going but --</p> <p>18 MS. LEE-CHO: We can pull that -- pull the traffic</p> <p>19 engineer before the landscape architect.</p> <p>20 HEARING EXAMINER: That would be good. So if we</p> <p>21 could go forward, but just keep in mind we've got a lot of</p> <p>22 people and we end at 4:00.</p> <p>23 MS. LEE-CHO: Okay.</p> <p>24 HEARING EXAMINER: All right. Go ahead.</p> <p>25 THE WITNESS: Okay. So as in response to the</p>	<p>51</p> <p>1 MS. LEE-CHO: If you zoom at the -- yeah, that home</p> <p>2 at the bottom.</p> <p>3 HEARING EXAMINER: Okay. Got you.</p> <p>4 THE WITNESS: So there's a seven foot difference</p> <p>5 that our building is depressed would be fully (inaudible) it</p> <p>6 can continues to increase as you go around.</p> <p>7 Q Can you scroll up a little bit police. Would it be</p> <p>8 helpful to see cross section -- what is the cross section</p> <p>9 number? Can you scroll up a little bit. Cross section 1.</p> <p>10 We -- there is a cross section view that's part of this set</p> <p>11 that cuts through house and the building.</p> <p>12 HEARING EXAMINER: All right. Pull it up.</p> <p>13 THE WITNESS: It's in that separate PDF, so that --</p> <p>14 it's a PDF. It should be that one.</p> <p>15 MS. LEE-CHO: Yeah, that one.</p> <p>16 HEARING EXAMINER: So I'm going to say if we ever</p> <p>17 get to see this exhibit, looks like it's buffering. This</p> <p>18 might be a huge exhibit. Okay. Is this what you want?</p> <p>19 THE WITNESS: This is not the one.</p> <p>20 MS. LEE-CHO: That's not the one.</p> <p>21 THE WITNESS: This is the same we just.</p> <p>22 MS. LEE-CHO: The same as before. There it is.</p> <p>23 THE WITNESS: There it is.</p> <p>24 HEARING EXAMINER: Okay. I see the cross -- so</p> <p>25 this is.</p>
<p>50</p> <p>1 question, the industrial state just to the north, and you</p> <p>2 can see more clearly here that relationship to some specific</p> <p>3 rules (inaudible).</p> <p>4 One other side note to consider is that from Dino</p> <p>5 Drive to the rear of the site, we drop about one story at</p> <p>6 each to our building site is one of the below. And that</p> <p>7 site continues to drop off to the back.</p> <p>8 HEARING EXAMINER: So the grading slopes down from</p> <p>9 Dino Drive to the forest, the wooded area there?</p> <p>10 THE WITNESS: Correct.</p> <p>11 BY MS. LEE-CHO:</p> <p>12 Q And on that topic, how does the grade differentiate</p> <p>13 between the single family neighborhood area down to the</p> <p>14 subject site?</p> <p>15 A The on the north side that first home that we see</p> <p>16 on Valley Street that has the red line going to it, our</p> <p>17 building is about two feet at the (inaudible) two feet below</p> <p>18 that home. Cut as you continue further back, where section</p> <p>19 one cuts through, the difference is the home -- the home is</p> <p>20 seven feet -- the floor of the home -- the first floor of</p> <p>21 the home is seven feet above the first floor by section one</p> <p>22 and.</p> <p>23 HAERING EXAMINER: Wait. Wait. The floor of what</p> <p>24 home?</p> <p>25 THE WITNESS: If can you zoom</p>	<p>52</p> <p>1 MS. LEE-CHO: So if you scroll down --</p> <p>2 HEARING EXAMINER: Updated site building cross</p> <p>3 section. Does anyone have an objection to admitting this?</p> <p>4 Okay, hearing none. We'll admit it.</p> <p>5 MS. LEE-CHO: And if you zoom in to that orange box</p> <p>6 page.</p> <p>7 HEARING EXAMINER: Go ahead, Mr. Palkowitsch.</p> <p>8 THE WITNESS: Sure. So this a section one where it</p> <p>9 is the -- where in this instance this is that first pole</p> <p>10 that's -- that's after you pass or drive on something</p> <p>11 street. We got a pool (inaudible) but we have approximately</p> <p>12 95 feet from our building to the property line. And then</p> <p>13 you can see from the placement along their property, there's</p> <p>14 an additional 107 seven feet. So we have about 200 feet of</p> <p>15 proper, you know, truly between the building and in</p> <p>16 that -- we place the storm liner (inaudible) to the left for</p> <p>17 just additional and truly between the buildings. The top</p> <p>18 section really shows what I'm speaking to in that</p> <p>19 transition. You can see the light back and you can possible</p> <p>20 nature of that and how we continue some of that in the</p> <p>21 facade. But truly the function of our much like the</p> <p>22 function is you know that we can we look to (inaudible)</p> <p>23 BY MS. LEE-CHO:</p> <p>24 Q And can we bring up the perspective drawings and</p> <p>25 it's Exhibit 27?</p>

Transcript of Hearing
Conducted on February 16, 2024

14 (53 to 56)

<p>53</p> <p>1 A If we go to 27D.</p> <p>2 Q D.</p> <p>3 A First, yes.</p> <p>4 Q Can you describe what we're looking at in this</p> <p>5 exhibit?</p> <p>6 A Hold on. My apologies. Scroll up. 27 C is the</p> <p>7 one. I had the wrong exhibit. So this is the -- you're see</p> <p>8 Valley Street the drive entry point roughly centered in that</p> <p>9 where you can see the vehicle here, and this is the really</p> <p>10 where we see representational of the project on the right</p> <p>11 side. This green really the (inaudible) drive and you can</p> <p>12 see how we've broken up this building. There's two primary</p> <p>13 way in that the two, two-and-a-half story entry in that</p> <p>14 area. I'll show that on next slide. But here you can see</p> <p>15 that how -- you know with in between that</p> <p>16 first (inaudible) project we're quite intentional to make</p> <p>17 sure that there was enough buffer between that the home and</p> <p>18 that building broken in multiple forms that we didn't -- we</p> <p>19 wanted to have as much upward in the industrial and</p> <p>20 residential that we used building articulation, material</p> <p>21 change to change the size of the different pieces within the</p> <p>22 building. So on the right-hand-side you can see we got the</p> <p>23 grade portions that are brick, and those are about 35 feet,</p> <p>24 and then we have what we do with (inaudible) and they</p> <p>25 provided the white -- more light gray portions with about</p>	<p>55</p> <p>1 on Dino Drive. The Dino Drive facade, we were -- we were</p> <p>2 competing a with couple of factors with wall science where</p> <p>3 there's -- within some of the study of this area, there was</p> <p>4 mentioned to have a residential field for a facade. But we</p> <p>5 were also challenged by planning staff that they wanted to</p> <p>6 us to have a more significant architectural preference. So</p> <p>7 we in our -- in our efforts and (inaudible) we we went back</p> <p>8 and forth with them with the facades here, and we felt this</p> <p>9 was balancing between the two. Between the two homes that</p> <p>10 the windows are residential in nature and, again, breaking</p> <p>11 these up into separate pieces, but then the corner canopy is</p> <p>12 something that -- that clearly gets a little bit more of a</p> <p>13 residential feel than that is the (inaudible) to that</p> <p>14 persona. And we would do it would have been a little bit</p> <p>15 below here as well just give it more significant present at</p> <p>16 Dino Drive was something that to get to this agreement with</p> <p>17 plan staff.</p> <p>18 Q What next exhibit would you like to, maybe the rear</p> <p>19 side adjacent?</p> <p>20 A Yeah, 27B, please.</p> <p>21 Q The main entry?</p> <p>22 A Yeah. So as I mentioned that the main entry</p> <p>23 before, we want to have a clear point of presence and</p> <p>24 orientation particularly on senior projects but so people</p> <p>25 can find their way to the project but then their way to the</p>
<p>54</p> <p>1 another like 35 feet. So we were creating ins and outs so</p> <p>2 that the -- we were not just a solid building face and that</p> <p>3 further we are -- we provided an architectural feature on</p> <p>4 the corner of Dino Drive that -- the Dino Drive, if we can</p> <p>5 go to Exhibit 27G now.</p> <p>6 Q I'm sorry, before you leave this exhibit, this</p> <p>7 exhibit doesn't seem to show all of the trees on -- near the</p> <p>8 entrance and landscaping that are on our plan sheet. So can</p> <p>9 you speak to whether this perspective includes all of the</p> <p>10 actual plantings represented?</p> <p>11 A This is a representational image, so it does not</p> <p>12 show that every planting, but the one piece that is -- that</p> <p>13 we've done so that this exhibit can show more of the</p> <p>14 building is you can see that we have kind of gathered</p> <p>15 transparency to a number of the trees across the project,</p> <p>16 really from the center of the edge all the way to the right</p> <p>17 of that to block that trees that would really -- would</p> <p>18 conceal this building much more, so if we're intentionally</p> <p>19 not so that people can see, you know, more so at this</p> <p>20 moment.</p> <p>21 Q Okay. If we can move on to the -- what did you ask</p> <p>22 for? 27D?</p> <p>23 A 27.</p> <p>24 HEARING EXAMINER: D?</p> <p>25 THE WITNESS: D as in dog, yes. This is our facade</p>	<p>56</p> <p>1 main entry, so that a number of guests as well. So we have</p> <p>2 this two and a half story portion, which I covered for it to</p> <p>3 show as our central building entry point and then that</p> <p>4 what's the four stories each break off of that. And</p> <p>5 additionally to the right side you can see there's another</p> <p>6 canopy area with the cover trees. That was an additional</p> <p>7 entry into the the building so that they don't necessarily</p> <p>8 have to go all the way through, you know, to the main every</p> <p>9 time they enter (inaudible)</p> <p>10 I'm speaking in materiality from a moment as well</p> <p>11 but we're looking at a gray brick that you're seeing gray</p> <p>12 area that are dealing with (inaudible) and other binding</p> <p>13 planning. We are we utilize siding the wood sections here</p> <p>14 that would have the state wood look overall. That's not the</p> <p>15 material that kind of ties (inaudible) homes and other areas</p> <p>16 but utilize in that photograph would promote can reduce</p> <p>17 maintenance and weather.</p> <p>18 We can see quite a bit of glass throughout these</p> <p>19 areas particularly at the main entry that we are looking at.</p> <p>20 Natural light is very important to the development of senior</p> <p>21 living experience and that's something that we are very</p> <p>22 thoughtful to integrate everywhere be possible in here.</p> <p>23 Then we do have some other -- the very light gray portion</p> <p>24 also in white in this image, is the -- it is just another</p> <p>25 secondary facade treatment that we saw along the overall</p>

Transcript of Hearing
Conducted on February 16, 2024

15 (57 to 60)

<p>57</p> <p>1 perspective view of the project. Then we have a dark bronze 2 that over here and that over frames a touch of traditional 3 into but also gives it a clean kind of integrity 4 (inaudible). 5 Q So based on what you've shown us, what in your 6 opinion is the proposed conditional use and appropriate use 7 adjacent the single-family residential use to the east? 8 A I believe so. I believe we done to -- as I spoke 9 before of having a buffer between the industrial warehouse 10 uses and the single-family homes that we are providing a 11 high transitional design. 12 Q And what is the height of the building? 13 A It is 50 feet, and that's the maximum allowed. 14 Q From this image we're seeing different variations 15 it seems of pieces of the building at different heights. So 16 are you saying it's 50 feet at the -- what point? Which one 17 are you looking at. 18 A One moment. 19 Q Maybe the four story? 20 A Yes. So from my finished we are 50 feet to the 21 (inaudible) lines. So as you look at that secondary point 22 of entry, that living entry going up, it's 50 feet to the 23 top 24 MS. LEE-CHO: Is it hearing examiner clear on the 25 two points of entry?</p>	<p>59</p> <p>1 landscape plan. 2 HEARING EXAMINER: Why does it matter why Dino 3 Drive is? 4 MS. LEE-CHO: Well, because that image looked like 5 it was adjacent to the industrial side, not the Stream 6 Valley, so I'm confused. 7 HEARING EXAMINER: I didn't think so. But go 8 ahead. 9 THE WITNESS: This image as you can see, the on the 10 left side of this plant there is the access point. 11 Q Do we have a perspective of the building on the 12 industrial side? 13 A We do not. 14 Q We do not? 15 A No. We do have Exhibit 24 would show that. 16 MS. LEE-CHO: Just want to give you -- 17 HEARING EXAMINER: I understand. So which one is 18 the industrial side? 19 THE WITNESS: Scroll further back, it's bottom 20 right there. The west elevation. 21 HEARING EXAMINER: The what? 22 THE WITNESS: The west elevation. 23 HEARING EXAMINER: I can't see the bottom of the 24 one on the bottom of this exhibit. 25 THE WITNESS: Yes, that's the side facing the</p>
<p>58</p> <p>1 HEARING EXAMINER: Yes. 2 MS. LEE-CHO: Okay. 3 HEARING EXAMINER: The 2 -- well, one order to -- I 4 don't know what that called canopy on the other side, yes, I 5 get it. 6 MS. LEE-CHO: All right. 7 Q Mr. Palkowitsch, are there any other 8 elevations, images exhibits that you'd like to show? 9 A Yes, one more. Exhibit 27B would show the rear 10 facade. 11 HEARING EXAMINER: And the rear faces which side? 12 What does the rear face on the abutting property? 13 THE WITNESS: It really faces just the Parkland 14 Forest, so this is -- this image is exaggerated that there 15 would actually be -- you would never really see this facade. 16 It would be trees all over the foregrounds here. But we, 17 you know, to just show that, you know, we are creating a 18 four-sided building (inaudible) 19 Q I'm a little confused. I thought -- is Dino Drive 20 on the image on the land left? 21 A Dino Drive is -- this is rear side of the building 22 that Dino Drive -- well, that's kind of straight ahead 500 23 feet would be like the way to describe that. 24 Q I'm sorry. I can't -- 25 A If you could pull up the second tab you have of the</p>	<p>60</p> <p>1 industrial. 2 MS. LEE-CHO: I have nothing further on elevations 3 or lands. The only other questions -- 4 HEARING EXAMINER: Who is going to testify about 5 lighting? 6 MS. LEE-CHO: Mr. John Nielson. 7 HEARING EXAMINER: All right. All right. 8 MS. LEE-CHO: Well -- 9 HEARING EXAMINER: What were you going to say. 10 MS. LEE-CHO: Just while I have Mr. Palkowitsch to 11 go through some of the general findings, if we could just 12 wait on that until the end. 13 THE COURT: Well, no, why don't we -- can we say 14 does he adopt a findings of staff and the technical staff 15 report. 16 MS. LEE-CHO: We can. 17 Q So Mr. Palkowitsch, in terms of the zoning 18 ordinance specific standard requirements under Section 19 59.3.32 (2)(E)(C)(2) of of the zoning ordinance as that's as 20 well as the general necessary findings of section 21 59.7.31(e), do you have adopt and concur with all of the 22 findings in the staff report as well as as outlined in the 23 statement of justification? 24 A I do adopt that. I concur with the staff plans. 25 HEARING EXAMINER: Anything else?</p>

Transcript of Hearing
Conducted on February 16, 2024

16 (61 to 64)

<p>61</p> <p>1 MS. LEE-CHO: No.</p> <p>2 HEARING EXAMINER: Okay. For those remote that are</p> <p>3 appearing in opposition, this is your time you can remove</p> <p>4 that exhibit unless you want -- this is your time to be able</p> <p>5 to ask questions. And if you want one of the exhibits up,</p> <p>6 you can ask for that as well. So does anybody want to ask</p> <p>7 Mr. Palkowitsch questions?</p> <p>8 MS. TAYLOR: Eileen Taylor. I have one question.</p> <p>9 HEARING EXAMINER: Uh-huh.</p> <p>10 MS. TAYLOR: When was the aerial photograph taken</p> <p>11 that was used in the exhibit?</p> <p>12 THE WITNESS: I could not speak to that. We</p> <p>13 developed these documents maybe about two years ago, so</p> <p>14 about 2022 when we started developing this land project and</p> <p>15 it would have been you know from that Google Earth at that</p> <p>16 point.</p> <p>17 MS. TAYLOR: From Google Earth, not from your</p> <p>18 own -- you did take the picture it is used if Google</p> <p>19 earth.</p> <p>20 THE WITNESS: For the -- from the staff, yes.</p> <p>21 MS. LEE-CHO: I'm sorry, what exhibit was she</p> <p>22 asking about?</p> <p>23 HEARING EXAMINER: Well, I don't have a number but</p> <p>24 it was the aerial that was not in the record, probably</p> <p>25 Brookstone aerial map.</p>	<p>63</p> <p>1 HEARING EXAMINER: These are important. Because</p> <p>2 they --</p> <p>3 S. MEYER: If it's easier I can submit it by the</p> <p>4 chat, but it's also listed as my participant name</p> <p>5 khater@gmail.. And I corresponded with the office of Zoning</p> <p>6 and Administrative hearings on e-mail as well, so that</p> <p>7 should be on record. I was the one who submitted the</p> <p>8 written testimony on behalf of the Valley Stream</p> <p>9 HEARING EXAMINER: Okay. Thank you.</p> <p>10 MS. MEYER: Yes, of course. Thank you, Mr.</p> <p>11 Palkowitsch for your testimony. I wanted to ask regarding</p> <p>12 the design of the building, I looked at some of the other</p> <p>13 facilities that you mentioned in your testimony and they</p> <p>14 have a much more residential appearance, and while I</p> <p>15 understand that there is sort of dueling architectural</p> <p>16 facades to work with. We are, you know, an older</p> <p>17 neighborhood with most of these houses being built in the</p> <p>18 60s to 80s which a very distinctive feel. The industrial</p> <p>19 area that you mentioned has a very soviet block field if you</p> <p>20 will cement facades. And because the industrial area will</p> <p>21 really not be as impacted by the visual as the residents</p> <p>22 here, why is it that the design seems to favor that more</p> <p>23 rigid rectangular block appearance as opposed to the roofing</p> <p>24 that you had in someone, for example, Anthology in Novi</p> <p>25 Michigan which would looked a bit more like houses or like a</p>
<p>62</p> <p>1 MS. TAYLOR: Yes, that one.</p> <p>2 THE WITNESS: Oh, this was done -- this was done.</p> <p>3 MS. LEE-CHO: Last night.</p> <p>4 THE WITNESS: Three days ago from Bing Maps</p> <p>5 HEARING EXAMINER: From what?</p> <p>6 THE WITNESS: Bing Maps.</p> <p>7 MS. TAYLOR: Bing Maps, okay, thank you.</p> <p>8 THE COURT: Anyone else?</p> <p>9 MS. TAYLOR: But you don't have a date when this</p> <p>10 photo was taken.</p> <p>11 THE WITNESS: No, I do not. I am not aware of when</p> <p>12 it was.</p> <p>13 MS. TAYLOR: Okay. Thank you.</p> <p>14 THE COURT: Okay. Anyone else have a question?</p> <p>15 MS. MEYER: Yes, ma'am. My name is Lauren Meyer.</p> <p>16 M-E-Y-E-R. I'm a resident at 4324 Valley Stream Avenue</p> <p>17 Burtonsville, Maryland. And my e-mail address</p> <p>18 Lauren.khater@gmail.com.</p> <p>19 HEARING EXAMINER: Okay, just a second it's Lauren</p> <p>20 dot K H at G mail.</p> <p>21 MS. MEYER: T E R at G mail dot com, so the second</p> <p>22 the second -- should read khater how it would be written out</p> <p>23 but phonetically it's khater.</p> <p>24 HEARING EXAMINER: Okay. K H T E at G mail.</p> <p>25 MS. MEYER: KHA as in apple after the H.</p>	<p>64</p> <p>1 residential property.</p> <p>2 THE WITNESS: Sure. Thank you. When we start doing</p> <p>3 design work, we look around the community and and get a feel</p> <p>4 for what some of the current architectural character of the</p> <p>5 area is. And then we utilize that to begin to create some</p> <p>6 different visionary concepts and work with the ownership</p> <p>7 team to create a shared vision of the one project they want</p> <p>8 to become. Just giving a little background of the process.</p> <p>9 And in this instance, you know from I think from our</p> <p>10 experience it's the site that just of impact at Dino Drive</p> <p>11 of the industrial properties, that it left us and building</p> <p>12 that clearly to look at more flatwood project. When you do</p> <p>13 a pitch group project, it will add usually about an</p> <p>14 additional seven feet in height to the of the pitch of the</p> <p>15 roof, and that was something we were trying to be sensitive</p> <p>16 of looking at what the right height was. I do sites</p> <p>17 specially the (inaudible) and that led us to going to a flat</p> <p>18 roof design.</p> <p>19 If regards to the other elements, we did look at</p> <p>20 the bright fields or brick colored of different materiality</p> <p>21 and felt that the more, you know, contemporary but</p> <p>22 transitional was most appropriate.</p> <p>23 MS. MEYER: Can I ask just one follow-up question</p> <p>24 to that, please?</p> <p>25 HEARING EXAMINER: HEARING EXAMINER: Yes.</p>

Transcript of Hearing
Conducted on February 16, 2024

17 (65 to 68)

<p>65</p> <p>1 MS. MEYER: Thank you. I understand the need to 2 sort of transition between these different styles, but given 3 that the building is 50 feet tall at its highest will 4 require, you know, years, decades of tree growth to really 5 conceal that. That's going to be very visible behind these 6 homes. The people that have been most likely is see it from 7 the industrial side are people who are just driving past or 8 picking up their stuff from the storage unit or the drivers 9 come out of the private shuttle facility that's just off 10 Dino, so it seems to me odd that the priorities been given 11 to what it looks like in terms of conforming to that style 12 versus conforming to people who live there. And perhaps 13 that's not something you can answer and I apologize if 14 that's the case, but I guess was that a negotiation that 15 guys took to -- you know, seven feet on top of 50 feet 16 doesn't really seem that much of a difference, but from the 17 visual aspect for us, that's a pitched roof versus a 18 flatroof as you know that those are pretty significant 19 changes.</p> <p>20 THE WITNESS: For the building site itself, you 21 know, I don't really necessarily have more to add to that 22 piece but within the site placement, we're really basically 23 we put this 20 foot light up near the industrial really 24 pushed the site to create as much buffer to as we can so to 25 really try to respect the you know the resident experience,</p>	<p>67</p> <p>1 MR. SINGH: The only thing is my computer doesn't 2 have, what you call, it a camera.</p> <p>3 HEARING EXAMINER: Well, does the applicant waive 4 the right to see him testify?</p> <p>5 MS. LEE-CHO: I do.</p> <p>6 HEARING EXAMINER: Okay. Go ahead, Mr. Singh.</p> <p>7 MR. SINGH: Yes.</p> <p>8 HEARING EXAMINER: Ask just a question, not 9 testimony.</p> <p>10 MR. SINGH: Okay. So my question I guess falls 11 with what the last person just said. Could this have been 12 designed as a three-story building because the view 13 of -- you presented a elevation from as seen from Valley 14 Stream Avenue and that looks to be like exactly how this 15 project will look from my home. And basically it's massive, 16 and my question is right now like we don't even see the 17 molding warehouse, because one of the I guess, the benefits 18 that was proposed was that this acts as a buffer, but right 19 now like in that from my home like we can't even see the 20 molding warehouse. So the question is was there any way to 21 make this like a two-story or three-story building?</p> <p>22 THE WITNESS: You know, there are definitely a 23 two-story would not have worked with the mix that we need. 24 There's more of developer's fact. There's certain, you 25 know, financial problems of the right mix that you need to</p>
<p>66</p> <p>1 and you are correct that some of these trees are going to 2 take some time to block at least and we have trying to save 3 existing trees as possible, especially in (inaudible) 4 HEARING EXAMINER: Thank you.</p> <p>5 MS. MEYER: Just one last questions I promise this 6 is the last one. Did providing the flat tops have a pitched 7 roof allow the developer to create more beds or units 8 overall? Would it have been on a three-story building if 9 you had not done the flat top?</p> <p>10 THE WITNESS: I'm not. I'm not sure. It would be 11 a lot of different ways to look at how the style could be 12 done to try and pick the right mix.</p> <p>13 MS. MEYER: No further questions at this time.</p> <p>14 HEARING EXAMINER: Okay. Anyone else?</p> <p>15 MR. SINGH: I have a question.</p> <p>16 HEARING EXAMINER: Your name.</p> <p>17 MR. SINGH: Piara Singh.</p> <p>18 HEARING EXAMINER: Mr. Singh, okay.</p> <p>19 MR. SINGH: Yes. So one of the elevations you 20 showed was --</p> <p>21 HEARING EXAMINER: Just let me stop you really 22 quickly. It's not that important on cross-examination but 23 when you speak, you should turn your cameras on. When you 24 testify, you should turn your -- you must turn your cameras 25 on.</p>	<p>68</p> <p>1 do to make the project (inaudible) they can proceed forward 2 with it. You know if we do, we four story appropriate way 3 to go with the 50 feet height limit. So we always worked on 4 the assumption on four. But we never really studied three 5 to begin.</p> <p>6 MR. SINGH: Okay. Thank you.</p> <p>7 HEARING EXAMINER: Anyone else? Hearing none, Ms. 8 Lee-Cho do you have any redirect?</p> <p>9 MS. LEE-CHO: Yes, I do.</p> <p>10 Q Mr. Palkowitsch, in terms of from a residential 11 character architectural discipline perspective, is there 12 anything that makes necessarily a flat roof contemporary 13 more modern design building less residential?</p> <p>14 A I don't believe so. I believe it's really more 15 layered than of the pieces are designed. And it's --</p> <p>16 HEARING EXAMINER: Well, I thought they have to 17 make residential roofs at least a 3 over 12 pitch?</p> <p>18 THE WITNESS: Maybe I misunderstood the question. 19 So on a pitched roof it -- a pitched roof does give a more 20 residential feel, yes, and it also gives a taller feel of 21 the building. So it would be bit more.</p> <p>22 Q I guess --</p> <p>23 A Can you reask the question.</p> <p>24 Q Yes. My question is there anything that makes 25 pitch roofs the only residential type of roof?</p>

Transcript of Hearing
Conducted on February 16, 2024

18 (69 to 72)

<p>69</p> <p>1 A No. There's many other design choices that go into 2 that. 3 HEARING EXAMINER: Well, you can't build flat roofs 4 in -- 5 MS. LEE-CHO: Why not? 6 HEARING EXAMINER: Because it -- doesn't have it to 7 to be 3 over 12? 8 MS. LEE-CHO: I mean, you have flat contemporary 9 roofhouses everywhere. 10 HEARING EXAMINER: Well, I wouldn't say 11 everywhere. 12 MS. LEE-CHO: Well, I mean a lot of places. 13 Q. That's my question. In terms of it from an 14 architect -- from an architectural disciplinary perspective. 15 is there something that makes a flat roof less residential 16 just by being flat? 17 A The answer by saying there's more factors than just 18 the roof of what makes something residential (inaudible) or 19 and it's the way that the building is laid out, it's the 20 window articulations, how the windows are gained 21 together, it's the (inaudible) incorporated into a project. 22 Those are some of the layers that make the project feel 23 residential versus being neighbor height or opposite of what 24 is mentioned on this industrial, but they're kind of 25 concrete blocks so --</p>	<p>71</p> <p>1 that's used. 2 MS. TAYLOR: When when you mixed together with the 3 other items, does it not lead Aa more contemporary feel to 4 just building? 5 THE WITNESS: This is a more contemporary building, 6 yes. 7 MS. TAYLOR: Do you feel the building reflects the 8 neighborhood homes? Most of the homes in the neighborhood 9 were built in the 196s0. They have been updated, but it is 10 not indicative -- to my opinion, it is not indicative of-- 11 HEARING EXAMINER: Okay. Well, that's not -- you 12 can say that in testimony. But we're not -- 13 MS. TAYLOR: Okay. Thank you. 14 HEARING EXAMINER: Anyone else? Okay. Any 15 question? Any redirect based on those questions? 16 MS. LEE-CHO: Yes. 17 Q Mr. Palkowitsch, is it required under the Zoning 18 Ordinance that the building be -- mimic the same residential 19 style of the adjacent neighborhood? 20 A It does not. 21 HEARING EXAMINER: Well, isn't it a compat -- it's 22 not required, but isn't it compatibility is required, right? 23 Q Yes. And do you believe that the building, as 24 designed, is compatible with the residential character of 25 the surrounding area?</p>
<p>70</p> <p>1 HEARING EXAMINER: Well, let me ask you this. Did 2 you notice any flat roofs in your tour of the neighborhood? 3 THE WITNESS: On the single-family homes, I could 4 not really state. But as mentioned this -- we looked at 5 this as a transitional design between the two areas. 6 HEARING EXAMINER: Okay. 7 THE WITNESS: So that's what we took into account 8 as I transition, we can work between the options. 9 HEARING EXAMINER: Any other questions? Any 10 questions? 11 HEARING EXAMINER: Just a second, Ms. Taylor, go 12 ahead. 13 MS. TAYLOR: Of course. Eileen Taylor. I have 14 another question. I agree with you that a flat roof alone 15 doesn't necessarily constitute a non-residential building, 16 but you also mentioned there other factors. Do you feel 17 that because it's using a flat roof as well as cement board 18 gray brick, excessive glass, those are more indicative of a 19 contemporary industrial look. Do you find those mostly in 20 residential homes? 21 THE WITNESS: I would not say this is an industrial 22 look because it covered that, but I would say that cement 23 board is a material often used by homes otherwise really in 24 it's a product to be more durable than, like, wood lapse 25 homes so it's a tradition after -- a traditional material</p>	<p>72</p> <p>1 A As the transitional site, yes, I do. 2 HEARING EXAMINER: Okay. 3 MS. LEE-CHO: I have nothing further. 4 HEARING EXAMINER: Okay. I just going to say let's 5 now two hours into our hearing. So we are going to take a 6 five minute break, because I need to make sure I have the 7 exhibit list correct. Because some have been added at the 8 last minute, and then we're going to get to your 9 transportation planner, correct? 10 MS. LEE-CHO: Correct. 11 HEARING EXAMINER: Okay. So we're off the record 12 well -- 13 MS. LEE-CHO: I would just say we have Mr. -- what 14 is his name Nielson he was going to deal with lighting, so 15 you prefer doing the traffic first? 16 HEARING EXAMINER: Well, since we're on 17 compatibility, we can do the landscape architect and he 18 can -- then we'll get to traffic. But please keep in mind I 19 don't want the bring all your witnesses back you know for a 20 second day of hearing and -- how many people are on the zoom 21 meeting that would like to testify? 22 MR. SINGH: I would like to testify. 23 MS. TAYLOR: Eileen Taylor, I would like to 24 testify. 25 HEARING EXAMINER: Anyone else and -- Miss -- your</p>

Transcript of Hearing
Conducted on February 16, 2024

19 (73 to 76)

<p style="text-align: right;">73</p> <p>1 name was Meyer</p> <p>2 MR. MEYER: Yes. And I also have with me two of my</p> <p>3 neighbors who would like to testify as well.</p> <p>4 HEARING EXAMINER: How many of your neighbors?</p> <p>5 MS. MEYER: Two. Ms. Kathleen Smith and Joanie</p> <p>6 Rackley.</p> <p>7 HEARING EXAMINER: So five people. Okay. Let's</p> <p>8 get to the landscape architect. He's going to describe the</p> <p>9 landscaping and buffering and lighting, and then we'll do</p> <p>10 the traffic engineer. I'm going to try to get through this.</p> <p>11 We'll probably only take a half hour for lunch, so that's</p> <p>12 how we'll do it. And I'm going to go off the record until</p> <p>13 for about, I'll say, ten minutes because I need to make sure</p> <p>14 the exhibit numbers are correct.</p> <p>15 (Discussion held off the record.).</p> <p>16 HEARING EXAMINER: We added the second e-mail from</p> <p>17 Mark Beall as 42A. The affidavit of posting is 43. Mr.</p> <p>18 Palkowitsch's resume' is 44. 45 is excerpts from Fairland</p> <p>19 Master Plan, 46 is Brookstone aerial map. 47 is updated</p> <p>20 site building sections. And 48 is updated site building</p> <p>21 sections. So what we're going to have to do.</p> <p>22 MS. LEE-CHO: Cross-section one or cross-sections</p> <p>23 so the 48.</p> <p>24 HEARING EXAMINER: Is cross-sections. Now, if I</p> <p>25 have questions because they weren't marked on the plan, I</p>	<p style="text-align: right;">75</p> <p>1 Group.</p> <p>2 Q And can you briefly describe --</p> <p>3 HEARING EXAMINER: Are you trying to qualify?</p> <p>4 Q Before I do that I will --</p> <p>5 HEARING EXAMINER: Are you trying to qualify him?</p> <p>6 Q I will provide the resume'. Mr. Nielson's resume'</p> <p>7 is also provided to the Zoom operator.</p> <p>8 HEARING EXAMINER: You have to put it up please.</p> <p>9 That would be 49. I'm not sure. It's in the exhibits she</p> <p>10 provided Ms. Lee-Cho provided separately. Are these all new</p> <p>11 exhibits?</p> <p>12 MS. LEE-CHO: No. We're just talking about what</p> <p>13 he's going to use.</p> <p>14 (Discussion held off the record.)</p> <p>15 HEARING EXAMINER: Now, the purpose of filing the</p> <p>16 pre-hearing statements so at least I can look at them</p> <p>17 beforehand. So getting with them last minute delays our</p> <p>18 hearings.</p> <p>19 MS. LEE-CHO: We'll only be using plans that you</p> <p>20 did get, and we just want to let the zoom operator.</p> <p>21 HEARING EXAMINER: I'm just saying it's hard for me</p> <p>22 with the voir dire to cut through everything when I haven't</p> <p>23 ever seen this resume' and didn't even know he was --</p> <p>24 MS. LEE-CHO: Understood. I apologize.</p> <p>25 HEARING EXAMINER: Are we ready? Okay. His</p>
<p style="text-align: right;">74</p> <p>1 may ask to you confirm is this 46, 47, and 48. Because</p> <p>2 normally we have them marked either at the hearing or on the</p> <p>3 planner. So that will be a follow up.</p> <p>4 (A brief recess was taken.)</p> <p>5 HEARING EXAMINE: All right. Are we ready to</p> <p>6 proceed with your next witness?</p> <p>7 MS. LEE-CHO: Yes, we are. We have Mr. Nielsen,</p> <p>8 our landscape architect.</p> <p>9 HEARING EXAMINER: Please raise your right hand.</p> <p>10 JOHN NIELSON</p> <p>11 after having been duly sworn or affirmed testified as</p> <p>12 follows:</p> <p>13 HEARING EXAMINER: Please state your name, business</p> <p>14 address, and e-mail address for the record.</p> <p>15 THE WITNESS: My ma'am is John Nielson,</p> <p>16 N-E-I-L-S-O-N. I work for BKV group, BKV group in</p> <p>17 Washington, D.C.. And the business address is 1054 31st</p> <p>18 street Northwest Canal Square Washington, D.C..</p> <p>19 HEARING EXAMINER: And e-mail.</p> <p>20 THE WITNESS: J-N-E-I-L-S-O-N@BKVgroup.com</p> <p>21 HEARING EXAMINER: Okay. Go ahead, Ms. Lee-Cho.</p> <p>22 BY MS LEE-CHO:</p> <p>23 Q Mr. Nielson, just for the record, what is your</p> <p>24 profession?</p> <p>25 A I'm a director of landscape architecture of BKV</p>	<p style="text-align: right;">76</p> <p>1 resume', can you pull it up so people can see it? Has he</p> <p>2 ever qualified as an expert in a court or administrative</p> <p>3 proceeding?</p> <p>4 MS. LEE-CHO: Not as an expert witness, but similar</p> <p>5 to Mr. Palkowitsch, he's got 20 plus years of experience</p> <p>6 in.</p> <p>7 HEARING EXAMINER: Well, is your experience fairly</p> <p>8 and accurately represented in your resume'?</p> <p>9 THE WITNESS: Yes.</p> <p>10 HEARING EXAMINER: Can you pull that resume' up so</p> <p>11 they can see it at home? Or make it smaller? Are you</p> <p>12 licensed in Maryland or do you work under the supervision of</p> <p>13 someone licensed in Maryland?</p> <p>14 THE WITNESS: I work with someone under advice of</p> <p>15 license.</p> <p>16 HEARING EXAMINER: Were you able to get it smaller</p> <p>17 so people can see the whole resume'? I'm sorry did you say</p> <p>18 you did work under the supervision of someone licensed in</p> <p>19 Maryland?</p> <p>20 THE WITNESS: Yes.</p> <p>21 HEARING EXAMINER: Are you licensed in Maryland?</p> <p>22 THE WITNESS: I'm currently not.</p> <p>23 HEARING EXAMINER: What?</p> <p>24 THE WITNESS: Not in Maryland.</p> <p>25 THE COURT: Can you speak up a little?</p>

Transcript of Hearing
Conducted on February 16, 2024

20 (77 to 80)

77	1 THE WITNESS: No, not in Maryland. 2 HEARING EXAMINER: Okay. All right. Just give me 3 a moment to look at this. And when you list all these 4 projects, are these projects that you worked as a landscape 5 architecture? 6 THE WITNESS: Yes. 7 HEARING EXAMINER: Architect on? 8 THE WITNESS: Yes. 9 HEARING EXAMINER: Okay. 10 THE WITNESS: The current projects I've worked on 11 for the last five years, I have a lot of Montgomery County 12 experience, being the lead senior landscape architect 13 leading those projects. 14 HEARING EXAMINER: Yeah, I see Ericson and a couple 15 of others, okay. Does anyone have an objection if I qualify 16 Mr. Nielson -- qualifying Mr. Nielson as an expert in 17 landscape architecture based on the resume' he submitted 18 into the record? Okay, hearing none, I will so qualify him. 19 Go ahead. 20 MS. LEE-CHO: Thank you. 21 Q Mr. Nielson, using the landscape plan Exhibit 1A 22 which is in the record already, tell me -- walk us through 23 the landscape. 24 HEARING EXAMINER: Wait, his resume', I'm not sure 25 I said it, but it's going to be 49.	79	1 ghost speaker. We been zoomed bombed. No. 2 Okay, go ahead. You're talking from Dino Drive 3 from that street? 4 THE WITNESS: Yes. I'm talking from Dino Drive we 5 got enhanced landscape, so we have a sort of canopy trees 6 and a buffer plantage as you come off Dino Drive. 7 MS. LEE-CHO: I'm sorry, one second. I'm getting 8 text messages that they're not hearing us. 9 HEARING EXAMINER: Okay. We're going to -- thank 10 you. We're going to hold on. 11 MS. LEE-CHO: They think we're still on break. 12 THE WITNESS: Testing. 13 HEARING EXAMINER: No, not that way. 14 (Discussion off the record.) 15 MR. SINGH: So quick question. Was that a 30 16 minute or was that -- 17 HEARING EXAMINER: No, it was a ten minute break. 18 MR. SINGH: Okay. Thank you. 19 HEARING EXAMINER: We will give everyone -- we 20 don't want you to starve to death while watching this, so we 21 will give a half hour lunch break, but I'm going to try and 22 get through Mr. Nielson qualified as an expert witness in 23 landscape architecture, but we can go through that again if 24 you did not hear it. 25 MR. SINGH: No, we're good.
78	1 MS. LEE-CHO: Correct. 2 HEARING EXAMINER: Go ahead. 3 THE WITNESS: Thank you. So the exhibit on screen 4 is the overall site planting land, which I'm going to talk 5 everyone through. 6 HEARING EXAMINER: Is it -- which exhibit number is 7 this? 17? 8 THE WITNESS: 17A. 9 HEARING EXAMINER: Okay. 10 THE WITNESS: So looking from plan north on the 11 left-hand side of the plan, if you're coming from Dino Drive 12 and then turning on to the Valley Stream Avenue and into the 13 site, the first key thing that I would like to stress is 14 throughout the process we really got enhanced landscape 15 treatment and arrival at that point. Throughout the 16 process, I think one of the key points was to push the 17 ongrade surface parking back so it's not visible from the 18 street. So really that was kind of one of the keys. 19 HEARING EXAMINER: From Dino Drive -- 20 MR. SINGH: Sorry, are we back on or on a 30 minute 21 break? 22 HEARING EXAMINER: I'm sorry? 23 MR. SINGH: Are we back on or on a 30 minute break? 24 HEARING EXAMINER: I'm sorry, who's speaking? Can 25 someone if -- who's speaking? Okay, hearing no one. A	80	1 HEARING EXAMINER: Okay. Mr. Nielson is the expert 2 witness in landscaping architecture. 3 THE WITNESS: Okay. So I'll start again just for 4 everyone. The exhibit that I'm using to describe the 5 overall landscape plan, I'm just going to walk people 6 through the plan and talk about the various kind of 7 landscape amenities and treatments as you kind of traverse 8 from Dino Drive into the site and around -- 9 HEARING EXAMINER: And what plan -- which are we 10 on? A or B? 11 THE WITNESS: We are on A, and it's the overall 12 site planting plan. And I kind of wanted to talk to -- you 13 can see the symbols on the plan indicate the amount of trees 14 planted that we're going to have to provide that kind of 15 screening and enhance buffer treatment. 16 So walking people through, along Dino Drive we have 17 a buffer planted against that -- the building. At the 18 amenity pathway that can connects a pedestrian pathway that 19 also comes and connects into the site. But one of the key 20 things that was discussed, you know, during this process 21 with staff is really looking at pushing the ongrade parking 22 backwards and having enhanced landscape green arrival 23 experience as you come into the site, and also so that 24 people that, you know, residents are walking, you provide 25 that green screen as well. So that was one of the key moves

Transcript of Hearing
Conducted on February 16, 2024

21 (81 to 84)

<p>81</p> <p>1 that we kind of-- this plan is trying to demonstrate. 2 The arrival area will have feature planting. We do 3 have a kind of meandering pathway that connects the Dino 4 Drive an provides that pedestrian connection. There also be 5 on that pedestrian pathway also looking at having some kind 6 of seating moments and some shading area for residents as 7 well. And then the other thing I would just highlight, the 8 entries that we will have a kind of signage element that 9 will have a soft accent lighting that will just be back. 10 HEARING EXAMINER: Now, you haven't submitted a 11 sign, right? Because you have to come back and amend the 12 conditional use land if you want to sign. 13 MS. LEE-CHO: The sign location is noted on the 14 conditional use plan and would be subject to this standard 15 site's sign permit requirements of the zoning ordinance. 16 HEARING EXAMINER: Okay. Go ahead. 17 THE WITNESS: Okay. So as you turn into the site 18 from Valley Stream Avenue, we have very straight linear 19 access that leads you towards main entrance points. The 20 ongrade parking will be separated with tree islands as per 21 the Montgomery County Ordinance 6.2. So addressing hearing 22 we are adhering to providing that kind of soft main that 23 ongrade parking with islands of tree. We also have a green 24 buffer against the building as well to really create a nice 25 landscape arrival experience into the development. The main</p>	<p>83</p> <p>1 you talking -- 2 THE WITNESS: I'm talking about the overall 3 strategy for the -- so if you look on the plan south where 4 you got the residents' houses and the 90 degree angle, we 5 have biotension along that edge. That kind of -- that's 6 been integrated again strategically, so we're kind of 7 increasing that buffer width. So on all these kind of 8 design decisions are, you know, going to create enhanced 9 buffer and trying to really screen the development 10 appropriately from the residents. 11 The other thing I was going -- the other key thing 12 probably just in terms of landscape strategy that I would 13 like to add is that we are using native and locally adapted 14 plant species in adherent with the Maryland Native Plant 15 Society and University of Maryland and Resources list. So 16 making sure any kind of proposed planting meets the proposed 17 Montgomery County plant list, more so make sure that we're, 18 you know, not proposing invading species on the site. So I 19 think that's a key sort of landscaping feature that we want 20 to integrate within the site given the context of the 21 adjacent Stream Valley buffer. 22 Towards the rear of the site in terms of the buffer 23 as well, we're not -- the development is not encroaching on 24 that buffer line. We're -- the creek, we are all providing 25 that as a planted edge as well to provide screen.</p>
<p>82</p> <p>1 pathway -- pedestrian pathway is pushed towards that 2 building side, loops around that pedestrian connection to 3 the main entrance points. 4 To reinforce just some of the points that Chris was 5 talking about and how we kind of maximized the amount of 6 landscape that we're putting into the buffers by pushing the 7 building north towards the more retail industrial use 8 areas, we maximized the kind of buffer areas of the 9 residential developments. That's one of the key points. 10 The other I think is -- well, that demonstrate in 11 the earlier section that we looked at the grading for the 12 car parking that goes along that perimeter, as you meet the 13 kind of soft edge, it's a lower level. So that the buffer 14 has an almost a slight embankment which provides a kind of 15 elevation change so that that will also help with kind of 16 the buffering along that line with tree planting as well. 17 We really start to have quite a nice kind of green edge to 18 slightly provide that kind of screening element. 19 The other thing is just working the civil engineer 20 and the kind of component of the site design is a lot of the 21 storm water strategy for the site. Water is being collected 22 by bioretention to locate towards the -- on the buffer side 23 as well, so that basically is another layer there that 24 buffer which would -- 25 HEARING EXAMINER: When you say buffer side, are</p>	<p>84</p> <p>1 HEARING EXAMINER: Are you talking about plan 2 left. 3 THE WITNESS: Plan west. 4 HEARING EXAMINER: Left. 5 THE WITNESS: The other side. And some of the 6 external site amenities that, you know, I think would make 7 this development really special, you kind of pick up on what 8 Chris was saying earlier about providing the senior 9 residents the areas where they can have access to nature and 10 promotes landscape, kind of important role that the -- has 11 and sort of held some -- that as you kind arrive, so coming 12 up to access drive and you got the arrival point within the 13 center with the two building entry points, to the left side 14 of the main entry point, if you were to go from the entry to 15 go plan south, there is a landscape therapeutic garden walk 16 which is being designed for visitors coming to see their 17 family, that they can, you know, come out -- they have an 18 area where they can kind of meet and they go for a walk, and 19 that will have seating moments within it. And they can 20 socialize and provide a really nice area outside for them. 21 It's also on the building frontage side to that again 22 creates more of a buffer towards where you got the 23 residential. 24 The other landscape amenities we'll be sharing on 25 plan is south wing. The U-shaped building, that's where the</p>

Transcript of Hearing
Conducted on February 16, 2024

22 (85 to 88)

<p>85</p> <p>1 memory care and assisted living courtyard will be. The 2 memory care courtyard will be enclosed, and then next to it 3 you have this assisted living courtyard which is the -- both 4 of those elevated, as I think Chris showed on one of the 5 renders.</p> <p>6 The last primary external amenities areas that are 7 on the north side of the building where you got the 8 retail, there is a podium level independent living courtyard 9 is there as well many so looking out towards that side and 10 there's a few -- there also a can't deck on that side 11 looking out. Which will add kind of seating element that 12 kind of thing.</p> <p>13 THE WITNESS: I think that was kind of the summary 14 that I had overall landscape framework.</p> <p>15 HEARING EXAMINER: I'm getting feed back. Does.</p> <p>16 MS. LEE-CHO: I'll turn this off.</p> <p>17 HEARING EXAMINER: Go ahead.</p> <p>18 THE WITNESS: Yeah, so should I go to the 19 lighting.</p> <p>20 Q Well, let me ask you, are you familiar with outdoor 21 lighting provisions of Section 6447?</p> <p>22 A Yes.</p> <p>23 Q Can you please describe how the lighting plan for 24 the project?</p> <p>25 A Okay. Can we pull out the lighting plan Exhibit 13</p>	<p>87</p> <p>1 foot-candle. If you do zoom into the plan, to the lowest 2 south side of the plan, you'll see that the photometric data 3 which gives you points of the level</p> <p>4 HEARING EXAMINER: Can you zoom in a little bit. 5 I'm talking -- for the record, I'm speaking to the zoom 6 operator.</p> <p>7 THE WITNESS: If you got the U section of the 8 building and use south point and you zoom in. Yeah just 9 towards the right -- left apologies. Yeah, you see we got 10 those red numbers, it's kind of that one. I'm trying to 11 make everyone be able to see it.</p> <p>12 MS. LEE-CHO: Can you zoom in close or the U?</p> <p>13 THE WITNESS: You can see there on this land that bottom 14 side against the boundary that, that shows the lighting 15 levels. So we have that nor .1 and we still have a little 16 bit of kind of buffer space.</p> <p>17 Q And so just to answer a question I think that was 18 raised, the zero point one doesn't come all the way to the 19 property line, but why doesn't it? Why does it stop short 20 of the property line?</p> <p>21 A So basically I think that that's where the light 22 never gets below zero point one, so we're only basically 23 recording.</p> <p>24 Q So the plan just records where?</p> <p>25 A It records that zero point one.</p>
<p>86</p> <p>1 in the exhibits I think it's 13. Yeah. Okay so as part 2 of the submission, this is the site lighting the photometric 3 plan which is documents the proposed column lighting that we 4 have on the site. Would you like me just go through an 5 describe?</p> <p>6 Q Well, first before you, can you give us an 7 understanding of the coloration that we're seeing on the 8 land and what those plan and those very small numbers 9 represent? If we could zoom can closer to the building.</p> <p>10 A So the coloration, the darker colors that kind of 11 red, blue, magenta lines, as they kind of bleed -- they're 12 located closer towards the buildings indicate a higher light 13 level. And as they kind of bleed towards the edges of the 14 site, when they become green and yellow, that's happening is 15 that light level is disbursing and it's less of glare. So 16 as per in code in terms of what we've done. One of the key 17 things with this plan in terms of meeting the code is that 18 we're edge not to exceed nor .1 foot-candle. And to adhere 19 to that and to meet that code requirement, what we're doing 20 is that we're showing any column lighting located on the car 21 park side against the building. What this lighting plan 22 does is it demonstrates the light intensity you know just 23 described coming from that in that color bleeding out which 24 towards the external area to the site with the yellow color. 25 And the yellows is representation of that kind of nor .1</p>	<p>88</p> <p>1 HEARING EXAMINER: And there's nothing intervening? 2 I see some black squares right on the southern.</p> <p>3 THE WITNESS: So the black squares need to 4 be -- they're not part of -- they're not any kind of 5 lighting fixture.</p> <p>6 HEARING EXAMINER: Okay. That's where I was 7 confused.</p> <p>8 THE WITNESS: Yeah. They're basically the 9 basically gravel kind of invert way of the storm water.</p> <p>10 HEARING EXAMINER: So there's nothing intervening 11 between the zero point one --</p> <p>12 THE WITNESS: It hasn't been recorded.</p> <p>13 HEARING EXAMINER: -- shown on the plan that would 14 increase lighting.</p> <p>15 THE WITNESS: No. And if you look at the pathway 16 that goes along the building, that's just adjacently to the 17 car parking spaces, you can kind of see a circle on them. 18 That's a lighting column.</p> <p>19 HEARING EXAMINER: Okay.</p> <p>20 THE WITNESS: And you can see how that --</p> <p>21 HEARING EXAMINER: Now, did this does show the 22 lighting -- does this account for any exterior lights on the 23 building or just the pole lights.</p> <p>24 THE WITNESS: This lighting plan does not account 25 for the exterior lights on the building.</p>

Transcript of Hearing
Conducted on February 16, 2024

23 (89 to 92)

<p>89</p> <p>1 HEARING EXAMINER: In your opinion, would the 2 exterior lighting on the building affect the lighting at the 3 property line? 4 THE WITNESS: No, not nor point one. 5 HEARING EXAMINER: What's your basis for that? 6 THE WITNESS: Well, the proposed lighting that we 7 would use on the building would be very soft lit, accent 8 lighting to kind of highlight. you know, the entry and 9 elements on the building, so the level is not going to 10 affect that nor point one foot-candle. 11 HEARING EXAMINER: Because usually they have 12 details of that on the plan. 13 THE WITNESS: Yes. 14 HEARING EXAMINER: Can you describe the type of 15 lighting that's typically -- 16 THE WITNESS: Yes. 17 MS. LEE-CHO: Can we bring the plan down a little 18 bit to show the entry? 19 THE WITNESS: No, up. 20 Q Yeah up. So if you, can for the record, speak to 21 what type of lighting might be on the building with an entry 22 area? 23 A So I think if we pulled up that Exhibit 27B that 24 Chris showed earlier, one of the comments I think from -- 25 HEARING EXAMINER: Just a second. Let's D, I</p>	<p>91</p> <p>1 HEARING EXAMINER: So you going to light the sign? 2 THE WITNESS: Yes. 3 MS. LEE-CHO: And we brought an example, but it is 4 part of the not introduced exhibits, so if you wanted to see 5 it. 6 HEARING EXAMINER: Yeah, let's see it. 7 MS. LEE-CHO: The file is called backlit. 8 HEARING EXAMINER: Okay. This would be 50, I 9 think. 10 THE WITNESS: This is just an intervention that 11 just, you know, what kind of -- 12 HEARING EXAMINER: Representative sign. 13 THE WITNESS: Yeah, just that kind of just 14 providing all the fixtures that we would be you know would 15 be proposing would kind of best (inaudible) 16 HEARING EXAMINER: And that would be at the 17 entrance? 18 THE WITNESS: That would be at the entrance, yes. 19 HEARING EXAMINER: Which does not abut residential? 20 THE WITNESS: Yes. 21 HEARING EXAMINER: Does it directly? 22 MS. LEE-CHO: Well, it does. 23 HEARING EXAMINER: Abut Dino Drive? 24 MS. LEE-CHO: It's up -- 25 THE COURT: I'm going to pull up the conditional</p>
<p>90</p> <p>1 think. 2 MS. LEE-CHO: Can we do the courtyard first before 3 we do the -- 4 HEARING EXAMINER: Well -- 5 THE WITNESS: I'll just show you. 6 MS. LEE-CHO: We can do Dino Drive first. 7 THE WITNESS: Just the arrival, and so you can see 8 here there's a very soft lighting on the building providing 9 a kind of wash on the facade. That's just kind of 10 accentuating kind of elements the different materiality. 11 That would kind of be one type of lighting. That's soft 12 kind of warm light. 13 HEARING EXAMINER: Okay. That's helpful. 14 Q This is the Dino Drive facade, is it not? 15 A Yes. 16 Q And what is the foot candle requirement along right 17 of way? 18 HEARING EXAMINER: I know it's not zero point one, 19 I'm just trying to get an idea of the types of fixtures and 20 lighting that he will have that are normally included on the 21 lighting plan. So I get that. Thank you. 22 THE WITNESS: Yes. And then the other lighting 23 would be there would be a signage -- where you have the 24 signage there would be resign of warm back lit light to that 25 as well.</p>	<p>92</p> <p>1 use plan which is -- well, I don't know which sheet to go to 2 cover sheet. 3 MS. LEE-CHO: Well even if you go to the 4 photometric plan, there you can see the placement of the 5 lighting. 6 HEARING EXAMINER: Which number the is photometric 7 plan? 8 THE WITNESS: If we go back to that one, we can 9 see. 13 10 MS. LEE-CHO: If you could zoom at the driveway 11 entrance. As big as possible. 12 HEARING EXAMINER: Okay. We cannot hear 13 you -- okay. Do we have it now? Did we capture it? 14 MS. LEE-CHO: I can see it. I'm not sure if you 15 can see it. 16 HEARING EXAMINER: Why don't you try to describe 17 in words where it is? 18 THE WITNESS: So it's -- as you're coming off 19 Valley Stream Avenue into the site, as you literally as 20 you're kind of driving into the site on the left-hand side 21 there is an entrance sign location. 22 HEARING EXAMINER: Does -- is it okay. It's 23 labeled entrance sign. I looked for it I couldn't find it, 24 but I do see it now. 25 THE WITNESS: Yeah. And that has the back to the</p>

Transcript of Hearing
Conducted on February 16, 2024

24 (93 to 96)

<p style="text-align: right;">93</p> <p>1 development and then --</p> <p>2 HEARING EXAMINER: Now, that does about residential</p> <p>3 but you -- is it your opinion that the lit sign is not going</p> <p>4 to increase those?</p> <p>5 THE WITNESS: Yes, based on the plan that we showed</p> <p>6 with that kind of back lit warm lighting.</p> <p>7 HEARING EXAMINER: Do you have a problem with the</p> <p>8 conditions staying since we don't have it figured into the</p> <p>9 plan saying that lighting shall not cause the lit candles to</p> <p>10 exceed zero point one?</p> <p>11 MS. LEE-CHO: No problem with that condition.</p> <p>12 HEARING EXAMINER: Okay. Go ahead.</p> <p>13 THE WITNESS: The other lighting that we would have</p> <p>14 for the building on the main arrival points, so kind of on</p> <p>15 the canopy, the property share we probably have some kind of</p> <p>16 inaudible lighting on that as you arrive and on the canopy</p> <p>17 on the other side. We also have where you got egress coming</p> <p>18 out the building to step, you know, you come out, we need</p> <p>19 some kind of lighting above the --</p> <p>20 HEARING EXAMINER: Are these -- okay. The share is</p> <p>21 in the interior sort of that northernmost semi-square?</p> <p>22 THE WITNESS: Yes. If you look at the -- towards</p> <p>23 the left of the cement where you got the squares in the</p> <p>24 middle, they indicate the columns. So we would have some</p> <p>25 kind of lighting probably on those columns to kind of</p>	<p style="text-align: right;">95</p> <p>1 lighting, and they wouldn't be additive to any of the light</p> <p>2 that was -- would not affect the nor point one lighting</p> <p>3 level at the boundary.</p> <p>4 HEARING EXAMINER: Okay. Do you have any</p> <p>5 perspectives showing what people are going to see once the</p> <p>6 landscaping is installed?</p> <p>7 THE WITNESS: Not at this moment, no.</p> <p>8 HEARING EXAMINER: Can you just describe what it's</p> <p>9 going to look like when first installed versus -- and how</p> <p>10 long is that going to be?</p> <p>11 THE WITNESS: So we specified as per the county</p> <p>12 ordinance 6.2, we put in a mix of different tree types along</p> <p>13 the canopy to provide that kind of natural edge. Specific</p> <p>14 trees will be kind of a three caliber so they're going in</p> <p>15 depending on species of tree that they will be going in</p> <p>16 about kind of 14, you know, 14 feet. So, I mean, from day</p> <p>17 one they will have some kind of height for them and provide</p> <p>18 that screen.</p> <p>19 HEARING EXAMINER: Are they a mix of evergreens and</p> <p>20 canopy trees?</p> <p>21 THE WITNESS: Yes. We do have some evergreens. We</p> <p>22 have the Magnolia (indiscernible) then there's some kind of</p> <p>23 under story flowering tree there as well to provide color.</p> <p>24 HEARING EXAMINER: Okay.</p> <p>25 THE WITNESS: So it's -- I kind of -- it's a mix</p>
<p style="text-align: right;">94</p> <p>1 illuminate them, illuminate underneath to provide that kind</p> <p>2 of lit arrival experience.</p> <p>3 HEARING EXAMINER: And what was the other area?</p> <p>4 THE WITNESS: The other area would be the opposite</p> <p>5 where you have the other arrival with the canopy. I would</p> <p>6 assume there would be some kind of lighting under there.</p> <p>7 HEARING EXAMINER: Okay. So --</p> <p>8 THE WITNESS: If you look at plan north almost</p> <p>9 where you got the finished floor elevation.</p> <p>10 HEARING EXAMINER: Yeah.</p> <p>11 THE WITNESS: Just below that there's two columns.</p> <p>12 There were some kind of accent lighting there as well.</p> <p>13 BY MS. LEE-CHO:</p> <p>14 Q Let me ask a question. So with these accent</p> <p>15 lights?</p> <p>16 A Yes.</p> <p>17 Q They're clearly within an area that has more -- has</p> <p>18 the pole lights, which have been measured?</p> <p>19 A Yes.</p> <p>20 Q Are they -- would they be less intense than the</p> <p>21 pole such that we could reasonably conclude that they would</p> <p>22 not --</p> <p>23 A Yes.</p> <p>24 Q -- cause the site the exceed zero point one?</p> <p>25 A They would be less intense than any of the pole</p>	<p style="text-align: right;">96</p> <p>1 because we want to make sure we have that sign of little as</p> <p>2 well as the kind of screening element as well along as a</p> <p>3 buffer.</p> <p>4 And then in terms, you know, if going in that kind</p> <p>5 of 14 feet to little bit -- species day one and then I think</p> <p>6 we would be looking at that kind of five year period as it</p> <p>7 start to get a bit higher, you know, years to 25 feet. So</p> <p>8 given the kind of width of the buffer this species --</p> <p>9 HEARING EXAMINER: What about this five to ten</p> <p>10 years maturity or is 20 years maturity?</p> <p>11 THE WITNESS: Yeah, I think probably about -- we</p> <p>12 would be looking at ten years maturity.</p> <p>13 HEARING EXAMINER: And what about screening for</p> <p>14 headlights in the parking lot?</p> <p>15 THE WITNESS: So because the site is -- the way</p> <p>16 it's been graded and the way the building is being</p> <p>17 positioned, the -- any parking that drives up and kind of</p> <p>18 faces outward when you're parking towards the buffer, the</p> <p>19 headlights are shining on the embankment, an then you would</p> <p>20 have planting behind that. So that would kind of mitigate</p> <p>21 that light.</p> <p>22 HEARING EXAMINER: So you say it's going to be</p> <p>23 mitigated by the grade.</p> <p>24 THE WITNESS: Grading and planting on that</p> <p>25 buffer.</p>

Transcript of Hearing
Conducted on February 16, 2024

25 (97 to 100)

<p>97</p> <p>1 HEARING EXAMINER: Do you have shrubbery there?</p> <p>2 THE WITNESS: We -- at the moment, I think we just</p> <p>3 have the tree planting that the various canopy trees and the</p> <p>4 flowering trees in that area.</p> <p>5 MS. LEE-CHO: We're just showing one portion of the</p> <p>6 area down here where the U-shaped.</p> <p>7 HEARING EXAMINER:: It may be helpful to go to the</p> <p>8 same plan.</p> <p>9 THE WITNESS: Yeah.</p> <p>10 HEARING EXAMINER: I think it's 15.</p> <p>11 THE WITNESS: It's 17A.</p> <p>12 HEARING EXAMINER: Oh, 17 sorry.</p> <p>13 THE WITNESS: Yeah. So you can see that we have</p> <p>14 kind of really a mixture of three plants along that edge.</p> <p>15 HEARING EXAMINER: Is it your opinion -- well, go</p> <p>16 ahead.</p> <p>17 THE WITNESS: So do you want me to -- I have some</p> <p>18 of that planting?</p> <p>19 HEARING EXAMINER: Well, does it -- is it -- does</p> <p>20 it meet the standard in the 6.5 of the seasoning</p> <p>21 ordinance.</p> <p>22 THE WITNESS: Yeah, we're meeting the standard set</p> <p>23 for -- we're above and beyond the ten foot width buffer.</p> <p>24 We're leaving -- we have the mix of the canopy trees that</p> <p>25 we, I think in those standards, they need to be kind of 30</p>	<p>99</p> <p>1 MS. LEE-CHO: Right.</p> <p>2 HEARING EXAMINER: General building type.</p> <p>3 MS. LEE-CHO: I think if you continue to scroll</p> <p>4 down there's a conditional use. I thought I saw a</p> <p>5 conditional use.</p> <p>6 HEARING EXAMINER: No, I don't see it. There is a</p> <p>7 section on conditional uses in 6.5. -- I always get halfway</p> <p>8 through the number and can't remember the end. If you look</p> <p>9 at 6.53.</p> <p>10 MS. LEE-CHO: A.</p> <p>11 HEARING EXAMINER: A, it says there is -- oh, no I</p> <p>12 gave you the wrong one. A conditional use in any building</p> <p>13 type except a single family detached house must provide</p> <p>14 screening under 6.53. If a subject property abuts property</p> <p>15 in an agricultural rural residential or residential detached</p> <p>16 zone that is vacant or improved with the resident</p> <p>17 agricultural residential use. So that puts you into 6.53</p> <p>18 for perimeter screening. Now, you've taken because the</p> <p>19 exterior is the parking lot, you've used 6.2.9.</p> <p>20 MS. LEE-CHO: Right, because I believe under 6.53</p> <p>21 it says where there is a parking lot between the building.</p> <p>22 HEARING EXAMINER: I don't see it, but you can give</p> <p>23 me the quote later instead of having a transcript full of</p> <p>24 653.29 AB. But you can take a minute and look at it and</p> <p>25 provide it to me after the hearing. You don't have to do it</p>
<p>98</p> <p>1 foot apart, an we're -- we have a tighter compaction of the</p> <p>2 trees. So it in terms of trees, the canopy trees and</p> <p>3 deciduous, we are meeting that standard and the width of the</p> <p>4 buffer.</p> <p>5 MS. LEE-CHO: What section did you say -- for the</p> <p>6 hearing examiner, which section did you just mention?</p> <p>7 HEARING EXAMINER: Let me get to it.</p> <p>8 MS. LEE-CHO: My understanding the 6.29</p> <p>9 THE WITNESS: Yeah 6.2.</p> <p>10 HEARING EXAMINER: Because it's parking lot</p> <p>11 lighting</p> <p>12 THE WITNESS: Yeah.</p> <p>13 HEARING EXAMINER: I was thinking of the site</p> <p>14 perimeter lighting in 6.5. There's two kinds of</p> <p>15 requirements. There's 6.2 which is the parking lot.</p> <p>16 THE WITNESS: Yeah, where we have the islands that</p> <p>17 break that.</p> <p>18 HEARING EXAMINER: Right and then there's 6.5.</p> <p>19 MS. LEE-CHO: I believe in 6.5 it makes reference</p> <p>20 to conditional uses referred to 6.29, so 6.5 I think that's</p> <p>21 enterprised to a certain other land reviews, but I did see a</p> <p>22 reference for conditional uses to comply with 6.29.</p> <p>23 HEARING EXAMINER: It says must provide screening</p> <p>24 under 6.5.3. Which is 6.5.3 and then there's these</p> <p>25 screening by building type and then there is.</p>	<p>100</p> <p>1 now. I don't even know if the two standards are different.</p> <p>2 So they may be very similar. So go ahead.</p> <p>3 I guess what I'm getting at, when I heard the</p> <p>4 gentleman ask is can you even verbalize a description of</p> <p>5 what they're going to see from different perspectives. If</p> <p>6 you can't, that's fine. You didn't know this question was</p> <p>7 coming. But I just wondered if you would -- could possibly</p> <p>8 just describe with the topography and the landscaping what</p> <p>9 the view is going to be like. If you can. If you</p> <p>10 can't, it's fine.</p> <p>11 THE WITNESS: Yeah. So from my experience, I mean</p> <p>12 just in terms of the -- because we are providing the wider</p> <p>13 buffers that are, you know, above and ten feet.</p> <p>14 HEARING EXAMINER: When you say setback, are</p> <p>15 you -- when you say buffer, are you talking setbacks,</p> <p>16 building setbacks?</p> <p>17 THE WITNESS: I'm talking about the kind of</p> <p>18 landscapes.</p> <p>19 HEARING EXAMINER: Width of the landscaping strip?</p> <p>20 THE WITNESS: Yeah.</p> <p>21 HEARING EXAMINER: Okay.</p> <p>22 THE WITNESS: So the width of the landscaping strip</p> <p>23 because it's widened, because it has the storm water because</p> <p>24 we have -- we have a buffer that's widened and then we have</p> <p>25 the storm water, then we have the car parking which has</p>

Transcript of Hearing
Conducted on February 16, 2024

26 (101 to 104)

<p>101</p> <p>1 trees in it as well. And on the buffer itself, we are</p> <p>2 providing, you know, to giving compacting canopy trees then</p> <p>3 underscoring layer of flowering trees as well to kind of --</p> <p>4 that we're providing a layers landscape on that buffer to</p> <p>5 provide that kind of screen. So and when they are going in,</p> <p>6 they're going at the three caliber, so they will be kind of</p> <p>7 bigger for that.</p> <p>8 HEARING EXAMINER: Is that bigger than what would</p> <p>9 normally -- or what would normally be required?</p> <p>10 THE WITNESS: Yeah, it -- required that we're kind</p> <p>11 of matching that code.</p> <p>12 HEARING EXAMINER: I'm sorry, I missed the first</p> <p>13 part.</p> <p>14 THE WITNESS: I believe the three caliber is what's</p> <p>15 required for the buffers.</p> <p>16 HEARING EXAMINER: Okay.</p> <p>17 THE WITNESS: To kind of mitigate the, you know,</p> <p>18 make sure the buffer is kind of working. So I think from</p> <p>19 day one we will have that kind of nice screened landscape</p> <p>20 and as mentioned overtime, you know those trees will</p> <p>21 obviously grow and provide much more screening for the</p> <p>22 development.</p> <p>23 HEARING EXAMINER: Okay.</p> <p>24 THE WITNESS: I think the last thing to note is</p> <p>25 that just the kind of grading as well that, you know, that</p>	<p>103</p> <p>1 smaller ones at the front. You're creating a kind of varied</p> <p>2 edge which to provide that kind of screen.</p> <p>3 HEARING EXAMINER: It's not like shrubs that you</p> <p>4 would provide a --</p> <p>5 THE WITNESS: No, it's not like that.</p> <p>6 HEARING EXAMINER: Okay. That's what I wanted to</p> <p>7 know.</p> <p>8 BY MS. LEE-CHO:</p> <p>9 Q Can you give us a sense of the height of the</p> <p>10 embankment, because it continues to get deeper or higher as</p> <p>11 you move into the site, does it not?</p> <p>12 A Yes. So as you come from --</p> <p>13 HEARING EXAMINER: Wait. Higher? Now, I'm</p> <p>14 confused.</p> <p>15 MS. LEE-CHO: Higher on our side. So we're below,</p> <p>16 so as you move around the parking lot --</p> <p>17 HEARING EXAMINER: Wait, I'm sorry. Let him</p> <p>18 testify. Okay, ahead.</p> <p>19 THE WITNESS: So as you come into the side from the</p> <p>20 main entrance, basically as you're coming straight towards</p> <p>21 the main entrance, the left-hand side where you have the</p> <p>22 buffer, it's shallower at that point, and as you start the</p> <p>23 turn left into the development where you've got the U-shaped</p> <p>24 wing, that becomes a much deeper landscape buffer and grade</p> <p>25 change along that whole edge.</p>
<p>102</p> <p>1 along that edge you alluded to sort of car park lights as</p> <p>2 well. That's going into the embankment, so, again, we're</p> <p>3 kind of -- that buffer is providing a visual from one side</p> <p>4 in terms of residential, and that screen would also from the</p> <p>5 other side with the level change.</p> <p>6 HEARING EXAMINER: How high -- do you know how high</p> <p>7 above grade the bank is from the car park? Now you've got</p> <p>8 me saying car park. Parking lot.</p> <p>9 THE WITNESS: Yeah, apologies.</p> <p>10 HEARING EXAMINER: No, it's not --</p> <p>11 THE WITNESS: I can't shake that. I would have to</p> <p>12 look at that section to confirm the exact grade change.</p> <p>13 HEARING EXAMINER: Okay.</p> <p>14 THE WITNESS: I don't know that, but it's higher</p> <p>15 than a car headlight, you know.</p> <p>16 HEARING EXAMINER: Okay.</p> <p>17 THE WITNESS: It's probably, you know --</p> <p>18 HEARING EXAMINER: Okay. So then are the trees at</p> <p>19 the -- on the top of the brim?</p> <p>20 THE WITNESS: They would be planted on along the</p> <p>21 edge on it as well so on the grade. So the way that we got</p> <p>22 it shown here.</p> <p>23 HEARING EXAMINER: Yeah.</p> <p>24 THE WITNESS: It's layered. So the landscaped</p> <p>25 trees you're going to have some at the back and then some</p>	<p>104</p> <p>1 HEARING EXAMINER: Okay.</p> <p>2 MS. LEE-CHO: You're talking about the triangle?</p> <p>3 HEARING EXAMINER: I'm talk about the -- maybe the</p> <p>4 engineer can --</p> <p>5 THE WITNESS: The below the right -- I think</p> <p>6 they're.</p> <p>7 HEARING EXAMINER: Maybe the engineer can give us</p> <p>8 an idea of the elevation.</p> <p>9 THE WITNESS: Yeah.</p> <p>10 HEARING EXAMINER: Okay. I guess I usurped you,</p> <p>11 Ms. Lee-Cho. Do you have any other questions?</p> <p>12 MS. LEE-CHO: I don't mine.</p> <p>13 BY MS. LEE-CHO:</p> <p>14 Q Mr. Nielson, did you want to say something</p> <p>15 generally about the plan with best practice principles? Did</p> <p>16 you already testify to that on lighting?</p> <p>17 A Yeah. I think I mentioned it, but, you know, any</p> <p>18 kind of lighting fixtures throughout the development we</p> <p>19 would propose, you know, best practice lighting principles</p> <p>20 in terms of reducing lighting spill to, you know, colored</p> <p>21 lights would have a shield on it so you could kind of has</p> <p>22 that light downwards.</p> <p>23 HEARING EXAMINER: I assume the parking lot poles</p> <p>24 have cut-off fixtures, correct?</p> <p>25 THE WITNESS: Yes. So they would have the -- so in</p>

Transcript of Hearing
Conducted on February 16, 2024

27 (105 to 108)

<p>105</p> <p>1 terms of best practice for lighting that we wouldn't have</p> <p>2 any outlights providing that kind of, you know, for</p> <p>3 pedestrian experience so --</p> <p>4 HEARING EXAMINER: What about the sconces on the</p> <p>5 side projecting upwards?</p> <p>6 THE WITNESS: I think they would reduce and</p> <p>7 typically, I mean, we --</p> <p>8 HEARING EXAMINER: Can they project downwards?</p> <p>9 Just downwards?</p> <p>10 THE WITNESS: They can, yes.</p> <p>11 HEARING EXAMINER: Would you have an issue?</p> <p>12 MS. LEE-CHO: On the wall?</p> <p>13 HEARING EXAMINER: Yeah.</p> <p>14 THE WITNESS: 27 was showing the light going up and</p> <p>15 down.</p> <p>16 Q I guess that is that's an accent, though?</p> <p>17 A Yeah, it's an accent light, so I don't think it</p> <p>18 would have any impact in terms of it's more kind of warm</p> <p>19 light that just kind of highlights that architectural</p> <p>20 element.</p> <p>21 HEARING EXAMINER: Okay.</p> <p>22 MS. LEE-CHO: I'm trying to think -- I don't.</p> <p>23 HEARING EXAMINER: I'm just looking for -- think of</p> <p>24 illumination not the zero point one at the property line but</p> <p>25 just is it -- you have going to at night, is this going to</p>	<p>107</p> <p>1 similar type of project in conditional use?</p> <p>2 A Yeah, I think lighting proposed is typically what</p> <p>3 you would find.</p> <p>4 HEARING EXAMINER: Well, the question is is it</p> <p>5 compatible with surrounding area? That's the question.</p> <p>6 THE WITNESS: I think it is, yeah. Because of</p> <p>7 we're meeting the requirements in terms of the photometric</p> <p>8 we kind of a lot of strategic moves putting the light</p> <p>9 towards the building could be compliant around the edges of</p> <p>10 the residential. So I would say yes.</p> <p>11 HEARING EXAMINER: Anything else?</p> <p>12 MS. LEE-CHO: I have nothing else.</p> <p>13 HEARING EXAMINER: Okay. With that, it's time for</p> <p>14 anyone in opposition to ask questions.</p> <p>15 Does anyone have any questions of Mr. Nielson?</p> <p>16 MS. MEYER: Yes, I have a few questions of Mr.</p> <p>17 Nielson. Please forgive any little noise from my two year</p> <p>18 old in the background. Back from preschool. This is Lauren</p> <p>19 Meyer.</p> <p>20 So my first question is regarding the parking lot</p> <p>21 lights, the car park lots, what are those going to look</p> <p>22 like? Do you have an example in the application? I thought</p> <p>23 I saw one that was kind of a very basic industrial post with</p> <p>24 an outward facing and downward facing bulb.</p> <p>25 THE WITNESS: So on Exhibit 13 we have an example</p>
<p>106</p> <p>1 be a beacon in the darkness or --</p> <p>2 THE WITNESS: No. I think it's just -- it would</p> <p>3 just get acentric to the building and highlight, you know,</p> <p>4 some of the kind of architectural design. So just going to</p> <p>5 be a very soft light, which really kind of picks up on the</p> <p>6 architectural design, you know, where Chris is kind of</p> <p>7 looked at some of that territory and that -- that lighting</p> <p>8 on the building really just defining kind of arrival</p> <p>9 points.</p> <p>10 Q Would it be any different than what we might see in</p> <p>11 terms of house lighting that you often see driving through a</p> <p>12 neighborhood of lights on the house from the ground?</p> <p>13 A No, it's --</p> <p>14 HEARING EXAMINER: It just said it going to be much</p> <p>15 higher.</p> <p>16 THE WITNESS: It's just higher, yeah, on the</p> <p>17 building.</p> <p>18 HEARING EXAMINER: All right. Do you have any more</p> <p>19 questions?</p> <p>20 Q I do just because in one of the general findings</p> <p>21 and the inherent noninherent adverse affects deals with</p> <p>22 lighting. And so I just wanted to ask Mr. Nielson in his</p> <p>23 professional opinion whether the lighting proposed as part</p> <p>24 of this application is inherent is -- inherent effect that</p> <p>25 is not any more adverse than would typically be found in a</p>	<p>108</p> <p>1 of this specification, the image of that light. So it's a</p> <p>2 column light, yeah, I guess we could just look at that and</p> <p>3 then I can show you what that is. So it's column light that</p> <p>4 kind of shield all the way around it, so the lighting is</p> <p>5 facing down. It's toward the right-hand side you can see</p> <p>6 it. This this the light fixing that if you go up north you</p> <p>7 can see going that's the head of the light. So you have</p> <p>8 column light and then the dark -- the dark fixture is what</p> <p>9 that kind of light looks like.</p> <p>10 HEARING EXAMINER: Wait, are those -- did they have</p> <p>11 shields that extend? I don't know what the adjustable slip</p> <p>12 fitter the pole mount does that have a shield that prevents</p> <p>13 the globe going outward? Or is it just directed down?</p> <p>14 THE WITNESS: This -- it would have a shield, so</p> <p>15 the lighting would be directed down.</p> <p>16 HEARING EXAMINER: And where is that shield on</p> <p>17 this?</p> <p>18 THE WITNESS: It's not showing.</p> <p>19 HEARING EXAMINER: Okay.</p> <p>20 THE WITNESS: It's the actual specification, this</p> <p>21 is kind of overall.</p> <p>22 HEARING EXAMINER: Would you object to a condition</p> <p>23 requiring a shield directing?</p> <p>24 THE WITNESS: No.</p> <p>25 HEARING EXAMINER: Okay. I'm sorry, Ms. Meyer, I</p>

Transcript of Hearing
Conducted on February 16, 2024

28 (109 to 112)

109	<p>1 interrupted your questions. Go ahead.</p> <p>2 MS. MEYER: Actually, no, it was -- that was a</p> <p>3 follow-up question that I had regarding the shield, so I</p> <p>4 thank you for bringing that up.</p> <p>5 How tall are those light posts? I believe you</p> <p>6 mentioned early contrary -- and my son might have been</p> <p>7 getting into trouble so I missed it -- but I wanted the</p> <p>8 confirmation.</p> <p>9 HEARING EXAMINER: I've been there.</p> <p>10 THE WITNESS: They're 16 feet tall.</p> <p>11 MS. MEYER: Okay. I did have two more questions.</p> <p>12 Does this lighting plan account for the use of warm LEDs as</p> <p>13 opposed to blue lit LEDs to help reduce the light pollution</p> <p>14 that eastbound illuminates the various lighting fixtures</p> <p>15 that are around? I know that entry sign features --</p> <p>16 examples features warm light, but it was unclear the image</p> <p>17 here in the exhibit on screen looks very blue light to me,</p> <p>18 and that's obviously something of concern in terms of like</p> <p>19 pollution and, you know, bird activity in the area.</p> <p>20 THE WITNESS: Yeah, I think that's something that</p> <p>21 we could look at. They can be, yeah. They could have the</p> <p>22 warm LED.</p> <p>23 HEARING EXAMINER: How would you phrase that? Warm</p> <p>24 LED? Is that a warm LED?</p> <p>25 THE WITNESS: It's actually it within our</p>	111	<p>1 architect.</p> <p>2 HEARING EXAMINER: Oh the architect, yes.</p> <p>3 THE WITNESS: 3,000 caliber is a nice number to</p> <p>4 utilize for the -- for higher prism.</p> <p>5 HEARING EXAMINER: Okay. And is that going to</p> <p>6 address Ms. Meyer's concerns?</p> <p>7 MR. PALKOWITSCH: I didn't her concerns. I guess</p> <p>8 on that with the 3,000 is a yellow light but it's has a bit</p> <p>9 white to it where anything of 4,000 above gets to be too</p> <p>10 white in color.</p> <p>11 HEARING EXAMINER: Okay. So it's not going to be a</p> <p>12 blue light, it's going to be a yellow light.</p> <p>13 MR. PALKOWITSCH: No, it would be a blue light.</p> <p>14 HEARING EXAMINER: A blue light, okay.</p> <p>15 MR. PALKOWITSCH: I apologize, it would be a yellow</p> <p>16 light. Yellow light.</p> <p>17 MR. MEYER: Thank you for that clarification. Just</p> <p>18 two more quick questions and Mr. Nielson, I apologize if one</p> <p>19 of these isn't directly related to your presentation you</p> <p>20 might rely on Mr. Palkowitsch again. But the first is can</p> <p>21 you confirm the mature tree height? I know that you</p> <p>22 mentioned initially some of the trees would be about 14</p> <p>23 feet, but over ten years they would mature to 25 feet. Did</p> <p>24 I have that correct?</p> <p>25 THE WITNESS: Yeah. I mean it varies based on the</p>
110	<p>1 specifications we'll have to make sure that kind of the</p> <p>2 wattage you would specify, so it would be whether -- I think</p> <p>3 3,000 would be a kind of the warmer, I think 4,000 would be</p> <p>4 a warmer kind of light glow from the light. So it would</p> <p>5 just be a specification that we just need to look at for</p> <p>6 that.</p> <p>7 HEARING EXAMINER: Okay. But I'm trying to get us</p> <p>8 a specification to use for a condition requiring you to put</p> <p>9 these lights on. So that's -- that's why I'm asking these</p> <p>10 technical. How would I phrase that?</p> <p>11 THE WITNESS: So we would need -- it would be on</p> <p>12 this sheet we'd just -- we show 4,000 light specific</p> <p>13 specification to --</p> <p>14 MS. LEE-CHO: I mean is warm LED sufficient?</p> <p>15 HEARING EXAMINER: No, because we -- I get</p> <p>16 to -- when I got the DPS, they want to know exactly what is</p> <p>17 permitted or not.</p> <p>18 MS. LEE-CHO: Is there a technical description?</p> <p>19 HEARING EXAMINER: Why don't we do this? I'll put</p> <p>20 that as a note to come back to. But basically you're saying</p> <p>21 you will do the warm LED lights, whatever that means, and</p> <p>22 then if we can get a technical description, we'll do that.</p> <p>23 MR. PALKOWITSCH: I apologize, may I interrupt?</p> <p>24 HEARING EXAMINER: Who's speaking?</p> <p>25 MR. PALKOWITSCH: This is Chris Palkowitsch, the</p>	112	<p>1 species that we put in, so what that mature height is going</p> <p>2 to be. So we are to see -- we have canopy trees in there</p> <p>3 that would be going up to 25 feet, maybe a bit taller, and</p> <p>4 then there's a understory layer as well, so that kind of</p> <p>5 smaller flowering trees that -- like which kind of be about,</p> <p>6 you know, 20 feet understory. And then I think we would</p> <p>7 have the canopies would be probably, after sort of ten</p> <p>8 years, they would mature height, you know, 20 years would be</p> <p>9 a sort of 30 feet 35 feet. So you'll get two different</p> <p>10 layers of mature height tree to provide that screening.</p> <p>11 HEARING EXAMINER: I'm sorry, wait. Can I just --</p> <p>12 I'm not sure I got what you said. The canopy trees.</p> <p>13 THE WITNESS: Yeah, so we'll have --</p> <p>14 HEARING EXAMINER: They'll be 25 feet, and what's</p> <p>15 their maturity, roughly?</p> <p>16 THE WITNESS: Well, the ones that we're specifying,</p> <p>17 I would say between about 25 to 40 feet.</p> <p>18 HEARING EXAMINER: Okay. So the canopy trees, 25</p> <p>19 to 40 feet at what age?</p> <p>20 THE WITNESS: About 20 years.</p> <p>21 HEARING EXAMINER: 20 years. And the other trees</p> <p>22 are the understory trees?</p> <p>23 THE WITNESS: We have some understory trees that</p> <p>24 would be a smaller 20, 25 feet.</p> <p>25 HEARING EXAMINER: And what is their maturity?</p>

Transcript of Hearing
Conducted on February 16, 2024

29 (113 to 116)

<p>113</p> <p>1 THE WITNESS: I say about 10 to 15 years.</p> <p>2 HEARING EXAMINER: And do you mix -- what goes</p> <p>3 closer to the brim?</p> <p>4 THE WITNESS: I would have the bigger ones at the</p> <p>5 -- towards the back, and then the understory ones slightly</p> <p>6 pushed forward.</p> <p>7 HEARING EXAMINER: Okay. When you say toward the</p> <p>8 back, is that toward the back top of the brim, okay?</p> <p>9 THE WITNESS: (Inaudible)</p> <p>10 HEARING EXAMINER: I'm sorry, Ms. Meyer, I cut you</p> <p>11 off again.</p> <p>12 MS. MEYER: No apologies. I appreciate your</p> <p>13 clarification. So based on what information you provided</p> <p>14 Mr. Nielson, none of the trees will ever mature fully to</p> <p>15 block the lighting coming inside the building, and the</p> <p>16 design show a lot of natural lighting that's taking</p> <p>17 advantage of that through windows. To what extent has the</p> <p>18 impact been measured for the lighting from inside that</p> <p>19 building, which presumably for some of the areas, will be on</p> <p>20 all the time due to staffing needs and then coming out of</p> <p>21 that building and facing towards the property? Right now we</p> <p>22 just see darkness. There's no street lights or parking or</p> <p>23 anything like that over there.</p> <p>24 So what's the measured impact of the interior</p> <p>25 lights and perhaps this might be a question that you relay</p>	<p>115</p> <p>1 Q And are we talking like we heard of window</p> <p>2 treatments and other things to mitigate the light initially</p> <p>3 from the windows?</p> <p>4 A Yeah, I mean, that could be an architectural</p> <p>5 feature on the kind of the way that the windows are treated</p> <p>6 to kind of --</p> <p>7 Q Well, I mean on the interior?</p> <p>8 A Yeah.</p> <p>9 Q Are there window treatment coverages on the</p> <p>10 interior of the site or interior of the rooms? Curtains and</p> <p>11 blinds?</p> <p>12 A Yes, there's curtains, blinds. There would be</p> <p>13 applied that kind of, again, buffer that light.</p> <p>14 MS. LEE-CHO: So in your.</p> <p>15 HEARING EXAMINER: Okay. So I think that -- I'm</p> <p>16 sorry this is cross right.</p> <p>17 HEARING EXAMINER: Yeah. I think that's your</p> <p>18 answer Ms. Meyer. Do you have another question?</p> <p>19 MS. MEYER: No, but I believe there are residents</p> <p>20 who did, so I will defer to them. Thank you.</p> <p>21 HEARING EXAMINER: Okay. Anyone else?</p> <p>22 MR. GOSCH: Hey, this is Arpan Gosch.</p> <p>23 HEARING EXAMINER: Wait, stop just a minute. Can</p> <p>24 you just state your full name. I heard it but I didn't --</p> <p>25 MR. GOSCH: Yeah, first name Arpan, last name</p>
<p>114</p> <p>1 back to your architect colleague, but you have some concerns</p> <p>2 that there be just be lighting kind of showing out from the</p> <p>3 50 foot tall building over the residential area without any</p> <p>4 tree cover 10, 20, 30 years down the line even.</p> <p>5 HEARING EXAMINER: Ms. Lee-Cho, you can't prompt</p> <p>6 him.</p> <p>7 THE WITNESS: I think -- well, it would be -- I</p> <p>8 mean, any the lighting from the building is kind of the</p> <p>9 light given you know as it kind of projects outwards toward</p> <p>10 the site. It's not going to have the significant glare. I</p> <p>11 mean the lighting from the site, you know, the kind of</p> <p>12 colored lighting on the exterior that's been measured that's</p> <p>13 going to have the highest lighting kind of glare, which the</p> <p>14 trees along the boundary are really starting to kind of</p> <p>15 mitigate that, and we're meeting the code compliance in that</p> <p>16 area. So I guess in my opinion, I think with the boundary</p> <p>17 and set back at the building, I don't think it's going to</p> <p>18 have that sort of significant visual impact.</p> <p>19 MS. LEE-CHO: I mean just to repeat --</p> <p>20 HEARING EXAMINER: Okay.</p> <p>21 BY MS. LEE-CHO:</p> <p>22 Q What is the distance that we're talking about?</p> <p>23 A Talking about, you know, the windows to the</p> <p>24 residents was sort of 200 feet. So there are other trees,</p> <p>25 you know, from the boundary as well. I mean --</p>	<p>116</p> <p>1 Gosh.</p> <p>2 HEARING EXAMINER: How do you spell that.</p> <p>3 MR. GOSCH: A-R-P-A-N-G-O-S-C-H.</p> <p>4 HEARING EXAMINER: And can you state your name and</p> <p>5 address and your e-mail address?</p> <p>6 MR. GOSCH: So yeah the name again, Arpan Gosh,</p> <p>7 address 4308 Valley Stream Avenue. And e-mail is my first</p> <p>8 name, last name 95@gmail.com So arpangosh95@gmail.com.</p> <p>9 HEARING EXAMINER: No dot between Arpan and Gosh?</p> <p>10 MR. GOSCH: That's correct.</p> <p>11 HEARING EXAMINER: Okay. Got it. Okay. You can</p> <p>12 ask a question. Again, this is your time to ask questions.</p> <p>13 You will get a chance to testify later. Go ahead, Mr.</p> <p>14 Mr. Gosch.</p> <p>15 MR. GOSCH: I appreciate it. Thank you. So I want</p> <p>16 the kind of ask more about this .01 intensity rating. Is</p> <p>17 that after the trees are mature after height of -- of decade</p> <p>18 15 years, 25 years, that -- when .01 is achieved.</p> <p>19 THE WITNESS: No, that's the first rating with the</p> <p>20 lights installed. So when the column lights go in with the</p> <p>21 fixture that we're specifying, that's the kind of light</p> <p>22 level. So it's kind of day one. It's not a light level</p> <p>23 that's projected out, if that makes sense.</p> <p>24 MR. GOSCH: Sort of. So like the columns that I</p> <p>25 see listed under the features, there 19400 through mens, so</p>

Transcript of Hearing
Conducted on February 16, 2024

30 (117 to 120)

<p>117</p> <p>1 that's the specification and how exactly is .01 kind of 2 measure -- what is that measurement of -- 3 THE WITNESS: Well, that's required so it's 4 basically -- 5 HEARING EXAMINER: He wants to know what a 6 foot-candle is. It's 0.1 foot-candle. 7 THE WITNESS: So it's basically on the lighting 8 measurement as per the code standard. It measures the foot 9 candles. So along the boundary the requirement is that we 10 need that client of nor point one, so from day one that nor 11 point foot-candle is a lot kind of weaker in terms of the 12 light glare, so you kind of get -- you won't get 13 that -- it's for measurement where you don't get the kind of 14 light spell. So can you see that there's a requirement to 15 where the column is that we need a higher foot candle at 16 rating along pathways to provide that kind of -- and where 17 we have the car parking, and that provides a kind of the 18 light safety requirement element in terms of access into the 19 building. But we we have the kind of the more passive areas 20 along that kind of residential you're going to do a lower 21 foot-candle which basically means that per code that that 22 kind of lower foot-candle of the nor point one is really 23 that kind of threshold where the lighting is not kind of 24 really impeding on to any, you know, adjacent development. 25 So it's basically a measurement of lighting to --</p>	<p>119</p> <p>1 there's no information and you got the boundary. That's 2 because we're kind of meeting the criteria and then nothing 3 else that's not on here is lower than that level. So it's 4 lower than nor point one on those two southern lots. That's 5 where you got lot 14 on the left-hand side the lighting 6 column is closer to the boundary. So you've got the -- you 7 can see the yellow line which is the nor point one, that's 8 your kind of -- it's -- you got the high level on that side 9 of the building towards the creek. So that's why you've got 10 more data on one side than on candle because it's just 11 recording that nor point one level. 12 MR. GOSCH: Okay. And then in terms of the -- it's 13 kind of confusing. I've heard this is going to be a barrier 14 or a buffer of landscaping. I think just a little bit ago 15 you mentioned there's two layers of trees that are different 16 variety -- different species to reach varying levels of 17 height, and that date or so. I didn't see that reflected in 18 the landscape diagram. I thought I only saw one layer, so 19 I'm a little confused about that. Can you clarify that? 20 THE WITNESS: Yes. So if you're on the landscape 21 plan, the planting land that I showed, there's varies of 22 different -- so the way that the landscape has been set 23 out, we want it to be a kind of a natural edge, so it's not 24 just like, you know, how it's planted. It's a linear line, 25 and then another linear line in front of it. What we've</p>
<p>118</p> <p>1 that we use on when developing a kind of photometric data 2 for the plan. So from day one, when the column goes 3 in, there won't be a lighting level that's higher than nor 4 point one per code along that boundary. And the trees will 5 also, just to your point, you know, when you start putting 6 the trees in the level change that, you know, it's -- it 7 improves it further. 8 MR. GOSCH: Okay. Would it be possible for the 9 Zoom operator to kind of show abutting property line kind of 10 towards the west side of the building? 11 THE COURT: I think you can -- yeah. 12 MR. GOSCH: All right. Right there. Would it be 13 possible to Zoom in a little more here, okay. So I see a 14 lot of .1s and decimals kind of leading to the left of the 15 screen where there's white space. And then it kind of cuts 16 off right up that kind of that edge in the bottom and then 17 there's nothing towards lot 14 and lot 13. Is that 18 accurate? Because I'm just confused why are there markings 19 where it says B kind of in the middle left but then there's 20 nothing at the bottom just -- 21 THE WITNESS: So the data recorded when it's 22 recording the foot-candle data, you can see on the plan that 23 you've got the nor point one and the various numbers. The 24 reason that you know the nor -- along that southern edge 25 where you got nor point one and then it goes white and</p>	<p>120</p> <p>1 done is we created a natural edge, so it's kind of 2 staggered, and that front layer you'll see -- I don't know 3 if you want to bring up the landscape plan again. But 4 you'll see that there's different symbols, and those 5 different symbols representation of there's a tree which is 6 a solid and a dot in the middle, that's kind of a canopy 7 tree. And then there's other trees kind of lines in the 8 middle which more of kind of flowering trees. It's much 9 more of a staggered organic edge to it. So you've got 10 layers in terms of how it's on the plan, but also layers of 11 height from kind of towards your resident side going towards 12 the development. 13 HEARING EXAMINER: I think the best exhibit would 14 be -- 15 THE WITNESS: The planting plan, it's probably 17A 16 again to look at that. 17 THE COURT: Yes. 18 THE WITNESS: You can Zoom in. Yeah so where 19 you've got lot 14 we just about, there's different -- the 20 different tree symbols represent. 21 THE COURT: Lot 14 is plan. 22 THE WITNESS: South. 23 THE COURT: South. 24 THE WITNESS: Yeah. So you can see it's a double 25 layer of tree planting there, and you've kind of got a</p>

Transcript of Hearing
Conducted on February 16, 2024

31 (121 to 124)

<p>121</p> <p>1 canopy tree, the flowering tree, you got a real mix of it, 2 the different types to provide that kind of layering. 3 That's what I was trying to describe when I was kind of 4 going through it. 5 MR. GOSCH: Okay. So that's still a -- I mean, I 6 see double layers and clearly there are circles on top of 7 other circles. But then near lot 13, that's just one layer, 8 right? Is there a plan for there to be a solid fence or 9 something to block any of the headlights or anything else 10 that might protrude into the property? 11 THE WITNESS: Currently on the plan, we're not 12 showing that. 13 HEARING EXAMINER: What's the grade there? Between 14 the two -- does it have the brim there? 15 THE WITNESS: Yes. Along that so there's a grade 16 differential in that corner that you've mentioned which have 17 an embankment that would kind of mitigate that the car 18 parking glare that you've just referenced. 19 HEARING EXAMINER: would that -- what do you mean 20 kind of mitigate? 21 THE WITNESS: Well, mitigate the light glare 22 because of the embankment height. 23 HEARING EXAMINER: Which is -- didn't you state was 24 higher than the car? 25 THE WITNESS: Yeah, its higher than the car, but</p>	<p>123</p> <p>1 HEARING EXAMINER: Yeah, so you can stop a minute. 2 Ms. Lee-Cho asked if this is testimony and there is -- it is 3 testimony. You'll get a chance to say it, but your question 4 I think is did you perform any -- was light study or a 5 dark. 6 MR. GOSCH: As part of the light study here, I mean 7 was it just the light spillage or was there anything to do 8 with light? 9 THE WITNESS: No. No, we didn't -- I mean, a lot 10 of lights, you know, the photometric plan is kind of, you 11 know, aimed to demonstrate that we meet to code in terms of 12 light spillage. We didn't do a study as you're describing. 13 Typically a lot of the fixtures that, you know, we'll be 14 selecting will apply inherent of the dark sky principles. 15 We talked about kind of shielding for the column lights, so 16 that lighting is projected downwards. We wouldn't have any 17 kind of up lighting, so that kind of doesn't have a glare. 18 HEARING EXAMINER: Except for the accent lights. I 19 know they're accents but 20 THE WITNESS: Yeah, I was kind of talking -- 21 HEARING EXAMINER: It's a concern why to the accent 22 lights, the sconces that light upward. 23 THE WITNESS: I think. 24 HEARING OFFICER: If it's just architectural. 25 THE WITNESS: It could be that they could just go</p>
<p>122</p> <p>1 I'd have to confirm that height. I don't know off of top of 2 my head. 3 MS. LEE-CHO: We'll have the civil engineer. 4 THE WITNESS: We'll have the civil engineer confirm 5 the height. 6 MS. GOSCH: And I would have one or maybe two other 7 questions, so I really appreciate your time. So I know 8 we've been focusing a lot on light spillage onto the 9 neighboring properties. I want to talk about light 10 pollution and dark side reservation. One of the best parts 11 about living in Burtonsville and one of the main reasons I 12 bought the house where I did here in Valley Stream Estates a 13 couple years ago is because I like the idea of there being 14 so many trees, and you can see quite a lot from in part the 15 county, but you can't -- you know the closer you get to the 16 city. 17 Were there any studies that you guys conducted 18 outside of the light spillage when it comes to like 19 pollution? I also read the Montgomery County climate action 20 plan that light pollution is one of the main things that 21 we're trying to avoid, and dark preservations also brought 22 up, you know, a study that was referenced in that actual 23 plan. 24 MS. LEE-CHO: Is this testimony? 25 THE WITNESS: Of university of Maryland.</p>	<p>124</p> <p>1 shine downwards in terms of to kind of, you know, still get 2 that affect for the building and we can still highlight. 3 HEARING EXAMINER: I interrupted you were 4 explaining how the lights are cut off. 5 THE WITNESS: Yeah. So, you know, in terms of dark 6 sky principles, you know, not having that kind of uplight 7 prevention of glare as well as making sure that, you know, 8 things are back lit as well. That's the kind of elements 9 that, you know, prevent those concerns and sort of the 10 lighting pollution that you're talking about. 11 MR. GOSCH: Okay. And then the follow-up to that 12 was these exterior lights, are they on dimmers, timers? How 13 easy would it be to move it or kind of like you guys 14 mentioned or just scattered from day one. 15 THE WITNESS: They're not on timers. I think at 16 the moment in terms of the building ones, they're kind of 17 really just highlighting the entry. There are different 18 lights that can be on a motion detector at the moment, but 19 we're not proposing. 20 HEARING EXAMINER: What about the parking lot 21 lights? 22 THE WITNESS: That's what I was kind of alluding 23 to. They're just kind of on a dusk to dawn setting. And 24 then I think the kind of building lights that, you know, 25 because of the accent lighting, they're not really going to</p>

Transcript of Hearing
Conducted on February 16, 2024

32 (125 to 128)

125	1 have a great impact. 2 HEARING EXAMINER: Now, do you need the parking lot 3 lights for security at night? 4 THE WITNESS: Yeah, we would need the -- 5 HEARING EXAMINER: So they can't be dusk to dawn. 6 THE WITNESS: Yeah, yeah, sorry. So the parking 7 lot lights would be needed for -- obviously they'll be for 8 staff changes and access to the entry, so the lighting up 9 car park and sidewalk. 10 HEARING EXAMINER: Okay. I just am trying to make 11 sure I understand the parameters. I saw the lighting plans 12 said dusk to dawn, but most places want them lit because of 13 security. 14 THE WITNESS: Yeah. 15 HEARING EXAMINER: But you will have the full cut 16 off features? 17 THE WITNESS: Yeah. 18 HEARING EXAMINER: Anything else? 19 MR. GOSCH: Nothing from me. Thank you. 20 HEARING EXAMINER: Thank you. Okay. With that 21 then, we're going to try and take a half -- how many more 22 witnesses? We have five witnesses from Valley Stream and we 23 have the civil and the traffic. 24 MS. LEE-CHO: Yes. And we have someone just on 25 operational from the state that we can skip that, but it's	127	1 everything on mute on your side because we can hear what you 2 say. Okay? And for the testimony this afternoon, people 3 have to have their cameras on unless you don't have a camera 4 like Mr. Singh. But otherwise you have to have your camera 5 on. Okay, with that we're going to go off until 1:40. 6 Thank you. 7 (A lunch recess was taken.) 8 HEARING EXAMINER: Is everyone on Zoom ready? 9 Just making sure someone is there. Okay. We're back on the 10 record. It's 1:45. Ms. Lee-Cho, do you want to call your 11 next witness? 12 MS. LEE-CHO: If I could do one thing before I call 13 Mr. Wilson. Chris Palkowitsch is on still on virtual and he 14 -- I've asked him to address the question about the Fairland 15 Master Plan and the pending final plan and Briggs Chaney 16 plan and address whether -- that applies to us at all this 17 site. Can I have him do that very quickly. 18 HEARING EXAMINER: Well, very well then. They got 19 to take questions. All right. 20 MS. LEE-CHO: It came up before. We can certainly 21 do it after the traffic. 22 THE COURT: Let's do it after the traffic. 23 MS. LEE-CHO: I just want to let you know we have 24 an answer to that question. 25 HEARING EXAMINER: Okay. Okay. Please raise your
126	1 in the record. 2 HEARING EXAMINER: Is the operational -- are the 3 operational aspects in your statement of justification? 4 MS. LEE-CHO: It is. But we need to making one 5 correction. So I can try to have that correction made by 6 somebody else. 7 HEARING EXAMINER: What I can do -- those in 8 opposition we're going to take a half hour for lunch. If 9 those in opposition would like to review the statement of 10 operations, which is exhibit -- I saw it, Exhibit 8, 11 description operational feature, that's when the shifts are 12 coming in. It's a little tied into -- we can just review 13 that, and if you have any questions about the operational 14 features, what I was hoping to do and you may also want to 15 look at the statement of justification, which is Exhibit 7. 16 What I was hoping to do is get to the traffic testimony 17 next, and then if there's anyway to abbreviate the civil 18 engineering testimony, except I think I want to know how 19 tall that brim is. And then we can get to the opposition 20 witnesses. Does anyone have an objection to that? 21 MS. LEE-CHO: That's fine. 22 HEARING EXAMINER: Okay. We'll try that and see if 23 we can get everybody out, so we will be back at 140. We're 24 off the record. 25 Please when we take this break, please put	128	1 right hand. 2 CARL WILSON 3 after having been duly sworn or affirmed testified as 4 follows: 5 HEARING EXAMINER: Please state your name, business 6 address, and e-mail for the record. 7 THE WITNESS: Sure. My name is Carl Wilson. 8 Business address 9900 Franklin Square Drive Suite H, that's 9 in Baltimore, 21236, and e-mail is cwilson@traffic 10 group.com 11 MS. LEE-CHO: This is Mr. Wilson's resume'. His 12 resume' is included in the shared file as well. 13 HEARING EXAMINER: Can you bring it up, please. 14 Thank you. And I'm going to mark this as Exhibit 51. 15 BY MS. LEE-CHO 16 Q So Mr. Wilson was qualified as a witness before, 17 and so I would just ask him to recall the case in which he 18 was qualified in? 19 A Sure case was S2 850. That was for creating 20 Memories Child Learning center back in January 2013, 21 actually. 22 HEARING EXAMINER: Okay. And, yes, that's fine. 23 We have Mr. Wilson seeking to be qualified. Are you a 24 traffic engineer? 25 THE WITNESS: Yes, I am.

Transcript of Hearing
Conducted on February 16, 2024

33 (129 to 132)

<p>129</p> <p>1 THE COURT: As A traffic expert in traffic 2 engineering. Do I hear his resume' is shown on the page. I 3 am aware at least of his firm, and he was qualified before 4 as a traffic expert in trafficking in engineering. Does 5 anyone have an objection? Hearing none, I will so qualify 6 him. Go ahead, Ms. Lee-Cho. 7 MS. LEE-CHO: Thank you. 8 Q Mr. Wilson, did you prepare the traffic statements 9 in support of this senior care facility application? 10 A Yes, I did. 11 Q Can you please walk us through the analysis 12 methodology set forth in that statement, I believe Exhibit 9 13 in the record? 14 A Yes, I can. For this site, the first step that we 15 do is we look at the proposed land use and determine the 16 number of trips that the site is going to generate. In this 17 case, there were 88 independent living units, 27 memory care 18 units, and 64 assisting living beds. And we used the 19 Institute of Transportation Engineers national standard in 20 the industry to determine the base trip generation for those 21 uses. Then Park and Planning Montgomery County Park and 22 Planning Commission has separate adjustment factors 23 basically that occur to those rates to determine number of 24 person trips that a site is going to generate. The number 25 of person trips, the total of number of people that arrive</p>	<p>131</p> <p>1 could be used as well. 2 And Ms. Lee-Cho asked me to note that one of the 3 corrections in the report is the number of staff that the 4 site will have. 5 HEARING EXAMINER: In what report? 6 MS. LEE-CHO: Before we get do that. 7 HEARING EXAMINER: I'm looking at exhibit 8. 8 THE WITNESS: Okay. 9 HEARING EXAMINER: Description of operational 10 features. 11 Q Before we get to that, I want to focus a little bit 12 on the ITE rate regarding -- based on the methodology that 13 you did apply based on unit and beds? 14 A Yes. 15 Q You said -- so it's not -- the number of employees 16 to service that amount of unit and beds that you're saying 17 is based on that number in the ITE? 18 A That's correct. ITE is based on studies that are 19 undertaken at similar facilities throughout the country. 20 Basically there's driveway counts that would occur, you 21 know, so somebody will be counting the total number of 22 vehicles going into a site and total number of vehicles 23 going out after site during the a.m. and p.m. peak period. 24 And then they determine -- they apply that to the number of 25 beds to the square footage, the number of employees to</p>
<p>130</p> <p>1 to the site during the a.m. peak hour and then the p.m. peak 2 hour. 3 In this case we found that the site itself would 4 generate a total of 21 a.m. vehicular trips and 36 p.m. 5 vehicular trips based on the variable of assisting living 6 beds and congregate care units. Once we apply the 7 adjustment factors to the policy area, I then divide by a 8 factor of 73.9 is what MNCPPC uses for the adjustment 9 traffic for person trips. That results in 27 person trips 10 during the morning peak hour and 47 person trips in p.m. 11 peak hour. So we're below that 50 threshold the traffic 12 statement is the end of the line, so to speak, in terms of 13 traffic analysis that we're typically required to put 14 together for a site like this. 15 Now, it's important to recognize that the trip 16 generation, even though we're using of number of beds, a lot 17 of the residents to a site like this aren't going to drive. 18 They might have cars on site, but a lot of the trips are 19 actually more staff related, they could be visitor related, 20 you know, those sort of things. You know, it's not to say 21 that the residents won't drive, but a lot of it is related 22 to, you know, staff or workers or deliveries to the site. 23 Again, we use the variable of beds and units, because that's 24 typically what's used. It's a physical attribute to the 25 site that's used, but ITE does have other variables that</p>	<p>132</p> <p>1 determine rates that we can use that rate to apply it to, 2 you know, a new proposed site. 3 Now, in this case, or in any case really, they're 4 not really interviewing the people to find out if they're 5 a.m. workers. if they're visitors, if they're staff. 6 whatever. It's really just the total number of vehicles, so 7 that account for any sorts of trip to the site during those 8 peak hours. 9 Q Now, there's a another methodology for ITE rate 10 that you could have used for this project? 11 A Yes. I mean, land use classifications there are 12 square footage, there's number of employees, so there are 13 different variables that we could use. 14 Q And I believe as for point of exercise, I did ask 15 you to look at the study in terms of an employee based ITE 16 rate, and did you do that? 17 A We did, yeah. And if we were to use the number of 18 employees that would actually result in fewer trips to the 19 site than the -- we're counting for the number of beds. 20 Q Okay. So what number of employees did you assume 21 in that analysis? 22 A We ran that with a total of 44 employees for the 23 site, and basically that would have resulted in 17 a.m. peak 24 hour person trips and 20 p.m. peak hour person trips. 25 HEARING EXAMINER: I'm sorry what was the p.m.?</p>

Transcript of Hearing
Conducted on February 16, 2024

34 (133 to 136)

<p>133</p> <p>1 THE WITNESS: The p.m. would have been 27 person 2 trips. If we consider the number of employees. It's also 3 important to recognize for a site such as this is that 4 there's a lot of activity that's going to occur during those 5 known people hours as well. So this is only the single hour 6 during the morning and the single hour during the afternoon 7 we're focusing on, but there's still going to be potential 8 trips that are occurring for staff members, for 9 visitors, you know, during other times of the day as well. 10 Q So those numbers that you recited, they're 11 significantly less than the numbers that we relied on to 12 support this application under the traffic statement that 13 was reviewed by the Planning Department, correct? 14 A Yes, that's correct. 15 HEARING EXAMINER: But they don't take into account 16 the actual shifts schedule. They're from ITE? 17 THE WITNESS: That's correct, yes. 18 HEARING EXAMINER: Okay. 19 Q So would you say that the methodology employed 20 under the official traffic statement that we filed for the 21 application to more conservative approach on the number of 22 trips? 23 A Yes, I do. 24 Q A higher number? 25 A It's high, right, correct. The traffic statement</p>	<p>135</p> <p>1 the driveways at those other uses during those times and 2 came up with a highest amount between 7:00 to 9:00 and 4:00 3 to 6:00 the highest single hour within a 15 minute period 4 within that time frame. 5 Q So looking at this shift schedule, I see a morning 6 shift that starts at 7:00 a.m. So there is a shift change 7 that's occurring at 7:00 a.m., which would get caught up in 8 the peak hour, correct? 9 A Some of that could be for the morning peak, yes. 10 Q And then when it goes from a morning shift to 11 evening shift, that happens at three o'clock? 12 A And that's prior to what we would consider a 13 typically p.m. peak hour. 14 Q And similarly for the food and beverage staff, 15 there's a shift change at two o'clock? 16 A Similarly prior to the typical peak hour. 17 Q So that would not -- that's outside peak? 18 A That's correct. 19 Q And then the night shift, they come in -- there's a 20 3:00 to 11:00 p.m. shift. Then there's a shift change at 21 11:00 p.m., which is completely off peak, I guess? 22 HEARING OFFICER: So is your point the exception 23 for the morning shift, they're outside of peak hours? 24 THE WITNESS: That's correct. 25 HEARING EXAMINER: Okay.</p>
<p>134</p> <p>1 that we submitted showed a potential higher number of trips 2 if we consider the number of units and beds versus 44 staff 3 members on site. 4 Q Okay. And then now we can address the correction 5 to exhibit -- Exhibit 8 which is the description of 6 operational features which we did have up? 7 HEARING EXAMINER: Now, in the past, we have made 8 shift times and staffing a condition of approval because 9 that's what we base our decision on. Do you -- with this 10 correction, do you have a problem of doing that? 11 MS. LEE-CHO: Well, maybe you want to hear what the 12 correction is first. 13 HEARING EXAMINER: Okay. 14 MS. LEE-CHO: 15 Q But before I get to the correction, so just to 16 clarify Mr. Wilson, this shift schedule, are you saying that 17 the traffic statement relied upon the changing shift 18 schedule to analyze the trip generation impasse? 19 A So the variable in ITE considers the adjacent 20 street peak hour. Which it addresses it at 7:00 to 9:00 21 a.m. and 4:00 to 6:00 p.m. So basically the studies that 22 would have been under taken if ITE looked at those hours 23 from 7:00 to 9:00, 4:00 to 6:00 because that's typically 24 peak hours on the road. That's when, you know, the most 25 intense surrounding traffic occurs. So it basically counted</p>	<p>136</p> <p>1 HEARING OFFICER: Let's move forward. 2 Q Okay. So the correction -- what is the correction 3 to this document? 4 A Instead of the 22 staff that's mentioned in the 5 document here, my understanding now is it could be up to 44 6 staff on site. 7 Q Well, no. I don't -- 8 HEARING OFFICER: Wait. What does that do to 9 parking? Do you have enough parking for that? 10 MS. LEE-CHO: The the parking was based on 44. I 11 mean, we can look at civil testimony. 12 HEARING EXAMINER: Okay. 13 Q So that was an error on this document to be 14 consistent? 15 HEARING EXAMINER: So I guess I'm saying -- all 16 right. So when are those people coming? When are the 17 additional people coming? 18 MS. LEE-CHO: They're not additional. It was an 19 error on this document. The 44 was always the number, and 20 it's represented in the parking count. 21 HEARING EXAMINER: But that doesn't change your 22 analysis for the purpose of the trip generation? 23 THE WITNESS: No, it does not. Because, again, 24 from the traffic statement that we prepared was based on the 25 number of units and beds. And again, for any type of</p>

Transcript of Hearing
Conducted on February 16, 2024

35 (137 to 140)

<p>137</p> <p>1 facility like this, the staff is part of those trips that 2 occur during the peak hours, and there's a certain number of 3 staff per beds and all that sort of that -- that gets 4 basically baked into the rates that we use. That's why we 5 prefer to use beds or units, you know, because, again, 6 that's something very quantifiable on a site plan versus the 7 number of employees. 8 MS. LEE-CHO: So based on that, what kind of 9 condition would the hearing examiner be thinking of. 10 HEARING EXAMINER: Well, I'm trying to remember the 11 case that I -- well, we used to do this as a typical thing, 12 but we would have a condition limiting it up to 44 staff on 13 site at one time just for the parking. You're saying it 14 doesn't effect the IT -- the traffic analysis, you're 15 analysis? 16 THE WITNESS: That's correct. 17 HEARING OFFICER: So it would be an overall maximum 18 of employees on site at one time. We've had cases that it 19 may have been that they in traffic studies where they 20 specifically put the shifts outside peak hours to avoid, you 21 know, to be able to pass. So of course they have average -- 22 and since then, so they increased the connection allowable 23 so okay. I guess it would just be that up to 22 maximum or 24 up to -- sorry up to 44 maximum employees on site at any one 25 time.</p>	<p>139</p> <p>1 existing student that won't have to travel on 198 any 2 more. 3 HEARING EXAMINER: Well, wait a minute. It will be 4 a wash overall on 198, but I guess the question was what is 5 the wash at the location? 6 THE WITNESS: Well, again, if you look at the maps 7 and the density of the area, that's a -- the school is being 8 relocated to a relatively dense residential area on the 9 south side of Maryland 198. 10 HEARING EXAMINER: Yeah. 11 THE WITNESS: So today those families that live in 12 that area are having to travel through the intersection of 13 Maryland 198 and Dino Drive in order to access the school 14 that's currently on the west side of U.S. 29. 15 HEARING EXAMINER: Okay. I understand. 16 THE WITNESS: Okay. 17 HEARING EXAMINER: So you're saying the origination 18 of the traffic is going to switch? 19 THE WITNESS: It's going to flip, yes. 20 HEARING EXAMINER: Okay. 21 BY MS. LEE CHO: 22 Q Now, there have been come questions about, I think, 23 crash or accidents that occur. Did you take a look at the 24 frequency of accident? 25 A Yes. So there was some concern raised about the</p>
<p>138</p> <p>1 MS. LEE-CHO: And that's just based on the 2 parking. 3 HEARING EXAMINER: Yes. 4 MS. LEE-CHO: Okay. 5 BY MS. LEE-CHO: 6 Q There was I comment -- I believe in one of the 7 written -- in the written letter from the neighbors about 8 concern about a elementary school relocating and whether 9 that could have changed the traffic dynamics. Could you 10 speak to that issue, please? 11 A I can. Sure. Burtonsville Elementary School is 12 currently located to the west of the site on the west side 13 of U.S. 29. It's proposed to be relocated to the east of 14 the site within one of the neighborhoods basically in the 15 eastern boundary of the county. There was concern raised in 16 the letter that this could generate additional trips on 17 Maryland 198, which is the main road that is north of our 18 site. In my opinion, there's going to be a large quantity 19 of students that are served within that existing 20 neighborhood with where the school is going to be relocated. 21 You know, those children won't have to be brought further to 22 the west anymore, you know, the -- where the school is 23 currently. So, yes, there's going to be some back and forth 24 traffic from the kids on the west side today, but it's going 25 to be basically be a wash with where there's going to be</p>	<p>140</p> <p>1 intersection of Maryland 198 at Dino Drive regarding crash 2 history at that location, and we did pull the available 3 records for that intersection. We found that there 4 were -- and these are basically police reported crashes that 5 occur. And in police reported crash basically means that 6 the vehicle has to sustain damage that's severe enough where 7 it can't be driven from the scene or if there is an injury 8 or fatality. So it's not going to account for 9 fender-benders. Even if the police are called for a 10 fender-bender, this data wouldn't be captured in these 11 records. 12 In 2021 we found three crashes at the location. 13 Two of them were potential angle-type crashes. One was 14 rear-end crash, which isn't really of a concern, I don't 15 believe at this location. In 2022 there were a total of -- 16 HEARING EXAMINER: What's an angle crash? 17 THE WITNESS: An angle crash would be in the case 18 where somebody might be leaving the minor street and then 19 crashing with somebody on the major street in a T-bone type 20 fashion. 21 HEARING EXAMINER: Okay. Keep going. 22 THE WITNESS: In 2022, there were five reported 23 crashes at this location. Again, two of them were listed as 24 rear-ends that are not at the intersection itself but 25 somewhere along the -- within a hundred feet or so of the</p>

Transcript of Hearing
Conducted on February 16, 2024

36 (141 to 144)

<p>141</p> <p>1 intersection. There are two rear-ends, and then there were 2 three angle crashes in 2022. In 2023, there was one 3 reported crash not exactly at the intersection that was 4 listed as the same direction rear-end. 5 HEARING EXAMINER: Okay. And what do you draw from 6 those statistics? 7 THE WITNESS: That there's not really a safety 8 concern at the intersection from a crash standpoint. The 9 fact that even in 2023 there were no angle crashes 10 whatsoever and the history been relatively minimal of angle 11 crashes throughout the last three years, which is the 12 typical period that we would review, was basically telling 13 us that there's not a documented safety concern at this 14 intersection. 15 HEARING EXAMINER: Now, why do you prioritize angle 16 crashes over rear-end if they're both occurring? 17 THE WITNESS: Angle crashes are more typically the 18 type that are more severe in nature, you know, because 19 again, that's two cars would T-bone together and a lot of 20 times that has more to do with a driver misjudging oncoming 21 traffic. Rear-end collisions are more typically occurring 22 in a congested area potentially where somebody might not be 23 paying as much of attention to the road as they should, they 24 might be distracted, you know, could be anything else. But, 25 you know, typically angle crashes are more of concern, you</p>	<p>143</p> <p>1 A So we did actually review the intersection around 2 198 for our client's interest just to determine if it might 3 actually meet some of the needs for a traffic signal based 4 on the volume. 5 HEARING EXAMINER: This is Dino Drive and 198? 6 THE WITNESS: That's correct, yes. 7 HEARING EXAMINER: Okay. 8 THE WITNESS: So back in June 2022, we went out 9 there, school was in session for a full day at that point, 10 and we collected volumes at that intersection to assess the 11 need for the traffic signal based on the manual uniform 12 traffic control devices. And then this was not submitted or 13 reviewed. This was basically just for our client's 14 information. Also just to be able to answer some of the 15 questions that we thought might come up in the process that 16 we're going through now. 17 The METCD is basically the federal document that 18 outlines the criteria for the need for a traffic signal. 19 And there's different combinations of traffic volumes that 20 we look at both on the major street 198 in the case and the 21 minor street which is Dino Drive in this case. What we 22 found was that there is not enough traffic volume on Dino 23 Drive to warrant traffic signalization. That's under the 24 existing condition back from 2022, and then also we went 25 through and we added in what we call the diurnal trips that</p>
<p>142</p> <p>1 know, because of safety implications associated with them. 2 Q And in your experience when you look at crash data 3 to assess the safety of an intersection, what kind of level 4 of numbers and types of crashes would you see as a, you 5 know, alert like that a signalization or some other measure 6 is warranted if you -- if your view is this is 7 insufficient, what is? 8 A So the Maryland uniform traffic control devices has 9 criteria that document the needs for a traffic signal, and 10 it has to do with different traffic volumes, different 11 combinations of traffic volumes. One of the criteria -- one 12 of the warrants has to do with crash examine experience and 13 what that crash experience, if we wanted to staff a warrant 14 for traffic signal to be installed based on the crash 15 experience alone, we would expect five or more crashes to 16 occur in a single 12 month period that would be what we call 17 susceptible to correction by signalization, which is getting 18 into that angle crash. So a rear-end crash is not something 19 that a traffic signal is going to help. In fact, it could 20 actually sometimes -- actually increase the occurrence of 21 rear-end crashes with a signal going in. But it's the type 22 that are potentially correctable by a signal that would be 23 five or more in a calendar year. 24 Q What other -- what other factors could meet the 25 warrant requirement for a traffic signalization?</p>	<p>144</p> <p>1 throughout the day trips that our site will be generating. 2 So those were also added into the mix to review the trips 3 per hour that would be exiting Dino Drive and ultimately 4 accessing Maryland 198. 5 And even with the site trips built into this, we 6 found that we are still in a situation where traffic signal 7 is not warranted under any of the hours throughout the day. 8 Basically that's a fact a result of the minor street left 9 turns being very low. So the major volumes of high enough 10 along Maryland 198 to potentially warrant a traffic signal, 11 but the volumes on Dino Drive throughout the entire course 12 of the day are too low on a hourly basis for that signal to 13 be warranted. 14 Q Well, you say too low, but can you give us kind of 15 than -- an idea of what the slow that you found? 16 A Absolutely. 17 Q And then sort of give us a sense of what would be 18 the high to warrant a signal? 19 A Sure. So there's two separate conditions under 20 what we call warrant number one and that's the -- that 21 considers eight hours worth of traffic. That's what -- 22 which controls this intersection that's if they want they're 23 usually most interested in because they want to make sure 24 that if a signal is going in, it's not going to unduly delay 25 traffic during the non-peak hours and everything else. They</p>

Transcript of Hearing
Conducted on February 16, 2024

37 (145 to 148)

<p>145</p> <p>1 want to make sure that the traffic signal is needed for 2 those hours throughout the day. 3 Condition A of warrant one says that I would need 4 105 vehicles per hour. Condition B says I could have 53 if 5 I have more on the major street. The major street satisfies 6 all of the eight hours. That's not an issue at all. But we 7 don't come anywhere close to 53 left turns coming out of 8 there during any hour of the day. The highest minor number 9 that we have on here is 44 left turns during the p.m. peak 10 exiting the site. 11 Q What are the other numbers? 12 A So throughout the rest of the day, they are much 13 lower. They go as low as 16 from 7:00 to 8:00 a.m. of left 14 turns. They spike a little bit in the mid-morning and, you 15 know, some of that is a result of our site and the other 16 sites in the neighborhood. But 44 is the highest and, at 17 the trim back down after the five o'clock hour back down to 18 23 and then 20 left turns after that trim back down. 19 HEARING EXAMINER: Now, does your analysis -- does 20 it include pipeline approvals? 21 THE WITNESS: So for this it does not. It 22 basically just included -- 23 HEARING OFFICER: For the record, pipeline is 24 approved but -- traffic from approved but unbuilt project. 25 You can correct me if that's wrong.</p>	<p>147</p> <p>1 they need the make sure if they were to put in a traffic 2 signal at the intersection, it would be justified and 3 wouldn't create a lot of additional delay for the main line 4 traffic by putting in the new stop basically for that 5 approach. 6 MS. LEE-CHO: Okay. Any questions on what he 7 testified so far? 8 HEARING EXAMINER: No. Thank you. 9 Q Then I will turn to general necessary findings, 10 section 59731 B of the zoning ordinance and ask you to opine 11 on, in particular 1F, which states necessary finding is that 12 this project will be served by adequate public facilities 13 services and facilities including schools, police, and fire 14 protection, water, sanitary roads, storm drainage, and other 15 public facilities. So relative to this necessary framing, I 16 would ask in your professional opinion does this -- has the 17 project met this necessary finding with regard to roads? 18 A Yes, it has. 19 Q And then with regard to 1G, which requires a 20 finding that the project will not cause undue harm to the 21 neighborhood as a result of non-inherent adverse effect 22 alone or the combination of an inherent and non-inherent 23 adverse effect in any of the following categories. The use, 24 peace, full enjoyment economic value or development 25 potential of abutting and front -- confronts properties or</p>
<p>146</p> <p>1 THE WITNESS: So we did not, for this particular 2 analysis, we did not include any pipeline development aside 3 for our own site. I'm not sure if there's any. 4 Q So let's pull that thread a little, though. The 5 pipeline development coming out of Dino Drive, correct? 6 A That's right. I'm not sure if there's anything 7 approved along Dino Drive that would further impact the need 8 for the signal. Again, as I testified, on the major 9 street, there is satisfactory volume throughout all of the 10 eight hours. So even if there was additional pipeline 11 development added, that wouldn't increase the need for a 12 traffic signal at that point. 13 Q And is the whole point, from a just for a layman to 14 understand like myself, a purpose of this warrant study is 15 sounds like it's to justify a signalization, because what 16 state highway doesn't want to signalize 198 and why so many 17 hoops to try to get a signal at an intersection? 18 A So again, this is based on federal document. 19 Federal highway administration actually publishes the manual 20 uniform traffic control devices, and that's really the 21 document that we use to justify a signal, because basically 22 sets like a national standard for when a traffic signal is 23 appropriate at an intersection. Otherwise they could be put 24 up anywhere if in wasn't any consistent guidance anywhere. 25 So SHA is concerned with moving traffic on Maryland 198, and</p>	<p>148</p> <p>1 the general neighborhood, traffic noise, odors, dust 2 illumination, or lack of parking or health safety and 3 welfare neighbors, residents, visitors or employees. 4 I would ask you to opine, in your professional 5 opinion, whether the project meets the criteria to -- meet 6 the necessary finding with regard to traffic? 7 A Yes, it does. 8 MS. LEE-CHO: Okay. That's it. 9 HEARING EXAMINER: Okay. Questions from -- I'm not 10 sure what's causing this. 11 (Discussion held off the record.) 12 HEARING EXAMINER: Is there anyone in opposition 13 that would like to ask Mr. Wilson a question? 14 MS TAYLOR: I have a question for Mr. Wilson. 15 HEARING EXAMINER: Is that -- 16 MS. TAYLOR: I'm sorry, Eileen Taylor. I 17 apologize. 18 HEARING EXAMINER: That's okay. 19 MS. TAYLOR: Mr. Wilson, in June 2022, you said you 20 did a traffic study for the amount of cars coming in and 21 out?. 22 THE WITNESS: Yes. 23 HEARING EXAMINER: Traffic count. 24 MR. TAYLOR: Traffic count, okay. That count does 25 mpt take into account the number of trucks that make U-turns</p>

Transcript of Hearing
Conducted on February 16, 2024

38 (149 to 152)

149	<p>1 at 198 Dino?</p> <p>2 THE WITNESS: That would be considered a part of</p> <p>3 the major street volume, not the minor street volume at that</p> <p>4 intersection.</p> <p>5 MS. TAYLOR: Does it take into account the number</p> <p>6 of people who turn right and make a U-turn at Mcknew,</p> <p>7 because it's dangerous to turn left at that intersection?</p> <p>8 THE WITNESS: We counted the number of right turns</p> <p>9 exiting site, but we do not track them down the street the</p> <p>10 determine if they make a U-turn.</p> <p>11 MS. TAYLOR: Okay. That was my question. Thank</p> <p>12 you.</p> <p>13 HEARING EXAMINER: Well, let me follow up on that.</p> <p>14 If there are vehicles using the median, is it a median break</p> <p>15 there or --</p> <p>16 MS. TAYLOR: Yes.</p> <p>17 HEARING EXAMINER: -- to get to 198 east or west?</p> <p>18 Sorry does that change your analysis or would it depend on</p> <p>19 how many of these were doing that?</p> <p>20 THE WITNESS: That -- to answer that question that</p> <p>21 she was asking about the U-turns, that would involve a much,</p> <p>22 much more detailed study, because when we do a signal</p> <p>23 warrant analysis, SHA basically requires us to not account</p> <p>24 for minor street right turns. Because, you know, minor</p> <p>25 street right turns don't typically incur nearly as much</p>	151	<p>1 that's turning -- that's on 19 making a U-turn?</p> <p>2 MS. TAYLOR: Yes. Because at that intersection it</p> <p>3 was expanded to allow large trucks. So it is used often for</p> <p>4 U-turns and yet what I'm asking is why couldn't that be</p> <p>5 included in the number of left turns, since technically</p> <p>6 they'll make a U-turn, it is a left turn, and because that</p> <p>7 can even sometimes back up and we can't make a left turn out</p> <p>8 of 198 and Dino Drive because of the visibility. So</p> <p>9 shouldn't those be included, I guess, in the left turn?</p> <p>10 THE WITNESS: Those are what we consider to be on</p> <p>11 the major approach. So, you know, basically any traffic</p> <p>12 that's arriving along Maryland 198 is considered a part of</p> <p>13 the major approach. So it's for different -- it's a</p> <p>14 different criteria for major versus minor, because basically</p> <p>15 that U-turn is only conflicted by the opposing traffic from</p> <p>16 the west as opposed to turning left from Dino Drive on the</p> <p>17 198 where you're conflicted by both eastbound and westbound</p> <p>18 traffic. So the major street left turns are a different</p> <p>19 criteria because they are -- you know, experiences less</p> <p>20 delay anyway.</p> <p>21 MS. TAYLOR: Thank you.</p> <p>22 HEARING EXAMINER: Anyone else? Okay, hearing --</p> <p>23 MS. MEYER: I have a question. This is Ms. Meyer</p> <p>24 again. Can you hear me?</p> <p>25 THE WITNESS: Yes.</p>
150	<p>1 delay as left turns. Often times they would be making a</p> <p>2 right turn on red at a traffic signal anyway. So SHA does</p> <p>3 not like us to use those basically to determine whether a</p> <p>4 signal is appropriate or not. We -- like I said, we did</p> <p>5 count the right turns, but we did not track them to</p> <p>6 determine if they wanted to go to the east on 19 or if they</p> <p>7 ultimately wanted to make a U-turn and come back.</p> <p>8 HEARING EXAMINER: But your --</p> <p>9 MS. LEE-CHO: Your question was did we track the</p> <p>10 left turns out of Dino Drive?</p> <p>11 THE COURT: No, -- I think she was -- Ms. Taylor</p> <p>12 was asking about the right turn and then you down a little</p> <p>13 and there's a U-turn, and then you head back west either to</p> <p>14 29 north or somewhere else.</p> <p>15 THE WITNESS: That's right. We did NOT track that</p> <p>16 volume.</p> <p>17 MS. TAYLOR: I had a follow-up question to the fact</p> <p>18 that at the median, the median was expanded to allow larger</p> <p>19 trucks to make U-turns at 198 and Dino Drive. So those</p> <p>20 U-turns, because that was used often, how -- that often</p> <p>21 blocks us from visibility to make that left turn. So why is</p> <p>22 that not included in the study then of how many times trucks</p> <p>23 or other vehicles are using that to make a U-turn to turn</p> <p>24 west on the 198.</p> <p>25 THE WITNESS: You're talking about the traffic</p>	152	<p>1 MS. MEYER: Thank you. Sorry I had to switch from</p> <p>2 my mics so that you guys hopefully can't hear my son.</p> <p>3 With regards to Mr. Wilson, you said that that</p> <p>4 study was done in 2022. Have you been back to the property</p> <p>5 to look at traffic patterns since then?</p> <p>6 THE WITNESS: I've drive through the site, but I</p> <p>7 have not recounted traffic, no.</p> <p>8 MS. MEYER: Are you aware of the newly installed</p> <p>9 private transportation services on Dino Drive just across</p> <p>10 from the proposed applicant lot?</p> <p>11 THE WITNESS: I'm aware that it's there, yes.</p> <p>12 MS. MEYER: Okay. How is that going to be factored</p> <p>13 in -- it's a massive fleet of shuttles and private SUV type</p> <p>14 cars that are often making left turns or right turns out of</p> <p>15 the Dino onto 198. How is that going to be factored in? We</p> <p>16 have noticed increased traffic just from them, but there are</p> <p>17 also other businesses from the Starpoint land area that use</p> <p>18 Dino Drive as an exit, many of which are new since 2022.</p> <p>19 THE WITNESS: So again, you know, we studied this</p> <p>20 back in 2022. We have not been back again to study it in</p> <p>21 2023 or obviously in 2024 at this point. What I can testify</p> <p>22 to is that back then the volumes were so far below the</p> <p>23 threshold for warranting a signal, that even if there was</p> <p>24 some additional traffic associated with the land use that's</p> <p>25 being described here, that's, you know, just south of our</p>

Transcript of Hearing
Conducted on February 16, 2024

39 (153 to 156)

<p>153</p> <p>1 site, it likely wouldn't make a difference in the warrants 2 needed for a traffic signal. 3 It's also important to note that the proposed site, 4 you know, throughout the day is basically single digit left 5 turns from a projection standpoint is single digit left 6 turns during all but two of peak hours -- all but two of the 7 eight hours that we have 11 at 2:00 o'clock and 10 at 4:00 8 o'clock. But aside from that, we're single digits additions 9 of left turns, which again don't have anywhere near staffing 10 to warrant criteria. 11 MS. MEYER: Thank you. Just one follow-up 12 question. In exhibit 9 under the table the trip generations 13 for subject site, your final column is average daily trips. 14 Those numbers does not include trips not associated with 15 average Brookstone Living -- he put that word in so I know 16 what it said earlier. It's unclear from the chart an I just 17 wanted the clarify how you 411 trips from the, as you said, 18 relatively small numbers by comparison. 19 THE WITNESS: So that last column table 2 of our -- 20 HEARING EXAMINER: I'm sorry, which exhibit are you 21 referring to? 22 THE WITNESS: It's shown on the screen right now. 23 MS. LEE-CHO: Exhibit 9. 24 HEARING EXAMINER: Oh, okay. Thank you. Exhibit 9 25 Page 5, I think. Yes. Okay, go ahead.</p>	<p>155</p> <p>1 MS. LEE-CHO: I have nothing further. 2 HEARING EXAMINER: Okay. Anyone else? Hearing 3 none, we will move on to your next witness. 4 Thank you, Mr. Wilson. 5 THE WITNESS: Thank you. 6 HEARING EXAMINER: Are we going to call Mr. 7 Palkowitsch? 8 MS. LEE-CHO: Yes, Chris Palkowitsch. I can just 9 ask the question or -- 10 HEARING EXAMINER: Yes, go ahead. 11 CHRIS PALKAWITSCH 12 after having been previous sworn or affirmed, testified as 13 follows: 14 BY MS. LEE-CHO: 15 Q So, Chris, this going back to? 16 THE COURT: You're still under oath, Mr. 17 Palkowitsch. 18 THE WITNESS: Okay. thank you. 19 Q Just going back to the question of the 20 applicability of -- 1997 Fairland Master Plan as opposed to 21 what the county is currently, I guess working on finalizing 22 which is the Fairland and Briggs Chaney Master Plan, if you 23 could clarify for the record whether the Fairland and Briggs 24 Chaney Master Plan applies to the project? 25 A Yes. I apologize for my lack of clarity on the</p>
<p>154</p> <p>1 THE WITNESS: So that table there at column -- at 2 the end average daily traffic -- represents the total of 3 number of trips in and out of the site over a 24 hour 4 period. So basically that's saying that the 205 trips would 5 be coming in, 205 trips would be leaving over the course of 6 an entire 24 hour period. 7 HEARING EXAMINER: Okay. 8 MS. MEYER: Just from Brookstone Living itself? 9 THE WITNESS: That is correct, yes. That's the 10 figure based on the rate in ITE. 11 MS. MEYER: And I realize this is not necessarily 12 something that you may be -- this might be to the county 13 code, but that's still not a sufficient number of trips per 14 day to warrant any kind of more in-depth traffic analysis 15 especially considering the extra businesses in the area? 16 THE WITNESS: No. So what's required of the 17 development process is that if we are below 50 person peak 18 hour trips, then the traffic statement is all that is 19 required. So the analysis that we ran at Maryland 198 and 20 Dino Drive was above and beyond what typically would have 21 been required. We're below 50 peak hour person trips, so 22 therefore there's no additional requirements from the county 23 at that point. 24 MS. MEYER: Thank you. No further questions from 25 me.</p>	<p>156</p> <p>1 answer previous. The Briggs Chaney new master plan does not 2 include this parcel -- 3 HEARING EXAMINER: Does not include this -- I 4 couldn't hear what you said for some reason. 5 THE WITNESS: It does not include the parcel that 6 we're reviewing today. 7 HEARING EXAMINER: Okay. 8 Q What are you looking at to determine that? 9 A I am looking at the online county plan and if -- 10 after there are two maps that are provided on the left side 11 to show what that outlines property is. And at the very 12 northern edge of that property is where our site is located, 13 but we are outside the the new master plan area. That's why 14 I answered the way previously that I was unaware of its 15 impasse on our site because it's outside the -- I'm aware of 16 the plan. 17 Q We don't have an electronic exhibit of the map of 18 that, but I do have a printout if you're interested in 19 taking it from me? 20 HEARING OFFICER: Well, let me just say I will take 21 official notice. Now, you can object to me taking official 22 notice, but the plan is on the planning website I get -- I 23 get mid counties versus -- versus up county. I'm going to 24 choose down county now. 25 MS. LEE-CHO: I find it better just to type in the</p>

Transcript of Hearing
Conducted on February 16, 2024

40 (157 to 160)

<p>157</p> <p>1 words fairland in the search.</p> <p>2 HEARING OFFICER: On the search button, okay, I'll</p> <p>3 do that.</p> <p>4 THE WITNESS: Is there a chat feature in the</p> <p>5 meeting I can just drop it.</p> <p>6 HEARING EXAMINER: No, we can't use chat because</p> <p>7 it's ex parte -- I can't monitor it and would be ex parte to</p> <p>8 try to use it so --</p> <p>9 THE WITNESS: I understand.</p> <p>10 HEARING EXAMINER: So parking planning does have a</p> <p>11 website. I'm sorry to take so long the find it for you.</p> <p>12 It's right on the cups, might be uptown.</p> <p>13 THE WITNESS: It is on uptown.</p> <p>14 HEARING EXAMINER: Okay. So what you do is you go</p> <p>15 -- I'm going to read the website so everybody has access to</p> <p>16 the plan Fairland and Briggs Chaney. So the website is</p> <p>17 Montgomery County planning, one word, dot org, ORG,</p> <p>18 backslash planning backslash communities backslash up county</p> <p>19 backslash fairland backslash fair land-master-plan -- oh, no</p> <p>20 I think I did the wrong one. Wait it says recently approved</p> <p>21 plans. Is this approved?</p> <p>22 MS. LEE-CHO: I think there's an interm that was</p> <p>23 approved.</p> <p>24 HEARING EXAMINER: county counsel approved interim</p> <p>25 draft. I was at the wrong -- I apologize. I'm going to</p>	<p>159</p> <p>1 say?</p> <p>2 MS. LEE-CHO: No. That's all I have for</p> <p>3 Mr. Palkawitsch.</p> <p>4 HEARING EXAMINER: Okay. Any questions of</p> <p>5 Mr. Palkawitsch?</p> <p>6 MS. TAYLOR: Mr. Palkawitsch, this is Eileen Taylor</p> <p>7 again. I have a quick question. Since I really first of</p> <p>8 all appreciate clarifying that the parcel is not included in</p> <p>9 the new proposed Fairland plan. My question though is since</p> <p>10 you are -- does this disqualify your argument that based on</p> <p>11 the 1997 land you were arguing that the land was allowed to</p> <p>12 be used for conditional use but since it's to longer being</p> <p>13 included in the master plan, doesn't that null and void that</p> <p>14 argument?</p> <p>15 THE WITNESS: It would -- that's a good question an</p> <p>16 dI don't have, like, a clean answer for you.</p> <p>17 MS. TAYLOR: Okay.</p> <p>18 THE WITNESS: It might (inaudible) site has to go</p> <p>19 to, you know, somebody master plan since it's not included</p> <p>20 in the new one. In my perspective. I would fall back to the</p> <p>21 previous one.</p> <p>22 MS. TAYLOR: Wouldn't you have to do due</p> <p>23 diligence, though, to be determine if it is in another</p> <p>24 master plan and how it is approved for zoning there?</p> <p>25 HEARING EXAMINER: I'm sorry, I couldn't understand</p>
<p>158</p> <p>1 give you another one. It's -- the front stays the same</p> <p>2 Montgomery Planning dot org backslash WP-content backslash</p> <p>3 uploads backslash 2023 backslash 12 backslash FBCM</p> <p>4 P-approved-counsel draft dash interm dot PDF. Okay. We'll</p> <p>5 figure out a way we have everyone's e-mail and we can send</p> <p>6 the link the people. And I will -- Monday is a county</p> <p>7 holiday, we're closed for business but, we will try to do it</p> <p>8 Tuesday. So what page are you referring to in this plan?</p> <p>9 THE WITNESS: I apologize, I don't have that direct</p> <p>10 plan on the left side of the plan and there are two plan</p> <p>11 docks on the website.</p> <p>12 MS. LEE-CHO: He said boundary maps. Chris, your</p> <p>13 audio is like crackly. It's hard to tell what you're</p> <p>14 saying.</p> <p>15 THE WITNESS: Okay. I'm not sure what's going on.</p> <p>16 I'll just speak up.</p> <p>17 HEARING EXAMINER: I see it and then it's south of</p> <p>18 the boundary. The boundary is --</p> <p>19 MS. LEE-CHO: Is the boundary south of the</p> <p>20 property.</p> <p>21 HEARING EXAMINER: East or west of this property.</p> <p>22 Is that your conclusion, Mr. Palkawitsch?</p> <p>23 THE WITNESS: Yes, that is my conclusion.</p> <p>24 HEARING EXAMINER: Okay. So we will try to get the</p> <p>25 link to everyone on Tuesday. Anything else you wanted to</p>	<p>160</p> <p>1 your question.</p> <p>2 MS. TAYLOR: Oh, I'm sorry. My question is since</p> <p>3 it's not in the new proposed master plan, Mr. Palkawitsch</p> <p>4 had said that it might be inside another master plan, but</p> <p>5 that is why he fell back to to the 1997.</p> <p>6 THE WITNESS: No, I was was saying there was since</p> <p>7 it is outside -- since our -- with reviewing this plan and</p> <p>8 that being updated in that our properties on side of that,</p> <p>9 the master plan wouldn't be considered to change anything in</p> <p>10 my perspective to our properties, how the property is being</p> <p>11 utilized, so the zoning or the other zoning that come with</p> <p>12 it.</p> <p>13 MS. TAYLOR: And yet your argument was based on the</p> <p>14 1997, that it was allowed for conditional use. My question</p> <p>15 is what -- wouldn't this void that argument since it's no</p> <p>16 longer in the new proposed master plan?</p> <p>17 HEARING EXAMINER: No. I'll jump in here. It says</p> <p>18 in the 1997 master plan unless there's an intervening master</p> <p>19 plan that covers the same area. So when you're looking at</p> <p>20 master -- unless somebody wants to argue that I'm wrong,</p> <p>21 unless there's -- if there is no other master plan</p> <p>22 applicable, then the 1997 one still applies.</p> <p>23 MS. TAYLOR: Would there be another master plan</p> <p>24 that covers that area?</p> <p>25 HEARING EXAMINER: Mr. Palkawitsch, do you know of</p>

Transcript of Hearing
Conducted on February 16, 2024

41 (161 to 164)

<p>161</p> <p>1 any other master plan that covers this area?</p> <p>2 THE WITNESS: I'm unaware of additional master</p> <p>3 plan.</p> <p>4 HEARING EXAMINER: We do have a new general plan,</p> <p>5 but I don't believe it has site called -- Thrive 2050, but I</p> <p>6 don't know -- I doubt it has any specific land use</p> <p>7 recommendations on the site with an overall plan for the</p> <p>8 county, but you're more than welcome to look it up. It's</p> <p>9 called Thrive 2050, and if anyone sees a -- something</p> <p>10 relating to this property, it containing more</p> <p>11 general -- general goals for the county. But can</p> <p>12 you -- you're welcome to look.</p> <p>13 MS. TAYLOR: Thank you. Appreciate it.</p> <p>14 HEARING EXAMINER: I don't want to get involved too</p> <p>15 much if somebody doesn't agree, but, okay, go ahead. Anyone</p> <p>16 else? Okay, hearing none. Do you have any redirect based</p> <p>17 on the questions? Just a minute, Mr. Wilson. Just a</p> <p>18 minute.</p> <p>19 MS. LEE-CHO: Not in light of your particular</p> <p>20 indication on the master plan but --</p> <p>21 HEARING OFFICER: Well, now can you go.</p> <p>22 MS. LEE-CHO: Yes. Okay. Your next -- how close</p> <p>23 are we to ending? Because I really want to get -- we have</p> <p>24 an hour left unless I get special permission to go later.</p> <p>25 Can you stay -- okay, we have a little more flexibility to</p>	<p>163</p> <p>1 engineering and land planning.</p> <p>2 THE WITNESS: And land surveying.</p> <p>3 MS. LEE-CHO: Land surveying.</p> <p>4 HEARING EXAMINER: That will be 52, Dean Packard</p> <p>5 resume'. Okay. I will say he has qualified as a civil</p> <p>6 engineer several times before our agency.</p> <p>7 Does anyone have an objection to qualifying him as</p> <p>8 a civil engineer in this case? Okay, hearing none. Go</p> <p>9 ahead, Mr. Packard.</p> <p>10 BY MS. LEE-CHO:</p> <p>11 Q So just to begin, very, very briefly if you could</p> <p>12 just use the MRIFSD Exhibit 11, identify for the record</p> <p>13 notable features, size, topography, environmental features,</p> <p>14 sensitive areas on the property.</p> <p>15 A It would be 11A, and I guess I did have -- this</p> <p>16 needs to be rotated. There you go. Generally early the</p> <p>17 site, you know, rises slightly from Dino Drive and Valley</p> <p>18 Stream Drive to a high point. It's pretty much in the</p> <p>19 center of the property, and it drops plan north, you know,</p> <p>20 eight feet, and toward the plan south it drops 30 feet. So</p> <p>21 this property does have 4.1 acres of forest on it and our</p> <p>22 priority was to preserve and -- a forest to open areas down</p> <p>23 near stream which is on the land west side of the</p> <p>24 property.</p> <p>25 HEARING EXAMINER: Is it on the property or just</p>
<p>162</p> <p>1 5:00.</p> <p>2 MS. LEE-CHO: We're going to be very brief because</p> <p>3 these are technical plans and --</p> <p>4 HEARING EXAMINER: And I really want to hear from</p> <p>5 the people that have been patiently waiting all day.</p> <p>6 MS. LEE-CHO: Yes. We're going to hit the</p> <p>7 highlights with Mr. Packard.</p> <p>8 HEARING EXAMINER: Please raise your right hand.</p> <p>9 DEAN PACKARD</p> <p>10 after having been duly sworn or affirmed, testified as</p> <p>11 follows:</p> <p>12 HEARING EXAMINER: Please state your name, business</p> <p>13 address, and e-mail address for the record.</p> <p>14 THE WITNESS: My name is Dean Packard. My business</p> <p>15 address is 204 Monroe Street, Suite 201 in Rockville</p> <p>16 Maryland, and my e-mail is dean@packardassociatesll.com</p> <p>17 HEARING EXAMINER: Go ahead, Ms. Lee-Cho.</p> <p>18 MS. LEE-CHO: So we like to qualify or introduce --</p> <p>19 HEARING EXAMINER: And do you have his resume'?</p> <p>20 MS. LEE-CHO: Yes.</p> <p>21 THE COURT: Is it in the packet that you downloaded</p> <p>22 earlier?</p> <p>23 MS. LEE-CHO: Mr. Packard has testified numerous</p> <p>24 times and qualified as an expert before this body and the</p> <p>25 Board of Appeals as well as in the profession of civil</p>	<p>164</p> <p>1 outside the property boundary?</p> <p>2 THE WITNESS: It runs parallel to the plan west</p> <p>3 property line just on our property and then veers off to the</p> <p>4 left toward the rectangular box in the inner left-hand</p> <p>5 corner.</p> <p>6 HEARING EXAMINER: Okay.</p> <p>7 THE WITNESS: As I said, our priority was to</p> <p>8 preserve the Stream Valley buffer. We are preserving it a</p> <p>9 hundred percent, you know, from the flood plan and wetlands,</p> <p>10 and the Stream Valley buffer we are preserving additional</p> <p>11 forest in the -- I would say southwest -- plan southwest</p> <p>12 corner of the property. And in the plan northwest of the</p> <p>13 property is an open area that we are replanting with trees</p> <p>14 and forestation. The question did come up if there are</p> <p>15 other areas on the site that could be reforested, and there</p> <p>16 are no other, you know -- our focus was on the Stream Valley</p> <p>17 buffer and the areas on the plan west side of the property.</p> <p>18 There are no other areas on the property that would qualify</p> <p>19 for, you know, reforestation or a forestation. So the plan</p> <p>20 was to over emphasize the proposed landscaping as previously</p> <p>21 testified to, you know, further enhance, you know,</p> <p>22 replacement of trees to the maximum extent possible.</p> <p>23 Q What has been approved by the planning board and is</p> <p>24 in the record, the resolution of approval, Exhibit 41, that</p> <p>25 is the preliminary forest conservation plan, correct?</p>

Transcript of Hearing
Conducted on February 16, 2024

42 (165 to 168)

<p>165</p> <p>1 A Correct.</p> <p>2 Q So there is -- is there another phase of forest</p> <p>3 conservation plan review and approval?</p> <p>4 A There will be another place. It would be called</p> <p>5 the final forest conservation plan, and that could be</p> <p>6 typically done at the main plan stage, but it's required to</p> <p>7 be approved prior to permitting for grading.</p> <p>8 MS. LEE-CHO: Okay. I would like to move on to the</p> <p>9 storm water concept, if there is nothing else on the forest</p> <p>10 conservation.</p> <p>11 HEARING EXAMINER: No, I'm fine with that.</p> <p>12 MS. LEE-CHO: Okay,.</p> <p>13 Q So if you could just very briefly describe how</p> <p>14 the --</p> <p>15 HEARING EXAMINER: Just are there any issues with</p> <p>16 the storm water? Does the audience have any questions on</p> <p>17 the storm water? If see some in the Valley Stream left.</p> <p>18 MS. MEYER: If I can speak briefly to some of those</p> <p>19 concerns. I think largely --</p> <p>20 HEARING EXAMINER: Why don't you just pose them as</p> <p>21 questions, and we'll just do that instead of having them go</p> <p>22 through everything.</p> <p>23 MS. MEYER: If the counsel and the witness are fine</p> <p>24 with that. I think for us it was just one sort of central</p> <p>25 question which was, to what extent is excess run-off from a</p>	<p>167</p> <p>1 MS. LEE-CHO: Can you guide the curser as you</p> <p>2 testify?</p> <p>3 THE WITNESS: So when you come in the front</p> <p>4 entrance, right underneath sheet two there is an oval-shaped</p> <p>5 just right there. That's -- let's call that by retention</p> <p>6 facility one. And those by retention facilities are</p> <p>7 designed to capture all the run-off from the paved areas and</p> <p>8 the impervious areas and treat them and infiltrate them into</p> <p>9 the ground to the extent that the county and state require,</p> <p>10 and then, you know, any flows above that is -- is picked up</p> <p>11 in an underground drainage system and conveyed down to the</p> <p>12 stream area. So going around the property as you travel to</p> <p>13 the left is another facility, and continuing around the</p> <p>14 corner there is a facility.</p> <p>15 HEARING EXAMINER: Those long oval shapes are the</p> <p>16 facilities?</p> <p>17 THE WITNESS: They are the facilities.</p> <p>18 HEARING EXAMINER: I'm just clarifying it for the</p> <p>19 record.</p> <p>20 THE WITNESS: And they are -- they are underground</p> <p>21 facilities, and they are mulched and planted with</p> <p>22 vegetation, grasses, and shrubbery and --</p> <p>23 HEARING EXAMINER: And do they capture water and</p> <p>24 then release it more slowly, or does the water absorb into</p> <p>25 the soil from there?</p>
<p>166</p> <p>1 paved area that's not being reforested and we're losing</p> <p>2 about close to four acres of forest of land and replacing it</p> <p>3 with a flat top building and paved roads with minimal</p> <p>4 landscaping by comparison. What impact on the storm waters</p> <p>5 are actually going to have and the pollution that comes</p> <p>6 from, you know, vehicles coming in those kind of human</p> <p>7 activities that are in the area?</p> <p>8 HEARING EXAMINER: Can you answer that?</p> <p>9 THE WITNESS: Yes, I can. We are proposing at the</p> <p>10 perimeter where the buffer area was previously acknowledged</p> <p>11 between the parking lot and the --</p> <p>12 HEARING EXAMINER: What's a good plan for this? One</p> <p>13 that has storm water? The conditional use plan.</p> <p>14 MS. LEE-CHO: It's 29, Exhibit 29. There's A</p> <p>15 through F. Which one should --</p> <p>16 THE WITNESS: The cover sheet.</p> <p>17 MS. LEE-CHO: 29A.</p> <p>18 HEARING EXAMINER: Can you bring 29A up?.</p> <p>19 THE WITNESS: You know, walking quickly around the</p> <p>20 property as you come in the main entrance, the oval-shaped</p> <p>21 features are by retention facilities, and, as you go around</p> <p>22 the perimeter boundary --</p> <p>23 HEARING EXAMINER: Can you expand that a little bit</p> <p>24 at the entrance and so we can follow and then just move it</p> <p>25 as he testifies? Is that too hard to do?</p>	<p>168</p> <p>1 THE WITNESS: They're designed to absorb the water</p> <p>2 into the soil and any overflow that is captured. Those</p> <p>3 boxes that you were asking out before --</p> <p>4 HEARING EXAMINER: Yes.</p> <p>5 THE WITNESS: -- those boxes are the structures in</p> <p>6 the facility that weren't turned off on the lighting plan,</p> <p>7 and they convey to water to a drainage system underneath the</p> <p>8 paving.</p> <p>9 HEARING EXAMINER: Okay.</p> <p>10 THE WITNESS: So that's facility number three. And</p> <p>11 going down the page, e it's facility 4 and 5, 7, 8, 9, 10,</p> <p>12 11, there's 12 facilities in total, which, you know -- you</p> <p>13 know meet or exceed the requirements of county and state to</p> <p>14 capture the water and infiltrate it into the ground.</p> <p>15 BY MS. LEE-CHO:</p> <p>16 Q Are there any up on Dino Drive?</p> <p>17 A Between the building an Dino Drive is how it -- I</p> <p>18 would call it facility 13. If you want to push the curser</p> <p>19 right next to Dino Drive to the left slightly, a little bit</p> <p>20 more, and there's a oval facility between the building and</p> <p>21 the road right at the top of the page. Down, down, down,</p> <p>22 down, down to the left south, down, down, right there. So</p> <p>23 that is a facility that will capture, you know, roof drains</p> <p>24 from that portion of the building. Why there's 12</p> <p>25 facilities is because there are area requirements of 20,000</p>

Transcript of Hearing
Conducted on February 16, 2024

43 (169 to 172)

<p>169</p> <p>1 square feet that we can only put into each facility. So as 2 each roof drain system from the building conveys water to 3 the parking lot, we capture that area in a facility, and 4 that's why there's 12. 5 Q And will there be some vegetation planted visible 6 coming out of those facilities? 7 A Yes. As I just mentioned, there would be planted 8 the grasses and shrubbery and the facilities itself to -- 9 the idea is to capture and be ascetically and, you know, 10 take down the temperature of the water coming off of the 11 building or parking lot and absorb the nutrients. 12 Q And the storm water concept that is in the record 13 has been approved by the Department of Permitting Services; 14 is that correct? 15 A That is correct. 16 HEARING EXAMINER: Now, is the there landscaping in 17 the -- I don't have the landscaping plan here, but I don't 18 want to change plans right now. Does -- is there 19 landscaping between the bioretention facilities and the 20 property line. 21 THE WITNESS: On the landscaping plan that we're 22 looking at before, yes. 23 HEARING EXAMINER: Did that answer all your 24 questions? Or you also had a question about pollution 25 run-off, Ms. Meyer. I think it was Ms. Meyer. She has a</p>	<p>171</p> <p>1 So the property is, you know, mostly forest now, and the 2 property will discharge water as mostly forest after the 3 proposed development, and that is by treating and filtering 4 and infiltrating and capturing the water on site. That's 5 how the state and county have developed these best minute 6 management practices to work, and that's what we are 7 providing. 8 HEARING EXAMINER: Any other questions? Okay, 9 hearing none. 10 I don't want to cut you off, but is there -- I 11 would like to know about the brim, how high is that brim and 12 will it cover cars and that headlights. 13 MS. LEE-CHO: So can we go back to the landscape 14 plan? 15 HEARING EXAMINER: Which is 17, the planting plan? 16 MS. LEE-CHO: 17A. I have just a few issues to 17 cover with. 18 HEARING EXAMINER: Okay. Go ahead. 19 BY MS. LEE-CHO: 20 Q So Mr. Packard, if you can address the question at 21 hand which is the varying embankment height. Using 22 landscape plan 17 -- Exhibit 17A, if you could sort of walk 23 us around the parking lot and testify as to the varying 24 heights? 25 A Okay. From the entering cite from Valley Stream</p>
<p>170</p> <p>1 little one. Oh, no it was -- 2 MS. MEYER: Can you please repeat the question? 3 Sorry I'm trying to do snack time and hearing time at the 4 same time. 5 HEARING EXAMINER: It's hard. It's definitely 6 hard. We can have you give your testimony after snack time. 7 MS. MEYER: That sounds good. 8 HEARING EXAMINER: Did you have -- he covered the 9 drain and and how the drainage will be handled. Did you 10 have other questions about this storm water? Did you have 11 questions about pollution? 12 MS. MEYER: Yes. I think our concern was just 13 that, you know, with the added traffic as vehicles sort of 14 more -- the more commercial aspects that there is an 15 increase in pollution with any human activity, and what 16 these facilities are doing to reduce the pollution run-off 17 with the storm water from our local water shed and just from 18 the local area. 19 HEARING EXAMINER: Mr. Packard, can you answer that 20 part of the question? 21 THE WITNESS: Yes, ma'am. The idea of storm water 22 management is designed and created by the Department of 23 Maryland Department Environment and Montgomery County is to 24 create a basic situation where the -- the water run off and 25 the treatment as if it was reverted back to natural forest.</p>	<p>172</p> <p>1 Drive and as you run parallel to the building to where we 2 just spoke to the by retention facilities one and two, the 3 parking lot drops away from the building. So, you know, 4 water flows downhill, so naturally we slope the parking lot 5 from the building down toward the -- 6 HEARING EXAMINER: Bioretention facility. 7 THE WITNESS: The facility. And that drops the 8 grade there. So at the entrance -- 9 HEARING EXAMINER: The entrance by Dino Drive? 10 THE WITNESS: By Dino Drive on the first facility 11 is approximately two feet below the grade of the surrounding 12 residential property. And as you go toward the facilities 13 to three and four, the grade drops significantly more so by 14 the time you get to bioretention facility three, we are 15 approximately eight feet below the grade of the adjoining 16 property. 17 Q So just to clarify, the parking -- the pavement of 18 the parking is eight feet below the top of the embankment at 19 the turn at the biofacility three, the corner? 20 A The paving parking is eight feet below the grade at 21 the property line of the adjoining property. 22 Q Okay. 23 A So there is no technically a brim. It's a drop. 24 HEARING EXAMINER: It's just a grading a slope. 25 THE WITNESS: It sloped downward to the parking</p>

Transcript of Hearing
Conducted on February 16, 2024

44 (173 to 176)

<p>173</p> <p>1 lot, and that was, you know -- that is.</p> <p>2 HEARING EXAMINER: Is that at the point -- I can't</p> <p>3 remember where three is, the point of plan south.</p> <p>4 THE WITNESS: It's the point of the L -- the corner</p> <p>5 of the L-shaped as you come in.</p> <p>6 Q So what is the height after bioretention one and</p> <p>7 two, you know, that's parallel?</p> <p>8 HEARING EXAMINER: I think he said that's two</p> <p>9 feet.</p> <p>10 THE WITNESS: It starts at two feet, and</p> <p>11 bioretention facility two is approximately four feet and</p> <p>12 then it drops to eight feet around the corner.</p> <p>13 Q And then can you continue to take us down to each</p> <p>14 biofacility and give us the height difference?</p> <p>15 A So one, two, three, four, five, as we turn the</p> <p>16 corner around the -- near the U-shaped portion of the</p> <p>17 building, bioretention facility five and six are on the plan</p> <p>18 south view. Down there. Now, those facilities are</p> <p>19 approximately ten feet below the grade, that property line.</p> <p>20 So as was testified before, there was, you know -- there was</p> <p>21 -- it was brought up that there wouldn't be car lights</p> <p>22 shining, and the car lights wouldn't be shining because the</p> <p>23 grade is ten feet below.</p> <p>24 HEARING EXAMINER: What about around the back? Are</p> <p>25 there homes? Let's just take it's all the way -- does five</p>	<p>175</p> <p>1 the brim or whatever you call it disappear there?</p> <p>2 THE WITNESS: It reverses from a -- adjoining</p> <p>3 property being higher to the adjoining property being</p> <p>4 lower.</p> <p>5 HEARING EXAMINER: Nobody lives at that level at</p> <p>6 that point?</p> <p>7 THE WITNESS: That point on plan west, it's forest,</p> <p>8 and that is the back part of our property down to the</p> <p>9 stream.</p> <p>10 HEARING EXAMINER: Okay.</p> <p>11 Q So just to be clear, at the Stream Valley?</p> <p>12 A That is the Stream Valley.</p> <p>13 HEARING EXAMINER: Okay.</p> <p>14 Q So in terms, you know, while I have -- so applicant</p> <p>15 would like to suggest a proffer at this point. I don't know</p> <p>16 how to bring it up. But because of the height of the lower</p> <p>17 height on the boundary as you enter the site, would you have</p> <p>18 a recommendation in terms of additional screening for the</p> <p>19 car lights?</p> <p>20 A Yes. We had discussed where the area is closer to</p> <p>21 the height of the adjoining property to put a six feet site</p> <p>22 type board-on-board fence.</p> <p>23 HEARING EXAMINER: Okay. Now, describe exactly</p> <p>24 where that area is.</p> <p>25 THE WITNESS: That would be, you know, certainly</p>
<p>174</p> <p>1 and six cover all the boundaries with single-family homes?</p> <p>2 THE WITNESS: I guess that the corner of between</p> <p>3 facility six and seven where the property starts to rotate</p> <p>4 around the back of the building, that is the edge of the</p> <p>5 single-family property.</p> <p>6 HEARING EXAMINER: And how low is it there?</p> <p>7 THE WITNESS: There -- it's the property -- the</p> <p>8 ground is starting to drop there, so it's approximately six</p> <p>9 feet below the adjoining property at that point, and, as you</p> <p>10 rotate around the back of the property, the -</p> <p>11 Q Plan west?</p> <p>12 A Plan west. On the back of the building on the plan</p> <p>13 west, the building stays roughly the same height, and the</p> <p>14 ground drops off significantly. So the wall reverses from a</p> <p>15 -- I refer to it as a cut wall to a fill wall. So, you</p> <p>16 know, as you turn the corner around --</p> <p>17 HEARING EXAMINER: I don't know what that means. I</p> <p>18 just tell you -</p> <p>19 THE WITNESS: Around the plan west side of the</p> <p>20 building, the parking lot's higher than the existing GROUND</p> <p>21 HEARING EXAMINER: Okay. So but the question is</p> <p>22 how high is it in comparison with the adjacent properties on</p> <p>23 the western side?</p> <p>24 Q So there are properties --</p> <p>25 HEARING EXAMINER: Did the grade from the -- did</p>	<p>176</p> <p>1 next to our retention facilities one and two and turning the</p> <p>2 corner to facility three until the grade's below six feet.</p> <p>3 HEARING EXAMINER: The grade is above six feet?</p> <p>4 THE WITNESS: Yes</p> <p>5 HEARING EXAMINER: Six feet down above?</p> <p>6 THE WITNESS: Yeah, the parking lot is lower six</p> <p>7 feet so that would be the definition of the condition</p> <p>8 that --</p> <p>9 HEARING EXAMINER: A site type would that be well,</p> <p>10 you know, you don't have to decide now but we --</p> <p>11 MS. LEE-CHO: Board-on-board.</p> <p>12 HEARING EXAMINER: Board-on-board.</p> <p>13 THE WITNESS: Right.</p> <p>14 HEARING EXAMINER: Did people understand what</p> <p>15 they're proffering there? Those in the opposition?</p> <p>16 MS. MEYER: I appreciate just a brief recap. I</p> <p>17 heard what you said about the board-on-board, that usually</p> <p>18 that was a recommendation. To clarify, does that mean that</p> <p>19 there's going to be a fence behind the landscaping that will</p> <p>20 help mitigate the parking light headlight situation?</p> <p>21 HEARING EXAMINER: Wait are we talking -- we're</p> <p>22 talking a fence and landscaping or are we talking</p> <p>23 landscaping and then a fence and then the biotention</p> <p>24 facility and then the parking lot?</p> <p>25 THE WITNESS: The fence would be at the parking</p>

Transcript of Hearing
Conducted on February 16, 2024

45 (177 to 180)

<p>177</p> <p>1 lot, then there would be.</p> <p>2 HEARING EXAMINER: With the exterior -- no, wait,</p> <p>3 say this again.</p> <p>4 THE WITNESS: I'm sorry. The fence would be at the</p> <p>5 property line.</p> <p>6 HEARING EXAMINER: The fence would be at the</p> <p>7 property line, and then what do you have?</p> <p>8 THE WITNESS: Then we have landscaping.</p> <p>9 HEARING EXAMINER: The ten foot strip or with the</p> <p>10 mix of trees and then you have the biotention facilities ?</p> <p>11 THE WITNESS: Correct.</p> <p>12 HEARING EXAMINER: Then you have the parking lot?</p> <p>13 THE WITNESS: Correct.</p> <p>14 HEARING EXAMINER: Did you understand that?</p> <p>15 MS. MEYER: Yes, that helped clarify. Thank you</p> <p>16 very much. The height of the fence was six feet?</p> <p>17 THE WITNESS: Yes.</p> <p>18 MS. MEYER: Thank you.</p> <p>19 MS. LEE-CHO: But just to clarify, that is not the</p> <p>20 full extent of the surround, it's just at that biotention</p> <p>21 one two and three.</p> <p>22 HEARING EXAMINER: With the proffer, was is that</p> <p>23 along the property edge there would be a six feet</p> <p>24 board-on-board fence until the parking -- the difference</p> <p>25 between the brim and the parking lot is six feet. So until</p>	<p>179</p> <p>1 plan, it did take into consideration shielding of the pole</p> <p>2 parking lot lights when it measured -- when it did the</p> <p>3 measurements that we're seeing on paper of -- for the foot</p> <p>4 candles. The photo metric plan was generated from the</p> <p>5 detail that was on the plan that wasn't showing shielding.</p> <p>6 So if there's shielding, then the lighting spread will be</p> <p>7 even less.</p> <p>8 MS. LEE-CHO: And you recall what the photometric</p> <p>9 plan has?</p> <p>10 HEARING EXAMINER: That's Exhibit 1 if anybody</p> <p>11 wants to look it up on their home computer. So you're</p> <p>12 saying with the full -- with the cut off shielding,</p> <p>13 illumination will be less than what's shown on the Exhibit</p> <p>14 13?</p> <p>15 THE WITNESS: The point -- the 0.1 number will be</p> <p>16 closer to the building than it is now.</p> <p>17 MS. LEE-CHO: And just so that we're clear, we're</p> <p>18 seeing -- to the extent that on the photometric plan, the</p> <p>19 numbers drop -- stop mid before it reaches the property line</p> <p>20 on plan west. So, you know, the back of the building as you</p> <p>21 -- and toward the Stream Valley, what is your explanation as</p> <p>22 to why it just goes white?</p> <p>23 THE WITNESS: When you plug certain -- it's a</p> <p>24 computer program. So when you plug the number in as to</p> <p>25 where you want the definitions to be, the lowest definition</p>
<p>178</p> <p>1 you get to where the brim is six feet above the parking lot,</p> <p>2 because then the fence wouldn't do anything, that you don't</p> <p>3 need it. When it's two and four and five and five</p> <p>4 feet, they'll put a fence at the adjacent property line.</p> <p>5 But then when the parking lot is six feet or more below the</p> <p>6 property line, then they wouldn't have a fence. They would</p> <p>7 just have the landscaping, the bioretention facilities, and</p> <p>8 then the parking lot.</p> <p>9 MS. MEYER: Understood. Would the applicant be</p> <p>10 able to provide a diagram that shows exactly where that</p> <p>11 fence would go for us those of us who or topographically</p> <p>12 challenged?</p> <p>13 HEARING EXAMINER: Well I think my speech is</p> <p>14 getting -- I'm having trouble articulating it, too. So,</p> <p>15 yes, is that okay? Ms. Lee-Cho is nodding, yes, they can do</p> <p>16 that.</p> <p>17 MS. MEYER: Okay. Thank you very much. And I</p> <p>18 wanted to have Mr. Packard make a clarification regarding</p> <p>19 some of the testimony on the photometric plan, because he</p> <p>20 actually -- his firm was part -- they were the ones who</p> <p>21 actually commissioned it.</p> <p>22 HEARING EXAMINER: Okay. Are people -- can they</p> <p>23 hear what's going on? He's going to clarify the photometric</p> <p>24 plan. Go ahead Mr. Packard.</p> <p>25 THE WITNESS: So with regard to the photometric</p>	<p>180</p> <p>1 that we plugged in was 0.1, and that was the requirement.</p> <p>2 Anything outside of the 0.1 line plan west, plan south, and</p> <p>3 so on is less than .1 or zero.</p> <p>4 HEARING EXAMINER: I have a suggestion just for you</p> <p>5 to put in zero, okay? Just so we don't have to go through</p> <p>6 explaining, but that's okay.</p> <p>7 MS. LEE-CHO: I agree. Lesson learned.</p> <p>8 HEARING EXAMINER: So did everyone understand that?</p> <p>9 Okay, I hear no comments. Do you have anything else for</p> <p>10 Mr. Packard or -- I can't remember if we were on</p> <p>11 cross-examination or --</p> <p>12 BY MS. LEE-CHO:</p> <p>13 Q The only other thing I would ask him to recite the</p> <p>14 general finding, his concurrence that on the necessary</p> <p>15 finding for 1F and G. F being the adequacy of public</p> <p>16 facilities to support the project, what would is his</p> <p>17 opinion?</p> <p>18 A I opine that we're providing adequate water supply,</p> <p>19 sewer supply for, and obviously there will wet utilities and</p> <p>20 dry utilities to the site to meet the fire marshall and WSSC</p> <p>21 requirements.</p> <p>22 HEARING EXAMINER: Don't you usually do police and</p> <p>23 fire, too?</p> <p>24 THE WITNESS: The fire marshall, yes.</p> <p>25 HEARING EXAMINER: Oh, fire marshall, okay.</p>

Transcript of Hearing
Conducted on February 16, 2024

46 (181 to 184)

181	<p>1 Q Is the fire department access plan was approved?</p> <p>2 A Right. The fire department access plan was</p> <p>3 approved and was exhibit.</p> <p>4 HEARING EXAMINER: Don't they tell you the nearest</p> <p>5 police station and fire station, or is that in the staff</p> <p>6 report?</p> <p>7 THE WITNESS: That's in the staff report, and</p> <p>8 that's the planning commission request that to be</p> <p>9 identified.</p> <p>10 HEARING EXAMINER: Okay.</p> <p>11 Q And then necessary finding 1G, which is the --</p> <p>12 whether the project will cause undue harm to the</p> <p>13 neighborhood as a result of any noninherent adverse effects</p> <p>14 alone or combination of inherent and noninherent effect, is</p> <p>15 your opinion that the project needs meets the requirement?</p> <p>16 A Yes, it is my opinion that it meets the requirement</p> <p>17 and, you know, all drainage and everything is directed away</p> <p>18 from any neighboring property.</p> <p>19 MS. LEE-CHO: I have nothing further. I did look</p> <p>20 up the landscape section of the code that's applicable, and</p> <p>21 I don't know if you want me to provide that to you now or --</p> <p>22 HEARING EXAMINER: No, just tell me the number.</p> <p>23 MS. LEE-CHO: The code number?</p> <p>24 HEARING EXAMINER: Yeah.</p> <p>25 MS. LEE-CHO: 6.53 does not apply to us.</p>	183	<p>1 son is content.</p> <p>2 HEARING EXAMINER: Is it naptime?</p> <p>3 MS. MEYER: This is Ms. Meyer.</p> <p>4 HEARING EXAMINER: Okay, Ms. Meyer, go ahead.</p> <p>5 MS. MEYER: So I actually had an opportunity to be</p> <p>6 before you guys today and to speak to this development. I</p> <p>7 want to start by saying that I am not opposed to senior</p> <p>8 housing. I think it's really important that housing is</p> <p>9 available for people from diverse ages, diverse groups.</p> <p>10 That's one of the beautiful things about our neighborhood is</p> <p>11 that we're intergenerational. We have multiple races and</p> <p>12 religions that are represented.</p> <p>13 Most of my concerns stem from the fact that we</p> <p>14 currently in a residential community with no real view of an</p> <p>15 industrial area, so the commentary about this being</p> <p>16 transitional, understandable but not really applicable from</p> <p>17 my perspective in that currently my view is my other</p> <p>18 neighbors and the lovely forest behind them.</p> <p>19 When we moved into this area 2020, we were really</p> <p>20 excited to find a quiet neighborhood. We were excited to be</p> <p>21 a part of the community that was growing. We were looking</p> <p>22 forward to relocation of Burtonsville Elementary and</p> <p>23 hopefully the creation of sidewalks down 198 to make it a</p> <p>24 safer walking environment for all of us. But when</p> <p>25 (inaudible) dedicated to other residential communities and</p>
182	<p>1 HEARING EXAMINER: Okay. That's good to know. And</p> <p>2 I will direct you to why. So under Section 6.53A which is</p> <p>3 the location, it says under A4 that screen asking not</p> <p>4 required between a lot line and the subject structure or use</p> <p>5 of the structure or use as separated from the lot line by a</p> <p>6 surface parking lot.</p> <p>7 HEARING EXAMINER: Perfect.</p> <p>8 MS. LEE-CHO: Instead, landscaping must be provided</p> <p>9 under section 629.</p> <p>10 THE COURT: Okay. That's good. That's what I</p> <p>11 wanted to know. It's covered.</p> <p>12 HEARING OFFICER: Anything else for this witness?</p> <p>13 And then I'm just going to see if there's any other</p> <p>14 questions for this witness from those in opposition?</p> <p>15 MS. LEE-CHO: I think we're good. I think we're</p> <p>16 done.</p> <p>17 HEARING EXAMINER: Anyone have any other questions</p> <p>18 of Mr. Packard? Okay, hearing none, let's go -- we have one</p> <p>19 more witness?</p> <p>20 MS. LEE-CHO: We're done.</p> <p>21 THE COURT: Your done? Okay. Those in opposition,</p> <p>22 you have been troopers, and this is your time to say what</p> <p>23 you would like to say. Who would like to start? I'm not</p> <p>24 hearing one.</p> <p>25 MS. MEYER: I'll try and speak in. Hopefully my</p>	184	<p>1 the idea of having more young families with young kids in</p> <p>2 the area was really a feeling. To have different</p> <p>3 development instead take place, a 50 foot tall structure</p> <p>4 that does not really resonating with the architectural</p> <p>5 culture of this neighborhood is disappointing and certainly</p> <p>6 will be knowing and meaningful. I'm not denying that we</p> <p>7 need to make housing available to people, but I also wonder</p> <p>8 where the housing is for people in the missing middle,</p> <p>9 people who need access to housing in this county that is</p> <p>10 affordable and for growing families, especially in this part</p> <p>11 of the county.</p> <p>12 Additionally, I retain my concerns on light</p> <p>13 pollution, the fact there's currently nothing there but</p> <p>14 there will something reaching over tree lines with lights,</p> <p>15 and that's going to have an impact, even with these</p> <p>16 wonderful diagrams with little numbers and introduction.</p> <p>17 But the fact remains that light travels until it hits a</p> <p>18 stopping point, and sometimes that stopping point is near</p> <p>19 and sometimes it's further.</p> <p>20 In addition, I think our concerns about traveling</p> <p>21 remain. We already have people who get load on their way to</p> <p>22 the post office, which is a much smaller venue. It takes</p> <p>23 more fewer trips, and they come speeding down our road and</p> <p>24 ripping around our cul-de-sac. I feel that's going to be</p> <p>25 the same experience. I didn't see anything in the traffic</p>

Transcript of Hearing
Conducted on February 16, 2024

47 (185 to 188)

<p>185</p> <p>1 court.</p> <p>2 Other testimony that implicated how the delivery</p> <p>3 trucks are leaving the facility, how many ambulance trucks</p> <p>4 will be coming, all of which are interruptive and add more</p> <p>5 traffic. This is community that, as I said, is quiet. We</p> <p>6 value it for its close-knitness and have -- and just feel as</p> <p>7 if the opportunity to create an expansion of that community</p> <p>8 that we value is being -- is given oversight to create a</p> <p>9 very large building that doesn't really resonate with the</p> <p>10 existing community.</p> <p>11 I'm grateful for the opportunity, I'm grateful for</p> <p>12 Montgomery County's willingness to host these hearings and</p> <p>13 for the time that has been taken by all the witnesses. I</p> <p>14 know this is your time as well.</p> <p>15 But these are my concerns. I feel very strongly</p> <p>16 that there could be amendments made, and many of them were</p> <p>17 in our written testimony that would perhaps make this</p> <p>18 development just a little bit better suited to the area,</p> <p>19 something that fits better with the residential community</p> <p>20 rather than taking so much inspiration and transitioning to</p> <p>21 the industrial, which we don't even really see.</p> <p>22 I appreciate attention to those and consideration</p> <p>23 of those, and I thank you again and to the hearing examiner</p> <p>24 for taking the time and to everyone else who is in here</p> <p>25 today. Thank you so much.</p>	<p>187</p> <p>1 follows:</p> <p>2 MS. TAYLOR: Well, thank you again for allowing us</p> <p>3 to speak and for your clarification questions. It was</p> <p>4 really helpful to hear and understand the issues and topics.</p> <p>5 I echo a lot of what Lauren said. I'm fast</p> <p>6 approaching at 55 plus age, so I am not opposed to senior</p> <p>7 housing or care for seniors at all. But I have been in this</p> <p>8 neighborhood for over 32 years, and it is a wonderful close</p> <p>9 neighborhood. We all know each other, we care for each</p> <p>10 other. My concern that the (inaudible) building which is in</p> <p>11 January will not fit in with the residential area we have.</p> <p>12 We currently have trees, we don't see -- there is an</p> <p>13 industrial complex just on the other side, but we don't see</p> <p>14 it. And we would continue to not to see something that</p> <p>15 looks so similar to that, which is what this building looks</p> <p>16 like with it's flat roofs and large glass windows and</p> <p>17 facades that they're using and different things. So we are</p> <p>18 concerned about the look of that facility.</p> <p>19 The second thing and really something that's really</p> <p>20 upsetting to me is the traffic. I understand that there are</p> <p>21 protocols that need to be followed and, you know,</p> <p>22 regulations set forth in order to have -- in order to have a</p> <p>23 traffic light, but unfortunately those regulations don't --</p> <p>24 the don't address all the different variables that we face</p> <p>25 on a day-to-basis at the intersection of 109 and Dino Drive.</p>
<p>186</p> <p>1 HEARING EXAMINER: Thank you. Ms. Lee-Cho, do have</p> <p>2 any questions?</p> <p>3 MS. LEE-CHO: No.</p> <p>4 HEARING EXAMINER: Okay. Who would like to speak</p> <p>5 next?</p> <p>6 MS. TAYLOR: Hi, this is Eileen Taylor. I can go</p> <p>7 next.</p> <p>8 HEARING EXAMINER: Okay. Oh, I forgot to -- I</p> <p>9 don't think Ms. Meyer -- I don't think I ever swore you in,</p> <p>10 so --</p> <p>11 MS. MEYER: You did not. If you would like to do</p> <p>12 so.</p> <p>13 HEARING EXAMINER: Can you please raise your right</p> <p>14 hand, if you can. Are you raising your right hand? Can you</p> <p>15 hear me?</p> <p>16 (Technical interruption.)</p> <p>17 HEARING EXAMINER: Please raise your right hand.</p> <p>18 LAUREN MEYER</p> <p>19 after having been sworn or affirmed testified previously</p> <p>20 MS. MEYER: Thank you again for your time.</p> <p>21 HEARING EXAMINER: Ms. Taylor?</p> <p>22 MS. TAYLOR: Oh, yes. Please raise your right</p> <p>23 hand.</p> <p>24 EILEEN TAYLOR</p> <p>25 after having been duly sworn or affirmed testified as</p>	<p>188</p> <p>1 Yes, it's going to -- I forgot the number was but</p> <p>2 about 200 trips a day will be adding and not during the peak</p> <p>3 hours I understand, but since they looked at traffic in</p> <p>4 2022, which was a year and a half ago, June 2022, there have</p> <p>5 other buildings, other facilities that have moved in the</p> <p>6 area. As Lauren previously said, there was DTS</p> <p>7 Transportation Service that has moved in on 198 right at</p> <p>8 that intersection. They house and use many limousines,</p> <p>9 SUVs, et cetera for moving people. They just provide all</p> <p>10 kinds of transportation services. What else that uses that</p> <p>11 intersection is a storage facility that uses that</p> <p>12 intersection.</p> <p>13 The large industrial complex that uses that</p> <p>14 intersection houses a post office, a couple churches, one of</p> <p>15 which is quite large. And I know traffic studies aren't</p> <p>16 usually done on Sundays, but you try to get out of our</p> <p>17 neighborhood on Sunday, it's very difficult. It houses a</p> <p>18 dance studio that just moved in, so that would not have even</p> <p>19 been shown on the 2022 traffic counts. It houses -- the</p> <p>20 opened up a new event venue that hosts events in that area.</p> <p>21 There is a large daycare facility for the disabled.</p> <p>22 There are so many businesses that use this one</p> <p>23 intersection, and now we will have an additional senior</p> <p>24 facility that's going to be using the same intersection, and</p> <p>25 they don't -- you don't take into account the problems we</p>

Transcript of Hearing
Conducted on February 16, 2024

48 (189 to 192)

189	<p>1 have with trucks making U-turns, which is frequent. We</p> <p>2 can't turn left into -- if you're heading 109 West on --</p> <p>3 headed 109 West and you want to make a left onto Dino Drive</p> <p>4 into our neighborhood, visibility is terrible because the</p> <p>5 trucks and the vans making U-turns, we can't be around them.</p> <p>6 All of these are factors that don't seem to</p> <p>7 applying to the traffic, and this is a concern for our</p> <p>8 neighborhood. The reason is probably why there's so few</p> <p>9 lefts is because you can't make lefts off it. Sometimes</p> <p>10 there's several trucks or vans making a U-turn. I can't get</p> <p>11 around them, so I go right. When I taught my daughter how</p> <p>12 to drive, she was prohibited from making a left because</p> <p>13 visibility is so poor.</p> <p>14 So these type of issues aren't addressed by your</p> <p>15 typical traffic counts, and that is a major concern for this</p> <p>16 neighborhood when we add in the senior facility with so many</p> <p>17 more trips every day, regardless if they're during the peak</p> <p>18 period or not. It will negatively impact traffic at that</p> <p>19 area and also, to be honest, I feel sorry for the seniors</p> <p>20 who move into that area and that have to be the intersection</p> <p>21 they use without a light, because if -- I know they said</p> <p>22 they only had two left turns a day, I don't see how that's</p> <p>23 possible when there's major grocery shopping is to the left.</p> <p>24 They're adding much more shops. They just opened a Sprouts,</p> <p>25 a TJ Maxx is opening, some restaurants all to the left.</p>	191	<p>1 MR. SINGH: I wanted to touch back on the 1997</p> <p>2 master plan and the special exception that existed at that</p> <p>3 time for this facility. Just wanted to comment on the</p> <p>4 record that, at that time, Elder Homecare or whatever is was</p> <p>5 had special exception for about 75 elderly condo units or</p> <p>6 assisted living. So the scale of that project that was</p> <p>7 approved at that time, which, you know, expired and was</p> <p>8 removed as much smaller in scale than this. We're talking</p> <p>9 about 220 beds here versus about 75, which was, you know,</p> <p>10 didn't create as much traffic.</p> <p>11 And, you know, we live right across the street from</p> <p>12 there, and this scale of this building, four-story monster</p> <p>13 building is not -- does not fit into what the rest of the</p> <p>14 community looks like. You know, there's no -- we don't see</p> <p>15 the industrial areas at all from our home, and so there's no</p> <p>16 benefit to this being a buffer, and so we strongly would</p> <p>17 hope that the property is used for what it's currently zoned</p> <p>18 for, which is residential homes.</p> <p>19 Thank you very much.</p> <p>20 HEARING EXAMINER: Thank you. Ms. Lee-Cho any</p> <p>21 questions?</p> <p>22 MS. LEE-CHO: I don't have any questions. I would</p> <p>23 just note that the previous approval -- his street is</p> <p>24 outlined in the statement of justification, and the number</p> <p>25 of beds senior residents is indicated in there as 120 on the</p>
190	<p>1 That would require much more left turns.</p> <p>2 So I wish there was a way that that could addressed</p> <p>3 with the senior housing, so that -- not just the senior</p> <p>4 housing but all of us. A new traffic study taking into</p> <p>5 account these variables.</p> <p>6 Thank you. That's really all I wanted to say.</p> <p>7 Thank you very much for listening.</p> <p>8 HEARING OFFICER: Thank you. Any questions, Ms.</p> <p>9 Lee-Cho?</p> <p>10 MS. LEE-CHO: No.</p> <p>11 HEARING EXAMINER: Anyone else who would like to</p> <p>12 testify?</p> <p>13 MR. SINGH: Can I speak?</p> <p>14 HEARING EXAMINER: And you are?</p> <p>15 MR. SINGH: This is Piara Singh at 4300 Valley</p> <p>16 Stream Avenue.</p> <p>17 HEARING EXAMINER: Did you already testify?</p> <p>18 MR. SINGH: No. I asked a question before, so we</p> <p>19 got our camera working.</p> <p>20 HEARING EXAMINER: Yay. Okay, I think I have your</p> <p>21 e-mail address. Okay, go ahead. Oh, please raise your</p> <p>22 right hand.</p> <p>23 PIARA SINGH</p> <p>24 after having been duly sworn or affirmed testified as</p> <p>25 follows:</p>	192	<p>1 property. But nonetheless, that's an old application, was</p> <p>2 not implemented, and we are here on a new application.</p> <p>3 HEARING EXAMINER: Thank you. Anyone else, please?</p> <p>4 MS. MENASCO-SMITH: I'd like to speak.</p> <p>5 HEARING EXAMINER: And you are?</p> <p>6 MS. MENASCO-SMITH: My name is Kathy Menasco-Smith.</p> <p>7 HEARING EXAMINER: Can you spell that.</p> <p>8 MS. MENASCO-SMITH: Sure. Kathy, K-A-T-H-Y,</p> <p>9 Menasco, M as in Mary, E, N as in Nancy, A, S am in Sam, C</p> <p>10 as in cat, O hyphen Smith, S-M-I-T-H. I live at 4327 Valley</p> <p>11 Stream Avenue, Burtonsville. My e-mail is smithkjk@aol.com,</p> <p>12 and I oppose this proposed facility on the side of Valley</p> <p>13 Stream Avenue at the very end, at the bottom.</p> <p>14 KATHY MENASCO-SMITH</p> <p>15 after having been duly sworn or affirmed testified as</p> <p>16 follows:</p> <p>17 MS. MENASCO-SMITH: Thank you.</p> <p>18 HEARING EXAMINER: Go ahead.</p> <p>19 MS. MENASCO-SMITH: Thank you for the opportunity</p> <p>20 of speaking and thank you for allowing us to submit our</p> <p>21 comments. I, too, would like to reiterate that I am</p> <p>22 definitely not opposed to senior housing or senior living</p> <p>23 centers. I think it's much needed; however, I strongly</p> <p>24 oppose the property being rezoned from the current</p> <p>25 residential lots.</p>

Transcript of Hearing
Conducted on February 16, 2024

49 (193 to 196)

193	<p>1 I was concerned about the height of the property,</p> <p>2 the building, and it was pointed out they will be 50 feet</p> <p>3 tall. Even if some of the land on our street is seven feet</p> <p>4 longer, that's still 43 feet that we'll be able to see.</p> <p>5 Even with the six-foot fence and the trees in 20 years,</p> <p>6 likely 25 being tall, that's still almost two stories of</p> <p>7 building that we currently do not have to look at. And as a</p> <p>8 couple people pointed out, the building just doesn't fit in</p> <p>9 with our community, the look of our community.</p> <p>10 I, too, and very much concerned about the traffic.</p> <p>11 Number one, there are no sidewalks on our street except</p> <p>12 right there in front of -- before the break beneath the</p> <p>13 curb. I frequently use our street to walk for exercise. I</p> <p>14 have to be very careful of cars zooming down to go down the</p> <p>15 cul-de-sac and zoom back out. You know, somebody mentioned</p> <p>16 it's very difficult to get out of our street on Sundays</p> <p>17 because of the two churches, well I can also attest to the</p> <p>18 fact that it's very difficult to cross over from Valley</p> <p>19 Stream Avenue to the sidewalk on Dino Drive because of all</p> <p>20 the cars zooming very fast down the street.</p> <p>21 So and the left turns, yeah, from Dino Drive to</p> <p>22 198, it's very difficult, and I agree with Eileen that the</p> <p>23 left-hand turns are not as high as they normally would be,</p> <p>24 because you simply cannot make a left turn out of 198. You</p> <p>25 got a light at certain times of the day, especially -- I</p>	195	<p>1 decision as to whether to rezone this property.</p> <p>2 HEARING EXAMINER: Well, I think Mr. Palkawitsch</p> <p>3 testified that the new plan doesn't cover this area. The</p> <p>4 boundary of the new plan is north of 198 -- south of 198,</p> <p>5 sorry. But I --</p> <p>6 MS. MENASCO-SMITH: Can he provide a copy of the</p> <p>7 master plan that does cover this area?</p> <p>8 HEARING EXAMINER: That is the 1997.</p> <p>9 MS. MENASCO-SMITH: Okay. Thank you for your time.</p> <p>10 HEARING EXAMINER: Thank you for staying around and</p> <p>11 voicing your concerns.</p> <p>12 MS. MENASCO-SMITH: Thank you. And thank you to</p> <p>13 all my neighbors.</p> <p>14 HEARING EXAMINER: Is there anyone else that would</p> <p>15 like to testify.</p> <p>16 MR. GOSCH: I would like to testify.</p> <p>17 HEARING EXAMINER: I think we have your name and</p> <p>18 e-mail address.</p> <p>19 MR. GOSCH: Yes.</p> <p>20 HEARING EXAMINER: Mr. Gosch.</p> <p>21 MR. GOSCH: Yes.</p> <p>22 HEARING EXAMINER: Please raise your right hand.</p> <p>23 ARPAN GOSCH</p> <p>24 after having been duly sworn or affirmed testified as</p> <p>25 follows:</p>
194	<p>1 mean, if I try to go out at 5:00 p.m., there's no way I can</p> <p>2 make a left-hand turn to go west, and I have to make a right</p> <p>3 and turn and go down and make a big U-turn. It's very</p> <p>4 scary. Sometimes you only get to the middle of the median,</p> <p>5 and I do drive a van, so I sit up higher. But the actual</p> <p>6 divider between the two sides of 198 is high for smaller</p> <p>7 cars, and it's a visual barrier. So in 2022, I wasn't quite</p> <p>8 sure who did that traffic study, but I think we definitely</p> <p>9 need another traffic study.</p> <p>10 I am opposed to the zoning needing changed due to</p> <p>11 an exception being made to current zoning. I'd rather have</p> <p>12 single-family homes so that there would be more children,</p> <p>13 more neighbors to get to know. Our neighborhood, yeah, I've</p> <p>14 been here since 1988, and that's one of the reasons that we</p> <p>15 bought our house was the great view in the back and the dead</p> <p>16 end street and not much traffic.</p> <p>17 The visual of this new building is just a</p> <p>18 heartbreaker for me. I also frequently see many birds, many</p> <p>19 foxes in the back or the trees. I don't understand why, out</p> <p>20 of four plus acres of the forestation, why only a half an</p> <p>21 acre is being required to be looked on. That's nothing.</p> <p>22 So I hope that we're going to take into</p> <p>23 consideration -- and the 1997 Fairland Master Plan, okay, it</p> <p>24 is time being attempted to be amended, why you cannot wait</p> <p>25 to see what they say about that before you make a final</p>	196	<p>1 MR. GOSCH: Well, thanks so much for hearing all</p> <p>2 this out. I, too, am not opposed to senior housing. I was</p> <p>3 born and raised in Silver Spring, Maryland on Arcola Avenue</p> <p>4 at University Tower Condominiums. Right across from it</p> <p>5 Northwood High School and a senior care facility. One thing</p> <p>6 I remember that when I was trying to fly out back in 2020</p> <p>7 was I'm looking up, you know, what's the neighborhood like,</p> <p>8 what's the look and feel (inaudible). That's the only place</p> <p>9 I grew up in. I want to be here.</p> <p>10 But I remember growing up there was always</p> <p>11 ambulances and there was incidents, cars coming in and out.</p> <p>12 I mean, that intersection was always crazy. I wanted to get</p> <p>13 away from that environment where you've got all those</p> <p>14 vehicles coming in. Burtonsville is the perfect place while</p> <p>15 still be closing to the city. You're right off the highway.</p> <p>16 It's got that feel the that rural aesthetic here. We got</p> <p>17 plots of land right next to us we got horses, we barns.</p> <p>18 It's just great.</p> <p>19 Well, now this Valley Stream Estates, back up there</p> <p>20 is these homes, there's only a few of them here separated by</p> <p>21 large blocks of land, and the of course essentially woods</p> <p>22 that are untouched was a big part of it. Right next to me</p> <p>23 is an historic house. It's got -- it's going to look</p> <p>24 nothing like this new facility that's trying to be -- trying</p> <p>25 to come in here. As impressive as some of its architecture</p>

Transcript of Hearing
Conducted on February 16, 2024

50 (197 to 200)

<p>197</p> <p>1 and lighting and all that is, it doesn't match the 2 neighborhood. It doesn't match the character of our 3 neighborhood. Nor does the limousine and these other SUVs 4 and buses that come in that are parked on the corner. And 5 no one is looking at that. No one is thinking about the 6 safety of the senior citizens who are going to be living 7 here if this plan does go into fruition, and I think that's 8 a mistake.</p> <p>9 Among other things that I was concerned and didn't 10 hear about are the utility power lines that are on the 11 property. They were talking about 25 foot trees to prevent 12 light spillage. Well, those lines are not insulated. Why 13 is there only 15 and a half feet from the ground. None of 14 this was discussed. So there's a lot of things that I'm-- 15 sounds great that they think there's solutions to this, but 16 there's also I think convenient -- there was some convenient 17 things that have been left out.</p> <p>18 I, too, and heavily opposed to this. But another 19 factor is silver people are staging. That's (inaudible) 20 lands already that are looking to be sold. Sandy Spring 21 like literally not even like three blocks away from us. 22 Those lands are ready for residential homes that wouldn't 23 require reforestation because it's already done. I just 24 don't see how it's logical to have to increase the density 25 of folks who live here and at the same time, you know, you</p>	<p>199</p> <p>1 under oath.</p> <p>2 MR. PACKARD: Yes, thank you. There is a utility 3 transmission line that runs on -- where you're looking at 4 the plan south between the proposed building and the 5 adjoining residential neighborhood that these people are 6 speaking from. Our plan is not to effect the utility poles 7 or the utility lines, so as they exist now would be the way 8 they exist in the future.</p> <p>9 HEARING EXAMINER: Okay. And anything else from 10 Mr. Packard?</p> <p>11 MS. LEE-CHO: No.</p> <p>12 HEARING EXAMINER: Do you have information, I think 13 it was Meyer mentioned that she hadn't heard anything about 14 truck deliveries and --</p> <p>15 MS. LEE-CHO: So operational document has that 16 information, and we opted to instead rely on that document 17 with that one correction as opposed to providing additional 18 testimony.</p> <p>19 HEARING EXAMINER: Is that Exhibit 7?</p> <p>20 MS. LEE-CHO: That is Exhibit (inaudible) and I 21 believe we received some input from planning on staff on 22 your question related to number of trucks. It's in the 23 e-mail that was received.</p> <p>24 HEARING EXAMINER: Okay. And where is loading? 25 Where is solid waste?</p>
<p>198</p> <p>1 have to fight for every inch to get against our property 2 line if you need those parking spots. You don't have to 3 worry about any of that in other parts of this county even a 4 couple blocks away.</p> <p>5 So and I know Mr. Norris has lived in this area as 6 well for a long time, so he's very aware of the challenges 7 that we have at Valley Stream. So it just surprises me that 8 year after year, the last time this was also brought in 9 2004, you know, here we are again and so have even gone this 10 far.</p> <p>11 So that's all I wanted to say. I'll pass it over.</p> <p>12 HEARING EXAMINER: Any questions, Ms. Lee-Cho?</p> <p>13 MS. LEE-CHO: I don't have any questions, but I did 14 have an answer for the utility power lines and why it wasn't 15 provided.</p> <p>16 HEARING EXAMINER: Well, you can do that on 17 rebuttal.</p> <p>18 Thank you very much. You may be excused or hang 19 around, which you prefer.</p> <p>20 Anyone else that would like to testify? Okay, 21 hearing none, Ms. Lee-Cho, we're going to turn -- do you 22 have any rebuttal witnesses or testimony.</p> <p>23 MS. LEE-CHO: I would just ask Mr. Packard to 24 address the utility power line issue raised by Mr. Gosch.</p> <p>25 HEARING EXAMINER: Okay. Mr. Packard, you're still</p>	<p>200</p> <p>1 MS. LEE-CHO: On the plan?</p> <p>2 HEARING EXAMINER: Uh-huh.</p> <p>3 MS. LEE-CHO: Mr. Packard can address it.</p> <p>4 Conditional use plan?</p> <p>5 MR. PACKARD: Conditional use plan which is 12, 6 cover sheet 12A.</p> <p>7 HEARING EXAMINER: That's the lighting plan. There 8 it is.</p> <p>9 MR. BOZZONETTI: It's loading.</p> <p>10 MR. PACKARD: What's on the screen now is the cover 11 sheet, the conditional use plan Exhibit 12A, and the loading 12 area is -- I'm trying to describe it -- on the back side of 13 the building on plan west at the of the U that was referred 14 to before.</p> <p>15 HEARING EXAMINER: I see it now. Thank you.</p> <p>16 MR. PACKARD: And then that is the loading area and 17 just plan north of that is --</p> <p>18 HEARING EXAMINER: I see it, the dumpster.</p> <p>19 MR. PACKARD: There's a dumpster and --</p> <p>20 HEARING EXAMINER: So it's not adjacent to any 21 residential property?</p> <p>22 MR. PACKARD: No. The whole purpose was to push as 23 many of these items on the property as far away from the 24 residential property as possible, including the building.</p> <p>25 HEARING EXAMINER: Okay. Does anyone have any</p>


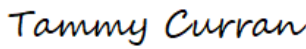
Transcript of Hearing
Conducted on February 16, 2024

51 (201 to 204)

201	<p>1 questions based on my questions? Anyone from either side?</p> <p>2 Hearing none. Ms. Lee-Cho do you have anything else?</p> <p>3 MS. LEE-CHO: I do not other than I tried to just</p> <p>4 -- couple legal issues I made, need to submit something to</p> <p>5 you on the TDR non-applicability and the MPDU issue.</p> <p>6 HEARING EXAMINER: Did you have a witness that was</p> <p>7 going to address the MPDUs?</p> <p>8 MS. LEE-CHO: I don't. It's so new, the team is</p> <p>9 not aware of it.</p> <p>10 HEARING EXAMINER: What?</p> <p>11 MS. LEE-CHO: There's a pending proposal to change</p> <p>12 the MPDU as it applies to senior living units.</p> <p>13 HEARING EXAMINER: Oh, to get rid of it?</p> <p>14 MS. LEE-CHO: To require a lower percentage for</p> <p>15 independent and potentially a very low assisted and memory</p> <p>16 care as affordable. Right now assisted and memory care are</p> <p>17 not subject to MPDU, so DHCA is crafting a potential</p> <p>18 proposal. That still has to go through the process it's</p> <p>19 going through now. It can either comply with the old law or</p> <p>20 be grandfathered -- grandfathered under the old law or up to</p> <p>21 go into the new law depending on what the preliminary plan</p> <p>22 is filed. So that is why we're trying to not be boxed in</p> <p>23 too early and --</p> <p>24 HEARING EXAMINER: Because you don't know what the</p> <p>25 law is going to be and if there will be a new law.</p>	203	<p>1 HEARING EXAMINER: So I think I have one question</p> <p>2 on the accent lights. I heard a lot of concern about the</p> <p>3 dark sky and the semi-rural nature and -- I was proposing a</p> <p>4 condition where you don't have any access lights that shine</p> <p>5 up.</p> <p>6 MS. LEE-CHO: If it's a significant enough issues,</p> <p>7 yeah, we can accommodate that. I think the accent lights</p> <p>8 are minimal and we understand that they are sky shape but we</p> <p>9 don't think it will affect or change that and create light</p> <p>10 invasion, but we won't fall on our sword for that issue.</p> <p>11 HEARING EXAMINER: I'm just going through my notes.</p> <p>12 A condition of maximum of 44 employee at any one time, the</p> <p>13 board fence which you're going to give us the details so we</p> <p>14 can see, and that will probably with the conditional use</p> <p>15 plan. The 3,000 kelvin requiring cut off features and 3,000</p> <p>16 kelvin.</p> <p>17 MS. LEE-CHO: That's acceptable.</p> <p>18 HEARING EXAMINER: That's what I have as far as</p> <p>19 potential conditions. Okay.</p> <p>20 So, again, I have not decided the case but we will</p> <p>21 await Ms. Lee-Cho has to submit a revised conditional use</p> <p>22 plan showing the fence. How long is going to take you, Ms.</p> <p>23 Lee-Cho to submit that.</p> <p>24 MS. LEE-CHO: Wednesday.</p> <p>25 HEARING EXAMINER: Wednesday the 21st.</p>
202	<p>1 MS. LEE-CHO: So the condition if you were to</p> <p>2 consider it, is just to comply affordable housing</p> <p>3 requirements as applicable either under the current law or</p> <p>4 under -- and at this point, because we don't what that</p> <p>5 future law will be, we don't know whether we'll opt to go</p> <p>6 under the current law.</p> <p>7 HEARING EXAMINER: Okay. I understand that.</p> <p>8 Anything else?</p> <p>9 MS. LEE-CHO: Just to answer you very simple</p> <p>10 question about the surety maintenance agreement, it will be</p> <p>11 equally obligated. It will be the landowner Elder Homeland</p> <p>12 LCC as the applicant on this case.</p> <p>13 HEARING EXAMINER: Okay.</p> <p>14 MS. LEE-CHO: So other than the TDR question, I'm</p> <p>15 not going to go into it.</p> <p>16 HEARING EXAMINER: So the only thing we need a</p> <p>17 revised plan showing the fence, correct.</p> <p>18 MS. LEE-CHO: Yes.</p> <p>19 HEARING EXAMINER: And there will be condition</p> <p>20 requiring the shields on the light, if I can just -- I don't</p> <p>21 know if I need a condition, but there will be -- and I</p> <p>22 haven't -- I haven't decided the case. I'm just saying</p> <p>23 these are the conditions that we've discussed and you've</p> <p>24 agreed to, correct?</p> <p>25 MS. LEE-CHO: Correct.</p>	204	<p>1 MS. LEE-CHO: This coming Wednesday so, yes.</p> <p>2 HEARING EXAMINER: Now, we have to give people in</p> <p>3 opposition a chance to comment. How long would you like? I</p> <p>4 have to leave the record open for ten days anyway to be able</p> <p>5 to comment, ten business days -- or, no, ten calendar days.</p> <p>6 If she submits -- if the applicant submits the revised plan</p> <p>7 by the 21st, would you feel comfortable submitting comments</p> <p>8 by Tuesday the 27th? Do we have any kind of input from</p> <p>9 those in opposition?</p> <p>10 MS. TAYLOR: Eileen Taylor, that works for me.</p> <p>11 MS. MENASCO-SMITH: That's fine.</p> <p>12 HEARING EXAMINER: Is that enough time?</p> <p>13 MS. MENASCO-SMITH: Yes.</p> <p>14 HEARING EXAMINER: So Ms. Lee-Cho is going to send</p> <p>15 the revised conditional use plan to everyone that's on this</p> <p>16 call and the Park and Planning Staff, and then I have to</p> <p>17 give Park and Planning Staff, I'll give them heads up it's</p> <p>18 coming but I have to give them a copy and get your comments.</p> <p>19 So hopefully they -- so I can get the citizens comments by</p> <p>20 the 27th and hopefully Park and Planning, hopefully they</p> <p>21 will get me their comments by the 27th so the record will</p> <p>22 close on the 27th. Then for those in the opposition, I have</p> <p>23 30 days to issue a decision in the case. You will get an</p> <p>24 e-mail of the decision and a memo just notifying you of the</p> <p>25 decision. You have ten days within the date the decision is</p>

Transcript of Hearing
Conducted on February 16, 2024

52 (205 to 208)

205	1 issued, which is why we try to use e-mail now, you know, ten 2 days from the date the decision is issued. If you don't 3 like what I decided, you can file an appeal with the board 4 of appeals. 5 So with that, I'm going to leave the record open 6 with those dates in mind. If anyone feels like they need a 7 longer period of time, please let me know. And we will be 8 posting and update exhibit list with the new exhibits on the 9 website. 10 MS. LEE-CHO: What about the Planning Staff's 11 comments? 12 HEARING EXAMINER: I'm going to ask for them on the 13 same date. If they can't, I may have to reopen the record 14 for a short period of time. Or I can say the 28th. I'll be 15 retired on May 1st. 16 Ms. Lee-Cho, make sure your time frame is realistic 17 because -- 18 MS. LEE-CHO: I was asking putting the fence on the 19 conditional use or landscape plan? 20 HEARING EXAMINER: It has to be one or the other 21 and you have to have a site detail that is a rendering if 22 you want a wooden board-on-board you have to have a site 23 detail of what it's going to look like so people can see 24 what it's going to look like. 25 If you need more time, I can give you more time.	207	1 CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC 2 I, CODY HANDLIR, the officer before whom the 3 foregoing proceedings were taken, do hereby certify that on 4 February 16, 2024, the proceedings were therefore recorded 5 by me and thereafter reduced to typewriting by a qualified 6 transcriptionist; that said digital audio recording of said 7 proceedings are a true and accurate record to the best of my 8 knowledge, skills, and ability; and that I am neither 9 counsel for, related to, nor employed by any of the parties 10 to this case and have no interest, financial or otherwise, 11 in its outcome. 12 IN WITNESS WHEREOF, I have hereunto set my hand this 13 28th day of February, 2024. 14 15  16 _____ 17 Jordan Collins, Notary Public 18 for the State of Virginia 19 20 21 22 23 24 25
206	1 It's easier now to get -- so Wednesday the 21st is when your 2 revised submission is due, and those in opposition please 3 submit -- I can't take the comments after 2/27 if that's 4 when we decide to close the record. If you are worried 5 about that and need a little longer, let me know now. It's 6 close of business which is five o'clock. 7 MS. MENASCO-SMITH: I have a question about that 8 date. Does it have to be signed by -- you know, because we 9 had to run around in the neighborhood to get original 10 signatures and took a picture and submitted by e-mail. 11 HEARING EXAMINER: Now that you've appeared here, 12 you can submit it by e-mail. The signature is for a 13 submission anyone who's not going to show up and we don't 14 know who's going to show up until the day of the hearings. 15 Now that you're parties, you communicate by e-mail and you 16 will get copies of every communication in this case. 17 MS. MENASCO-SMITH: Thank you. 18 HEARING EXAMINER: Last call, anyone else. Thank 19 you everyone for appearing on Zoom and taking your time out 20 of your day. Thank you, Ms. Lee-Cho for your presentation 21 and, with that, we're going off the record. 22 (Off the record at 4:00 p.m.) 23 24 25	208	1 CERTIFICATE OF TRANSCRIBER 2 I, Tammy Curran, do hereby certify that the 3 foregoing transcript is a true and correct record of the 4 recorded proceedings; that said proceedings were transcribed 5 to the best of my ability from the audio recording and 6 supporting information; and that I am neither counsel for, 7 related to, nor employed by any of the parties to this case 8 and have no interest, financial or otherwise, in its 9 outcome. 10 11 12 13  14 _____ 15 Tammy Curran 16 17 18 19 20 21 22 23 24 25

A	104:2, 104:3, 104:15, 105:4, 111:22, 112:5, 112:17, 112:20, 113:1, 114:22, 114:23, 116:16, 119:19, 120:19, 122:9, 122:11, 123:15, 124:10, 124:20, 126:13, 127:14, 138:7, 138:8, 139:22, 139:25, 149:21, 150:12, 150:25, 166:2, 169:24, 170:10, 170:11, 171:11, 173:24, 176:17, 183:10, 183:15, 184:20, 187:18, 188:2, 191:5, 191:9, 193:1, 193:10, 194:25, 197:5, 197:10, 197:11, 198:3, 199:13, 202:10, 203:2, 205:10, 206:5, 206:7	147:25 accent 81:9, 89:7, 94:12, 94:14, 105:16, 105:17, 123:18, 123:21, 124:25, 203:2, 203:7 accents 123:19 accentuating 90:10 acceptable 203:17 access 45:14, 59:10, 81:19, 84:9, 84:12, 117:18, 125:8, 139:13, 157:15, 181:1, 181:2, 184:9, 203:4 accessing 144:4 accident 139:24 accidents 139:23 accommodate 203:7 account 70:7, 88:22, 88:24, 109:12, 132:7, 133:15, 140:8, 148:25, 149:5, 149:23, 188:25, 190:5 accurate 40:20, 118:18, 207:7 accurately 76:8 acentric 106:3 achieved 116:18 acknowledged 166:10	acre 194:21 acres 9:13, 163:21, 166:2, 194:20 across 27:16, 54:15, 152:9, 191:11, 196:4 action 122:19 active 20:16, 27:5, 27:18 activities 20:23, 21:2, 166:7 activity 109:19, 133:4, 170:15 acts 67:18 actual 54:10, 108:20, 122:22, 133:16, 194:5 actually 16:18, 17:16, 17:24, 20:18, 20:20, 58:15, 109:2, 109:25, 128:21, 130:19, 132:18, 142:20, 143:1, 143:3, 146:19, 166:5, 178:20, 178:21, 183:5 adapted 83:13 add 7:4, 64:13, 65:21, 83:13, 85:11, 185:4, 189:16 added 33:8, 72:7, 73:16, 143:25, 144:2, 146:11,
a-r-p-a-n-g-o-s-- c-h 116:3 a4 182:3 aa 71:3 ab 99:24 abbreviate 126:17 abbreviations 42:11 ability 20:4, 28:24, 207:8, 208:5 able 6:3, 6:18, 6:19, 18:6, 20:15, 35:12, 37:17, 45:20, 61:4, 76:16, 87:11, 137:21, 143:14, 178:10, 193:4, 204:4 about 5:18, 11:1, 15:8, 15:10, 17:16, 18:11, 19:7, 19:11, 23:11, 23:25, 24:15, 31:9, 37:19, 38:23, 39:20, 41:5, 44:6, 49:3, 50:5, 50:17, 52:14, 53:23, 53:25, 60:4, 61:13, 61:14, 61:22, 64:13, 73:13, 75:12, 80:6, 82:5, 83:2, 84:1, 84:8, 95:16, 96:9, 96:11, 96:13, 100:17,	above 50:21, 93:19, 97:23, 100:13, 102:7, 111:9, 154:20, 167:10, 176:3, 176:5, 178:1 absolutely 14:25, 28:21, 144:16 absorb 167:24, 168:1, 169:11 abut 91:19, 91:23, 93:2 abuts 99:14 abutting 58:12, 118:9,		

170:13 adding 188:2, 189:24 addition 184:20 additional 6:4, 10:14, 20:21, 36:4, 38:23, 39:5, 47:20, 52:14, 52:17, 56:6, 64:14, 136:17, 136:18, 138:16, 146:10, 147:3, 152:24, 154:22, 161:2, 164:10, 175:18, 188:23, 199:17 additionally 27:5, 45:15, 47:21, 56:5, 184:12 additions 153:8 additive 95:1 address 4:20, 9:6, 9:24, 11:7, 12:11, 13:7, 13:8, 14:3, 14:4, 22:4, 26:1, 26:2, 39:24, 62:17, 74:14, 74:17, 111:6, 116:5, 116:7, 127:14, 127:16, 128:6, 128:8, 134:4, 162:13, 162:15, 171:20, 187:24, 190:21, 195:18, 198:24, 200:3, 201:7 addressed 189:14, 190:2 addresses 134:20	addressing 81:21 adequacy 180:15 adequate 147:12, 180:18 adhere 86:18 adherent 83:14 adhering 81:22 adjacent 39:4, 39:13, 55:19, 57:7, 59:5, 71:19, 83:21, 117:24, 134:19, 174:22, 178:4, 200:20 adjacently 88:16 adjoining 172:15, 172:21, 174:9, 175:2, 175:3, 175:21, 199:5 adjourn 45:6 adjustable 108:11 adjustment 5:4, 129:22, 130:7, 130:8 administration 3:5, 146:19 administrative 1:1, 28:5, 63:6, 76:2 admit 44:23, 48:20, 52:4 admitted 37:13, 44:22 admitting 25:24, 26:14, 41:25, 52:3 adopt 60:14, 60:21,	60:24 adopted 41:11 adult 27:18 adults 20:15 advance 37:6 advantage 113:17 adverse 106:21, 106:25, 147:21, 147:23, 181:13 advice 76:14 aerial 44:10, 44:14, 61:10, 61:24, 61:25, 73:19 aesthetic 196:16 affect 89:2, 89:10, 95:2, 124:2, 203:9 affects 106:21 affidavit 7:2, 7:24, 73:17 affirmed 13:2, 25:20, 74:11, 128:3, 155:12, 162:10, 186:19, 186:25, 190:24, 192:15, 195:24 affordable 184:10, 201:16, 202:2 after 5:24, 6:2, 11:22, 12:10, 13:2, 16:19, 23:4, 25:20, 40:3, 42:6,	42:22, 52:10, 62:25, 70:25, 74:11, 99:25, 112:7, 116:17, 127:21, 127:22, 128:3, 131:23, 145:17, 145:18, 155:12, 156:10, 162:10, 170:6, 171:2, 173:6, 186:19, 186:25, 190:24, 192:15, 195:24, 198:8, 206:3 afternoon 127:2, 133:6 again 9:4, 13:20, 17:5, 21:20, 26:10, 30:21, 35:18, 36:9, 43:10, 55:10, 79:23, 80:3, 83:6, 84:21, 102:2, 111:20, 113:11, 115:13, 116:6, 116:12, 120:3, 120:16, 130:23, 136:23, 136:25, 137:5, 139:6, 140:23, 141:19, 146:8, 146:18, 151:24, 152:19, 152:20, 153:9, 159:7, 177:3, 185:23, 186:20, 187:2, 198:9, 203:20 against 80:17, 81:24, 86:21, 87:14, 198:1 age 17:6, 21:7, 21:13, 22:13, 27:17, 112:19, 187:6 agency 28:5, 163:6
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

ages 183:9 aging 20:8, 20:15 ago 23:1, 61:13, 62:4, 119:14, 122:13, 188:4 agree 31:3, 31:5, 31:10, 70:14, 161:15, 180:7, 193:22 agreed 202:24 agreement 11:11, 55:16, 202:10 agricultural 99:15, 99:17 ahead 8:16, 9:3, 14:12, 22:8, 26:18, 28:21, 29:5, 30:11, 34:16, 35:24, 45:6, 46:4, 49:24, 52:7, 58:22, 59:8, 67:6, 70:12, 74:21, 77:19, 78:2, 79:2, 81:16, 85:17, 93:12, 97:16, 100:2, 103:18, 109:1, 116:13, 129:6, 153:25, 155:10, 161:15, 162:17, 163:9, 171:18, 178:24, 183:4, 190:21, 192:18 aimed 123:11 alert 142:5 algorithm 23:7	algorithms 22:19 all 6:6, 8:8, 8:24, 11:19, 13:15, 14:14, 16:2, 16:21, 17:9, 17:20, 18:3, 21:2, 21:16, 23:4, 31:9, 34:15, 36:23, 37:9, 42:13, 45:2, 45:7, 45:23, 45:24, 49:11, 49:24, 51:12, 54:7, 54:9, 54:16, 56:8, 58:6, 58:16, 60:7, 60:21, 72:19, 74:5, 75:10, 77:2, 77:3, 83:7, 83:24, 87:18, 91:14, 106:18, 108:4, 113:20, 118:12, 127:16, 127:19, 136:15, 137:3, 145:6, 146:9, 153:6, 154:18, 159:2, 159:8, 162:5, 167:7, 169:23, 173:25, 174:1, 181:17, 183:24, 185:4, 185:13, 187:7, 187:9, 187:24, 188:9, 189:6, 189:25, 190:4, 190:6, 191:15, 193:19, 195:13, 196:1, 196:13, 197:1, 198:11 allow 8:4, 19:3, 19:19, 21:2, 44:25, 66:7, 150:18, 151:3	allowable 137:22 allowed 16:1, 43:22, 57:13, 159:11, 160:14 allowing 187:2, 192:20 allows 12:12, 19:16 alluded 102:1 alluding 124:22 almost 14:21, 15:7, 15:18, 18:2, 23:8, 24:5, 24:12, 24:18, 82:14, 94:8, 193:6 alone 70:14, 142:15, 147:22, 181:14 along 46:25, 52:13, 56:25, 80:16, 82:12, 82:16, 83:5, 88:16, 90:16, 95:12, 96:2, 97:14, 102:1, 102:20, 103:25, 114:14, 117:9, 117:16, 117:20, 118:4, 118:24, 121:15, 140:25, 144:10, 146:7, 151:12, 177:23 already 17:6, 25:12, 45:25, 77:22, 104:16, 184:21, 190:17, 197:20, 197:23 also 4:10, 10:5, 12:4, 18:6, 18:22, 19:25, 23:14, 28:16, 31:6, 36:19, 45:9, 55:5, 56:24, 57:3, 63:4, 68:20, 70:16, 73:2, 75:7, 80:19, 80:23, 81:4, 81:5, 81:23, 82:15, 84:21, 85:10, 93:17, 102:4, 118:5, 120:10, 122:19, 122:21, 126:14, 133:2, 143:14, 143:24, 144:2, 152:17, 153:3, 169:24, 184:7, 189:19, 193:17, 194:18, 197:16, 198:8 although 20:10 always 17:12, 20:4, 68:3, 99:7, 136:19, 196:10, 196:12 alzheimer's 20:7 ambulance 185:3 ambulances 196:11 amend 81:11 amended 194:24 amendments 185:16 amenities 80:7, 84:6, 84:24, 85:6 amenity 80:18 among 197:9
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

amount 80:13, 82:5, 131:16, 135:2, 148:20 analysis 44:1, 129:11, 130:13, 132:21, 136:22, 137:14, 137:15, 145:19, 146:2, 149:18, 149:23, 154:14, 154:19 analyze 134:18 angle 83:4, 140:16, 140:17, 141:2, 141:9, 141:10, 141:15, 141:17, 141:25, 142:18 angle-type 140:13 another 7:11, 24:4, 36:17, 38:7, 45:10, 54:1, 56:5, 56:24, 70:14, 82:23, 115:18, 119:25, 132:9, 158:1, 159:23, 160:4, 160:23, 165:2, 165:4, 167:13, 194:9, 197:18 answer 24:15, 65:13, 69:17, 87:17, 115:18, 127:24, 143:14, 149:20, 156:1, 159:16, 166:8, 169:23, 170:19, 198:14, 202:9 answered 156:14 answering 6:11 anthology 27:20, 27:21,	63:24 any 6:6, 10:9, 10:16, 13:13, 21:19, 29:1, 35:10, 40:9, 41:9, 42:11, 48:18, 58:7, 67:20, 68:8, 70:2, 70:9, 71:14, 71:15, 83:16, 86:20, 88:4, 88:22, 94:25, 95:1, 95:4, 96:17, 99:12, 104:11, 104:17, 105:2, 105:18, 106:10, 106:18, 106:25, 107:15, 107:17, 114:3, 114:8, 117:24, 121:9, 122:17, 123:4, 123:16, 126:13, 132:3, 132:7, 136:25, 137:24, 139:1, 144:7, 145:8, 146:2, 146:3, 146:24, 147:6, 147:23, 151:11, 154:14, 159:4, 161:1, 161:6, 161:16, 165:15, 165:16, 167:10, 168:2, 168:16, 170:15, 171:8, 181:13, 181:18, 182:13, 182:17, 186:2, 190:8, 191:20, 191:22, 198:3, 198:12, 198:13, 198:22, 200:20, 200:25, 203:4, 203:12, 204:8, 207:9, 208:7 anybody 17:24, 25:23,	61:6, 179:10 anymore 41:13, 138:22 anyone 4:5, 4:12, 5:21, 12:14, 21:18, 24:25, 26:13, 30:8, 37:12, 48:18, 52:3, 62:8, 62:14, 66:14, 68:7, 71:14, 72:25, 77:15, 107:14, 107:15, 115:21, 126:20, 129:5, 148:12, 151:22, 155:2, 161:9, 161:15, 163:7, 182:17, 190:11, 192:3, 195:14, 198:20, 200:25, 201:1, 205:6, 206:13, 206:18 anything 8:9, 10:12, 19:9, 60:25, 68:12, 68:24, 107:11, 111:9, 113:23, 121:9, 123:7, 125:18, 141:24, 146:6, 158:25, 160:9, 178:2, 180:2, 180:9, 182:12, 184:25, 199:9, 199:13, 201:2, 202:8 anyway 42:19, 126:17, 150:2, 151:20, 204:4 anywhere 145:7, 146:24, 153:9 apart 98:1 apartments 29:25	apologies 53:6, 87:9, 102:9, 113:12 apologize 43:1, 65:13, 75:24, 110:23, 111:15, 111:18, 148:17, 155:25, 157:25, 158:9 appeal 205:3 appeals 162:25, 205:4 appearance 63:14, 63:23 appeared 206:11 appearing 61:3, 206:19 appears 12:15 apple 62:25 applicability 155:20 applicable 30:15, 30:16, 30:22, 160:22, 181:20, 183:16, 202:3 applicant 3:10, 5:20, 5:24, 6:2, 67:3, 152:10, 175:14, 178:9, 202:12, 204:6 applicant's 42:6, 42:7, 42:17, 42:18 applicants 9:5 application 1:12, 4:3, 7:6, 9:9, 40:13, 106:24, 107:22, 129:9, 133:12, 133:21, 192:1, 192:2
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>applied 115:13 applies 127:16, 155:24, 160:22, 201:12 apply 123:14, 130:6, 131:13, 131:24, 132:1, 181:25 applying 189:7 appreciate 5:14, 16:21, 113:12, 116:15, 122:7, 159:8, 161:13, 176:16, 185:22 approach 133:21, 147:5, 151:11, 151:13 approaches 31:22 approaching 187:6 appropriate 10:16, 37:25, 57:6, 64:22, 68:2, 146:23, 150:4 appropriately 83:10 approval 35:11, 134:8, 164:24, 165:3, 191:23 approvals 145:20 approved 145:24, 146:7, 157:20, 157:21, 157:23, 157:24, 159:24, 164:23, 165:7, 169:13, 181:1, 181:3, 191:7 approximately 9:13, 52:11, 172:11, 172:15,</p>	<p>173:11, 173:19, 174:8 architect 11:23, 12:1, 25:10, 26:22, 46:2, 49:6, 49:8, 49:19, 69:14, 72:17, 73:8, 74:8, 77:7, 77:12, 111:1, 111:2, 114:1 architects 26:5 architectural 54:3, 55:6, 63:15, 64:4, 68:11, 69:14, 105:19, 106:4, 106:6, 115:4, 123:24, 184:4 architecture 27:3, 27:4, 27:9, 28:6, 28:16, 29:21, 30:9, 46:10, 46:13, 74:25, 77:5, 77:17, 79:23, 80:2, 196:25 arcola 196:3 area 7:13, 19:1, 24:4, 38:13, 38:17, 38:19, 38:22, 39:7, 39:9, 39:10, 39:11, 41:13, 41:15, 42:22, 42:23, 43:3, 44:1, 44:11, 44:17, 45:14, 48:2, 48:4, 50:9, 50:13, 53:14, 55:3, 56:6, 56:12, 63:19, 63:20,</p>	<p>64:5, 71:25, 81:2, 81:6, 84:18, 84:20, 86:24, 89:22, 94:3, 94:4, 94:17, 97:4, 97:6, 107:5, 109:19, 114:3, 114:16, 130:7, 139:7, 139:8, 139:12, 141:22, 152:17, 154:15, 156:13, 160:19, 160:24, 161:1, 164:13, 166:1, 166:7, 166:10, 167:12, 168:25, 169:3, 170:18, 175:20, 175:24, 183:15, 183:19, 184:2, 185:18, 187:11, 188:6, 188:20, 189:19, 189:20, 195:3, 195:7, 198:5, 200:12, 200:16 areas 30:1, 43:8, 45:11, 56:15, 56:19, 70:5, 82:8, 84:9, 85:6, 113:19, 117:19, 163:14, 163:22, 164:15, 164:17, 164:18, 167:7, 167:8, 191:15 aren't 10:6, 42:13, 49:12, 130:17, 188:15, 189:14 argue 160:20 arguing 159:11 argument 159:10, 159:14, 160:13, 160:15</p>	<p>arise 20:18 around 15:25, 21:14, 22:22, 24:21, 41:14, 51:6, 64:3, 80:8, 82:2, 103:16, 107:9, 108:4, 109:15, 143:1, 166:19, 166:21, 167:12, 167:13, 171:23, 173:12, 173:16, 173:24, 174:4, 174:10, 174:16, 174:19, 184:24, 189:5, 189:11, 195:10, 198:19, 206:9 arpan 115:22, 115:25, 116:6, 116:9, 195:23 arpangosh@gmail 116:8 arrival 78:15, 80:22, 81:2, 81:25, 84:12, 90:7, 93:14, 94:2, 94:5, 106:8 arrive 84:11, 93:16, 129:25 arriving 151:12 articulating 178:14 articulation 53:20 articulations 69:20 ascetically 169:9 aside 146:2, 153:8 asked 6:12, 7:12,</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

16:14, 17:1, 123:2, 127:14, 131:2, 190:18 asking 29:3, 44:7, 61:22, 110:9, 149:21, 150:12, 151:4, 168:3, 182:3, 205:18 aspect 65:17 aspects 126:3, 170:14 assess 142:3, 143:10 asset 17:23, 19:14 assets 15:7 assigned 6:11, 6:22 assisted 9:16, 19:25, 21:15, 23:10, 27:18, 47:11, 85:1, 85:3, 191:6, 201:15, 201:16 assisting 129:18, 130:5 associated 142:1, 152:24, 153:14 association 24:10 assume 4:14, 94:6, 104:23, 132:20 assumption 22:15, 68:4 attempted 194:24 attend 23:23 attendance 27:7 attention 20:11, 141:23,	185:22 attenuated 34:13 attest 193:17 attractive 18:13 attribute 130:24 audience 37:5, 165:16 audio 158:13, 207:6, 208:5 automobile 29:20 available 36:19, 140:2, 183:9, 184:7 avenue 2:3, 3:6, 3:13, 22:6, 62:16, 67:14, 78:12, 81:18, 92:19, 116:7, 190:16, 192:11, 192:13, 193:19, 196:3 average 21:7, 21:13, 24:17, 24:18, 24:21, 137:21, 153:13, 153:15, 154:2 avoid 122:21, 137:20 await 203:21 aware 62:11, 129:3, 152:8, 152:11, 156:15, 198:6, 201:9 away 19:4, 34:11, 172:3, 181:17, 196:13, 197:21, 198:4, 200:23	bachelor 27:3 back 15:12, 15:17, 16:23, 34:2, 37:22, 38:10, 39:6, 39:19, 50:7, 50:18, 52:19, 55:7, 59:19, 72:19, 78:17, 78:20, 78:23, 81:9, 81:11, 85:15, 90:24, 92:8, 92:25, 93:6, 102:25, 107:18, 110:20, 113:5, 113:8, 114:1, 114:17, 124:8, 126:23, 127:9, 128:20, 138:23, 143:8, 143:24, 145:17, 145:18, 150:7, 150:13, 151:7, 152:4, 152:20, 152:22, 155:15, 155:19, 159:20, 160:5, 170:25, 171:13, 173:24, 174:4, 174:10, 174:12, 175:8, 179:20, 191:1, 193:15, 194:15, 194:19, 196:6, 196:19, 200:12 background 14:22, 64:8, 107:18 backlit 91:7 backslash 157:18, 157:19, 158:2, 158:3 backwards 80:22 baked 137:4	balancing 55:9 baltimore 128:9 bank 102:7 barns 196:17 barrier 119:13, 194:7 base 22:15, 129:20, 134:9 based 22:11, 23:3, 23:7, 23:12, 26:23, 28:13, 28:24, 57:5, 71:15, 77:17, 93:5, 111:25, 113:13, 130:5, 131:12, 131:13, 131:17, 131:18, 132:15, 136:10, 136:24, 137:8, 138:1, 142:14, 143:3, 143:11, 146:18, 154:10, 159:10, 160:13, 161:16, 201:1 basic 107:23, 170:24 basically 65:22, 67:15, 82:23, 87:21, 87:22, 88:8, 88:9, 103:20, 110:20, 117:4, 117:7, 117:21, 117:25, 129:23, 131:20, 132:23, 134:21, 134:25, 137:4, 138:14, 138:25, 140:4, 140:5, 141:12, 143:13, 143:17, 144:8, 145:22, 146:21, 147:4,
	<hr/> B <hr/> baby 24:9		

<p>149:23, 150:3, 151:11, 151:14, 153:4, 154:4 basis 40:16, 89:5, 144:12 battleship 16:11 beacon 106:1 beall 6:11, 73:17 bear 16:6 bearing 18:17, 18:18 beautiful 18:3, 183:10 became 15:24 because 5:5, 10:6, 10:13, 12:12, 15:25, 18:18, 19:15, 21:24, 22:11, 32:19, 35:4, 37:6, 39:1, 39:18, 40:9, 40:24, 41:25, 42:18, 59:4, 63:1, 63:20, 67:12, 67:17, 69:6, 70:17, 70:22, 72:6, 72:7, 73:13, 73:25, 74:1, 81:11, 89:11, 96:1, 96:15, 98:10, 99:18, 99:20, 100:12, 100:23, 103:10, 106:20, 107:6, 110:15, 118:18, 119:2, 119:10, 121:22, 122:13, 124:25, 125:12, 127:1, 130:23, 134:8,</p>	<p>134:23, 136:23, 137:5, 141:18, 142:1, 144:23, 146:15, 146:21, 149:7, 149:22, 149:24, 150:20, 151:2, 151:6, 151:8, 151:14, 151:19, 156:15, 157:6, 161:23, 162:2, 168:25, 173:22, 175:16, 178:2, 178:19, 189:4, 189:9, 189:12, 189:21, 193:17, 193:19, 193:24, 197:23, 201:24, 202:4, 205:17, 206:8 become 17:23, 28:10, 64:8, 86:14 becomes 103:24 bed 16:14 beds 9:17, 20:1, 66:7, 129:18, 130:6, 130:16, 130:23, 131:13, 131:16, 131:25, 132:19, 134:2, 136:25, 137:3, 137:5, 191:9, 191:25 been 7:5, 7:6, 9:6, 15:25, 17:18, 25:20, 27:7, 31:7, 31:13, 33:13, 37:17, 40:11, 55:14, 61:15, 65:6, 65:10, 66:8, 67:11, 71:9, 72:7, 74:11, 79:1, 83:6,</p>	<p>88:12, 94:18, 96:16, 109:6, 109:9, 113:18, 114:12, 119:22, 122:8, 128:3, 133:1, 134:22, 137:19, 139:22, 141:10, 152:4, 152:20, 154:21, 155:12, 162:5, 162:10, 164:23, 169:13, 182:22, 185:13, 186:19, 186:25, 187:7, 188:19, 190:24, 192:15, 194:14, 195:24, 197:17 before 1:15, 2:13, 10:23, 16:20, 21:23, 28:5, 37:8, 42:16, 44:23, 49:19, 51:22, 54:6, 55:23, 57:9, 75:4, 86:6, 90:2, 127:12, 127:20, 128:16, 129:3, 131:6, 131:11, 134:15, 162:24, 163:6, 168:3, 169:22, 173:20, 179:19, 183:6, 190:18, 193:12, 194:25, 200:14, 207:2 beforehand 75:17 began 15:20 begin 46:20, 46:21, 64:5, 68:5, 163:11 behalf 3:10, 63:8 behind 18:5, 19:17,</p>	<p>65:5, 96:20, 176:19, 183:18 being 10:20, 13:2, 18:6, 32:19, 32:21, 37:13, 38:18, 43:16, 63:17, 69:16, 69:23, 77:12, 82:21, 84:16, 96:16, 122:13, 139:7, 144:9, 152:25, 159:12, 160:8, 160:10, 166:1, 175:3, 180:15, 183:15, 185:8, 191:16, 192:24, 193:6, 194:11, 194:21, 194:24 believe 19:20, 22:24, 31:20, 36:19, 57:8, 68:14, 71:23, 98:19, 99:20, 101:14, 109:5, 115:19, 129:12, 132:14, 138:6, 140:15, 161:5, 199:21 below 50:6, 50:17, 55:15, 87:22, 94:11, 103:15, 104:5, 130:11, 152:22, 154:17, 154:21, 172:11, 172:15, 172:18, 172:20, 173:19, 173:23, 174:9, 176:2, 178:5 beneath 193:12 benefit 191:16 benefits 67:17 berbert 3:12, 4:8</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

best 5:3, 21:3, 47:16, 47:19, 91:15, 104:15, 104:19, 105:1, 120:13, 122:10, 171:5, 207:7, 208:5 bethesda 3:15 better 5:1, 13:14, 13:22, 13:25, 39:2, 45:1, 45:2, 156:25, 185:18, 185:19 between 33:13, 43:8, 43:15, 43:19, 45:14, 47:17, 50:13, 52:15, 52:17, 53:15, 53:17, 55:9, 57:9, 65:2, 70:5, 70:8, 88:11, 99:21, 112:17, 116:9, 121:13, 135:2, 166:11, 168:17, 168:20, 169:19, 174:2, 177:25, 182:4, 194:6, 199:4 beverage 135:14 beyond 18:23, 29:21, 35:11, 97:23, 154:20 big 92:11, 194:3, 196:22 bigger 19:2, 43:9, 101:7, 101:8, 113:4 biggest 18:15	binding 56:12 bing 62:4, 62:6, 62:7 biofacility 172:19, 173:14 bioretention 82:22, 169:19, 172:6, 172:14, 173:6, 173:11, 173:17, 178:7 biotension 83:5 biotention 176:23, 177:10, 177:20 bird 109:19 birds 194:18 bit 5:17, 15:10, 15:12, 15:23, 16:24, 18:19, 38:16, 51:7, 51:9, 55:12, 55:14, 56:18, 63:25, 68:21, 87:4, 87:16, 89:18, 96:5, 96:7, 111:8, 112:3, 119:14, 131:11, 145:14, 166:23, 168:19, 185:18 bkv 12:2, 26:5, 28:2, 74:16, 74:25 bkvgroup 26:11 black 88:2, 88:3 bleed 86:11, 86:13 bleeding 86:23	blinds 115:11, 115:12 block 9:11, 54:17, 63:19, 63:23, 66:2, 113:15, 121:9 blocks 69:25, 150:21, 196:21, 197:21, 198:4 blue 86:11, 109:13, 109:17, 111:12, 111:13, 111:14 board 70:17, 70:23, 162:25, 164:23, 203:13, 205:3 board-on-board 175:22, 176:11, 176:12, 176:17, 177:24, 205:22 body 162:24 bombed 79:1 boomer 24:6 boomers 24:10 born 196:3 both 20:7, 85:3, 141:16, 143:20, 151:17 bottom 44:15, 45:3, 45:4, 51:2, 59:19, 59:23, 59:24, 87:13, 118:16, 118:20, 192:13 bought 122:12, 194:15 boundaries 7:13, 31:9,	174:1 boundary 31:19, 33:25, 34:1, 34:5, 34:8, 87:14, 95:3, 114:14, 114:16, 114:25, 117:9, 118:4, 119:1, 119:6, 138:15, 158:12, 158:18, 158:19, 164:1, 166:22, 175:17, 195:4 box 52:5, 164:4 boxed 201:22 boxes 168:3, 168:5 bozzonetti 5:7, 8:5, 13:17, 32:14, 36:25, 48:8, 200:9 break 15:9, 16:25, 56:4, 72:6, 78:21, 78:23, 79:11, 79:17, 79:21, 98:17, 126:25, 149:14, 193:12 breaking 55:10 breaks 23:2 bregman 3:12, 4:8 brick 53:23, 56:11, 64:20, 70:18 brief 9:5, 74:4, 162:2, 176:16 briefly 27:1, 75:2, 163:11, 165:13, 165:18
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

briggs 127:15, 155:22, 155:23, 156:1, 157:16 bright 64:20 brilliant 5:13 brim 102:19, 113:3, 113:8, 121:14, 126:19, 171:11, 172:23, 175:1, 177:25, 178:1 bring 15:1, 21:1, 25:17, 42:4, 52:24, 72:19, 89:17, 120:3, 128:13, 166:18, 175:16 bringing 41:23, 109:4 brings 19:15 broken 53:12, 53:18 bronze 57:1 brookstone 1:6, 4:3, 27:20, 44:11, 61:25, 73:19, 153:15, 154:8 brought 29:22, 91:3, 122:21, 138:21, 173:21, 198:8 buff 16:9 buffer 43:8, 47:16, 53:17, 57:9, 65:24, 67:18, 79:6, 80:15, 80:17, 81:24, 82:8, 82:13, 82:22, 82:24,	82:25, 83:7, 83:9, 83:21, 83:22, 83:24, 84:22, 87:16, 96:3, 96:8, 96:18, 96:25, 97:23, 98:4, 100:15, 100:24, 101:1, 101:4, 101:18, 102:3, 103:22, 103:24, 115:13, 119:14, 164:8, 164:10, 164:17, 166:10, 191:16 buffering 51:17, 73:9, 82:16 buffers 82:6, 100:13, 101:15 build 21:1, 69:3 builder 23:18 buildings 30:2, 45:17, 52:17, 86:12, 188:5 built 23:5, 24:19, 63:17, 71:9, 144:5 bulb 107:24 bulbs 31:16 burtonsville 1:10, 4:4, 9:15, 18:12, 22:6, 22:14, 45:19, 62:17, 122:11, 138:11, 183:22, 192:11, 196:14 buses 197:4 business 12:11, 13:7,	14:4, 15:23, 21:11, 26:1, 74:13, 74:17, 128:5, 128:8, 158:7, 162:12, 162:14, 204:5, 206:6 businesses 152:17, 154:15, 188:22 button 157:2 <hr/> C <hr/> c-h-r-i-s 14:8 calendar 142:23, 204:5 caliber 95:14, 101:6, 101:14, 111:3 call 6:3, 11:20, 12:20, 19:15, 23:25, 25:15, 46:14, 67:2, 127:10, 127:12, 142:16, 143:25, 144:20, 155:6, 167:5, 168:18, 175:1, 204:16, 206:18 called 4:13, 36:17, 48:12, 58:4, 91:7, 140:9, 161:5, 161:9, 165:4 calling 4:2, 38:5 came 6:9, 16:7, 24:11, 40:3, 127:20, 135:2 camera 67:2, 127:3, 127:4, 190:19 cameras 66:23, 66:24,	127:3 can't 23:19, 37:6, 44:16, 58:24, 59:23, 67:19, 69:3, 85:10, 99:8, 100:6, 100:10, 102:11, 114:5, 122:15, 125:5, 140:7, 151:7, 152:2, 157:6, 157:7, 173:2, 180:10, 189:2, 189:5, 189:9, 189:10, 205:13, 206:3 canal 74:18 candle 90:16, 117:15, 119:10 candles 93:9, 117:9, 179:4 cannot 32:9, 92:12, 193:24, 194:24 canopies 112:7 canopy 55:11, 56:6, 58:4, 79:5, 93:15, 93:16, 94:5, 95:13, 95:20, 97:3, 97:24, 98:2, 101:2, 112:2, 112:12, 112:18, 120:6, 121:1 capabilities 20:12 capture 92:13, 167:7, 167:23, 168:14, 168:23, 169:3, 169:9 captured 140:10, 168:2
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>capturing 171:4</p> <p>car 82:12, 86:20, 88:17, 100:25, 102:1, 102:7, 102:8, 102:15, 107:21, 117:17, 121:17, 121:24, 121:25, 125:9, 173:21, 173:22, 175:19</p> <p>care 1:9, 4:4, 9:10, 9:15, 9:17, 14:23, 15:3, 19:16, 20:1, 20:10, 20:21, 21:15, 23:11, 27:19, 39:19, 47:10, 85:1, 85:2, 129:9, 129:17, 130:6, 187:7, 187:9, 196:5, 201:16</p> <p>career 15:21</p> <p>careful 193:14</p> <p>carl 12:2, 128:2, 128:7</p> <p>cars 130:18, 141:19, 148:20, 152:14, 171:12, 193:14, 193:20, 194:7, 196:11</p> <p>case 1:7, 4:2, 5:21, 5:24, 6:2, 30:16, 30:24, 41:24, 42:7, 42:17, 42:18, 65:14, 128:17, 128:19, 129:17, 130:3, 132:3, 137:11, 140:17,</p>	<p>143:20, 143:21, 163:8, 202:12, 202:22, 203:20, 204:23, 206:16, 207:10, 208:7</p> <p>cases 137:18</p> <p>cat 192:10</p> <p>categories 147:23</p> <p>caught 135:7</p> <p>cause 93:9, 94:24, 147:20, 181:12</p> <p>causing 148:10</p> <p>cement 63:20, 70:17, 70:22, 93:23</p> <p>census 22:12</p> <p>center 44:15, 45:4, 45:16, 47:7, 54:16, 84:13, 128:20, 163:19</p> <p>centered 53:8</p> <p>centers 192:23</p> <p>central 56:3, 165:24</p> <p>centralized 47:6</p> <p>certain 5:18, 67:24, 98:21, 137:2, 179:23, 193:25</p> <p>certainly 15:12, 127:20, 175:25, 184:5</p> <p>certificate 207:1, 208:1</p> <p>certify 207:3, 208:2</p> <p>cetera 188:9</p>	<p>challenge 40:15</p> <p>challenged 55:5, 178:12</p> <p>challenges 198:6</p> <p>chance 6:3, 6:5, 20:19, 116:13, 123:3, 204:3</p> <p>chaney 127:15, 155:22, 155:24, 156:1, 157:16</p> <p>change 53:21, 82:15, 102:5, 102:12, 103:25, 118:6, 135:6, 135:15, 135:20, 136:21, 149:18, 160:9, 169:18, 201:11, 203:9</p> <p>changed 41:14, 41:15, 138:9, 194:10</p> <p>changes 65:19, 125:8</p> <p>changing 134:17</p> <p>chapter 35:5</p> <p>character 29:18, 64:4, 68:11, 71:24, 197:2</p> <p>characterization 41:18, 41:20</p> <p>chart 153:16</p> <p>chased 17:11</p> <p>chat 63:4, 157:4, 157:6</p> <p>chief 11:21, 12:5, 14:17</p>	<p>child 128:20</p> <p>children 138:21, 194:12</p> <p>cho 139:21</p> <p>choices 69:1</p> <p>choose 156:24</p> <p>chris 11:20, 11:22, 11:24, 12:21, 12:22, 13:1, 14:8, 25:9, 25:19, 26:4, 26:15, 82:4, 84:8, 85:4, 89:24, 106:6, 110:25, 127:13, 155:8, 155:11, 155:15, 158:12</p> <p>christopher 13:10, 13:21, 26:4</p> <p>churches 188:14, 193:17</p> <p>circle 88:17</p> <p>circles 121:6, 121:7</p> <p>cite 171:25</p> <p>citizens 197:6, 204:19</p> <p>city 28:8, 122:16, 196:15</p> <p>civil 12:6, 49:6, 82:19, 122:3, 122:4, 125:23, 126:17, 136:11, 162:25, 163:5, 163:8</p> <p>clarification 111:17, 113:13, 178:18, 187:3</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>clarify 48:6, 119:19, 134:16, 153:17, 155:23, 172:17, 176:18, 177:15, 177:19, 178:23 clarifying 9:8, 159:8, 167:18 clarity 155:25 classifications 132:11 clean 57:3, 159:16 clear 55:23, 57:24, 175:11, 179:17 clearly 50:2, 55:12, 64:12, 94:17, 121:6 clemson 27:3 click 32:12 client 117:10 client's 143:2, 143:13 climate 122:19 clockwise 46:23 close 20:20, 46:16, 87:12, 145:7, 161:22, 166:2, 187:8, 204:22, 206:4, 206:6 close-knit 185:6 closed 158:7 closer 19:3, 86:9, 86:12, 113:3, 119:6, 122:15,</p>	<p>175:20, 179:16 closing 196:15 co-founder 14:16 code 86:16, 86:17, 86:19, 101:11, 114:15, 117:8, 117:21, 118:4, 123:11, 154:13, 181:20, 181:23 cody 2:13, 207:2 colleague 114:1 collected 29:25, 82:21, 143:10 collins 207:17 collisions 141:21 color 38:12, 86:23, 86:24, 95:23, 111:10 coloration 86:7, 86:10 colored 64:20, 104:20, 114:12 colors 86:10 column 86:3, 86:20, 88:18, 108:2, 108:3, 108:8, 116:20, 117:15, 118:2, 119:6, 123:15, 153:13, 153:19, 154:1 columns 93:24, 93:25, 94:11, 116:24 com 14:9, 22:7, 26:11, 40:1,</p>	<p>40:5, 62:18, 62:21, 74:20, 116:8, 128:10, 162:16, 192:11 combination 147:22, 181:14 combinations 142:11, 143:19 come 17:3, 17:4, 18:2, 18:3, 19:21, 20:16, 25:22, 28:19, 31:21, 37:16, 65:9, 79:6, 80:23, 81:11, 84:17, 87:18, 93:18, 103:12, 103:19, 110:20, 135:19, 139:22, 143:15, 145:7, 150:7, 160:11, 164:14, 166:20, 167:3, 173:5, 184:23, 196:25, 197:4 comes 17:21, 25:25, 46:25, 80:19, 122:18, 166:5 comfortable 204:7 coming 5:7, 5:8, 23:5, 24:1, 24:6, 24:14, 32:20, 33:2, 78:11, 84:11, 84:16, 86:23, 92:18, 93:17, 100:7, 103:20, 113:15, 113:20, 126:12, 136:16, 136:17, 145:7, 146:5, 148:20, 154:5, 166:6, 169:6, 169:10, 185:4, 196:11, 196:14,</p>	<p>204:1, 204:18 comment 138:6, 191:3, 204:3, 204:5 commentary 183:15 comments 89:24, 180:9, 192:21, 204:7, 204:18, 204:19, 204:21, 205:11, 206:3 commercial 30:1, 33:18, 170:14 commission 129:22, 181:8 commissioned 178:21 commissions 28:8 communicate 12:13, 206:15 communication 12:13, 206:16 communities 24:19, 157:18, 183:25 community 4:15, 5:16, 17:25, 19:3, 20:8, 20:14, 20:19, 21:1, 21:8, 22:10, 24:18, 64:3, 183:14, 183:21, 185:5, 185:7, 185:10, 185:19, 191:14, 193:9 compacting 101:2 compaction 98:1 companies 16:2 company 14:15, 17:16, 18:6</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>compare 23:15 comparison 153:18, 166:4, 174:22 compat 71:21 compatibility 71:22, 72:17 compatible 71:24, 107:5 competing 55:2 complete 28:2 completed 27:15 completely 135:21 complex 187:13, 188:13 compliance 11:2, 114:15 compliant 107:9 comply 98:22, 201:19, 202:2 component 82:20 comprehensive 15:3, 29:12 computer 25:5, 67:1, 179:11, 179:24 conceal 54:18, 65:5 concept 10:22, 165:9, 169:12 concepts 64:6 concern 109:18, 123:21, 138:8, 138:15, 139:25, 140:14, 141:8, 141:13, 141:25, 170:12,</p>	<p>187:10, 189:7, 189:15, 203:2 concerned 49:3, 146:25, 187:18, 193:1, 193:10, 197:9 concerns 111:6, 111:7, 114:1, 124:9, 165:19, 183:13, 184:12, 184:20, 185:15, 195:11 conclude 94:21 conclusion 158:22, 158:23 concrete 69:25 concur 60:21, 60:24 concurrence 180:14 condition 10:21, 93:11, 108:22, 110:8, 134:8, 137:9, 137:12, 143:24, 145:3, 145:4, 176:7, 202:1, 202:19, 202:21, 203:4, 203:12 conditional 9:9, 10:11, 10:20, 57:6, 81:12, 81:14, 91:25, 98:20, 98:22, 99:4, 99:5, 99:7, 99:12, 107:1, 159:12, 160:14, 166:13, 200:4, 200:5, 200:11, 203:14, 203:21, 204:15, 205:19 conditions 93:8, 144:19, 202:23, 203:19 condo 191:5</p>	<p>condominiums 196:4 conducted 122:17 conference 27:7 conferences 23:23 confirm 74:1, 102:12, 111:21, 122:1, 122:4 confirmation 109:8 conflicted 151:15, 151:17 conformants 42:25 conforming 65:11, 65:12 confronts 147:25 confused 58:19, 59:6, 88:7, 103:14, 118:18, 119:19 confusing 21:25, 119:13 congested 141:22 congregate 130:6 connected 45:14 connection 81:4, 82:2, 137:22 connectivity 29:19, 45:12 connects 80:18, 80:19, 81:3 conservation 164:25, 165:3, 165:5, 165:10 conservative 133:21 consider 8:11, 50:4,</p>	<p>133:2, 134:2, 135:12, 151:10, 202:2 considerable 26:24 consideration 179:1, 185:22, 194:23 considered 28:19, 31:7, 33:13, 149:2, 151:12, 160:9 considering 11:3, 154:15 considers 134:19, 144:21 consistent 136:14, 146:24 constitute 70:15 construction 15:14, 15:22 contacts 29:16 containing 161:10 contemporary 64:21, 68:12, 69:8, 70:19, 71:3, 71:5 content 183:1 context 83:20 continue 27:5, 42:19, 50:18, 52:20, 99:3, 173:13, 187:14 continues 50:7, 51:6, 103:10 continuing 167:13 continuously 7:6 continuum 19:16</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

contract 15:7 contractor 15:24, 17:8 contrary 109:6 control 142:8, 143:12, 146:20 controls 144:22 convenient 197:16 convey 168:7 conveyed 167:11 conveys 169:2 coordinate 37:18 copied 6:10, 7:25, 12:15 copies 206:16 copy 195:6, 204:18 corner 54:4, 55:11, 121:16, 164:5, 164:12, 167:14, 172:19, 173:4, 173:12, 173:16, 174:2, 174:16, 176:2, 197:4 corporate 14:23 correct 21:12, 32:5, 35:7, 36:14, 37:11, 39:5, 39:15, 41:1, 43:16, 49:10, 50:10, 66:1, 72:7, 72:9, 72:10, 73:14, 78:1, 104:24,	111:24, 116:10, 131:18, 133:13, 133:14, 133:17, 133:25, 135:8, 135:18, 135:24, 137:16, 143:6, 145:25, 146:5, 154:9, 164:25, 165:1, 169:14, 169:15, 177:11, 177:13, 202:17, 202:24, 202:25, 208:3 correctable 142:22 correction 126:5, 134:4, 134:10, 134:12, 134:15, 136:2, 142:17, 199:17 corrections 131:3 corresponded 63:5 could 5:6, 31:6, 31:13, 31:16, 32:6, 33:12, 33:17, 38:8, 38:16, 40:19, 42:24, 43:14, 43:20, 49:21, 58:25, 60:11, 61:12, 66:11, 67:11, 70:3, 86:9, 92:10, 94:21, 100:7, 104:21, 107:9, 108:2, 109:21, 115:4, 123:25, 127:12, 130:19, 131:1, 132:10, 132:13, 135:9, 136:5, 138:9, 138:16, 141:24, 142:19, 142:24, 145:4, 146:23, 155:23, 163:11,	164:15, 165:5, 165:13, 171:22, 185:16, 190:2 couldn't 10:8, 33:11, 92:23, 151:4, 156:4, 159:25 councils 28:8 counsel 157:24, 165:23, 207:9, 208:6 count 136:20, 148:23, 148:24, 150:5 counted 134:25, 149:8 counties 156:23 counting 131:21, 132:19 country 16:3, 131:19 counts 131:20, 188:19, 189:15 county 1:2, 2:4, 3:4, 22:13, 28:1, 28:3, 30:16, 77:11, 81:21, 83:17, 95:11, 122:15, 122:19, 129:21, 138:15, 154:12, 154:22, 155:21, 156:9, 156:23, 156:24, 157:17, 157:18, 157:24, 158:6, 161:8, 161:11, 167:9, 168:13, 170:23, 171:5, 184:9, 184:11, 198:3 county's 185:12 couple 16:18, 17:7,	22:25, 31:6, 42:23, 55:2, 77:14, 122:13, 188:14, 193:8, 198:4, 201:4 course 63:10, 70:13, 137:21, 144:11, 154:5, 196:21 courses 27:6 court 5:10, 7:8, 14:12, 22:3, 22:8, 28:5, 29:5, 37:12, 39:23, 60:13, 62:8, 62:14, 76:2, 76:25, 91:25, 118:11, 120:17, 120:21, 120:23, 127:22, 129:1, 150:11, 155:16, 162:21, 182:10, 182:21, 185:1, 207:1 courtyard 85:1, 85:2, 85:3, 85:8, 90:2 cover 56:6, 92:2, 114:4, 166:16, 171:12, 171:17, 174:1, 195:3, 195:7, 200:6, 200:10 coverages 115:9 covered 56:2, 70:22, 170:8, 182:11 covers 160:19, 160:24, 161:1 cpalkowitsch 26:9 crackly 158:13
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

crafting 201:17 crash 139:23, 140:1, 140:5, 140:14, 140:16, 140:17, 141:3, 141:8, 142:2, 142:12, 142:13, 142:14, 142:18 crashes 140:4, 140:12, 140:13, 140:23, 141:2, 141:9, 141:11, 141:16, 141:17, 141:25, 142:4, 142:15, 142:21 crashing 140:19 crazy 196:12 create 11:4, 38:22, 47:16, 64:5, 64:7, 65:24, 66:7, 81:24, 83:8, 147:3, 170:24, 185:7, 185:8, 191:10, 203:9 created 120:1, 170:22 creates 45:14, 84:22 creating 54:1, 58:17, 103:1, 128:19 creation 183:23 creek 83:24, 119:9 creeks 19:17 crew 16:12 criteria 119:2, 142:9,	142:11, 143:18, 148:5, 151:14, 151:19, 153:10 critical 29:11 cross 51:8, 51:9, 51:10, 51:24, 52:2, 115:16, 193:18 cross-examination 5:20, 66:22, 180:11 cross-section 73:22 cross-sections 73:22, 73:24 cu 1:8, 4:2 cul-de-sac 184:24, 193:15 culture 184:5 cups 157:12 curb 193:13 curran 1:29, 208:2, 208:15 current 41:20, 64:4, 77:10, 192:24, 194:11, 202:3, 202:6 currently 11:3, 15:6, 23:5, 23:7, 41:10, 76:22, 121:11, 138:12, 138:23, 139:14, 155:21, 183:14, 183:17, 184:13, 187:12, 191:17, 193:7 curser 33:17, 48:11, 167:1, 168:18	curtains 115:10, 115:12 curves 34:2 cut 50:18, 75:22, 113:10, 124:4, 125:15, 171:10, 174:15, 179:12, 203:15 cut-off 104:24 cuts 50:19, 51:11, 118:15 cwilson@traffic 128:9 <hr/> D <hr/> d-i-s-t-i-n-c-t-- i-v-e-d-e-v 14:9 dad 16:8 daily 153:13, 154:2 damage 140:6 dance 188:18 dangerous 149:7 dark 57:1, 108:8, 122:10, 122:21, 123:5, 123:14, 124:5, 203:3 darker 86:10 darkness 106:1, 113:22 dash 158:4 data 22:17, 22:18, 22:21, 23:7, 23:14, 24:2, 87:2, 118:1,	118:21, 118:22, 119:10, 140:10, 142:2 date 62:9, 119:17, 204:25, 205:2, 205:13, 206:8 dates 205:6 daughter 189:11 dawn 124:23, 125:5, 125:12 day 17:11, 24:4, 42:14, 72:20, 95:16, 96:5, 101:19, 116:22, 117:10, 118:2, 124:14, 133:9, 143:9, 144:1, 144:7, 144:12, 145:2, 145:8, 145:12, 153:4, 154:14, 162:5, 188:2, 189:17, 189:22, 193:25, 206:14, 206:20, 207:13 day-to-basis 187:25 daycare 188:21 days 16:18, 17:7, 37:5, 62:4, 204:4, 204:5, 204:23, 204:25, 205:2 dead 194:15 deal 72:14 dealing 10:17, 56:12 deals 106:21
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>dealt 9:20 dean 12:6, 162:9, 162:14, 163:4 dean@packardasso- ciatesll 162:16 death 79:20 decade 116:17 decades 65:4 decide 15:22, 176:10, 206:4 decided 202:22, 203:20, 205:3 deciduous 98:3 decimals 118:14 decision 17:12, 134:9, 195:1, 204:23, 204:24, 204:25, 205:2 decisions 83:8 deck 85:10 dedicated 183:25 deeper 103:10, 103:24 defer 115:20 defining 106:8 definite 45:17 definitely 67:22, 170:5, 192:22, 194:8 definition 176:7, 179:25</p>	<p>definitions 179:25 degree 46:23, 83:4 degrees 19:24 delay 144:24, 147:3, 150:1, 151:20 delays 75:17 deliberate 15:2 delineation 31:3, 31:5, 31:10, 31:14, 32:2, 33:13 deliveries 130:22, 199:14 delivery 185:2 demand 19:1, 23:8, 24:13 dementia 20:7 demographics 45:9 demonstrate 81:1, 82:10, 123:11 demonstrates 86:22 dense 139:8 density 139:7, 197:24 denying 184:6 department 29:13, 31:1, 133:13, 169:13, 170:22, 170:23, 181:1, 181:2 depend 149:18 depending 21:9, 30:19,</p>	<p>95:15, 201:21 depressed 51:5 depth 38:6, 38:7 deputy 15:13 describe 27:1, 46:6, 47:3, 53:4, 58:23, 73:8, 75:2, 80:4, 85:23, 86:5, 89:14, 92:16, 95:8, 100:8, 121:3, 165:13, 175:23, 200:12 described 86:23, 152:25 describing 45:24, 123:12 description 100:4, 110:18, 110:22, 126:11, 131:9, 134:5 design 26:22, 26:24, 27:9, 29:7, 57:11, 63:12, 63:22, 64:3, 64:18, 68:13, 69:1, 70:5, 82:20, 83:8, 106:4, 106:6, 113:16 designated 40:10 designed 67:12, 68:15, 71:24, 84:16, 167:7, 168:1, 170:22 designer 12:1 desirability 44:3 desirable 45:22</p>	<p>detached 99:13, 99:15 detail 179:5, 205:21, 205:23 detailed 149:22 details 89:12, 203:13 detector 124:18 determinations 23:3 determine 129:15, 129:20, 129:23, 131:24, 132:1, 143:2, 149:10, 150:3, 150:6, 156:8, 159:23 determining 44:2 develop 10:16 developed 61:13, 171:5 developer 66:7 developer's 67:24 developing 61:14, 118:1 development 10:14, 11:21, 14:17, 14:18, 15:8, 26:25, 30:1, 38:13, 38:24, 39:7, 56:20, 81:25, 83:9, 83:23, 84:7, 93:1, 101:22, 103:23, 104:18, 117:24, 120:12, 146:2, 146:5, 146:11, 147:24, 154:17, 171:3, 183:6, 184:3, 185:18</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

developments 34:10, 82:9 devices 142:8, 143:12, 146:20 dhca 11:3, 201:17 di 159:16 diagram 119:18, 178:10 diagrams 184:16 difference 50:19, 51:4, 65:16, 153:1, 173:14, 177:24 different 10:17, 28:11, 29:22, 34:25, 48:5, 53:21, 57:14, 57:15, 64:6, 64:20, 65:2, 66:11, 90:10, 95:12, 100:1, 100:5, 106:10, 112:9, 119:15, 119:16, 119:22, 120:4, 120:5, 120:19, 120:20, 121:2, 124:17, 132:13, 142:10, 143:19, 151:13, 151:14, 151:18, 184:2, 187:17, 187:24 differential 121:16 differentiate 50:12 difficult 188:17, 193:16, 193:18, 193:22 difficulties 13:16 digit 153:4, 153:5 digital 207:6	digits 153:8 diligence 159:23 dimmers 124:12 dino 1:10, 4:4, 9:14, 46:21, 46:25, 47:2, 47:14, 50:4, 50:9, 54:4, 55:1, 55:16, 58:19, 58:21, 58:22, 59:2, 64:10, 65:10, 78:11, 78:19, 79:2, 79:4, 79:6, 80:8, 80:16, 81:3, 90:6, 90:14, 91:23, 139:13, 140:1, 143:5, 143:21, 143:22, 144:3, 144:11, 146:5, 146:7, 149:1, 150:10, 150:19, 151:8, 151:16, 152:9, 152:15, 152:18, 154:20, 163:17, 168:16, 168:17, 168:19, 172:9, 172:10, 187:25, 189:3, 193:19, 193:21 dire 75:22 direct 34:23, 48:5, 158:9, 182:2 directed 108:13, 108:15, 181:17 directing 108:23 direction 141:4	directly 91:21, 111:19 director 74:25 disabled 188:21 disappear 175:1 disappointing 184:5 disbursing 86:15 discharge 171:2 disciplinary 69:14 discipline 68:11 discussed 80:20, 175:20, 197:14, 202:23 discussion 4:18, 5:9, 13:19, 73:15, 75:14, 79:14, 148:11 dispense 9:8, 11:16 display 36:23 disqualify 159:10 distance 31:7, 114:22 distinction 14:23 distinctive 11:20, 12:4, 14:16, 14:18, 14:22, 14:25, 17:17, 18:10, 18:13, 19:10, 44:2, 63:18 distinctivedev 14:9 distracted 141:24 district 35:11	districts 45:18 diurnal 143:25 diverse 183:9 divide 130:7 divider 194:6 docks 158:11 document 32:17, 37:1, 37:23, 40:24, 41:8, 42:1, 136:3, 136:5, 136:13, 136:19, 142:9, 143:17, 146:18, 146:21, 199:15, 199:16 documented 141:13 documents 61:13, 86:3 dog 54:25 doing 10:10, 13:17, 17:21, 25:8, 64:2, 72:15, 86:19, 134:10, 149:19, 170:16 done 16:21, 17:15, 20:25, 28:3, 38:21, 42:13, 54:13, 57:8, 62:2, 66:9, 66:12, 86:16, 120:1, 152:4, 165:6, 182:16, 182:20, 182:21, 188:16, 197:23 door 47:22 dot 14:9, 62:20,
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Transcript of Hearing
Conducted on February 16, 2024

69

62:21, 116:9, 120:6, 157:17, 158:2, 158:4 double 24:5, 120:24, 121:6 doubt 161:6 down 16:11, 17:21, 23:2, 32:25, 34:4, 34:5, 38:3, 38:6, 38:9, 39:2, 50:8, 50:13, 52:1, 89:17, 97:6, 99:4, 105:15, 108:5, 108:13, 108:15, 114:4, 145:17, 145:18, 149:9, 150:12, 156:24, 163:22, 167:11, 168:11, 168:21, 168:22, 169:10, 172:5, 173:13, 173:18, 175:8, 176:5, 183:23, 184:23, 193:14, 193:20, 194:3 downhill 172:4 download 48:9 downloaded 6:18, 162:21 downward 107:24, 172:25 downwards 104:22, 105:8, 105:9, 123:16, 124:1 dozen 27:8 dps 110:16 draft 157:25, 158:4	draghiceanu 12:4 drain 169:2, 170:9 drainage 147:14, 167:11, 168:7, 170:9, 181:17 drains 168:23 draw 141:5 drawing 39:8 drawings 35:12, 38:8, 52:24 drive 1:10, 4:4, 9:14, 46:22, 46:25, 47:2, 47:14, 47:18, 50:5, 50:9, 52:10, 53:8, 53:11, 54:4, 55:1, 55:16, 58:19, 58:21, 58:22, 59:3, 64:10, 78:11, 78:19, 79:2, 79:4, 79:6, 80:8, 80:16, 81:4, 84:12, 90:6, 90:14, 91:23, 128:8, 130:17, 130:21, 139:13, 140:1, 143:5, 143:21, 143:23, 144:3, 144:11, 146:5, 146:7, 150:10, 150:19, 151:8, 151:16, 152:6, 152:9, 152:18, 154:20, 163:17, 163:18, 168:16, 168:17, 168:19, 172:1, 172:9,	172:10, 187:25, 189:3, 189:12, 193:19, 193:21, 194:5 driven 140:7 driver 141:20 drivers 65:8 drives 18:6, 96:17 driveway 92:10, 131:20 driveways 135:1 driving 65:7, 92:20, 106:11 drop 50:5, 50:7, 157:5, 172:23, 174:8, 179:19 drops 163:19, 163:20, 172:3, 172:7, 172:13, 173:12, 174:14 dry 180:20 dto 188:6 due 113:20, 159:22, 194:10, 206:2 dueling 63:15 duly 13:2, 25:20, 74:11, 128:3, 162:10, 186:25, 190:24, 192:15, 195:24 dumpster 200:18, 200:19 durable 70:24 during 16:11, 18:20,	80:20, 130:1, 130:10, 131:23, 132:7, 133:4, 133:6, 133:9, 135:1, 137:2, 144:25, 145:8, 145:9, 153:6, 188:2, 189:17 dusk 124:23, 125:5, 125:12 dust 148:1 dynamics 138:9 <hr/> <p style="text-align: center;">E</p> <hr/> e 60:21 e-mail 6:9, 7:9, 7:17, 8:1, 8:4, 8:5, 12:11, 12:17, 13:7, 14:4, 14:7, 22:4, 22:7, 26:2, 26:8, 39:24, 40:1, 62:17, 63:6, 73:16, 74:14, 74:19, 116:5, 116:7, 128:6, 128:9, 158:5, 162:13, 162:16, 190:21, 192:11, 195:18, 199:23, 204:24, 205:1, 206:10, 206:12, 206:15 e-mails 12:12 each 17:18, 50:6, 56:4, 169:1, 169:2, 173:13, 187:9 eagan 29:23 earlier 82:11, 84:8,
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>89:24, 153:16, 162:22 early 9:8, 15:14, 20:7, 24:11, 109:6, 163:16, 201:23 earth 61:15, 61:17, 61:19 easier 36:6, 63:3, 206:1 east 31:14, 32:24, 33:9, 43:7, 45:10, 47:1, 47:7, 57:7, 138:13, 149:17, 150:6, 158:21 eastbound 109:14, 151:17 eastern 31:20, 31:21, 34:5, 138:15 eastside 31:15 easy 124:13 echo 187:5 economic 147:24 edge 38:13, 43:17, 46:24, 47:2, 54:16, 82:13, 82:17, 83:5, 83:25, 86:18, 95:13, 97:14, 102:1, 102:21, 103:2, 103:25, 118:16, 118:24, 119:23, 120:1, 120:9, 156:12, 174:4, 177:23 edges 86:13, 107:9</p>	<p>education 27:2, 27:5 effect 106:24, 137:14, 147:21, 147:23, 181:14, 199:6 effects 181:13 effort 30:5 efforts 55:7 egress 93:17 eight 144:21, 145:6, 146:10, 153:7, 163:20, 172:15, 172:18, 172:20, 173:12 eileen 22:5, 61:8, 70:13, 72:23, 148:16, 159:6, 186:6, 186:24, 193:22, 204:10 either 5:1, 40:11, 74:2, 150:13, 201:1, 201:19, 202:3 elder 1:12, 4:9, 34:21, 35:9, 35:10, 36:11, 43:12, 191:4, 202:11 elderly 37:24, 38:1, 38:5, 39:19, 43:8, 43:22, 191:5 electronic 156:17 element 81:8, 82:18, 85:11, 96:2, 105:20, 117:18</p>	<p>elementary 138:8, 138:11, 183:22 elements 64:19, 89:9, 90:10, 124:8 elevated 85:4 elevation 59:20, 59:22, 67:13, 82:15, 94:9, 104:8 elevations 58:8, 60:2, 66:19 else 8:9, 12:15, 12:16, 22:20, 24:25, 25:6, 60:25, 62:8, 62:14, 66:14, 68:7, 71:14, 72:25, 107:11, 107:12, 115:21, 119:3, 121:9, 125:18, 126:6, 141:24, 144:25, 150:14, 151:22, 155:2, 158:25, 161:16, 165:9, 180:9, 182:12, 185:24, 188:10, 190:11, 192:3, 195:14, 198:20, 199:9, 201:2, 202:8, 206:18 embankment 82:14, 96:19, 102:2, 103:10, 121:17, 121:22, 171:21, 172:18 emotional 16:24, 17:3 emphasize 164:20 employ 29:7 employed 133:19, 207:9,</p>	<p>208:7 employee 132:15, 203:12 employees 131:15, 131:25, 132:12, 132:18, 132:20, 132:22, 133:2, 137:7, 137:18, 137:24, 148:3 enclosed 85:2 encompassed 10:20 encouraged 37:24 encroaching 83:23 end 17:17, 28:10, 42:17, 49:22, 60:12, 99:8, 130:12, 154:2, 192:13, 194:16 ending 161:23 ends 16:1 energy 20:12 engagement 20:23 engaging 20:17 engineer 12:6, 47:15, 49:5, 49:6, 49:14, 49:19, 73:10, 82:19, 104:4, 104:7, 122:3, 122:4, 128:24, 163:6, 163:8 engineering 12:3, 126:18, 129:2, 129:4, 163:1 engineers 26:6, 129:19</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>enhance 80:15, 164:21</p> <p>enhanced 78:14, 79:5, 80:22, 83:8</p> <p>enjoy 19:17, 19:20, 21:3</p> <p>enjoyment 147:24</p> <p>enormous 24:21</p> <p>enough 22:20, 34:11, 44:18, 53:17, 136:9, 140:6, 143:22, 144:9, 203:6, 204:12</p> <p>enter 36:20, 48:17, 56:9, 175:17</p> <p>entered 6:22</p> <p>entering 171:25</p> <p>enterprised 98:21</p> <p>entire 10:19, 144:11, 154:6</p> <p>entrance 54:8, 81:19, 82:3, 91:17, 91:18, 92:11, 92:21, 92:23, 103:20, 103:21, 166:20, 166:24, 167:4, 172:8, 172:9</p> <p>entries 81:8</p> <p>entry 18:17, 21:7, 47:7, 47:13, 53:8, 53:13, 55:21, 55:22, 56:1, 56:3, 56:7, 56:19,</p>	<p>57:22, 57:25, 84:13, 84:14, 89:8, 89:18, 89:21, 109:15, 124:17, 125:8</p> <p>environment 170:23, 183:24, 196:13</p> <p>environmental 163:13</p> <p>environments 15:4</p> <p>equally 202:11</p> <p>ericson 77:14</p> <p>error 136:13, 136:19</p> <p>especially 37:7, 66:3, 154:15, 184:10, 193:25</p> <p>esquire 3:11</p> <p>essence 43:9</p> <p>essentially 196:21</p> <p>established 42:22</p> <p>estate 17:21, 17:22</p> <p>estates 4:16, 5:16, 9:12, 122:12, 196:19</p> <p>et 188:9</p> <p>evaluate 28:20, 28:25, 29:6</p> <p>even 17:8, 19:18, 19:19, 20:24, 23:5, 67:16, 67:19, 75:23, 92:3, 100:1, 100:4, 114:4,</p>	<p>130:16, 140:9, 141:9, 144:5, 146:10, 151:7, 152:23, 179:7, 184:15, 185:21, 188:18, 193:3, 193:5, 197:21, 198:3, 198:9</p> <p>evening 135:11</p> <p>event 188:20</p> <p>events 188:20</p> <p>ever 16:4, 28:4, 51:16, 75:23, 76:2, 113:14, 186:9</p> <p>evergreens 95:19, 95:21</p> <p>every 12:13, 23:24, 54:12, 56:8, 189:17, 198:1, 206:16</p> <p>everybody 18:20, 25:6, 126:23, 157:15</p> <p>everyone 12:9, 12:15, 12:16, 25:8, 37:16, 78:5, 79:19, 80:4, 87:11, 127:8, 158:25, 180:8, 185:24, 204:15, 206:19</p> <p>everyone's 158:5</p> <p>everything 20:22, 22:19, 41:15, 75:22, 127:1, 144:25, 165:22, 181:17</p> <p>everywhere 56:22, 69:9, 69:11</p>	<p>evident 26:23</p> <p>ex 157:7</p> <p>exact 102:12</p> <p>exactly 23:19, 67:14, 110:16, 117:1, 141:3, 175:23, 178:10</p> <p>exaggerated 58:14</p> <p>examine 74:5, 142:12</p> <p>examiner: 97:7, 102:16</p> <p>example 45:13, 63:24, 91:3, 107:22, 107:25</p> <p>examples 109:16</p> <p>exceed 86:18, 93:10, 94:24, 168:13</p> <p>except 10:5, 37:9, 99:13, 123:18, 126:18, 193:11</p> <p>exception 39:19, 40:10, 40:11, 41:16, 135:22, 191:2, 191:5, 194:11</p> <p>exceptions 43:22</p> <p>excerpt 36:18</p> <p>excerpts 37:3, 37:15, 73:18</p> <p>excess 165:25</p> <p>excessive 70:18</p> <p>excited 183:20</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

excitement 15:1 excuse 14:17, 15:5, 23:8, 23:9 excused 198:18 exemptions 10:11, 38:1 exercise 132:14, 193:13 exhibit 6:22, 7:7, 7:14, 7:15, 26:14, 31:23, 31:25, 32:5, 32:7, 32:12, 33:7, 35:13, 35:25, 36:2, 36:5, 36:13, 37:16, 37:17, 37:18, 39:1, 40:19, 40:23, 41:25, 44:5, 44:6, 44:9, 44:13, 46:9, 46:14, 46:18, 47:3, 48:5, 48:7, 48:8, 48:20, 51:17, 51:18, 52:25, 53:5, 53:7, 54:5, 54:6, 54:7, 54:13, 55:18, 58:9, 59:15, 59:24, 61:4, 61:11, 61:21, 72:7, 73:14, 77:21, 78:3, 78:6, 80:4, 85:25, 89:23, 107:25, 109:17, 120:13, 126:10, 126:15, 128:14, 129:12, 131:7, 134:5, 153:12, 153:20, 153:23, 153:24,	156:17, 163:12, 164:24, 166:14, 171:22, 179:10, 179:13, 181:3, 199:19, 199:20, 200:11, 205:8 exhibits 6:14, 6:16, 37:5, 37:7, 45:24, 46:6, 48:6, 49:12, 58:8, 61:5, 75:9, 75:11, 86:1, 91:4, 205:8 exist 199:7, 199:8 existed 191:2 existing 7:13, 66:3, 138:19, 139:1, 143:24, 174:20, 185:10 exit 152:18 exiting 144:3, 145:10, 149:9 expand 16:2, 166:23 expanded 150:18, 151:3 expanding 18:23 expansion 185:7 expect 142:15, 162:24 experience 14:19, 26:24, 27:1, 27:10, 27:11, 28:1, 28:13, 28:24, 43:11, 56:21, 64:10, 65:25, 76:5, 76:7, 77:12, 80:23,	81:25, 94:2, 100:11, 105:3, 142:2, 142:12, 142:13, 142:15, 184:25 experiences 151:19 expert 4:10, 8:22, 8:24, 11:23, 12:15, 28:6, 28:10, 28:15, 30:9, 76:2, 76:4, 77:16, 79:22, 80:1, 129:1, 129:4 expertise 26:24 expired 40:11, 191:7 explain 29:3 explaining 124:4, 180:6 explanation 179:21 explicit 11:2 extend 108:11 extent 113:17, 164:22, 165:25, 167:9, 177:20, 179:18 exterior 88:22, 88:25, 89:2, 99:19, 114:12, 124:12, 177:2 external 84:6, 85:6, 86:24 extinguish 10:10, 10:22 extinguished 10:6 extra 154:15	F facade 52:21, 54:25, 55:1, 55:4, 56:25, 58:10, 58:15, 90:9, 90:14 facades 55:8, 63:16, 63:20, 187:17 face 54:2, 58:12, 187:24 faces 58:11, 58:13, 96:18 facilities 63:13, 131:19, 147:12, 147:13, 147:15, 166:21, 167:6, 167:16, 167:17, 167:21, 168:12, 168:25, 169:6, 169:8, 169:19, 170:16, 172:2, 172:12, 173:18, 176:1, 177:10, 178:7, 180:16, 188:5 facility 1:7, 1:9, 4:4, 9:10, 9:16, 29:25, 65:9, 129:9, 137:1, 167:6, 167:13, 167:14, 168:6, 168:10, 168:11, 168:18, 168:20, 168:23, 169:1, 169:3, 172:6, 172:7, 172:10, 172:14, 173:11, 173:17, 174:3, 176:2, 176:24, 185:3, 187:18, 188:11, 188:21, 188:24, 189:16,
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

191:3, 192:12, 196:5, 196:24 facing 59:25, 107:24, 108:5, 113:21 fact 38:6, 41:16, 67:24, 141:9, 142:19, 144:8, 150:17, 183:13, 184:13, 184:17, 193:18 factor 130:8, 197:19 factored 152:12, 152:15 factors 23:4, 29:12, 55:2, 69:17, 70:16, 129:22, 130:7, 142:24, 189:6 fair 157:19 fairland 9:22, 9:25, 30:23, 34:19, 35:8, 36:9, 36:17, 37:1, 37:10, 37:15, 73:18, 127:14, 155:20, 155:22, 155:23, 157:1, 157:16, 157:19, 159:9, 194:23 fairly 76:7 fall 159:20, 203:10 falls 67:10 familiar 85:20 familiarize 38:11 families 45:15, 139:11, 184:1, 184:10	family 15:16, 15:23, 18:7, 18:25, 19:4, 19:20, 21:3, 50:13, 84:17, 99:13 famous 16:10 far 19:4, 34:11, 44:18, 47:22, 147:7, 152:22, 198:10, 200:23, 203:18 fashion 140:20 fast 187:5, 193:20 fatality 140:8 father 15:13, 20:7, 20:10 favor 63:22 favorite 19:21 favorites 20:4 fbcm 158:3 feature 54:3, 81:2, 83:19, 115:5, 126:11, 157:4 features 109:15, 109:16, 116:25, 125:16, 126:14, 131:10, 134:6, 163:13, 166:21, 203:15 february 1:16, 207:4, 207:13 federal 143:17, 146:18, 146:19 feed 85:15	feel 23:21, 23:22, 34:10, 55:13, 63:18, 64:3, 68:20, 69:22, 70:16, 71:3, 71:7, 184:24, 185:6, 185:15, 189:19, 196:8, 196:16, 204:7 feeling 17:11, 184:2 feels 205:6 feet 47:23, 50:17, 50:20, 50:21, 52:12, 52:14, 53:23, 54:1, 57:13, 57:16, 57:20, 57:22, 58:23, 64:14, 65:3, 65:15, 68:3, 95:16, 96:5, 96:7, 100:13, 109:10, 111:23, 112:3, 112:6, 112:9, 112:14, 112:17, 112:19, 112:24, 114:24, 140:25, 163:20, 169:1, 172:11, 172:15, 172:18, 172:20, 173:9, 173:10, 173:11, 173:12, 173:19, 173:23, 174:9, 175:21, 176:2, 176:3, 176:5, 176:7, 177:16, 177:23, 177:25, 178:1, 178:4, 178:5, 193:2, 193:3, 193:4, 197:13 fell 160:5 felt 15:18, 18:21,	19:1, 55:8, 64:21 female 4:14, 4:22, 5:3 fence 121:8, 175:22, 176:19, 176:22, 176:23, 176:25, 177:4, 177:6, 177:16, 177:24, 178:2, 178:4, 178:6, 178:11, 193:5, 202:17, 203:13, 203:22, 205:18 fender-bender 140:10 fender-benders 140:9 few 9:6, 27:19, 29:15, 29:22, 31:15, 34:25, 38:7, 38:8, 85:10, 107:16, 171:16, 189:8, 196:20 fewer 132:18, 184:23 field 18:19, 28:14, 28:15, 55:4, 63:19 fields 64:20 fifth 12:3 fight 198:1 figure 36:9, 38:15, 154:10, 158:5 figured 93:8 figuring 13:18 file 36:17, 48:10,
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>91:7, 128:12, 205:3 filed 7:6, 133:20, 201:22 filing 75:15 fill 174:15 filtering 171:3 final 19:23, 21:5, 127:15, 153:13, 165:5, 194:25 finalizing 155:21 finally 12:6 financial 67:25, 207:10, 208:8 find 10:9, 18:13, 20:20, 35:12, 55:25, 70:19, 92:23, 107:3, 132:4, 156:25, 157:11, 183:20 finding 10:11, 15:15, 147:11, 147:17, 147:20, 148:6, 180:14, 180:15, 181:11 findings 60:11, 60:14, 60:20, 60:22, 106:20, 147:9 fine 11:18, 32:12, 32:22, 32:23, 100:6, 100:10, 126:21, 128:22, 165:11, 165:23, 204:11 finished 57:20, 94:9</p>	<p>finishes 15:24 fire 147:13, 180:20, 180:23, 180:24, 180:25, 181:1, 181:2, 181:5 firm 4:8, 30:4, 30:5, 129:3, 178:20 first 4:5, 5:21, 11:19, 16:4, 17:4, 18:15, 27:2, 37:25, 47:10, 47:12, 50:15, 50:20, 50:21, 52:9, 53:3, 53:16, 72:15, 78:13, 86:6, 90:2, 90:6, 95:9, 101:12, 107:20, 111:20, 115:25, 116:7, 116:19, 129:14, 134:12, 159:7, 172:10 fit 42:16, 187:11, 191:13, 193:8 fitness 20:23 fits 185:19 fitter 108:12 five 72:6, 73:7, 77:11, 96:6, 96:9, 125:22, 140:22, 142:15, 142:23, 145:17, 173:15, 173:17, 173:25, 178:3, 206:6 fixed 5:12, 5:13</p>	<p>fixing 108:6 fixture 88:5, 108:8, 116:21 fixtures 90:19, 91:14, 104:18, 104:24, 109:14, 123:13 flat 64:17, 66:6, 66:9, 68:12, 69:3, 69:8, 69:15, 69:16, 70:2, 70:14, 70:17, 166:3, 187:16 flatroof 65:18 flatwood 64:12 flavor 18:9 fleet 152:13 flexibility 161:25 flexible 11:19 flip 139:19 flood 164:9 floor 47:10, 50:20, 50:21, 50:23, 94:9 flowering 95:23, 97:4, 101:3, 112:5, 120:8, 121:1 flows 167:10, 172:4 fly 196:6 focus 20:24, 131:11, 164:16</p>	<p>focused 27:12, 29:16 focusing 122:8, 133:7 folks 197:25 follow 74:3, 149:13, 166:24 follow-up 64:23, 109:3, 124:11, 150:17, 153:11 followed 187:21 following 147:23 follows 13:3, 25:21, 74:12, 128:4, 155:13, 162:11, 187:1, 190:25, 192:16, 195:25 food 135:14 foot 51:4, 65:23, 90:16, 97:23, 98:1, 114:3, 117:8, 117:15, 177:9, 179:3, 184:3, 197:11 foot-candle 86:18, 87:1, 89:10, 117:6, 117:11, 117:21, 117:22, 118:22 footage 131:25, 132:12 football 29:24 foregoing 207:3, 208:3 foregrounds 58:16 foremost 18:15 forest 50:9, 58:14,</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

163:21, 163:22, 164:11, 164:25, 165:2, 165:5, 165:9, 166:2, 170:25, 171:1, 171:2, 175:7, 183:18 forestation 164:14, 164:19, 194:20 forget 12:18 forgive 107:17 forgot 186:8, 188:1 formalities 5:19 forms 53:18 forth 55:8, 129:12, 138:23, 187:22 forward 17:11, 23:6, 49:21, 68:1, 113:6, 136:1, 183:22 found 47:16, 106:25, 130:3, 140:3, 140:12, 143:22, 144:6, 144:15 four 15:9, 56:4, 57:19, 68:2, 68:4, 166:2, 172:13, 173:11, 173:15, 178:3, 194:20 four-sided 58:18 four-story 9:15, 47:5, 191:12 foxes 194:19 frame 135:4, 205:16	frames 57:2 framework 85:14 framing 147:15 franklin 128:8 freehold 14:6 frequency 139:24 frequent 189:1 frequently 193:13, 194:18 friday 1:16 front 8:25, 103:1, 119:25, 120:2, 147:25, 158:1, 167:3, 193:12 frontage 84:21 fruition 29:23, 197:7 full 19:15, 99:23, 115:24, 125:15, 143:9, 147:24, 177:20, 179:12 fully 6:1, 51:5, 113:14 function 17:23, 52:21, 52:22 further 28:17, 29:4, 29:14, 34:4, 34:9, 35:11, 50:18, 54:3, 59:19, 60:2, 66:13, 72:3, 118:7, 138:21, 146:7, 154:24, 155:1, 164:21,	181:19, 184:19 future 38:20, 199:8, 202:5 <hr/> G <hr/> gained 69:20 garden 84:15 gather 21:2 gathered 54:14 gave 99:12 general 15:24, 29:19, 45:11, 60:11, 60:20, 99:2, 106:20, 147:9, 148:1, 161:4, 161:11, 180:14 generally 18:12, 31:5, 104:15, 163:16 generate 129:16, 129:24, 130:4, 138:16 generated 179:4 generating 144:1 generation 23:25, 24:3, 24:6, 129:20, 130:16, 134:18, 136:22 generations 21:2, 153:12 gentleman 100:4 george 12:4, 17:19, 21:11 getting 16:23, 20:25, 24:22, 31:15,	75:17, 79:7, 85:15, 100:3, 109:7, 142:17, 178:14 ghost 79:1 gilday 3:12, 4:9 give 9:5, 14:14, 14:22, 27:13, 47:12, 55:15, 59:16, 68:19, 77:2, 79:19, 79:21, 86:6, 99:22, 103:9, 104:7, 144:14, 144:17, 158:1, 170:6, 173:14, 203:13, 204:2, 204:17, 204:18, 205:25 given 65:2, 65:10, 83:20, 96:8, 114:9, 185:8 gives 18:9, 23:3, 23:4, 43:9, 57:3, 68:20, 87:3 giving 64:8, 101:2 glare 86:15, 114:10, 114:13, 117:12, 121:18, 121:21, 123:17, 124:7 glass 56:18, 70:18, 187:16 globe 108:13 glow 110:4 gmail 40:5 goals 29:14, 35:9,
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>161:11 goes 22:20, 24:2, 38:6, 38:7, 82:12, 88:16, 113:2, 118:2, 118:25, 135:10, 179:22 gone 14:2, 43:21, 198:9 good 18:21, 18:22, 26:3, 40:18, 40:20, 41:23, 46:1, 49:20, 79:25, 159:15, 166:12, 170:7, 182:1, 182:10, 182:15 google 61:15, 61:17, 61:18 gosch 115:22, 115:25, 116:3, 116:6, 116:10, 116:14, 116:15, 116:24, 118:8, 118:12, 119:12, 121:5, 122:6, 123:6, 124:11, 125:19, 195:16, 195:19, 195:20, 195:21, 195:23, 196:1, 198:24 gosh 16:24, 116:1, 116:6, 116:9 gotten 7:20 gov 22:12 grade 50:12, 53:23, 96:23, 102:7, 102:12, 102:21, 103:24, 121:13,</p>	<p>121:15, 172:8, 172:11, 172:13, 172:15, 172:20, 173:19, 173:23, 174:25, 176:3 grade's 176:2 graded 96:16 grading 50:8, 82:11, 96:24, 101:25, 165:7, 172:24 grandfathered 201:20 granted 39:19 grasses 167:22, 169:8 grateful 185:11 gravel 88:9 gray 53:25, 56:11, 56:23, 70:18 great 22:16, 125:1, 194:15, 196:18, 197:15 greatest 23:17, 24:2, 24:8, 24:16 green 53:11, 80:22, 80:25, 81:23, 82:17, 86:14 grew 15:13, 16:20, 196:9 grocery 189:23 ground 15:9, 106:12, 167:9, 168:14, 174:8, 174:14, 174:20, 197:13 grounds 19:16</p>	<p>group 8:25, 12:2, 12:3, 26:5, 28:2, 64:13, 74:16, 75:1, 128:10 grouping 20:1 groups 23:13, 183:9 grow 15:15, 101:21 growing 183:21, 184:10, 196:10 growth 65:4 guess 40:19, 65:14, 67:10, 67:17, 68:22, 100:3, 104:10, 105:16, 108:2, 111:7, 114:16, 135:21, 136:15, 137:23, 139:4, 151:9, 155:21, 163:15, 174:2 guests 56:1 guidance 146:24 guide 167:1 guys 65:15, 122:17, 124:13, 152:2, 183:6</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>haering 50:23 half 56:2, 73:11, 79:21, 125:21, 126:8, 188:4, 194:20, 197:13 halfway 99:7</p>	<p>hand 12:25, 25:18, 74:9, 128:1, 162:8, 171:21, 186:14, 186:17, 186:23, 190:22, 195:22, 207:12 handful 28:3 handled 170:9 handlir 2:13, 207:2 hang 18:20, 42:10, 198:18 hanging 42:13 hannan 1:15 hannen 3:3 happen 24:7, 24:22 happened 16:5 happening 86:14 happens 135:11 hard 43:17, 75:21, 158:13, 166:25, 170:5, 170:6 harm 147:20, 181:12 hat 16:9 he'll 11:25 head 108:7, 122:2, 150:13 headed 189:3 heading 189:2 headlight 102:15, 176:20</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

headlights 96:14, 96:19, 121:9, 171:12 heads 204:17 health 14:23, 148:2 hear 5:1, 5:6, 11:8, 11:10, 11:13, 16:18, 35:22, 41:3, 42:17, 79:24, 92:12, 127:1, 129:2, 134:11, 151:24, 152:2, 156:4, 162:4, 178:23, 180:9, 186:15, 187:4, 197:10 heard 5:15, 10:22, 29:1, 100:3, 115:1, 115:24, 119:13, 176:17, 199:13, 203:2 hearings 1:1, 3:5, 14:1, 63:6, 75:18, 185:12, 206:14 heartbreaker 194:18 heavily 197:18 height 57:12, 64:14, 64:16, 68:3, 69:23, 95:17, 103:9, 111:21, 112:1, 112:8, 112:10, 116:17, 119:17, 120:11, 121:22, 122:1, 122:5, 171:21, 173:6, 173:14, 174:13, 175:16, 175:17, 175:21, 177:16, 193:1 heights 57:15, 171:24	held 2:1, 4:18, 5:9, 13:19, 73:15, 75:14, 84:11, 148:11 help 18:16, 20:13, 82:15, 109:13, 142:19, 176:20 helped 177:15 helpful 51:8, 90:13, 97:7, 187:4 here 4:5, 15:11, 19:24, 32:20, 35:12, 35:13, 35:16, 38:12, 40:13, 50:2, 53:9, 53:14, 55:8, 55:15, 56:13, 56:22, 57:2, 58:16, 63:22, 90:8, 97:6, 102:22, 109:17, 118:13, 119:3, 122:12, 123:6, 136:5, 145:9, 152:25, 160:17, 169:17, 185:24, 191:9, 192:2, 194:14, 196:9, 196:16, 196:20, 196:25, 197:7, 197:25, 198:9, 206:11 hereby 207:3, 208:2 hereunto 207:12 hey 115:22 hi 186:6 high 18:17, 18:18, 18:25, 20:24, 57:11, 102:6, 119:8, 133:25, 144:9, 144:18, 163:18, 171:11, 174:22, 193:23, 194:6, 196:5 higher 20:18, 86:12, 96:7, 102:14, 103:10, 103:13, 103:15, 106:15, 106:16, 111:4, 117:15, 118:3, 121:24, 121:25, 133:24, 134:1, 174:20, 175:3, 194:5 highest 65:3, 114:13, 135:2, 135:3, 145:8, 145:16 highlight 81:7, 89:8, 106:3, 124:2 highlighted 36:21, 37:22, 37:25, 38:12 highlighting 37:9, 124:17 highlights 37:13, 105:19, 162:7 highway 146:16, 146:19, 196:15 historic 196:23 historical 29:17 history 140:2, 141:10 hit 15:20, 16:13, 17:6, 162:6 hits 184:17 hoard 11:20, 11:22, 11:24, 12:21, 12:22, 13:1, 13:10, 13:20, 13:21, 14:3, 14:14, 21:19, 22:9 hoard's 45:7 hold 43:1, 53:6, 79:10 holes 31:6 holiday 158:7 home 43:13, 45:8, 50:15, 50:18, 50:19, 50:20, 50:21, 50:24, 51:1, 53:17, 67:15, 67:19, 76:11, 179:11, 191:15 homecare 191:4 homeland 1:12, 4:9, 202:11 homes 15:17, 15:25, 23:16, 31:15, 33:12, 34:7, 34:21, 35:9, 43:6, 43:17, 47:19, 55:9, 56:15, 57:10, 65:6, 70:3, 70:20, 70:23, 70:25, 71:8, 173:25, 174:1, 191:18, 194:12, 196:20, 197:22 honest 189:19 hoops 146:17 hope 18:8, 26:15,
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>191:17, 194:22 hopefully 152:2, 182:25, 183:23, 204:19, 204:20 hoping 126:14, 126:16 horses 196:17 host 185:12 hosts 188:20 hour 73:11, 79:21, 126:8, 130:1, 130:2, 130:10, 130:11, 132:24, 133:5, 133:6, 134:20, 135:3, 135:8, 135:13, 135:16, 144:3, 145:4, 145:8, 145:17, 154:3, 154:6, 154:18, 154:21, 161:24 hourly 144:12 hours 72:5, 132:8, 133:5, 134:22, 134:24, 135:23, 137:2, 137:20, 144:7, 144:21, 144:25, 145:2, 145:6, 146:10, 153:6, 153:7, 188:3 house 51:11, 99:13, 106:11, 106:12, 122:12, 188:8, 194:15, 196:23 housed 17:13 houses 34:3, 34:4, 45:8, 63:17,</p>	<p>63:25, 69:9, 83:4, 188:14, 188:17, 188:19 housing 14:20, 15:17, 22:10, 22:18, 23:15, 26:25, 27:12, 27:16, 28:14, 35:10, 36:11, 37:24, 38:1, 38:5, 43:8, 43:12, 43:22, 183:8, 184:7, 184:8, 184:9, 187:7, 190:3, 190:4, 192:22, 196:2, 202:2 however 17:22, 43:21, 192:23 huge 51:18 human 166:6, 170:15 humongous 24:16 hundred 140:25, 164:9 hyphen 192:10</p> <hr/> <p>I</p> <hr/> <p>idea 90:19, 104:8, 122:13, 144:15, 169:9, 170:21, 184:1 identified 36:10, 36:13, 38:18, 38:21, 39:9, 181:9 identify 4:6, 4:20, 21:24, 39:7, 39:23, 163:12 ii 16:8, 16:12</p>	<p>illuminate 94:1 illuminates 109:14 illumination 105:24, 148:2, 179:13 image 38:4, 39:3, 43:3, 44:15, 45:3, 54:11, 56:24, 57:14, 58:14, 58:20, 59:4, 59:9, 108:1, 109:16 images 58:8 immediately 39:13 impact 15:2, 17:6, 17:9, 19:2, 64:10, 105:18, 113:18, 113:24, 114:18, 125:1, 146:7, 166:4, 184:15, 189:18 impacted 63:21 impactful 15:3 impacts 34:12 impasse 134:18, 156:15 impeding 117:24 impervious 167:8 implemented 192:2 implicated 185:2 implications 142:1 important 12:12, 20:6, 56:20, 63:1,</p>	<p>66:22, 84:10, 130:15, 133:3, 153:3, 183:8 importantly 18:25 impressive 196:25 improved 99:16 improves 118:7 in-depth 154:14 inaccurate 41:19 inch 198:1 incidents 196:11 include 9:16, 145:20, 146:2, 153:14, 156:2, 156:3, 156:5 included 31:13, 90:20, 128:12, 145:22, 150:22, 151:5, 151:9, 159:8, 159:13, 159:19 includes 27:17, 54:9 including 41:16, 147:13, 200:24 incorporated 69:21 increase 51:6, 88:14, 93:4, 142:20, 146:11, 170:15, 197:24 increased 137:22, 152:16 increasing 83:7 incur 149:25</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>independent 9:16, 19:25, 20:5, 21:10, 21:11, 21:13, 23:9, 27:18, 47:8, 85:8, 129:17, 201:15</p> <p>indianapolis 16:10, 16:16</p> <p>indicate 36:21, 80:13, 86:12, 93:24</p> <p>indicated 31:4, 191:25</p> <p>indication 161:20</p> <p>indicative 70:18, 71:10</p> <p>individual 22:24</p> <p>industrial 39:11, 39:14, 43:6, 43:17, 43:19, 48:2, 48:4, 50:1, 53:19, 57:9, 59:5, 59:12, 59:18, 60:1, 63:18, 63:20, 64:11, 65:7, 65:23, 69:24, 70:19, 70:21, 82:7, 107:23, 183:15, 185:21, 187:13, 188:13, 191:15</p> <p>industry 15:2, 15:11, 23:23, 129:20</p> <p>infiltrate 167:8, 168:14</p> <p>infiltrating 171:4</p> <p>informal 5:18</p> <p>information 38:23, 39:6, 41:9, 113:13,</p>	<p>119:1, 143:14, 199:12, 199:16, 208:6</p> <p>inherent 106:21, 106:24, 123:14, 147:22, 181:14</p> <p>initially 111:22, 115:2</p> <p>injury 140:7</p> <p>inner 164:4</p> <p>input 22:21, 199:21, 204:8</p> <p>ins 54:1</p> <p>inside 113:15, 113:18, 160:4</p> <p>inspiration 15:1, 185:20</p> <p>installed 95:6, 95:9, 116:20, 142:14, 152:8</p> <p>instance 52:9, 64:9</p> <p>instead 99:23, 136:4, 165:21, 182:8, 184:3, 199:16</p> <p>institute 129:19</p> <p>insufficient 142:7</p> <p>insulated 197:12</p> <p>integrate 56:22, 83:20</p> <p>integrated 83:6</p> <p>integrity 57:3</p> <p>intense 94:20, 94:25, 134:25</p>	<p>intensity 86:22, 116:16</p> <p>intentional 53:16</p> <p>intentionally 54:18</p> <p>interest 31:16, 143:2, 207:10, 208:8</p> <p>interested 144:23, 156:18</p> <p>interesting 24:1</p> <p>intergenerational 183:11</p> <p>interim 157:24</p> <p>interior 19:8, 93:21, 113:24, 115:7, 115:10</p> <p>interm 157:22, 158:4</p> <p>interrupt 35:21, 110:23</p> <p>interrupted 109:1, 124:3</p> <p>interruption 186:16</p> <p>interruptive 185:4</p> <p>intersection 9:14, 139:12, 140:1, 140:3, 140:24, 141:1, 141:3, 141:8, 141:14, 142:3, 143:1, 143:10, 144:22, 146:17, 146:23, 147:2, 149:4, 149:7, 151:2, 187:25, 188:8, 188:11, 188:12, 188:14, 188:23, 188:24, 189:20, 196:12</p> <p>interstate 29:18</p>	<p>intervening 88:1, 88:10, 160:18</p> <p>intervention 91:10</p> <p>interviewing 132:4</p> <p>introduce 162:18</p> <p>introduced 91:4</p> <p>introduction 8:11, 184:16</p> <p>invading 83:18</p> <p>invasion 203:10</p> <p>inventory 23:4</p> <p>invert 88:9</p> <p>investment 22:18</p> <p>investors 15:6</p> <p>involve 149:21</p> <p>involved 161:14</p> <p>islands 81:20, 81:23, 98:16</p> <p>issue 11:3, 39:17, 105:11, 138:10, 145:6, 198:24, 201:5, 203:10, 204:23</p> <p>issued 30:25, 205:1, 205:2</p> <p>issues 9:6, 9:19, 165:15, 171:16, 187:4, 189:14, 201:4, 203:6</p> <p>ite 130:25, 131:12,</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

131:17, 131:18, 132:9, 132:15, 133:16, 134:19, 134:22, 154:10 items 29:15, 71:3, 200:23 itself 17:17, 19:7, 39:9, 43:14, 65:20, 101:1, 130:3, 140:24, 154:8, 169:8	justify 146:15, 146:21 jut 42:12	labeled 92:23 lack 148:2, 155:25 laid 69:19 lakes 29:23 land 10:4, 10:16, 11:23, 12:6, 25:10, 28:19, 28:23, 28:25, 29:7, 29:8, 29:10, 30:1, 30:9, 30:25, 35:5, 38:19, 58:20, 61:14, 78:4, 81:12, 86:8, 87:13, 98:21, 119:21, 129:15, 132:11, 152:17, 152:24, 159:11, 161:6, 163:1, 163:2, 163:3, 163:23, 166:2, 193:3, 196:17, 196:21 land-master-plan 157:19 landowner 202:11 lands 60:3, 197:20, 197:22 landscape 12:1, 48:15, 49:6, 49:8, 49:9, 49:19, 59:1, 72:17, 73:8, 74:8, 74:25, 77:4, 77:12, 77:17, 77:21, 77:23, 78:14, 79:5, 79:23, 80:5, 80:7, 80:22, 81:25, 82:6,	83:12, 84:10, 84:15, 84:24, 85:14, 101:4, 101:19, 103:24, 119:18, 119:20, 119:22, 120:3, 171:13, 171:22, 181:20, 205:19 landscaped 102:24 landscapes 100:18 landscaping 54:8, 73:9, 80:2, 83:19, 95:6, 100:8, 100:19, 100:22, 119:14, 164:20, 166:4, 169:16, 169:17, 169:19, 169:21, 176:19, 176:22, 176:23, 177:8, 178:7, 182:8 lapse 70:24 laptop 5:8 large 16:2, 138:18, 151:3, 185:9, 187:16, 188:13, 188:15, 188:21, 196:21 largely 165:19 larger 19:14, 23:13, 33:19, 43:19, 150:18 largest 22:18 last 6:10, 7:15, 7:20, 13:8, 14:1, 17:7, 17:15, 23:20, 23:24, 37:17,
J j-n-e-i-l-s-o-n@- bkvgroup 74:20 january 24:11, 128:20, 187:11 jersey 14:6, 18:23 joanie 73:5 job 1:27 joe 17:19 john 11:23, 11:25, 60:6, 74:10, 74:15 jordan 207:17 jump 24:21, 160:17 june 143:8, 148:19, 188:4 jurisdictions 27:14, 28:8, 28:11 justification 60:23, 126:3, 126:15, 191:24 justified 147:2	K k-a-t-h-y 192:8 kathleen 73:5 kathy 192:6, 192:8, 192:14 keep 4:25, 8:18, 49:17, 49:21, 72:18, 140:21 kelvin 203:15, 203:16 key 29:15, 35:9, 78:13, 78:16, 80:19, 80:25, 82:9, 83:11, 83:19, 86:16 keys 78:18 kha 62:25 khater 62:22, 62:23 khater@gmail 62:18, 63:5 kids 15:15, 138:24, 184:1 kinds 98:14, 188:10 knew 16:1, 16:10 knowing 184:6 knowledge 207:8 known 9:11, 133:5	L l-shaped 173:5	

Transcript of Hearing
Conducted on February 16, 2024

81

<p>39:25, 62:3, 66:5, 66:6, 67:11, 72:8, 75:17, 77:11, 85:6, 101:24, 115:25, 116:8, 141:11, 153:19, 198:8, 206:18 lastly 27:25 late 7:20 later 4:23, 4:24, 99:23, 116:13, 161:24 lauren 62:15, 62:18, 62:19, 107:18, 186:18, 187:5, 188:6 law 4:8, 201:19, 201:20, 201:21, 201:25, 202:3, 202:5, 202:6 lawyer 45:10 layer 45:8, 82:23, 101:3, 112:4, 119:18, 120:2, 120:25, 121:7 layered 68:15, 102:24 layering 121:2 layers 69:22, 101:4, 112:10, 119:15, 120:10, 121:6 laying 47:11 layman 146:13 lcc 202:12 lead 26:22, 71:3,</p>	<p>77:12 leadership 17:18 leading 77:13, 118:14 leads 81:19 learned 180:7 learning 128:20 least 66:2, 68:17, 75:16, 129:3 leave 32:23, 42:15, 54:6, 204:4, 205:5 leaving 97:24, 140:18, 154:5, 185:3 led 15:16, 16:22, 64:17, 109:22, 109:24, 110:14, 110:21 leds 109:12, 109:13 lee 139:21 left 10:16, 48:11, 52:16, 58:20, 59:10, 64:11, 84:2, 84:4, 84:13, 87:9, 93:23, 103:23, 118:14, 118:19, 144:8, 145:7, 145:9, 145:13, 145:18, 149:7, 150:1, 150:10, 150:21, 151:5, 151:6, 151:7, 151:9, 151:16, 151:18, 152:14, 153:4, 153:5, 153:9, 156:10,</p>	<p>158:10, 161:24, 164:4, 165:17, 167:13, 168:19, 168:22, 189:2, 189:3, 189:12, 189:22, 189:23, 189:25, 190:1, 193:21, 193:24, 197:17 left-hand 78:11, 92:20, 103:21, 119:5, 164:4, 193:23, 194:2 lefts 189:9 legal 9:6, 9:19, 201:4 less 68:13, 69:15, 86:15, 94:20, 94:25, 133:11, 151:19, 179:7, 179:13, 180:3 lesson 180:7 let's 8:7, 24:18, 36:7, 42:12, 49:17, 72:4, 73:7, 89:25, 91:6, 127:22, 136:1, 146:4, 167:5, 173:25, 182:18 letter 49:16, 138:7, 138:16 level 21:13, 82:13, 85:8, 86:13, 86:15, 87:3, 89:9, 95:3, 102:5, 116:22, 118:3, 118:6, 119:3, 119:8, 119:11, 142:3,</p>	<p>175:5 levels 20:2, 20:18, 20:21, 21:8, 87:15, 119:16 license 76:15 licensed 76:12, 76:13, 76:18, 76:21 life 17:10 lifestyle 20:17 light 52:19, 53:25, 56:20, 56:23, 65:23, 86:12, 86:15, 86:22, 87:21, 90:12, 90:24, 91:1, 95:1, 96:21, 104:22, 105:14, 105:17, 105:19, 106:5, 107:8, 108:1, 108:2, 108:3, 108:6, 108:7, 108:8, 108:9, 109:5, 109:13, 109:16, 109:17, 110:4, 110:12, 111:8, 111:12, 111:13, 111:14, 111:16, 114:9, 115:2, 115:13, 116:21, 116:22, 117:12, 117:14, 117:18, 121:21, 122:8, 122:9, 122:18, 122:20, 123:4, 123:6, 123:7, 123:8, 123:12, 123:22, 161:19, 176:20, 184:12, 184:17, 187:23, 189:21, 193:25, 197:12, 202:20,</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Transcript of Hearing
Conducted on February 16, 2024

82

<p>203:9 lighting 60:5, 72:14, 73:9, 81:9, 85:19, 85:21, 85:23, 85:25, 86:2, 86:3, 86:20, 86:21, 87:14, 88:5, 88:14, 88:18, 88:22, 88:24, 89:2, 89:6, 89:8, 89:15, 89:21, 90:8, 90:11, 90:20, 90:21, 90:22, 92:5, 93:6, 93:9, 93:13, 93:16, 93:19, 93:25, 94:6, 94:12, 95:1, 95:2, 98:11, 98:14, 104:16, 104:18, 104:19, 104:20, 105:1, 106:7, 106:11, 106:22, 106:23, 107:2, 108:4, 108:15, 109:12, 109:14, 113:15, 113:16, 113:18, 114:2, 114:8, 114:11, 114:12, 114:13, 117:7, 117:23, 117:25, 118:3, 119:5, 123:16, 123:17, 124:10, 124:25, 125:8, 125:11, 168:6, 179:6, 197:1, 200:7 lights 88:22, 88:23, 88:25, 94:15, 94:18, 102:1, 104:21, 106:12, 107:21, 110:9, 110:21, 113:22,</p>	<p>113:25, 116:20, 123:10, 123:15, 123:18, 123:22, 124:4, 124:12, 124:18, 124:21, 124:24, 125:3, 125:7, 173:21, 173:22, 175:19, 179:2, 184:14, 203:2, 203:4, 203:7 likely 65:6, 153:1, 193:6 limit 68:3 limiting 137:12 limousine 197:3 limousines 188:8 line 23:6, 25:10, 33:13, 50:16, 52:12, 82:16, 83:24, 87:19, 87:20, 89:3, 105:24, 114:4, 118:9, 119:7, 119:24, 119:25, 130:12, 147:3, 164:3, 169:20, 172:21, 173:19, 177:5, 177:7, 178:4, 178:6, 179:19, 180:2, 182:4, 182:5, 198:2, 198:24, 199:3 linear 81:18, 119:24, 119:25 liner 52:16 lines 57:21, 86:11, 120:7, 184:14,</p>	<p>197:10, 197:12, 198:14, 199:7 lining 41:12 link 158:6, 158:25 lisa 17:20 list 72:7, 77:3, 83:15, 83:17, 205:8 listed 36:10, 63:4, 116:25, 140:23, 141:4 listened 23:22 listening 190:7 lists 35:8 lit 89:7, 90:24, 93:3, 93:6, 93:9, 94:2, 109:13, 124:8, 125:12 literally 23:24, 92:19, 197:21 little 5:17, 15:10, 15:12, 15:23, 16:24, 18:9, 18:24, 20:25, 38:3, 38:7, 38:16, 51:7, 51:9, 55:12, 55:14, 58:19, 64:8, 76:25, 87:4, 87:15, 89:17, 96:1, 96:5, 107:17, 118:13, 119:14, 119:19, 126:12, 131:11, 145:14, 146:4, 150:12,</p>	<p>161:25, 166:23, 168:19, 170:1, 184:16, 185:18, 206:5 live 20:16, 22:5, 45:19, 65:12, 139:11, 191:11, 192:10, 197:25 lived 198:5 lives 19:2, 21:4, 175:5 living 1:7, 4:3, 9:16, 11:21, 12:4, 14:17, 14:18, 14:23, 15:1, 15:2, 17:14, 17:17, 18:10, 18:13, 19:11, 19:25, 20:5, 21:11, 21:15, 23:9, 23:11, 23:20, 27:18, 44:2, 44:3, 45:20, 47:9, 47:11, 56:21, 57:22, 85:1, 85:3, 85:8, 122:11, 129:17, 129:18, 130:5, 153:15, 154:8, 191:6, 192:22, 197:6, 201:12 llc 1:12, 4:3, 4:9 load 184:21 loading 44:20, 199:24, 200:9, 200:11, 200:16 local 29:16, 29:18, 170:17, 170:18 locally 83:13</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

locate 82:22 located 9:14, 26:6, 28:1, 34:25, 38:2, 86:12, 86:20, 138:12, 156:12 location 18:22, 43:4, 81:13, 92:21, 139:5, 140:2, 140:12, 140:15, 140:23, 182:3 locations 14:24, 18:23, 19:22, 37:25, 38:21 lodge 33:14, 33:16, 33:20, 33:22 logical 197:24 long 95:10, 157:11, 167:15, 198:6, 203:22, 204:3 longer 18:19, 159:12, 160:16, 193:4, 205:7, 206:5 look 19:17, 22:22, 24:2, 29:15, 29:16, 29:18, 29:19, 35:3, 41:12, 42:12, 46:14, 52:22, 56:14, 57:21, 64:3, 64:12, 64:19, 66:11, 67:15, 70:19, 70:22, 75:16, 77:3, 83:3, 88:15, 93:22, 94:8, 95:9, 99:8, 99:24, 102:12, 107:21,	108:2, 109:21, 110:5, 120:16, 126:15, 129:15, 132:15, 136:11, 139:6, 139:23, 142:2, 143:20, 152:5, 161:8, 161:12, 179:11, 181:19, 187:18, 193:7, 193:9, 196:8, 196:23, 205:23, 205:24 looked 16:14, 20:9, 24:4, 47:14, 59:4, 63:12, 63:25, 70:4, 82:11, 92:23, 106:7, 134:22, 188:3, 194:21 looking 22:12, 22:23, 23:6, 31:19, 35:17, 43:2, 45:10, 45:11, 46:10, 46:13, 53:4, 56:11, 56:19, 57:17, 64:16, 78:10, 80:21, 81:5, 85:9, 85:11, 96:6, 96:12, 105:23, 131:7, 135:5, 156:8, 156:9, 160:19, 169:22, 183:21, 196:7, 197:5, 197:20, 199:3 looks 34:4, 39:3, 51:17, 65:11, 67:14, 108:9, 109:17, 187:15, 191:14 loops 82:2 lose 16:25	losing 23:22, 24:3, 166:1 lost 34:18, 42:21 lot 8:17, 15:25, 16:1, 18:19, 19:6, 20:10, 20:11, 22:19, 24:9, 49:14, 49:21, 66:11, 69:12, 77:11, 82:20, 96:14, 98:10, 98:15, 99:19, 99:21, 102:8, 103:16, 104:23, 107:8, 107:20, 113:16, 117:11, 118:14, 118:17, 119:5, 120:19, 120:21, 121:7, 122:8, 122:14, 123:9, 123:13, 124:20, 125:2, 125:7, 130:16, 130:18, 130:21, 133:4, 141:19, 147:3, 152:10, 166:11, 169:3, 169:11, 171:23, 172:3, 172:4, 173:1, 176:6, 176:24, 177:1, 177:12, 177:25, 178:1, 178:5, 178:8, 179:2, 182:4, 182:5, 182:6, 187:5, 197:14, 203:2 lot's 174:20 lots 31:16, 107:21, 119:4, 192:25 love 18:17	loved 20:20 lovely 183:18 low 144:9, 144:12, 144:14, 145:13, 174:6, 201:15 lower 82:13, 117:20, 117:22, 119:3, 119:4, 145:13, 175:4, 175:16, 176:6, 201:14 lowest 87:1, 179:25 lunch 73:11, 79:21, 126:8, 127:7 lynn 1:15, 3:3 <hr/> <p style="text-align: center;">M</p> <hr/> m-e-y-e-r 62:16 ma'am 14:5, 14:11, 24:24, 62:15, 74:15, 170:21 made 40:9, 126:5, 134:7, 185:16, 194:11, 201:4 magenta 86:11 magnolia 95:22 mail 62:20, 62:21, 62:24 main 14:5, 55:21, 55:22, 56:1, 56:8, 56:19, 81:19, 81:22, 81:25, 82:3, 84:14, 93:14, 103:20, 103:21,
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>122:11, 122:20, 138:17, 147:3, 165:6, 166:20 maintain 24:20 maintenance 11:11, 56:17, 202:10 major 140:19, 143:20, 144:9, 145:5, 146:8, 149:3, 151:11, 151:13, 151:14, 151:18, 189:15, 189:23 make 7:19, 10:25, 12:18, 19:2, 30:5, 53:16, 67:21, 68:1, 68:17, 69:22, 72:6, 73:13, 76:11, 83:17, 84:6, 87:11, 96:1, 101:18, 110:1, 125:10, 144:23, 145:1, 147:1, 148:25, 149:6, 149:10, 150:7, 150:19, 150:21, 150:23, 151:6, 151:7, 153:1, 178:18, 183:23, 184:7, 185:17, 189:3, 189:9, 193:24, 194:2, 194:3, 194:25, 205:16 makes 68:12, 68:24, 69:15, 69:18, 98:19, 116:23 making 17:12, 83:16, 124:7, 126:4, 127:9, 150:1, 151:1, 152:14, 189:1, 189:5,</p>	<p>189:10, 189:12 man 16:14, 16:19 man's 17:7, 17:10 management 170:22, 171:6 manual 143:11, 146:19 many 14:3, 14:19, 37:7, 37:16, 46:13, 49:4, 69:1, 72:20, 73:4, 85:9, 122:14, 125:21, 146:16, 149:19, 150:22, 152:18, 185:3, 185:16, 188:8, 188:22, 189:16, 194:18, 200:23 map 30:16, 35:5, 44:11, 61:25, 73:19, 156:17 maps 62:4, 62:6, 62:7, 139:6, 156:10, 158:12 mark 6:11, 73:17, 128:14 marked 73:25, 74:2 market 18:17, 23:12, 23:13 markings 118:18 marshall 180:20, 180:24, 180:25 mary 192:9 maryland 1:2, 2:3, 2:5, 2:14, 3:6, 3:7,</p>	<p>3:15, 22:6, 22:13, 62:17, 76:12, 76:13, 76:19, 76:21, 76:24, 77:1, 83:14, 83:15, 122:25, 138:17, 139:9, 139:13, 140:1, 142:8, 144:4, 144:10, 146:25, 151:12, 154:19, 162:16, 170:23, 196:3 massive 67:15, 152:13 master 9:21, 9:22, 9:24, 9:25, 10:5, 10:10, 29:13, 29:22, 30:16, 30:22, 30:23, 34:19, 34:24, 35:8, 35:9, 36:9, 36:18, 37:1, 37:10, 37:13, 37:15, 38:5, 38:17, 38:19, 39:9, 40:22, 41:2, 41:10, 41:20, 43:2, 43:11, 43:21, 43:25, 73:19, 127:15, 155:20, 155:22, 155:24, 156:1, 156:13, 159:13, 159:19, 159:24, 160:3, 160:4, 160:9, 160:16, 160:18, 160:20, 160:21, 160:23, 161:1, 161:2, 161:20, 191:2, 194:23, 195:7 masters 27:2 match 197:1, 197:2</p>	<p>matching 101:11 material 53:20, 56:15, 70:23, 70:25 materiality 56:10, 64:20, 90:10 matter 8:10, 8:12, 59:2 matters 6:7 mature 111:21, 111:23, 112:1, 112:8, 112:10, 113:14, 116:17 maturity 96:10, 96:12, 112:15, 112:25 maximized 82:5, 82:8 maximum 57:13, 137:17, 137:23, 137:24, 164:22, 203:12 maxx 189:25 maybe 8:23, 16:24, 31:7, 32:15, 42:24, 55:18, 57:19, 61:13, 68:18, 104:3, 104:7, 112:3, 122:6, 134:11 mcknew 149:6 mean 30:3, 47:25, 69:8, 69:12, 95:16, 100:11, 105:7, 110:14, 111:25, 114:8, 114:11, 114:19, 114:25, 115:4, 115:7, 121:5,</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

121:19, 123:6, 123:9, 132:11, 136:11, 176:18, 194:1, 196:12 meandering 81:3 meaning 15:1 meaningful 184:6 means 110:21, 117:21, 140:5, 174:17 measure 117:2, 142:5 measured 94:18, 113:18, 113:24, 114:12, 179:2 measurement 117:2, 117:8, 117:13, 117:25 measurements 179:3 measures 117:8 median 149:14, 150:18, 194:4 medical 45:15 meet 24:13, 82:12, 84:18, 86:19, 97:20, 123:11, 142:24, 143:3, 148:5, 168:13, 180:20 meeting 21:19, 72:21, 86:17, 97:22, 98:3, 107:7, 114:15, 119:2, 157:5 meets 83:16, 148:5, 181:15, 181:16 members 4:15, 15:4,	18:7, 18:8, 18:25, 19:20, 133:8, 134:3 memo 204:24 memories 128:20 memory 9:17, 20:1, 21:15, 23:11, 27:18, 47:10, 85:1, 85:2, 129:17, 201:15, 201:16 men 16:12 menasco 192:9 menasco-smith 192:4, 192:6, 192:8, 192:14, 192:17, 192:19, 195:6, 195:9, 195:12, 204:11, 204:13, 206:7, 206:17 mens 116:25 mention 98:6 mentioned 37:24, 45:12, 55:4, 55:22, 63:13, 63:19, 69:24, 70:4, 70:16, 101:20, 104:17, 109:6, 111:22, 119:15, 121:16, 124:14, 136:4, 169:7, 193:15, 199:13 merits 41:24 mess 17:2 messages 79:8 messed 16:25	met 16:20, 147:17 metcd 143:17 methodology 129:12, 131:12, 132:9, 133:19 metric 179:4 meyer 62:15, 62:21, 62:25, 63:3, 63:10, 64:23, 65:1, 66:5, 66:13, 73:1, 73:2, 73:5, 107:16, 107:19, 108:25, 109:2, 109:11, 111:17, 113:10, 113:12, 115:18, 115:19, 151:23, 152:1, 152:8, 152:12, 153:11, 154:8, 154:11, 154:24, 165:18, 165:23, 169:25, 170:2, 170:7, 170:12, 176:16, 177:15, 177:18, 178:9, 178:17, 182:25, 183:3, 183:4, 183:5, 186:9, 186:11, 186:18, 186:20, 199:13 meyer's 111:6 michigan 27:22, 63:25 microphone 5:4 mics 152:2 mid 156:23, 179:19 mid-morning 145:14 middle 93:24, 118:19,	120:6, 120:8, 184:8, 194:4 might 11:15, 23:21, 42:17, 51:18, 89:21, 106:10, 109:6, 111:20, 113:25, 121:10, 130:18, 140:18, 141:22, 141:24, 143:2, 143:15, 154:12, 157:12, 159:18, 160:4 mile 22:24 mimic 71:18 mind 8:18, 49:21, 72:18, 205:6 mine 6:12, 17:10, 17:20, 104:12 minimal 141:10, 166:3, 203:8 minneapolis 26:7, 27:22 minnesota 26:7, 27:4, 27:22, 29:24 minor 140:18, 143:21, 144:8, 145:8, 149:3, 149:24, 151:14 minute 31:12, 37:17, 72:6, 72:8, 75:17, 78:20, 78:23, 79:16, 79:17, 99:24, 115:23, 123:1, 135:3, 139:3, 161:17, 161:18, 171:5 minutes 73:13
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Transcript of Hearing
Conducted on February 16, 2024

86

misjudging 141:20 miss 72:25 missed 101:12, 109:7 missing 184:8 mission 14:23, 14:25 mistake 197:8 misunderstood 68:18 mitigate 96:20, 101:17, 114:15, 115:2, 121:17, 121:20, 121:21, 176:20 mitigated 96:23 mix 19:24, 21:8, 66:12, 67:23, 67:25, 95:12, 95:19, 95:25, 97:24, 113:2, 121:1, 144:2, 177:10 mixed 71:2 mixture 97:14 mncppc 130:8 mode 46:18 model 20:5 moderately 11:4 modern 68:13 molding 67:17, 67:20 moment 16:7, 37:21, 54:20, 56:10,	57:18, 77:3, 95:7, 97:2, 124:16, 124:18 moments 81:6, 84:19 monday 158:6 monitor 157:7 monroe 162:15 monster 191:12 montana 22:12 montgomery 1:2, 3:4, 27:25, 30:25, 77:11, 81:21, 83:17, 122:19, 129:21, 157:17, 158:2, 170:23, 185:12 month 17:17, 23:24, 142:16 moose 33:13, 33:15, 33:20, 33:22 more 12:13, 15:23, 18:19, 18:24, 19:6, 19:19, 20:10, 20:11, 21:1, 21:6, 32:18, 34:12, 38:3, 38:4, 38:6, 38:7, 38:8, 41:1, 47:9, 47:16, 50:2, 53:25, 54:13, 54:18, 54:19, 55:6, 55:12, 55:15, 58:9, 63:14, 63:22, 63:25, 64:12, 64:21, 65:21, 66:7,	67:24, 68:13, 68:14, 68:19, 68:21, 69:17, 70:18, 70:24, 71:3, 71:5, 82:7, 83:17, 84:22, 94:17, 101:21, 105:18, 106:18, 106:25, 109:11, 111:18, 116:16, 117:19, 118:13, 119:10, 120:8, 120:9, 125:21, 130:19, 133:21, 139:2, 141:17, 141:18, 141:20, 141:21, 141:25, 142:15, 142:23, 145:5, 149:22, 154:14, 161:8, 161:10, 161:25, 167:24, 168:20, 170:14, 172:13, 178:5, 182:19, 184:1, 184:23, 185:4, 189:17, 189:24, 190:1, 194:12, 194:13, 205:25 moreover 27:7 morning 26:3, 130:10, 133:6, 135:5, 135:9, 135:10, 135:23 most 18:25, 19:21, 22:25, 63:17, 64:22, 65:6, 71:8, 125:12, 134:24, 144:23, 183:13 mostly 15:24, 39:4, 46:3, 70:19, 171:1, 171:2 mother 20:8, 20:11,	20:14 motion 124:18 mount 108:12 move 19:4, 33:18, 45:23, 49:12, 54:21, 103:11, 103:16, 124:13, 136:1, 155:3, 165:8, 166:24, 189:20 moved 15:14, 20:20, 183:19, 188:5, 188:7, 188:18 moves 80:25, 107:8 moving 16:23, 43:25, 146:25, 188:9 mpdu 11:1, 201:5, 201:12, 201:17 mpdus 201:7 mpt 148:25 mrifsd 163:12 much 12:13, 13:22, 13:25, 42:13, 52:21, 53:19, 54:18, 63:14, 65:16, 65:24, 101:21, 103:24, 106:14, 120:8, 141:23, 145:12, 149:21, 149:22, 149:25, 161:15, 163:18, 177:16, 178:17, 184:22, 185:20, 185:25, 189:24, 190:1, 190:7, 191:8, 191:10, 191:19,
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

192:23, 193:10, 194:16, 196:1, 198:18 mulched 167:21 multiple 29:12, 45:22, 53:18, 183:11 must 66:24, 98:23, 99:13, 182:8 mute 127:1 muted 13:6 myself 146:14	native 83:13, 83:14 natural 19:17, 56:20, 95:13, 113:16, 119:23, 120:1, 170:25 naturally 172:4 nature 52:20, 55:10, 84:9, 141:18, 203:3 near 54:7, 65:23, 121:7, 153:9, 163:23, 173:16, 184:18 nearby 45:15 nearest 181:4 nearly 149:25 necessarily 56:7, 65:21, 68:12, 70:15, 154:11 necessary 6:4, 60:20, 147:9, 147:11, 147:15, 147:17, 148:6, 180:14, 181:11 need 6:21, 8:3, 14:1, 18:16, 22:10, 23:17, 24:9, 24:16, 32:6, 65:1, 67:23, 67:25, 72:6, 73:13, 88:3, 93:18, 97:25, 110:5, 110:11, 117:10, 117:15, 125:2, 125:4, 126:4, 143:11, 143:18,	145:3, 146:7, 146:11, 147:1, 178:3, 184:7, 184:9, 187:21, 194:9, 198:2, 201:4, 202:16, 202:21, 205:6, 205:25, 206:5 needed 125:7, 145:1, 153:2, 192:23 needing 194:10 needs 20:10, 20:13, 20:18, 23:15, 113:20, 142:9, 143:3, 163:16, 181:15 negatively 189:18 negotiation 65:14 neighbor 69:23 neighborhood 31:3, 31:10, 50:13, 63:17, 70:2, 71:8, 71:19, 106:12, 138:20, 145:16, 147:21, 148:1, 181:13, 183:10, 183:20, 184:5, 187:8, 187:9, 188:17, 189:4, 189:8, 189:16, 194:13, 196:7, 197:2, 197:3, 199:5, 206:9 neighborhoods 138:14 neighboring 4:16, 122:9, 181:18 neighbors 73:3, 73:4, 138:7, 148:3,	183:18, 194:13, 195:13 neither 28:1, 207:8, 208:6 never 10:22, 13:15, 16:20, 41:7, 58:15, 68:4, 87:22 new 11:4, 14:6, 18:23, 40:12, 44:13, 48:6, 48:7, 75:10, 132:2, 147:4, 152:18, 156:1, 156:13, 159:9, 159:20, 160:3, 160:16, 161:4, 188:20, 190:4, 192:2, 194:17, 195:3, 195:4, 196:24, 201:8, 201:21, 201:25, 205:8 newly 152:8 next 12:2, 16:18, 23:6, 25:1, 25:9, 31:21, 53:14, 55:18, 74:6, 85:2, 126:17, 127:11, 155:3, 161:22, 168:19, 176:1, 186:5, 186:7, 196:17, 196:22 nic 22:17, 24:10 nice 19:16, 81:24, 82:17, 84:20, 101:19, 111:3 nielsen 74:7 nielson 11:23, 11:25,
N			
n-e-i-l-s-o-n 74:16 nails 20:25 name 4:20, 12:10, 13:7, 13:8, 13:9, 22:3, 22:5, 26:1, 26:4, 39:24, 39:25, 62:15, 63:4, 66:16, 72:14, 73:1, 74:13, 115:24, 115:25, 116:4, 116:6, 116:8, 128:5, 128:7, 162:12, 162:14, 192:6, 195:17 nana 6:10, 6:12 nancy 192:9 naptime 183:2 national 23:13, 129:19, 146:22 nationwide 24:12			

60:6, 72:14, 74:10, 74:15, 74:23, 77:16, 77:21, 79:22, 80:1, 104:14, 106:22, 107:15, 107:17, 111:18, 113:14 nielson's 75:6 night 6:10, 7:21, 62:3, 105:25, 125:3, 135:19 nobody 175:5 nodding 178:15 noise 107:17, 148:1 non-applicability 201:5 non-inherent 147:21, 147:22 non-peak 144:25 non-residential 70:15 none 21:21, 25:1, 26:14, 30:10, 37:14, 48:19, 52:4, 68:7, 77:18, 113:14, 129:5, 155:3, 161:16, 163:8, 171:9, 182:18, 197:13, 198:21, 201:2 nonetheless 192:1 noninherent 106:21, 181:13, 181:14 normally 74:2, 90:20, 101:9, 193:23 norris 198:5	north 26:6, 47:8, 48:4, 50:1, 50:15, 78:10, 82:7, 85:7, 94:8, 108:6, 138:17, 150:14, 163:19, 195:4, 200:17 northern 156:12 northernmost 93:21 northwest 74:18, 164:12 northwood 196:5 notable 163:13 notary 2:13, 207:1, 207:17 note 10:25, 50:4, 101:24, 110:20, 131:2, 153:3, 191:23 noted 81:13 notes 203:11 nothing 60:2, 72:3, 88:1, 88:10, 107:12, 118:17, 118:20, 119:2, 125:19, 155:1, 165:9, 181:19, 184:13, 194:21, 196:24 notice 2:13, 70:2, 156:21, 156:22 noticed 16:9, 16:23, 152:16 notifying 204:24	novi 27:21, 63:24 null 159:13 number 6:22, 7:15, 8:22, 10:1, 38:21, 51:9, 54:15, 56:1, 61:23, 78:6, 92:6, 99:8, 111:3, 129:16, 129:23, 129:24, 129:25, 130:16, 131:3, 131:15, 131:17, 131:21, 131:22, 131:24, 131:25, 132:6, 132:12, 132:17, 132:19, 132:20, 133:2, 133:21, 133:24, 134:1, 134:2, 136:19, 136:25, 137:2, 137:7, 144:20, 145:8, 148:25, 149:5, 149:8, 151:5, 154:3, 154:13, 168:10, 179:15, 179:24, 181:22, 181:23, 188:1, 191:24, 193:11, 199:22 numbers 24:5, 37:16, 37:18, 48:20, 73:14, 86:8, 87:10, 118:23, 133:10, 133:11, 142:4, 145:11, 153:14, 153:18, 179:19, 184:16 numerous 162:23 nursing 15:17, 15:25 nutrients 169:11	O o'clock 135:11, 135:15, 145:17, 153:7, 153:8, 206:6 oath 5:19, 22:1, 155:16, 199:1 object 39:18, 41:19, 108:22, 156:21 objection 1:6, 25:23, 26:13, 37:12, 40:9, 40:14, 40:15, 48:18, 52:3, 77:15, 126:20, 129:5, 163:7 objections 40:18 objects 30:8 obligated 202:11 observations 43:3 observed 43:5 obviously 101:21, 109:18, 125:7, 152:21, 180:19 occur 129:23, 131:20, 133:4, 137:2, 139:23, 140:5, 142:16 occurrence 142:20 occurring 133:8, 135:7, 141:16, 141:21 occurs 134:25 odd 65:10
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

odors 148:1 offer 28:15 offering 15:2 offers 29:17 office 1:1, 2:1, 2:4, 3:4, 12:14, 26:6, 63:5, 184:22, 188:14 officer 11:21, 12:5, 14:18, 123:24, 135:22, 136:1, 136:8, 137:17, 145:23, 156:20, 157:2, 161:21, 182:12, 190:8, 207:2 official 40:24, 42:1, 133:20, 156:21 often 43:13, 70:23, 106:11, 150:1, 150:20, 151:3, 152:14 oh 13:4, 16:24, 25:7, 62:2, 97:12, 99:11, 111:2, 153:24, 157:19, 160:2, 170:1, 180:25, 186:8, 186:22, 190:21, 201:13 old 17:16, 107:18, 192:1, 201:19, 201:20 older 63:16 once 4:11, 95:5, 130:6	oncoming 141:20 one's 24:15 ones 103:1, 112:16, 113:4, 113:5, 124:16, 178:20 ongrade 78:17, 80:21, 81:20, 81:23 online 4:11, 156:9 only 13:17, 16:16, 19:18, 20:3, 20:12, 22:13, 22:14, 23:1, 60:3, 67:1, 68:25, 73:11, 75:19, 87:22, 119:18, 133:5, 151:15, 169:1, 180:13, 189:22, 194:4, 194:20, 196:8, 196:20, 197:13, 202:16 onset 20:7 open 48:7, 163:22, 164:13, 204:4, 205:5 opened 188:20, 189:24 opening 8:13, 189:25 operating 12:5, 14:17, 15:6 operational 125:25, 126:2, 126:3, 126:11, 126:13, 131:9, 134:6, 199:15 operations 126:10 operator 6:18, 25:4,	25:15, 25:17, 36:5, 36:17, 75:7, 75:20, 87:6, 118:9 opine 147:10, 148:4, 180:18 opinion 57:6, 71:10, 89:1, 93:3, 97:15, 106:23, 114:16, 138:18, 147:16, 148:5, 180:17, 181:15, 181:16 opportunity 15:15, 20:16, 183:5, 185:7, 185:11, 192:19 oppose 192:12, 192:24 opposed 63:23, 109:13, 151:16, 155:20, 183:7, 187:6, 192:22, 194:10, 196:2, 197:18, 199:17 opposing 151:15 opposite 69:23, 94:4 opposition 5:21, 6:2, 42:15, 61:3, 107:14, 126:8, 126:9, 126:19, 148:12, 176:15, 182:14, 182:21, 204:3, 204:9, 204:22, 206:2 opposition's 5:25 opt 202:5 opted 199:16 options 70:8	orange 38:12, 52:5 order 47:16, 58:3, 139:13, 187:22 ordinance 60:18, 60:19, 71:18, 81:15, 81:21, 95:12, 97:21, 147:10 org 157:17, 158:2 organic 120:9 organization 19:8, 24:11 organizations 27:6 orient 46:21 orientation 48:15, 55:24 original 206:9 origination 139:17 other 8:4, 8:15, 8:19, 10:25, 14:23, 18:1, 19:6, 20:15, 24:4, 28:7, 29:25, 31:9, 32:7, 34:7, 39:1, 41:14, 43:11, 50:4, 56:12, 56:15, 56:23, 58:4, 58:7, 60:3, 63:12, 64:19, 69:1, 70:9, 70:16, 71:3, 81:7, 82:10, 82:19, 83:11, 84:5, 84:24, 90:22, 93:13, 93:17, 94:3, 94:4, 94:5,
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>98:21, 102:5, 104:11, 112:21, 114:24, 115:2, 120:7, 121:7, 122:6, 130:25, 133:9, 135:1, 142:5, 142:24, 145:11, 145:15, 147:14, 150:23, 152:17, 160:11, 160:21, 161:1, 164:15, 164:16, 164:18, 170:10, 171:8, 180:13, 182:13, 182:17, 183:17, 183:25, 185:2, 187:9, 187:10, 187:13, 188:5, 197:3, 197:9, 198:3, 201:3, 202:14, 205:20 others 25:15, 77:15 otherwise 70:23, 127:4, 146:23, 207:10, 208:8 ourselves 38:11, 47:17, 47:19 out 6:19, 7:12, 13:18, 24:11, 33:2, 42:2, 42:4, 42:13, 46:25, 47:12, 62:22, 65:9, 69:19, 84:17, 85:9, 85:11, 85:25, 86:23, 93:18, 113:20, 114:2, 116:23, 119:23, 126:23, 131:23, 132:4, 143:8, 145:7, 146:5, 148:21, 150:10, 151:7,</p>	<p>152:14, 154:3, 158:5, 168:3, 169:6, 188:16, 193:2, 193:8, 193:15, 193:16, 193:24, 194:1, 194:19, 196:2, 196:6, 196:11, 197:17, 206:19 outcome 207:11, 208:9 outdoor 85:20 outlights 105:2 outlined 60:22, 191:24 outlines 143:18, 156:11 outlot 9:11, 9:13 outs 54:1 outside 84:20, 122:18, 135:17, 135:23, 137:20, 156:13, 156:15, 160:7, 164:1, 180:2 outward 96:18, 107:24, 108:13 outwards 114:9 oval 167:15, 168:20 oval-shaped 166:20, 167:4 over 5:17, 9:10, 16:2, 16:14, 17:19, 22:13, 23:6, 23:8, 23:21, 24:14, 27:8, 27:15, 40:4, 57:2, 58:16, 68:17, 69:7, 111:23,</p>	<p>113:23, 114:3, 141:16, 154:3, 154:5, 164:20, 184:14, 187:8, 193:18, 198:11 overall 27:16, 34:10, 56:14, 56:25, 66:8, 78:4, 80:5, 80:11, 83:2, 85:14, 108:21, 137:17, 139:4, 161:7 overflow 168:2 overlapping 27:23 overlay 10:21 oversight 185:8 overtime 101:20 overview 9:5 own 61:18, 146:3 ownership 64:6 <hr/>P<hr/>p-a-l-k-o-w-i-t-- s-c-h 26:5, 26:10 p-approved-couns- el 158:4 p-i-a 40:2 p-i-a-r-a 39:25 packard 12:6, 162:7, 162:9, 162:14, 162:23, 163:4, 163:9, 170:19, 171:20, 178:18, 178:24, 180:10,</p>	<p>182:18, 198:23, 198:25, 199:2, 199:10, 200:3, 200:5, 200:10, 200:16, 200:19, 200:22 packet 162:21 page 31:4, 31:25, 32:4, 32:8, 32:11, 32:12, 32:14, 32:15, 32:16, 32:17, 34:24, 35:1, 35:12, 35:14, 36:8, 37:23, 38:16, 40:22, 41:25, 43:2, 48:1, 52:6, 129:2, 153:25, 158:8, 168:11, 168:21 pages 1:28, 35:1, 35:2, 36:18, 36:21, 37:2, 37:13, 38:7, 42:23 paint 18:3 palkawitsch 155:11, 158:22, 159:3, 159:5, 159:6, 160:3, 160:25, 195:2 palkowitsch 11:22, 11:24, 25:9, 25:16, 25:19, 26:4, 26:15, 26:20, 28:17, 30:8, 36:19, 37:19, 38:15, 41:4, 41:5, 42:19, 42:24, 45:6, 46:5, 52:7, 58:7, 60:10,</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>60:17, 61:7, 63:11, 68:10, 71:17, 76:5, 110:23, 110:25, 111:7, 111:13, 111:15, 111:20, 127:13, 155:7, 155:8, 155:17 palkowitsch's 28:13, 73:18 panels 27:8 paper 29:10, 179:3 parallel 164:2, 172:1, 173:7 parameters 125:11 parcel 156:2, 156:5, 159:8 parents 20:6, 20:9 park 86:21, 102:1, 102:7, 102:8, 107:21, 125:9, 129:21, 204:16, 204:17, 204:20 parked 197:4 parking 9:18, 47:18, 78:17, 80:21, 81:20, 81:23, 82:12, 88:17, 96:14, 96:17, 96:18, 98:10, 98:15, 99:19, 99:21, 100:25, 102:8, 103:16, 104:23, 107:20, 113:22, 117:17, 121:18, 124:20, 125:2, 125:6, 136:9, 136:10, 136:20, 137:13,</p>	<p>138:2, 148:2, 157:10, 166:11, 169:3, 169:11, 171:23, 172:3, 172:4, 172:17, 172:18, 172:20, 172:25, 174:20, 176:6, 176:20, 176:24, 176:25, 177:12, 177:24, 177:25, 178:1, 178:5, 178:8, 179:2, 182:6, 198:2 parkland 58:13 part 20:5, 28:21, 29:9, 31:13, 33:8, 34:1, 38:18, 45:21, 51:10, 86:1, 88:4, 91:4, 101:13, 106:23, 122:14, 123:6, 137:1, 149:2, 151:12, 170:20, 175:8, 178:20, 183:21, 184:10, 196:22 parte 157:7 participant 63:4 participate 18:18 participation 27:6 particular 19:12, 21:10, 26:25, 28:14, 34:23, 38:15, 38:18, 146:1, 147:11, 161:19 particularly 55:24, 56:19 parties 4:5, 206:15,</p>	<p>207:9, 208:7 partner 21:12 partners 17:19 partnership 22:17 parts 122:10, 198:3 pass 52:10, 137:21, 198:11 passive 117:19 past 10:6, 65:7, 134:7 paths 29:20 pathway 80:18, 81:3, 81:5, 82:1, 88:15 pathways 117:16 patience 5:12, 5:14 patient 18:19 patiently 162:5 patterns 152:5 paved 166:1, 166:3, 167:7 pavement 172:17 paving 168:8, 172:20 paying 141:23 pdf 32:16, 32:17, 35:1, 51:13, 51:14, 158:4 peace 147:24</p>	<p>peaceful 19:19 peak 130:1, 130:10, 130:11, 131:23, 132:8, 132:23, 132:24, 134:20, 134:24, 135:8, 135:9, 135:13, 135:16, 135:17, 135:21, 135:23, 137:2, 137:20, 145:9, 153:6, 154:17, 154:21, 188:2, 189:17 pedestrian 29:20, 80:18, 81:4, 81:5, 82:1, 82:2, 105:3 pending 41:10, 127:15, 201:11 pennsylvania 18:23 people 5:13, 5:16, 6:16, 8:4, 16:1, 17:24, 37:5, 42:13, 44:23, 49:13, 49:22, 54:19, 55:24, 65:6, 65:7, 65:12, 72:20, 73:7, 76:1, 76:17, 80:5, 80:16, 80:24, 95:5, 127:2, 129:25, 132:4, 133:5, 136:16, 136:17, 149:6, 158:6, 162:5, 176:14, 178:22, 183:9, 184:7, 184:8, 184:9, 184:21, 188:9, 193:8, 197:19, 199:5, 204:2,</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>205:23 percent 22:13, 22:14, 164:9 percentage 201:14 perfect 182:7, 196:14 perform 123:4 perhaps 65:12, 113:25, 185:17 perimeter 82:12, 98:14, 99:18, 166:10, 166:22 period 96:6, 131:23, 135:3, 141:12, 142:16, 154:4, 154:6, 189:18, 205:7, 205:14 permission 161:24 permit 81:15 permitted 110:17 permitting 165:7, 169:13 person 17:4, 67:11, 129:24, 129:25, 130:9, 130:10, 132:24, 133:1, 154:17, 154:21 persona 55:14 personal 16:19 personally 17:9, 18:6, 20:6 persons 9:10 perspective 24:17, 47:12,</p>	<p>52:24, 54:9, 57:1, 59:11, 68:11, 69:14, 159:20, 160:10, 183:17 perspectives 95:5, 100:5 phase 165:2 phonetically 62:23 photo 62:10, 179:4 photograph 56:16, 61:10 photometric 86:2, 87:2, 92:4, 92:6, 107:7, 118:1, 123:10, 178:19, 178:23, 178:25, 179:8, 179:18 phrase 109:23, 110:10 physical 130:24 piara 39:25, 66:17, 190:15, 190:23 piara@gmail 40:1 pick 27:19, 66:12, 84:7 picked 167:10 picking 65:8 picks 106:5 picture 18:4, 61:18, 206:10 pictures 45:2 piece 54:12, 65:22 pieces 53:21, 55:11,</p>	<p>57:15, 68:15 pinned 32:7 pipeline 15:8, 23:5, 145:20, 145:23, 146:2, 146:5, 146:10 pitch 64:13, 64:14, 68:17, 68:25 pitched 65:17, 66:6, 68:19 pizza 45:20 place 15:18, 42:21, 52:16, 165:4, 184:3, 196:8, 196:14 placed 15:19, 35:10, 47:22 placement 52:13, 65:22, 92:4 places 21:2, 69:12, 125:12 planner 6:10, 7:9, 10:4, 25:10, 30:2, 72:9, 74:3 planners 43:7 planning 6:24, 11:23, 12:7, 28:8, 28:19, 28:24, 28:25, 29:7, 29:8, 29:10, 30:9, 30:24, 30:25, 55:5, 56:13, 129:21, 129:22, 133:13, 156:22, 157:10, 157:17, 157:18,</p>	<p>158:2, 163:1, 164:23, 181:8, 199:21, 204:16, 204:17, 204:20, 205:10 plans 29:12, 29:13, 29:22, 60:24, 75:19, 125:11, 157:21, 162:3, 169:18 plant 47:8, 47:18, 47:22, 59:10, 83:14, 83:17 plantage 79:6 planted 80:14, 80:17, 83:25, 102:20, 119:24, 167:21, 169:5, 169:7 planting 46:14, 54:12, 78:4, 80:12, 81:2, 82:16, 83:16, 96:20, 96:24, 97:3, 97:18, 119:21, 120:15, 120:25, 171:15 plantings 54:10 plants 97:14 platt 9:13 platted 9:12 play 28:20 please 12:18, 12:20, 12:24, 13:7, 14:4, 14:14, 22:3, 25:17, 26:1, 37:4, 37:22, 39:24,</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>42:10, 42:15, 42:16, 42:19, 42:23, 46:6, 47:3, 55:20, 64:24, 72:18, 74:9, 74:13, 75:8, 85:23, 107:17, 126:25, 127:25, 128:5, 128:13, 129:11, 138:10, 162:8, 162:12, 170:2, 186:13, 186:17, 186:22, 190:21, 192:3, 195:22, 205:7, 206:2</p> <p>plots 196:17</p> <p>plug 179:23, 179:24</p> <p>plugged 180:1</p> <p>plus 23:2, 76:5, 187:6, 194:20</p> <p>pocket 39:14</p> <p>podium 85:8</p> <p>point 32:10, 32:21, 40:18, 40:21, 40:23, 40:25, 42:2, 42:3, 42:14, 47:13, 48:2, 53:8, 55:23, 56:3, 57:16, 57:21, 59:10, 61:16, 78:15, 84:12, 84:14, 87:8, 87:18, 87:22, 87:25, 88:11, 89:4, 89:10, 90:18, 93:10, 94:24, 95:2, 103:22, 105:24, 117:10, 117:11,</p>	<p>117:22, 118:4, 118:5, 118:23, 118:25, 119:4, 119:7, 119:11, 132:14, 135:22, 143:9, 146:12, 146:13, 152:21, 154:23, 163:18, 173:2, 173:3, 173:4, 174:9, 175:6, 175:7, 175:15, 179:15, 184:18, 202:4</p> <p>pointed 193:2, 193:8</p> <p>points 41:24, 57:25, 78:16, 81:19, 82:3, 82:4, 82:9, 84:13, 87:3, 93:14, 106:9</p> <p>pole 52:9, 88:23, 94:18, 94:21, 94:25, 108:12, 179:1</p> <p>poles 104:23, 199:6</p> <p>police 51:7, 140:4, 140:5, 140:9, 147:13, 180:22, 181:5</p> <p>policies 29:14</p> <p>policy 130:7</p> <p>pollution 109:13, 109:19, 122:10, 122:19, 122:20, 124:10, 166:5, 169:24, 170:11, 170:15, 170:16, 184:13</p> <p>pool 52:11</p> <p>poor 189:13</p>	<p>population 23:1</p> <p>portion 30:15, 37:23, 56:2, 56:23, 97:5, 168:24, 173:16</p> <p>portions 53:23, 53:25</p> <p>pose 165:20</p> <p>positioned 96:17</p> <p>possible 46:17, 52:19, 56:22, 66:3, 92:11, 118:8, 118:13, 164:22, 189:23, 200:24</p> <p>possibly 100:7</p> <p>post 6:13, 6:14, 37:7, 107:23, 184:22, 188:14</p> <p>posted 7:2, 7:5</p> <p>posting 7:25, 73:17, 205:8</p> <p>posts 109:5</p> <p>potential 10:14, 133:7, 134:1, 140:13, 147:25, 201:17, 203:19</p> <p>potentially 141:22, 142:22, 144:10, 201:15</p> <p>power 197:10, 198:14, 198:24</p> <p>practice 29:8, 29:21, 104:15, 104:19, 105:1</p> <p>practices 171:6</p>	<p>pre-hearing 48:22, 75:16</p> <p>prefer 8:24, 72:15, 137:5, 198:19</p> <p>preference 55:6</p> <p>preliminaries 8:15</p> <p>preliminary 6:6, 8:9, 8:12, 8:24, 164:25, 201:21</p> <p>prepare 129:8</p> <p>prepared 136:24</p> <p>preschool 107:18</p> <p>presence 55:23</p> <p>present 55:15</p> <p>presentation 111:19, 206:20</p> <p>presented 67:13</p> <p>presents 5:20, 5:24</p> <p>preservations 122:21</p> <p>preserve 163:22, 164:8</p> <p>preserving 164:8, 164:10</p> <p>president 11:21, 14:16</p> <p>presumably 113:19</p> <p>pretty 16:2, 16:10, 47:22, 65:18, 163:18</p> <p>prevent 124:9, 197:11</p> <p>prevention 124:7</p> <p>prevents 108:12</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>previous 27:25, 155:12, 156:1, 159:21, 191:23</p> <p>previously 45:12, 156:14, 164:20, 166:10, 186:19, 188:6</p> <p>priced 11:4</p> <p>primarily 47:5</p> <p>primary 30:1, 53:12, 85:6</p> <p>principle 29:10</p> <p>principles 28:19, 28:25, 104:15, 104:19, 123:14, 124:6</p> <p>printout 156:18</p> <p>prior 29:10, 31:15, 135:12, 135:16, 165:7</p> <p>priorities 65:10</p> <p>prioritize 141:15</p> <p>priority 20:24, 163:22, 164:7</p> <p>prism 111:4</p> <p>private 65:9, 152:9, 152:13</p> <p>probably 16:8, 18:25, 19:19, 20:3, 24:20, 61:24, 73:11, 83:12, 93:15, 93:25, 96:11, 102:17, 112:7, 120:15, 189:8, 203:14</p>	<p>problem 5:12, 5:13, 6:13, 13:24, 93:7, 93:11, 134:10</p> <p>problems 67:25, 188:25</p> <p>proceed 25:1, 42:12, 68:1, 74:6</p> <p>proceeding 30:14, 76:3</p> <p>proceedings 207:3, 207:4, 207:7, 208:4</p> <p>process 18:20, 18:21, 28:9, 29:9, 64:8, 78:14, 78:16, 80:20, 143:15, 154:17, 201:18</p> <p>procuring 47:13</p> <p>produce 24:13</p> <p>product 70:24</p> <p>profession 26:20, 74:24, 162:25</p> <p>professional 27:6, 106:23, 147:16, 148:4</p> <p>proffer 175:15, 177:22</p> <p>proffering 176:15</p> <p>program 179:24</p> <p>progress 20:17</p> <p>progressively 21:14</p> <p>prohibited 189:12</p> <p>project 9:6, 9:9, 19:7,</p>	<p>19:11, 27:20, 29:6, 29:7, 29:11, 29:23, 31:8, 45:24, 46:7, 47:4, 53:10, 53:16, 54:15, 55:25, 57:1, 61:14, 64:7, 64:12, 64:13, 67:15, 68:1, 69:21, 69:22, 85:24, 105:8, 107:1, 132:10, 145:24, 147:12, 147:17, 147:20, 148:5, 155:24, 180:16, 181:12, 181:15, 191:6</p> <p>projected 116:23, 123:16</p> <p>projecting 38:20, 105:5</p> <p>projection 153:5</p> <p>projects 15:8, 16:4, 18:14, 19:24, 26:25, 27:14, 27:16, 28:1, 28:3, 28:18, 28:20, 28:25, 29:22, 55:24, 77:4, 77:10, 77:13, 114:9</p> <p>promise 66:5</p> <p>promote 56:16</p> <p>promotes 84:10</p> <p>prompt 114:5</p> <p>proper 52:15</p> <p>properties 4:16, 64:11, 122:9, 147:25,</p>	<p>160:8, 160:10, 174:22, 174:24</p> <p>property 9:11, 10:17, 30:18, 34:20, 34:22, 47:23, 52:12, 52:13, 58:12, 64:1, 87:19, 87:20, 89:3, 93:15, 99:14, 105:24, 113:21, 118:9, 121:10, 152:4, 156:11, 156:12, 158:20, 158:21, 160:10, 161:10, 163:14, 163:19, 163:21, 163:24, 163:25, 164:1, 164:3, 164:12, 164:13, 164:17, 164:18, 166:20, 167:12, 169:20, 171:1, 171:2, 172:12, 172:16, 172:21, 173:19, 174:3, 174:5, 174:7, 174:9, 174:10, 175:3, 175:8, 175:21, 177:5, 177:7, 177:23, 178:4, 178:6, 179:19, 181:18, 191:17, 192:1, 192:24, 193:1, 195:1, 197:11, 198:1, 200:21, 200:23, 200:24</p> <p>proposal 11:4, 201:11, 201:18</p> <p>propose 104:19</p> <p>proposed 46:7, 47:4, 57:6, 67:18, 83:16, 86:3,</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>89:6, 106:23, 107:2, 129:15, 132:2, 138:13, 152:10, 153:3, 159:9, 160:3, 160:16, 164:20, 171:3, 192:12, 199:4 proposing 9:15, 47:5, 83:18, 91:15, 124:19, 166:9, 203:3 protection 147:14 protocols 187:21 protrude 121:10 provide 18:24, 19:18, 20:2, 20:21, 47:20, 75:6, 80:14, 80:24, 82:18, 83:25, 84:20, 94:1, 95:13, 95:17, 95:23, 98:23, 99:13, 99:25, 101:5, 101:21, 103:2, 103:4, 112:10, 117:16, 121:2, 178:10, 181:21, 188:9, 195:6 provided 20:22, 25:14, 36:5, 36:16, 38:23, 44:12, 53:25, 54:3, 75:7, 75:10, 113:13, 156:10, 182:8, 198:15 provides 22:19, 23:1, 81:4, 82:14, 117:17 providing 15:3, 57:10,</p>	<p>66:6, 81:22, 83:24, 84:8, 90:8, 91:14, 100:12, 101:2, 101:4, 102:3, 105:2, 171:7, 180:18, 199:17 provisions 85:21 public 2:13, 45:21, 147:12, 147:15, 180:15, 207:1, 207:17 publishes 146:19 pull 6:19, 6:20, 23:12, 31:23, 36:25, 49:18, 51:12, 58:25, 76:1, 76:10, 85:25, 91:25, 140:2, 146:4 pulled 22:25, 89:23 pulling 49:12 purpose 41:23, 75:15, 136:22, 146:14, 200:22 pursuant 2:13 push 78:16, 168:18, 200:22 pushed 65:24, 82:1, 113:6 pushing 80:21, 82:6 put 15:19, 20:4, 24:17, 65:23, 75:8, 95:12, 110:8, 110:19, 112:1, 126:25,</p>	<p>130:13, 137:20, 146:23, 147:1, 153:15, 169:1, 175:21, 178:4, 180:5 puts 6:2, 99:17 putting 21:25, 47:22, 82:6, 107:8, 118:5, 147:4, 205:18</p> <hr/> <p>Q</p> <hr/> <p>qualifications 35:16, 36:1 qualified 28:5, 76:2, 79:22, 128:16, 128:18, 128:23, 129:3, 162:24, 163:5, 207:5 qualify 8:24, 28:23, 30:10, 75:3, 75:5, 77:15, 77:18, 129:5, 162:18, 164:18 qualifying 30:8, 77:16, 163:7 quantifiable 137:6 quantity 138:18 question 5:22, 5:23, 6:5, 9:21, 10:5, 11:1, 19:23, 21:5, 21:6, 21:23, 22:1, 22:9, 22:16, 24:15, 28:17, 50:1, 61:8, 62:14, 64:23, 66:15, 67:8, 67:10, 67:16, 67:20, 68:18,</p>	<p>68:23, 68:24, 69:13, 70:14, 71:15, 79:15, 87:17, 94:14, 100:6, 107:4, 107:5, 107:20, 109:3, 113:25, 115:18, 116:12, 123:3, 127:14, 127:24, 139:4, 148:13, 148:14, 149:11, 149:20, 150:9, 150:17, 151:23, 153:12, 155:9, 155:19, 159:7, 159:9, 159:15, 160:1, 160:2, 160:14, 164:14, 165:25, 169:24, 170:2, 170:20, 171:20, 174:21, 190:18, 199:22, 202:10, 202:14, 203:1, 206:7 questions 6:12, 9:7, 9:19, 21:19, 21:20, 22:21, 49:3, 49:14, 60:3, 61:5, 61:7, 66:5, 66:13, 70:9, 70:10, 71:15, 73:25, 104:11, 106:19, 107:14, 107:15, 107:16, 109:1, 109:11, 111:18, 116:12, 122:7, 126:13, 127:19, 139:22, 143:15, 147:6, 148:9, 154:24, 159:4, 161:17, 165:16, 165:21, 169:24, 170:10, 170:11, 171:8, 182:14, 182:17,</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

186:2, 187:3, 190:8, 191:21, 191:22, 198:12, 198:13, 201:1 quick 79:15, 111:18, 159:7 quickly 8:22, 12:13, 16:20, 66:22, 127:17, 166:19 quiet 183:20, 185:5 quite 27:19, 28:9, 53:16, 56:18, 82:17, 122:14, 188:15, 194:7 quote 99:23	rate 131:12, 132:1, 132:9, 132:16, 154:10 rates 129:23, 132:1, 137:4 rather 41:24, 43:16, 185:20, 194:11 rating 116:16, 116:19, 117:16 reach 119:16 reaches 179:19 reaching 184:14 read 22:21, 35:3, 49:16, 62:22, 122:19, 157:15 ready 24:22, 74:5, 75:25, 127:8, 197:22 real 17:21, 17:22, 121:1, 183:14 realistic 205:16 realize 154:11 realized 17:8 really 5:6, 12:11, 15:17, 16:21, 17:22, 17:23, 18:5, 19:1, 19:15, 20:6, 21:3, 29:16, 41:24, 45:10, 45:14, 47:17, 49:11, 52:18, 53:9, 53:11, 54:16, 54:17,	58:13, 58:15, 63:21, 65:4, 65:16, 65:21, 65:22, 65:23, 65:25, 66:21, 68:4, 68:14, 70:4, 70:23, 78:14, 78:18, 80:21, 81:24, 82:17, 83:9, 84:7, 84:20, 97:14, 106:5, 106:8, 114:14, 117:22, 117:24, 122:7, 124:17, 124:25, 132:3, 132:4, 132:6, 140:14, 141:7, 146:20, 159:7, 161:23, 162:4, 183:8, 183:16, 183:19, 184:2, 184:4, 185:9, 185:21, 187:4, 187:19, 190:6 realm 27:17 rear 50:5, 55:18, 58:9, 58:11, 58:12, 58:21, 83:22 rear-end 140:14, 141:4, 141:16, 141:21, 142:18, 142:21 rear-ends 140:24, 141:1 reask 68:23 reason 11:2, 12:18, 18:15, 118:24, 156:4, 189:8 reasonably 94:21 reasons 122:11, 194:14	rebuttal 6:3, 198:17, 198:22 recall 128:17, 179:8 recap 176:16 received 199:21, 199:23 recent 22:25 recently 24:10, 157:20 recess 5:10, 74:4, 127:7 recite 180:13 recited 133:10 recognize 18:1, 130:15, 133:3 recommend 34:20 recommendation 10:9, 175:18, 176:18 recommendations 161:7 recommends 34:21 record 4:6, 4:7, 4:18, 4:20, 5:9, 13:8, 13:19, 14:4, 22:4, 25:13, 25:24, 26:2, 26:21, 35:14, 35:15, 36:21, 37:14, 39:24, 45:25, 46:10, 48:17, 48:19, 49:13, 61:24, 63:7, 72:11, 73:12, 73:15, 74:14, 74:23, 75:14, 77:18,
R			
r 9:11, 30:19, 43:20 races 183:11 rackley 73:6 radius 22:22, 22:24 raise 12:24, 25:18, 40:18, 40:21, 40:24, 74:9, 127:25, 162:8, 186:13, 186:17, 186:22, 190:21, 195:22 raised 9:6, 9:20, 87:18, 138:15, 139:25, 196:3, 198:24 raising 186:14 ran 132:22, 154:19			

77:22, 79:14, 87:5, 89:20, 126:1, 126:24, 127:10, 128:6, 129:13, 145:23, 148:11, 155:23, 162:13, 163:12, 164:24, 167:19, 169:12, 191:4, 204:4, 204:21, 205:5, 205:13, 206:4, 206:21, 206:22, 207:7, 208:3 recorded 88:12, 118:21, 207:4, 208:4 recording 87:23, 118:22, 119:11, 207:6, 208:5 records 87:24, 87:25, 140:3, 140:11 recounted 152:7 rectangular 63:23, 164:4 red 50:16, 86:11, 87:10, 150:2 redirect 68:8, 71:15, 161:16 reduce 56:16, 105:6, 109:13, 170:16 reduced 207:5 reducing 104:20 refer 36:20, 174:15 reference 10:9, 98:19, 98:22 referenced 121:18, 122:22	referred 98:20, 200:13 referring 37:1, 45:25, 153:21, 158:8 reflected 119:17 reflects 71:7 reforestation 164:19, 197:23 reforested 164:15, 166:1 regard 8:23, 147:17, 147:19, 148:6, 178:25 regarding 9:21, 63:11, 107:20, 109:3, 131:12, 140:1, 178:18 regardless 189:17 regards 64:19, 152:3 regulations 187:22, 187:23 reinforce 82:4 reiterate 192:21 related 111:19, 130:19, 130:21, 199:22, 207:9, 208:7 relating 161:10 relation 27:8 relationship 50:2 relationships 27:24 relative 11:1, 43:4, 48:3, 147:15 relatively 139:8, 141:10,	153:18 relay 113:25 release 167:24 relevant 36:18, 40:19, 46:6 relied 133:11, 134:17 religions 183:12 relocated 138:13, 138:20, 139:8 relocating 138:8 relocation 183:22 rely 111:20, 199:16 remain 184:21 remains 184:17 remember 99:8, 137:10, 173:3, 180:10, 196:6, 196:10 remote 61:2 remotely 21:19 removal 9:23, 9:24 remove 10:21, 61:3 removed 39:20, 41:17, 41:19, 191:8 rendering 205:21 renders 85:5 renovating 16:22 reopen 205:13	repeat 114:19, 170:2 replacement 164:22 replacing 166:2 replanting 164:13 report 22:25, 24:4, 24:10, 30:25, 31:4, 31:24, 32:1, 35:4, 35:18, 44:16, 60:15, 60:22, 131:3, 131:5, 181:6, 181:7 reported 140:4, 140:5, 140:22, 141:3 reporter 39:23, 207:1 reports 23:23 represent 86:9, 120:20 representation 28:18, 86:25, 120:5 representational 53:10, 54:11 representative 91:12 represented 54:10, 76:8, 136:20, 183:12 representing 4:15 represents 154:2 request 181:8 require 65:4, 167:9, 190:1, 197:23, 201:14 required 9:22, 48:25,
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>71:17, 71:22, 101:9, 101:10, 101:15, 117:3, 130:13, 154:16, 154:19, 154:21, 165:6, 182:4, 194:21 requirement 86:19, 90:16, 117:9, 117:14, 117:18, 142:25, 180:1, 181:15, 181:16 requirements 60:18, 81:15, 98:15, 107:7, 154:22, 168:13, 168:25, 180:21, 202:3 requires 9:24, 147:19, 149:23 requiring 108:23, 110:8, 202:20, 203:15 rerouted 41:14 reservation 122:10 resident 47:6, 62:16, 65:25, 99:16, 120:11 residential 1:9, 4:4, 4:16, 9:10, 23:18, 35:10, 39:13, 43:6, 43:10, 53:20, 55:4, 55:10, 55:13, 57:7, 63:14, 64:1, 68:10, 68:13, 68:17, 68:20, 68:25, 69:15, 69:18, 69:23, 70:20, 71:18, 71:24, 82:9, 84:23,</p>	<p>91:19, 93:2, 99:15, 99:17, 102:4, 107:10, 114:3, 117:20, 139:8, 172:12, 183:14, 183:25, 185:19, 187:11, 191:18, 192:25, 197:22, 199:5, 200:21, 200:24 residents 15:3, 18:7, 18:24, 19:17, 19:20, 45:16, 45:20, 63:21, 80:24, 81:6, 83:4, 83:10, 84:9, 114:24, 115:19, 130:17, 130:21, 148:3, 191:25 resign 90:24 resolution 164:24 resonate 185:9 resonating 184:4 resources 83:15 respect 16:21, 65:25 respected 17:13 response 49:25 rest 145:12, 191:13 restaurants 189:25 restrictive 27:17 result 132:18, 144:8, 145:15, 147:21, 181:13 resulted 132:23</p>	<p>results 130:9 resume 25:11, 25:12, 25:24, 26:12, 26:15, 26:23, 28:14, 73:18, 75:6, 75:23, 76:1, 76:8, 76:10, 76:17, 77:17, 77:24, 128:11, 128:12, 129:2, 162:19, 163:5 retail 82:7, 85:8 retain 184:12 retention 166:21, 167:5, 167:6, 172:2, 176:1 retired 205:15 return 15:4 returns 15:5 reversed 17:14 reverses 174:14, 175:2 reverted 170:25 review 9:23, 29:9, 29:12, 29:13, 43:11, 126:9, 126:12, 141:12, 143:1, 144:2, 165:3 reviewed 30:15, 30:24, 133:13, 143:13 reviewing 29:15, 48:15, 156:6, 160:7 reviews 98:21</p>	<p>revised 202:17, 203:21, 204:6, 204:15, 206:2 rewarding 15:5 rezone 195:1 rezoned 192:24 richmond 27:21 rid 201:13 right 5:21, 6:6, 8:8, 10:18, 12:24, 14:14, 24:1, 24:3, 24:20, 25:18, 26:16, 31:9, 32:12, 33:18, 34:15, 36:23, 37:22, 45:2, 45:7, 45:23, 46:24, 49:11, 49:24, 51:12, 53:10, 54:16, 56:5, 58:6, 59:20, 60:7, 64:16, 66:12, 67:4, 67:16, 67:18, 67:25, 71:22, 74:5, 74:9, 77:2, 81:11, 87:9, 88:2, 90:16, 98:18, 99:1, 99:20, 104:5, 106:18, 113:21, 115:16, 118:12, 118:16, 121:8, 127:19, 128:1, 133:25, 136:16, 146:6, 149:6, 149:8, 149:24, 149:25, 150:2, 150:5, 150:12, 150:15,</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

152:14, 153:22, 157:12, 162:8, 167:4, 167:5, 168:19, 168:21, 168:22, 169:18, 176:13, 181:2, 186:13, 186:14, 186:17, 186:22, 188:7, 189:11, 190:22, 191:11, 193:12, 194:2, 195:22, 196:4, 196:15, 196:17, 196:22, 201:16 right-hand 108:5 right-hand-side 53:22 rights 30:20 rigid 63:23 rigorously 15:4, 15:5 ripping 184:24 rises 163:17 road 33:10, 33:23, 33:25, 34:1, 34:2, 134:24, 138:17, 141:23, 168:21, 184:23 roads 147:14, 147:17, 166:3 robeson 1:15, 3:3 robots 45:1 rockville 2:5, 3:7, 162:15 role 14:15, 84:10 roof 64:15, 64:18,	65:17, 66:7, 68:12, 68:19, 68:25, 69:9, 69:15, 69:18, 70:14, 70:17, 168:23, 169:2 roofing 63:23 roofs 68:17, 68:25, 69:3, 70:2, 187:16 room 2:4, 4:9, 11:25, 16:5, 16:7, 16:22, 16:23 rooms 115:10 rotate 174:3, 174:10 rotated 163:16 roughly 53:8, 112:15, 174:13 routinely 28:7 rules 50:3 run 8:21, 170:24, 172:1, 206:9 run-off 165:25, 167:7, 169:25, 170:16 runs 164:2, 199:3 rural 99:15, 196:16 rush 8:18	s0 71:9 s2 128:19 safer 183:24 safety 117:18, 141:7, 141:13, 142:1, 142:3, 148:2, 197:6 said 16:9, 16:15, 16:16, 16:17, 17:2, 17:3, 17:4, 21:5, 21:6, 22:9, 24:11, 26:15, 30:3, 36:16, 67:11, 77:25, 106:14, 112:12, 125:12, 131:15, 148:19, 150:4, 152:3, 153:16, 153:17, 156:4, 158:12, 160:4, 164:7, 173:8, 176:17, 185:5, 187:5, 188:6, 189:21, 207:6, 208:4 sam 192:9 same 48:14, 51:21, 51:22, 71:18, 97:8, 141:4, 158:1, 160:19, 170:4, 174:13, 184:25, 188:24, 197:25, 205:13 sampling 27:14 sandy 31:22, 33:10, 197:20 sanitary 147:14	satisfactory 146:9 satisfies 145:5 save 19:7, 66:2 saw 16:14, 18:16, 56:25, 99:4, 107:23, 119:18, 125:11, 126:10 say 5:23, 6:1, 14:7, 23:16, 24:5, 24:8, 24:18, 26:8, 37:14, 51:16, 60:9, 60:13, 69:10, 70:21, 70:22, 71:12, 72:4, 72:13, 73:13, 76:17, 82:25, 96:22, 98:5, 100:14, 100:15, 104:14, 107:10, 112:17, 113:1, 113:7, 123:3, 127:2, 130:20, 133:19, 144:14, 156:20, 159:1, 163:5, 164:11, 177:3, 182:22, 182:23, 190:6, 194:25, 198:11, 205:14 saying 38:1, 42:18, 43:14, 47:24, 57:16, 69:17, 75:21, 84:8, 93:9, 102:8, 110:20, 131:16, 134:16, 136:15, 137:13, 139:17, 154:4, 158:14, 160:6, 179:12, 183:7, 202:22 says 22:12, 35:5,
	s		
	s-i-n-g-h 40:1 s-m-i-t-h 192:10		

<p>35:10, 35:22, 98:23, 99:11, 99:21, 118:19, 145:3, 145:4, 157:20, 160:17, 182:3 scale 43:19, 191:6, 191:8, 191:12 scary 194:4 scattered 124:14 scene 140:7 schedule 133:16, 134:16, 134:18, 135:5 school 138:8, 138:11, 138:20, 138:22, 139:7, 139:13, 143:9, 196:5 schools 147:13 schwartz 4:8 science 27:3, 55:2 sconces 105:4, 123:22 screen 26:13, 78:3, 80:25, 83:9, 83:25, 95:18, 101:5, 102:4, 103:2, 109:17, 118:15, 153:22, 182:3, 200:10 screened 101:19 screening 80:15, 82:18, 96:2, 96:13, 98:23, 98:25, 99:14, 99:18, 101:21, 112:10, 175:18</p>	<p>scroll 32:25, 37:4, 38:3, 38:6, 38:8, 38:16, 38:25, 39:2, 42:23, 51:7, 51:9, 52:1, 53:6, 59:19, 99:3 search 157:1, 157:2 seasoning 97:20 seating 81:6, 84:19, 85:11 second 13:17, 26:6, 33:1, 35:21, 44:6, 45:8, 48:11, 58:25, 62:19, 62:21, 62:22, 70:11, 72:20, 73:16, 79:7, 89:25, 187:19 secondary 56:25, 57:21 section 47:20, 50:18, 50:21, 51:8, 51:9, 51:10, 52:3, 52:8, 52:18, 60:18, 60:20, 82:11, 85:21, 87:7, 98:5, 98:6, 99:7, 102:12, 147:10, 181:20, 182:2, 182:9 sections 48:13, 56:13, 73:20, 73:21 security 125:3, 125:13 seeing 13:4, 21:13, 33:3, 33:4,</p>	<p>56:11, 57:14, 86:7, 179:3, 179:18 seeking 128:23 seem 54:7, 65:16, 189:6 seems 57:15, 63:22, 65:10 seen 67:13, 75:23 sees 161:9 selecting 123:14 selection 45:18 semi-rural 203:3 semi-square 93:21 send 8:6, 158:5, 204:14 senior 1:6, 4:3, 9:15, 14:20, 15:2, 15:17, 17:14, 19:24, 22:10, 23:20, 26:22, 26:25, 27:12, 27:15, 27:17, 28:14, 44:3, 55:24, 56:20, 77:12, 84:8, 129:9, 183:7, 187:6, 188:23, 189:16, 190:3, 191:25, 192:22, 196:2, 196:5, 197:6, 201:12 seniors 18:7, 18:16, 19:2, 20:15, 22:18, 187:7, 189:19</p>	<p>sense 27:13, 103:9, 116:23, 144:17 sensitive 64:15, 163:14 sentence 37:25 separate 47:18, 51:13, 55:11, 129:22, 144:19 separated 81:20, 182:5, 196:20 separately 75:10 serve 14:24, 17:24, 18:7, 18:8, 43:15 served 16:15, 23:20, 138:19, 147:12 service 20:2, 21:8, 131:16, 188:7 services 147:13, 152:9, 169:13, 188:10 serving 24:3 session 143:9 set 16:6, 51:10, 97:22, 114:17, 119:22, 129:12, 187:22, 207:12 setback 100:14 setbacks 100:15, 100:16 sets 146:22 setting 19:19, 20:14, 20:22, 124:23 seven 22:24, 50:20,</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Transcript of Hearing
Conducted on February 16, 2024

101

<p>50:21, 51:4, 52:14, 64:14, 65:15, 174:3, 193:3 several 9:19, 163:6, 189:10 severe 140:6, 141:18 sewer 180:19 sha 146:25, 149:23, 150:2 shading 81:6 shake 102:11 shall 93:9 shallower 103:22 shape 203:8 shapes 167:15 share 19:10, 28:2, 32:9, 48:10, 93:15, 93:20 shared 32:19, 32:21, 44:9, 64:7, 128:12 sharing 84:24 shcwartz 3:12 shed 170:17 sheet 54:8, 92:1, 92:2, 110:12, 166:16, 167:4, 200:6, 200:11 sheets 46:11, 46:13 sheriff 15:13</p>	<p>shield 104:21, 108:4, 108:12, 108:14, 108:16, 108:23, 109:3 shielding 123:15, 179:1, 179:5, 179:6, 179:12 shields 108:11, 202:20 shift 134:8, 134:16, 134:17, 135:5, 135:6, 135:10, 135:11, 135:15, 135:19, 135:20, 135:23 shifts 126:11, 133:16, 137:20 shine 124:1, 203:4 shining 96:19, 173:22 shopping 45:18, 189:23 shops 189:24 short 5:10, 87:19, 205:14 should 42:2, 42:3, 51:14, 62:22, 63:7, 66:23, 66:24, 85:18, 141:23, 166:15 shouldn't 151:9 show 47:20, 53:14, 54:7, 54:12, 54:13, 56:3, 58:8, 58:9, 58:17, 59:15, 88:21, 89:18, 90:5, 108:3,</p>	<p>110:12, 113:16, 118:9, 156:11, 206:13, 206:14 showed 66:20, 85:4, 89:24, 93:5, 119:21, 134:1 showing 26:13, 86:20, 95:5, 97:5, 105:14, 108:18, 114:2, 121:12, 179:5, 202:17, 203:22 shown 38:4, 57:5, 88:13, 102:22, 129:2, 153:22, 179:13, 188:19 shows 35:13, 52:18, 87:14, 178:10 shrubbery 97:1, 167:22, 169:8 shrubs 103:3 shuttle 65:9 shuttles 152:13 side 19:14, 31:14, 32:7, 32:24, 33:9, 34:7, 41:14, 45:10, 47:1, 47:18, 50:4, 50:15, 53:11, 55:19, 56:5, 58:4, 58:11, 58:21, 59:5, 59:10, 59:12, 59:18, 59:25, 65:7, 78:11, 82:2, 82:22, 82:25, 84:5, 84:13, 84:21, 85:7,</p>	<p>85:9, 85:10, 86:21, 87:2, 87:14, 92:20, 93:17, 102:3, 102:5, 103:15, 103:19, 103:21, 105:5, 108:5, 118:10, 119:5, 119:8, 119:10, 120:11, 122:10, 127:1, 138:12, 138:24, 139:9, 139:14, 156:10, 158:10, 160:8, 163:23, 164:17, 174:19, 174:23, 187:13, 192:12, 200:12, 201:1 sides 194:6 sidewalk 125:9, 193:19 sidewalks 183:23, 193:11 siding 56:13 sight 29:18 sign 11:11, 81:11, 81:12, 81:13, 81:15, 91:1, 91:12, 92:21, 92:23, 93:3, 96:1, 109:15 signage 81:8, 90:23, 90:24 signal 142:9, 142:14, 142:19, 142:21, 142:22, 143:3, 143:11, 143:18, 144:6, 144:10, 144:12, 144:18, 144:24, 145:1, 146:8, 146:12, 146:17, 146:21,</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

146:22, 147:2, 149:22, 150:2, 150:4, 152:23, 153:2 signalization 142:5, 142:17, 142:25, 143:23, 146:15 signalize 146:16 signature 206:12 signature-mig2k 208:13 signature-plkal 207:15 signatures 206:10 signed 206:8 significant 55:6, 55:15, 65:18, 114:10, 114:18, 203:6 significantly 133:11, 172:13, 174:14 signs 7:5 silver 23:25, 196:3, 197:19 similar 17:20, 27:20, 27:23, 76:4, 100:2, 107:1, 131:19, 187:15 similarly 135:14, 135:16 simple 202:9 simply 193:24 since 7:6, 40:11, 72:16, 93:8, 137:22, 151:5, 152:5, 152:18,	159:7, 159:9, 159:12, 159:19, 160:2, 160:6, 160:7, 160:15, 188:3, 194:14 sing 39:17 singh 39:25, 40:1, 40:4, 40:7, 40:17, 41:1, 41:8, 41:12, 41:23, 42:5, 42:9, 66:15, 66:17, 66:18, 66:19, 67:1, 67:6, 67:7, 67:10, 68:6, 72:22, 78:20, 78:23, 79:15, 79:18, 79:25, 127:4, 190:13, 190:15, 190:18, 190:23, 191:1 single 50:13, 99:13, 133:5, 133:6, 135:3, 142:16, 153:4, 153:5, 153:8 single-family 35:5, 35:7, 43:17, 43:21, 47:17, 57:7, 57:10, 70:3, 174:1, 174:5, 194:12 sit 194:5 site's 43:4, 81:15 sites 38:20, 64:16, 145:16 situation 144:6, 170:24, 176:20 six 173:17, 174:1,	174:3, 174:8, 175:21, 176:2, 176:3, 176:5, 176:6, 177:16, 177:23, 177:25, 178:1, 178:5 six-foot 193:5 size 53:21, 163:13 skill 27:19 skills 207:8 skip 125:25 sky 123:14, 124:6, 203:3, 203:8 slide 53:14 slight 82:14 slightly 82:18, 113:5, 163:17, 168:19 slip 108:11 slope 172:4, 172:24 sloped 172:25 slopes 50:8 slow 144:15 slowly 167:24 small 86:8, 153:18 smaller 43:19, 76:11, 76:16, 103:1, 112:5, 112:24, 184:22, 191:8, 194:6 smart 22:20	smith 73:5, 192:10 smithkjk@aol 192:11 snack 170:3, 170:6 socialize 84:20 society 83:15 soft 81:9, 81:22, 82:13, 89:7, 90:8, 90:11, 106:5 soil 167:25, 168:2 sold 197:20 solid 54:2, 120:6, 121:8, 199:25 solutions 197:15 some 4:10, 6:12, 6:13, 6:14, 9:7, 12:18, 14:22, 16:2, 16:4, 17:12, 21:3, 23:22, 28:1, 29:25, 34:4, 42:14, 50:2, 52:20, 55:3, 56:23, 60:11, 63:12, 64:4, 64:5, 66:1, 66:2, 69:22, 72:7, 81:5, 81:6, 82:4, 84:5, 84:11, 88:2, 93:15, 93:19, 93:24, 94:6, 94:12, 95:17, 95:21, 95:22, 97:17, 102:25, 106:4, 106:7, 111:22,
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

112:23, 113:19, 114:1, 135:9, 138:23, 139:25, 142:5, 143:3, 143:14, 145:15, 152:24, 156:4, 165:17, 165:18, 169:5, 178:19, 189:25, 193:3, 196:25, 197:16, 199:21 somebody 15:19, 126:6, 131:21, 140:18, 140:19, 141:22, 159:19, 160:20, 161:15, 193:15 someone 42:14, 42:15, 63:24, 76:13, 76:14, 76:18, 78:25, 125:24, 127:9 something 9:25, 16:25, 17:2, 19:11, 49:8, 52:10, 55:12, 55:16, 56:21, 64:15, 65:13, 69:15, 69:18, 104:14, 109:18, 109:20, 121:9, 137:6, 142:18, 154:12, 161:9, 184:14, 185:19, 187:14, 187:19, 201:4 sometimes 142:20, 151:7, 184:18, 184:19, 189:9, 194:4 somewhere 140:25, 150:14 son 109:6, 152:2, 183:1 soo 3:11, 4:7	sorry 23:10, 32:15, 42:22, 54:6, 58:24, 61:21, 76:17, 78:20, 78:22, 78:24, 79:7, 97:12, 101:12, 103:17, 108:25, 112:11, 113:10, 115:16, 125:6, 132:25, 137:24, 148:16, 149:18, 152:1, 153:20, 157:11, 159:25, 160:2, 170:3, 177:4, 189:19, 195:5 sort 6:24, 15:10, 63:15, 65:2, 79:5, 83:19, 84:11, 93:21, 102:1, 112:7, 112:9, 114:18, 114:24, 116:24, 124:9, 130:20, 137:3, 144:17, 165:24, 170:13, 171:22 sorts 132:7 sounds 8:17, 146:15, 170:7, 197:15 south 33:10, 34:4, 34:9, 47:9, 83:3, 84:15, 84:25, 87:2, 87:8, 120:22, 120:23, 139:9, 152:25, 158:17, 158:19, 163:20, 168:22, 173:3, 173:18, 180:2, 195:4, 199:4 southern 31:19, 88:2,	118:24, 119:4 southwest 164:11 soviet 63:19 space 19:3, 19:8, 24:1, 87:16, 118:15 spaces 9:18, 88:17 speak 5:2, 5:3, 13:12, 13:13, 13:20, 42:25, 44:20, 47:15, 54:9, 61:12, 66:23, 76:25, 89:20, 130:12, 138:10, 158:16, 165:18, 182:25, 183:6, 186:4, 187:3, 190:13, 192:4 speaker 5:8, 79:1 speaking 41:8, 46:1, 52:18, 56:10, 78:24, 78:25, 87:5, 110:24, 192:20, 199:6 special 10:10, 38:1, 39:18, 40:10, 40:11, 43:22, 84:7, 161:24, 191:2, 191:5 specially 64:17 species 83:14, 83:18, 95:15, 96:5, 96:8, 112:1, 119:16 specific 22:22, 22:23, 32:18, 50:2,	60:18, 95:13, 110:12, 161:6 specifically 15:16, 17:19, 18:12, 18:18, 20:9, 23:21, 137:20 specification 108:1, 108:20, 110:5, 110:8, 110:13, 117:1 specifications 110:1 specified 95:11 specify 29:6, 110:2 specifying 112:16, 116:21 speech 178:13 speeding 184:23 spell 7:12, 13:8, 26:10, 116:2, 117:14, 192:7 spend 17:5 spike 38:5, 145:14 spill 104:20 spillage 122:8, 122:18, 123:7, 123:12, 197:12 spoke 4:21, 45:8, 45:9, 57:8, 172:2 spoken 27:8 spots 34:25, 198:2 spread 179:6 spring 31:22, 33:10,
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>196:3, 197:20 sprouts 189:24 square 74:18, 128:8, 131:25, 132:12, 169:1 squares 88:2, 88:3, 93:23 st 74:17, 203:25, 204:7, 206:1 staff 6:17, 7:18, 30:24, 31:24, 32:1, 35:4, 35:17, 44:16, 55:5, 55:17, 60:14, 60:22, 60:24, 61:20, 80:21, 125:8, 130:19, 130:22, 131:3, 132:5, 133:8, 134:2, 135:14, 136:4, 136:6, 137:1, 137:3, 137:12, 142:13, 181:5, 181:7, 199:21, 204:16, 204:17 staff's 205:10 staffing 37:6, 113:20, 134:8, 153:9 stage 165:6 staggered 120:2, 120:9 staging 197:19 standard 29:9, 31:17, 60:18, 81:14, 97:20, 97:22, 98:3, 117:8, 129:19, 146:22</p>	<p>standards 97:25, 100:1 standpoint 141:8, 153:5 starpoint 152:17 start 4:11, 29:11, 30:14, 40:4, 64:2, 80:3, 82:17, 96:7, 103:22, 118:5, 182:23, 183:7 started 15:11, 61:14 starter 23:16 starting 24:7, 114:14, 174:8 starts 21:14, 135:6, 173:10, 174:3 starve 79:20 state 2:14, 12:10, 12:19, 13:7, 14:3, 21:25, 22:3, 26:1, 26:20, 28:9, 48:16, 50:1, 56:14, 70:4, 74:13, 115:24, 116:4, 121:23, 125:25, 128:5, 146:16, 162:12, 167:9, 168:13, 171:5, 207:18 statement 8:14, 11:3, 14:25, 35:16, 35:25, 48:23, 60:23, 126:3, 126:9, 126:15, 129:12, 130:12, 133:12, 133:20, 133:25, 134:17,</p>	<p>136:24, 154:18, 191:24 statements 75:16, 129:8 states 7:5, 15:6, 27:16, 147:11 station 181:5 statistics 22:11, 141:6 stay 19:3, 161:25 staying 93:8, 195:10 stays 158:1, 174:13 stem 183:13 step 93:18, 129:14 sticks 34:7 still 13:18, 20:16, 79:11, 87:15, 121:5, 124:1, 124:2, 127:13, 133:7, 144:6, 154:13, 155:16, 160:22, 193:4, 193:6, 196:15, 198:25, 201:18 stop 31:12, 66:21, 87:19, 115:23, 123:1, 147:4, 179:19 stopping 184:18 storage 65:8, 188:11 stories 17:7, 17:20, 56:4, 193:6 storm 52:16, 82:21, 88:9, 100:23,</p>	<p>100:25, 147:14, 165:9, 165:16, 165:17, 166:4, 166:13, 169:12, 170:10, 170:17, 170:21 story 16:6, 16:10, 16:11, 16:19, 47:6, 50:5, 53:13, 56:2, 57:19, 68:2, 95:23 straight 58:22, 81:18, 103:20 strategic 18:22, 107:8 strategically 83:6 strategy 82:21, 83:3, 83:12 stream 4:15, 5:16, 9:12, 9:14, 22:6, 46:22, 46:24, 47:15, 59:5, 62:16, 63:8, 67:14, 78:12, 81:18, 83:21, 92:19, 116:7, 122:12, 125:22, 163:18, 163:23, 164:8, 164:10, 164:16, 165:17, 167:12, 171:25, 175:9, 175:11, 175:12, 179:21, 190:16, 192:11, 192:13, 193:19, 196:19, 198:7 street 12:10, 14:6, 22:3, 50:16, 52:11, 53:8, 74:18, 78:18,</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

79:3, 113:22, 134:20, 140:18, 140:19, 143:20, 143:21, 144:8, 145:5, 146:9, 149:3, 149:9, 149:24, 149:25, 151:18, 162:15, 191:11, 191:23, 193:3, 193:11, 193:13, 193:16, 193:20, 194:16 stress 78:13 strip 100:19, 100:22, 177:9 strongly 185:15, 191:16, 192:23 structure 182:4, 182:5, 184:3 structures 168:5 student 139:1 students 138:19 studied 68:4, 152:19 studies 23:12, 23:13, 122:17, 131:18, 134:21, 137:19, 188:15 studio 188:18 study 55:3, 122:22, 123:4, 123:6, 123:12, 132:15, 146:14, 148:20, 149:22, 150:22, 152:4, 152:20, 190:4, 194:8, 194:9 stuff 65:8	style 65:11, 66:11, 71:19 styles 65:2 sub 38:22, 42:22 subdivision 9:12 subject 5:18, 5:19, 18:12, 39:12, 50:14, 81:14, 99:14, 153:13, 182:4, 201:17 submers 38:23 submission 86:2, 206:2, 206:13 submit 12:14, 63:3, 192:20, 201:4, 203:21, 203:23, 206:3, 206:12 submits 12:14, 204:6 submitted 6:15, 63:7, 77:17, 81:10, 134:1, 143:12, 206:10 submitting 204:7 sudden 17:9 sufficient 110:14, 154:13 suggest 175:15 suggesting 34:6 suggestion 180:4 suite 3:14, 128:8, 162:15 suited 185:18	summary 85:13 sunday 188:17 sundays 188:16, 193:16 supervision 76:12, 76:18 supervisory 28:9 supplemental 7:12, 7:20, 7:22, 7:25 supply 180:18, 180:19 support 20:11, 129:9, 133:12, 180:16 supported 17:13 supporting 208:6 supports 23:14 sure 4:22, 7:19, 12:18, 27:15, 31:11, 41:4, 44:24, 52:8, 53:17, 64:2, 66:10, 72:6, 73:13, 75:9, 77:24, 83:16, 83:17, 92:14, 96:1, 101:18, 110:1, 112:12, 124:7, 125:11, 127:9, 128:7, 128:19, 138:11, 144:19, 144:23, 145:1, 146:3, 146:6, 147:1, 148:10, 158:15, 192:8, 194:8, 205:16 surety 11:11, 202:10 surface 9:18, 78:17,	182:6 surprises 198:7 surround 177:20 surrounding 7:13, 43:4, 44:1, 44:17, 71:25, 107:5, 134:25, 172:11 surveying 163:2, 163:3 survived 16:13, 16:17 susceptible 142:17 suspect 49:13 sustain 140:6 suv 152:13 suvs 188:9, 197:3 swear 12:10 switch 34:9, 36:1, 139:18, 152:1 sword 203:10 swore 186:9 sworn 13:2, 25:20, 74:11, 128:3, 155:12, 162:10, 186:19, 186:25, 190:24, 192:15, 195:24 symbols 80:13, 120:4, 120:5, 120:20 system 167:11, 168:7, 169:2 <hr/> T <hr/> t-bone 140:19, 141:19
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>tab 58:25 table 153:12, 153:19, 154:1 take 5:10, 15:21, 49:13, 61:18, 66:2, 72:5, 73:11, 99:24, 125:21, 126:8, 126:25, 127:19, 133:15, 139:23, 148:25, 149:5, 156:20, 157:11, 169:10, 173:13, 173:25, 179:1, 184:3, 188:25, 194:22, 203:22, 206:3 taken 61:10, 62:10, 74:4, 99:18, 127:7, 134:22, 185:13, 207:3 takes 6:13, 184:22 taking 113:16, 156:19, 156:21, 185:20, 185:24, 190:4, 206:19 talk 78:4, 80:6, 80:12, 104:3, 122:9 talked 23:24, 123:15 talking 44:5, 44:6, 75:12, 79:2, 79:4, 82:5, 83:1, 83:2, 84:1, 87:5, 100:15, 100:17, 104:2, 114:22, 114:23, 115:1, 123:20, 124:10,</p>	<p>150:25, 176:21, 176:22, 191:8, 197:11 tall 65:3, 109:5, 109:10, 114:3, 126:19, 184:3, 193:3, 193:6 taller 68:20, 112:3 tammy 1:29, 208:2, 208:15 tapestry 18:3 taught 189:11 taylor 21:22, 22:2, 22:5, 22:9, 23:15, 24:23, 61:8, 61:10, 61:17, 62:1, 62:7, 62:9, 62:13, 70:11, 70:13, 71:2, 71:7, 71:13, 72:23, 148:14, 148:16, 148:19, 148:24, 149:5, 149:11, 149:16, 150:11, 150:17, 151:2, 151:21, 159:6, 159:17, 159:22, 160:2, 160:13, 160:23, 161:13, 186:6, 186:21, 186:22, 186:24, 187:2, 204:10 taylor@hotmail 22:7 tdr 9:11, 9:21, 10:21, 30:20, 39:13, 201:5, 202:14 tdrs 10:1, 10:6,</p>	<p>10:10 team 15:4, 18:8, 64:7, 201:8 technical 5:11, 5:12, 5:13, 13:16, 39:17, 60:14, 110:10, 110:18, 110:22, 162:3, 186:16 technically 151:5, 172:23 teenage 15:14 television 5:8 tell 4:25, 15:10, 23:19, 42:14, 77:22, 158:13, 174:18, 181:4, 181:22 telling 141:12 temperature 169:10 ten 73:13, 79:17, 96:9, 96:12, 97:23, 100:13, 111:23, 112:7, 173:19, 173:23, 177:9, 204:4, 204:5, 204:25, 205:1 terms 34:20, 43:3, 60:17, 65:11, 68:10, 69:13, 83:12, 83:22, 86:16, 86:17, 96:4, 98:2, 100:12, 102:4, 104:20, 105:1, 105:18, 106:11, 107:7, 109:18, 117:11, 117:18,</p>	<p>119:12, 120:10, 123:11, 124:1, 124:5, 124:16, 130:12, 132:15, 175:14, 175:18 terrible 189:4 territory 106:7 tested 41:7 testified 13:2, 25:20, 28:7, 74:11, 128:3, 146:8, 147:7, 155:12, 162:10, 162:23, 164:21, 173:20, 186:19, 186:25, 190:24, 192:15, 195:3, 195:24 testifies 12:9, 12:17, 166:25 testify 5:17, 5:23, 5:25, 8:20, 11:19, 12:5, 22:1, 37:19, 41:5, 44:7, 60:4, 66:24, 67:4, 72:21, 72:22, 72:24, 73:3, 103:18, 104:16, 116:13, 152:21, 167:2, 171:23, 190:12, 190:17, 195:15, 195:16, 198:20 testimony 5:19, 10:2, 11:9, 11:14, 30:14, 40:21, 40:25, 42:3, 42:4, 42:5, 42:8, 42:12, 43:23, 43:24, 45:8, 63:8,</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>63:11, 63:13, 67:9, 71:12, 122:24, 123:2, 123:3, 126:16, 126:18, 127:2, 136:11, 170:6, 178:19, 185:2, 185:17, 198:22, 199:18 testing 79:12 text 79:8 th 204:8, 204:20, 204:21, 204:22, 205:14, 207:13 thank 4:7, 5:11, 9:4, 13:22, 14:10, 18:11, 21:16, 21:18, 22:8, 22:16, 24:23, 26:3, 26:9, 26:17, 30:12, 34:15, 39:22, 40:7, 44:4, 62:7, 62:13, 63:9, 63:10, 64:2, 65:1, 66:4, 68:6, 71:13, 77:20, 78:3, 79:9, 79:18, 90:21, 109:4, 111:17, 115:20, 116:15, 125:19, 125:20, 127:6, 128:14, 129:7, 147:8, 149:11, 151:21, 152:1, 153:11, 153:24, 154:24, 155:4, 155:5, 155:18, 161:13, 177:15, 177:18, 178:17, 185:23, 185:25, 186:1, 186:20, 187:2,</p>	<p>190:6, 190:7, 190:8, 191:19, 191:20, 192:3, 192:17, 192:19, 192:20, 195:9, 195:10, 195:12, 198:18, 199:2, 200:15, 206:17, 206:18, 206:20 thanks 196:1 themselves 4:6 therapeutic 84:15 thereafter 207:5 therefore 154:22, 207:4 thing 47:12, 67:1, 78:13, 81:7, 82:19, 83:11, 85:12, 101:24, 127:12, 137:11, 180:13, 187:19, 196:5, 202:16 things 8:22, 18:1, 20:25, 23:16, 45:22, 80:20, 86:17, 115:2, 122:20, 124:8, 130:20, 183:10, 187:17, 197:9, 197:14, 197:17 thinking 98:13, 137:9, 197:5 third 11:25 thought 11:15, 16:24, 21:5, 58:19, 68:16, 99:4, 107:22, 119:18, 143:15 thoughtful 56:22</p>	<p>thoughtfully 43:7 thread 146:4 three 17:16, 23:6, 27:23, 62:4, 68:4, 95:14, 97:14, 101:6, 101:14, 135:11, 140:12, 141:2, 141:11, 168:10, 172:13, 172:14, 172:19, 173:3, 173:15, 176:2, 177:21, 197:21 three-story 66:8, 67:12, 67:21 threshold 117:23, 130:11, 152:23 thrive 161:5, 161:9 through 4:11, 5:7, 5:8, 8:21, 27:5, 27:7, 35:4, 36:7, 37:4, 37:8, 42:7, 45:11, 50:19, 51:11, 56:8, 60:11, 73:10, 75:22, 77:22, 78:5, 79:22, 79:23, 80:6, 80:16, 86:4, 99:8, 106:11, 113:17, 116:25, 121:4, 129:11, 139:12, 143:16, 143:25, 152:6, 165:22, 166:15, 180:5, 201:18, 201:19, 203:11 throughout 38:21, 56:18, 78:14, 78:15,</p>	<p>104:18, 131:19, 141:11, 144:1, 144:7, 144:11, 145:2, 145:12, 146:9, 153:4 tied 126:12 ties 56:15 tighter 98:1 time 5:22, 5:23, 5:25, 6:1, 6:13, 13:17, 15:16, 15:21, 16:8, 17:5, 20:11, 21:20, 49:3, 49:13, 56:9, 61:3, 61:4, 66:2, 66:13, 107:13, 113:20, 116:12, 122:7, 135:4, 137:13, 137:18, 137:25, 170:3, 170:4, 170:6, 172:14, 182:22, 185:13, 185:14, 185:24, 186:20, 191:3, 191:4, 191:7, 194:24, 195:9, 197:25, 198:6, 198:8, 203:12, 204:12, 205:7, 205:14, 205:16, 205:25, 206:19 timers 124:12, 124:15 times 27:8, 133:9, 134:8, 135:1, 141:20, 150:1, 150:22, 162:24, 163:6, 193:25 title 14:15 tj 189:25</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

today 5:17, 20:13, 23:8, 138:24, 139:11, 156:6, 183:6, 185:25 together 18:3, 21:3, 69:21, 71:2, 130:14, 141:19 took 65:15, 70:7, 206:10 top 17:18, 38:16, 47:25, 48:1, 52:17, 57:23, 65:15, 66:9, 102:19, 113:8, 121:6, 122:1, 166:3, 168:21, 172:18 topic 50:12 topics 187:4 topographically 178:11 topography 100:8, 163:13 tops 66:6 total 23:1, 27:11, 129:25, 130:4, 131:21, 131:22, 132:6, 132:22, 140:15, 154:2, 168:12 touch 57:2, 191:1 tour 70:2 toward 47:18, 108:5, 113:7, 113:8, 114:9, 163:20, 164:4, 172:5, 172:12, 179:21	towards 15:5, 81:19, 82:1, 82:7, 82:22, 83:22, 84:22, 85:9, 86:12, 86:13, 86:24, 87:9, 93:22, 96:18, 103:20, 107:9, 113:5, 113:21, 118:10, 118:17, 119:9, 120:11 tower 196:4 townhome 34:10 track 34:18, 149:9, 150:5, 150:9, 150:15 tradition 70:25 traditional 43:16, 57:2, 70:25 traffic 12:3, 47:15, 49:5, 49:14, 49:18, 72:15, 72:18, 73:10, 125:23, 126:16, 127:21, 127:22, 128:24, 129:1, 129:4, 129:8, 130:9, 130:11, 130:13, 133:12, 133:20, 133:25, 134:17, 134:25, 136:24, 137:14, 137:19, 138:9, 138:24, 139:18, 141:21, 142:8, 142:9, 142:10, 142:11, 142:14, 142:19, 142:25, 143:3, 143:11, 143:12, 143:18, 143:19, 143:22,	143:23, 144:6, 144:10, 144:21, 144:25, 145:1, 145:24, 146:12, 146:20, 146:22, 146:25, 147:1, 147:4, 148:1, 148:6, 148:20, 148:23, 148:24, 150:2, 150:25, 151:11, 151:15, 151:18, 152:5, 152:7, 152:16, 152:24, 153:2, 154:2, 154:14, 154:18, 170:13, 184:25, 185:5, 187:20, 187:23, 188:3, 188:15, 188:19, 189:7, 189:15, 189:18, 190:4, 191:10, 193:10, 194:8, 194:9, 194:16 trafficking 129:4 training 29:25 transaction 17:22 transcribed 1:29, 208:4 transcriber 208:1 transcript 99:23, 208:3 transcriptionist 207:6 transfer 30:20 transition 43:15, 52:19, 65:2, 70:8 transitional 43:18, 57:11, 64:22, 70:5, 72:1, 183:16 transitioning 185:20	transmission 199:3 transparency 54:15 transportation 72:9, 129:19, 152:9, 188:7, 188:10 travel 29:20, 139:1, 139:12, 167:12 traveling 184:20 travels 184:17 traverse 80:7 treasure 28:9 treat 167:8 treated 115:5 treating 171:3 treatment 56:25, 78:15, 80:15, 115:9, 170:25 treatments 80:7, 115:2 tree 65:4, 81:20, 81:23, 82:16, 95:12, 95:15, 95:23, 97:3, 111:21, 112:10, 114:4, 120:5, 120:7, 120:20, 120:25, 121:1, 184:14 trees 47:1, 54:7, 54:15, 54:17, 56:6, 58:16, 66:1, 66:3, 79:5, 80:13, 95:14, 95:20,
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

97:3, 97:4, 97:24, 98:2, 101:1, 101:2, 101:3, 101:20, 102:18, 102:25, 111:22, 112:2, 112:5, 112:12, 112:18, 112:21, 112:22, 112:23, 113:14, 114:14, 114:24, 116:17, 118:4, 118:6, 119:15, 120:7, 120:8, 122:14, 164:13, 164:22, 177:10, 187:12, 193:5, 194:19, 197:11 triangle 104:2 tried 201:3 triggered 21:6 trim 145:17, 145:18 trip 129:20, 130:15, 132:7, 134:18, 136:22, 153:12 trips 129:16, 129:24, 129:25, 130:4, 130:5, 130:9, 130:10, 130:18, 132:18, 132:24, 133:2, 133:8, 133:22, 134:1, 137:1, 138:16, 143:25, 144:1, 144:2, 144:5, 153:13, 153:14, 153:17, 154:3, 154:4, 154:5, 154:13, 154:18, 154:21, 184:23, 188:2, 189:17 troopers 182:22	trouble 5:1, 109:7, 178:14 truck 199:14 trucks 148:25, 150:19, 150:22, 151:3, 185:3, 189:1, 189:5, 189:10, 199:22 true 207:7, 208:3 truly 52:15, 52:17, 52:21 try 8:21, 13:13, 14:3, 42:13, 42:16, 49:11, 65:25, 66:12, 73:10, 79:21, 92:16, 125:21, 126:5, 126:22, 146:17, 157:8, 158:7, 158:24, 182:25, 188:16, 194:1, 205:1 trying 9:24, 28:23, 36:25, 42:7, 64:15, 66:2, 75:3, 75:5, 81:1, 83:9, 87:10, 90:19, 105:22, 110:7, 121:3, 122:21, 125:10, 137:10, 170:3, 196:6, 196:24, 200:12, 201:22 tsunami 23:25 tuckahoe 27:21 tuesday 158:8, 158:25, 204:8	turn 5:2, 5:25, 13:11, 20:14, 46:23, 66:23, 66:24, 81:17, 85:16, 103:23, 147:9, 149:6, 149:7, 150:2, 150:12, 150:21, 150:23, 151:6, 151:7, 151:9, 172:19, 173:15, 174:16, 189:2, 193:24, 194:2, 194:3, 198:21 turned 17:1, 168:6 turning 34:19, 78:12, 151:1, 151:16, 176:1 turns 16:5, 16:7, 34:2, 144:9, 145:7, 145:9, 145:14, 145:18, 149:8, 149:24, 149:25, 150:1, 150:5, 150:10, 151:5, 151:18, 152:14, 153:5, 153:6, 153:9, 189:22, 190:1, 193:21, 193:23 two 17:4, 27:25, 37:5, 43:8, 47:6, 50:17, 53:12, 53:13, 55:9, 56:2, 57:25, 61:13, 70:5, 72:5, 73:2, 73:5, 84:13, 94:11, 98:14, 100:1, 107:17, 109:11, 111:18, 112:9, 119:4, 119:15,	121:14, 122:6, 135:15, 140:13, 140:23, 141:1, 141:19, 144:19, 153:6, 156:10, 158:10, 167:4, 172:2, 172:11, 173:7, 173:8, 173:10, 173:11, 173:15, 176:1, 177:21, 178:3, 189:22, 193:6, 193:17, 194:6 two-and-a-half 53:13 two-story 67:21, 67:23 type 20:8, 20:14, 20:22, 27:13, 39:10, 68:25, 89:14, 89:21, 90:11, 98:25, 99:2, 99:13, 107:1, 136:25, 140:19, 141:18, 142:21, 152:13, 156:25, 175:22, 176:9, 189:14 types 90:19, 95:12, 121:2, 142:4 typewriting 207:5 typical 19:10, 20:1, 20:3, 21:7, 135:16, 137:11, 141:12, 189:15 typically 45:1, 48:25, 89:15, 105:7, 106:25, 107:2, 123:13, 130:13, 130:24, 134:23, 135:13, 141:17, 141:21, 141:25, 149:25, 154:20,
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

165:6	201:20, 202:3, 202:4, 202:6	uniqueness 19:13	upsetting 187:20
U		unit 19:24, 65:8, 131:13, 131:16	uptown 157:12, 157:13
u-shaped 47:9, 84:25, 97:6, 103:23, 173:16	underground 167:11, 167:20	united 27:16	upward 53:19, 123:22
u-turn 149:6, 149:10, 150:7, 150:13, 150:23, 151:1, 151:6, 151:15, 189:10, 194:3	underneath 94:1, 167:4, 168:7	units 9:16, 9:17, 19:25, 21:10, 23:8, 23:9, 23:10, 24:12, 24:18, 47:9, 47:10, 66:7, 129:17, 129:18, 130:6, 130:23, 134:2, 136:25, 137:5, 191:5, 201:12	upwards 105:5
u-turns 148:25, 149:21, 150:19, 150:20, 151:4, 189:1, 189:5	underscoring 101:3	university 27:3, 27:4, 83:15, 122:25, 196:4	urban 12:1
uh-huh 7:9, 61:9, 200:2	understand 6:14, 29:11, 29:14, 33:11, 42:2, 59:17, 63:15, 65:1, 125:11, 139:15, 146:14, 157:9, 159:25, 176:14, 177:14, 180:8, 187:4, 187:20, 188:3, 194:19, 202:7, 203:8	unless 61:4, 127:3, 160:18, 160:20, 160:21, 161:24	use 9:9, 10:20, 22:17, 34:21, 35:5, 36:11, 37:24, 38:19, 41:7, 43:14, 43:18, 43:21, 44:3, 44:16, 57:6, 57:7, 75:13, 81:12, 81:14, 82:7, 87:8, 89:7, 92:1, 99:4, 99:5, 99:12, 99:17, 107:1, 109:12, 110:8, 118:1, 129:15, 130:23, 132:1, 132:11, 132:13, 132:17, 137:4, 137:5, 146:21, 147:23, 150:3, 152:17, 152:24, 157:6, 157:8, 159:12, 160:14, 161:6, 163:12, 166:13, 182:4, 182:5, 188:8, 188:22, 189:21, 193:13, 200:4, 200:5, 200:11, 203:14, 203:21, 204:15, 205:1, 205:19
ultimate 17:12	understandable 183:16	until 17:24, 25:25, 60:12, 73:12, 127:5, 176:2, 177:24, 177:25, 184:17, 206:14	uses 10:11, 38:20, 43:4, 43:6, 57:10, 98:20,
ultimately 144:3, 150:7	understanding 44:1, 86:7, 98:8, 136:5	untouched 196:22	
um 45:15	understood 10:15, 75:24, 178:9	update 37:17, 205:8	
unaware 156:14, 161:2	understory 112:4, 112:6, 112:22, 112:23, 113:5	updated 48:12, 48:20, 52:2, 71:9, 73:19, 73:20, 160:8	
unbuilt 145:24	undertaken 44:2, 131:19	uplight 124:6	
unclear 109:16, 153:16	undue 147:20, 181:12	uploads 158:3	
under 5:19, 9:25, 15:7, 22:1, 23:11, 60:18, 71:17, 76:12, 76:14, 76:18, 94:6, 95:23, 98:24, 99:14, 99:20, 116:25, 133:12, 133:20, 134:22, 143:23, 144:7, 144:19, 153:12, 155:16, 182:2, 182:3, 182:9, 199:1,	unduly 144:24	uprooted 20:19	
	unfortunately 5:4, 49:12, 187:23		
	unidentified 4:14, 4:22, 5:3		
	uniform 142:8, 143:11, 146:20		
	unique 19:11		

<p>98:22, 99:7, 129:21, 130:8, 135:1, 188:10, 188:11, 188:13 using 22:15, 32:2, 33:7, 39:18, 43:7, 46:6, 47:3, 70:17, 75:19, 77:21, 80:4, 83:13, 130:16, 149:14, 150:23, 171:21, 187:17, 188:24 usually 64:13, 89:11, 144:23, 176:17, 180:22, 188:16 usurped 104:10 utilities 180:19, 180:20 utility 197:10, 198:14, 198:24, 199:2, 199:6, 199:7 utilize 56:13, 56:16, 64:5, 111:4 utilized 160:11</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>vacant 99:16 valley 4:15, 5:16, 9:12, 9:14, 22:6, 46:22, 46:24, 47:14, 50:16, 53:8, 59:6, 62:16, 63:8, 67:13, 78:12, 81:18, 83:21, 92:19, 116:7, 122:12, 125:22, 163:17, 164:8, 164:10,</p>	<p>164:16, 165:17, 171:25, 175:11, 175:12, 179:21, 190:15, 192:10, 192:12, 193:18, 196:19, 198:7 value 147:24, 185:6, 185:8 van 194:5 vans 189:5, 189:10 variable 130:5, 130:23, 134:19 variables 130:25, 132:13, 187:24, 190:5 variations 57:14 varied 103:1 varies 111:25, 119:21 variety 4:14, 18:24, 45:16, 119:16 various 36:21, 37:2, 80:6, 97:3, 109:14, 118:23 varying 19:24, 119:16, 171:21, 171:23 veers 164:3 vegetation 167:22, 169:5 vehicle 53:9, 140:6 vehicles 131:22, 132:6, 145:4, 149:14, 150:23, 166:6, 170:13, 196:14 vehicular 130:4, 130:5</p>	<p>venue 184:22, 188:20 verbalize 100:4 versus 65:12, 65:17, 69:23, 95:9, 134:2, 137:6, 151:14, 156:23, 191:9 viability 44:3 video 32:10 view 44:14, 46:17, 51:10, 57:1, 67:12, 100:9, 142:6, 173:18, 183:14, 183:17, 194:15 viking 29:23, 29:24 virginia 27:21, 207:18 virtual 127:13 visibility 150:21, 151:8, 189:4, 189:13 visible 65:5, 78:17, 169:5 vision 64:7 visionary 64:6 visit 45:15 visitor 130:19 visitors 84:16, 132:5, 133:9, 148:3 visual 19:18, 63:21, 65:17, 102:3, 114:18, 194:7,</p>	<p>194:17 voicing 195:11 void 159:13, 160:15 voir 75:22 volume 5:2, 13:11, 37:22, 143:4, 143:22, 146:9, 149:3, 150:16 volumes 142:10, 142:11, 143:10, 143:19, 144:9, 144:11, 152:22</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>wait 10:2, 10:3, 11:5, 13:11, 25:24, 33:11, 44:22, 47:24, 50:23, 60:12, 77:24, 103:13, 103:17, 108:10, 112:11, 115:23, 136:8, 139:3, 157:20, 176:21, 177:2, 194:24 waiting 25:17, 162:5 waive 67:3 walk 77:22, 80:5, 84:15, 84:18, 129:11, 171:22, 193:13 walking 80:16, 80:24, 166:19, 183:24 wall 16:9, 55:2, 105:12, 174:14, 174:15 want 8:18, 8:19,</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Transcript of Hearing
Conducted on February 16, 2024

112

<p>8:23, 9:5, 10:13, 10:25, 11:8, 11:10, 11:13, 11:19, 19:9, 21:1, 25:1, 35:22, 36:20, 37:5, 37:19, 40:16, 42:17, 42:25, 45:19, 45:23, 51:18, 55:23, 59:16, 61:4, 61:5, 61:6, 64:7, 72:19, 75:20, 79:20, 81:12, 83:19, 96:1, 97:17, 104:14, 110:16, 116:15, 119:23, 120:3, 122:9, 125:12, 126:14, 126:18, 127:10, 127:23, 131:11, 134:11, 144:22, 144:23, 145:1, 146:16, 161:14, 161:23, 162:4, 168:18, 169:18, 171:10, 179:25, 181:21, 183:7, 189:3, 196:9, 205:22 wanted 4:25, 15:22, 53:19, 55:5, 63:11, 80:12, 91:4, 103:6, 106:22, 109:7, 142:13, 150:6, 150:7, 153:17, 158:25, 178:18, 182:11, 190:6, 191:1, 191:3, 196:12, 198:11 wanting 17:12 wants 36:20, 117:5,</p>	<p>160:20, 179:11 war 16:8, 16:11 warehouse 57:9, 67:17, 67:20 warm 90:12, 90:24, 93:6, 105:18, 109:12, 109:16, 109:22, 109:23, 109:24, 110:14, 110:21 warmer 110:3, 110:4 warrant 142:13, 142:25, 143:23, 144:10, 144:18, 144:20, 145:3, 146:14, 149:23, 153:10, 154:14 warranted 142:6, 144:7, 144:13 warranting 152:23 warrants 142:12, 153:1 wash 90:9, 138:25, 139:4, 139:5 washington 74:17, 74:18 waste 199:25 watching 79:20 water 16:12, 82:21, 88:9, 100:23, 100:25, 147:14, 165:9, 165:16, 165:17, 166:13, 167:23, 167:24, 168:1, 168:7, 168:14, 169:2, 169:10, 169:12,</p>	<p>170:10, 170:17, 170:21, 170:24, 171:2, 171:4, 172:4, 180:18 waters 166:4 wattage 110:2 way 15:22, 39:1, 39:2, 39:6, 53:13, 54:16, 55:25, 56:8, 58:23, 67:20, 68:2, 69:19, 79:13, 87:18, 88:9, 90:17, 96:15, 96:16, 102:21, 108:4, 115:5, 119:22, 156:14, 158:5, 173:25, 184:21, 190:2, 194:1, 199:7 ways 47:7, 66:11 we'll 24:12, 30:14, 45:25, 48:20, 52:4, 72:18, 73:9, 73:11, 73:12, 75:19, 84:24, 110:1, 110:22, 112:13, 122:3, 122:4, 123:13, 126:22, 158:4, 165:21, 193:4, 202:5 we're 4:25, 5:10, 8:17, 10:3, 17:16, 18:2, 18:22, 19:6, 21:1, 21:13, 22:23, 24:3, 25:16, 25:24, 30:21, 33:3, 35:12, 41:3,</p>	<p>45:1, 47:11, 47:13, 47:17, 47:22, 49:3, 53:4, 53:16, 54:18, 56:11, 57:14, 65:22, 71:12, 72:8, 72:11, 72:16, 73:21, 75:12, 79:9, 79:10, 79:11, 79:25, 80:14, 82:6, 83:6, 83:17, 83:23, 83:24, 86:7, 86:18, 86:19, 86:20, 87:22, 97:5, 97:22, 97:23, 97:24, 98:1, 101:4, 101:10, 102:2, 103:15, 107:7, 112:16, 114:15, 114:22, 116:21, 119:2, 121:11, 122:21, 124:19, 125:21, 126:8, 126:23, 127:5, 127:9, 130:11, 130:13, 130:16, 132:19, 133:7, 143:16, 153:8, 154:21, 156:6, 158:7, 162:2, 162:6, 166:1, 169:21, 176:21, 179:3, 179:17, 180:18, 182:15, 182:20, 183:11, 191:8, 194:22, 198:21, 201:22, 206:21 we've 7:20, 13:15, 17:15, 23:24, 37:16, 49:21, 53:12, 54:13, 86:16, 119:25, 122:8, 137:18,</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

202:23 weaker 117:11 weather 56:17 website 37:7, 156:22, 157:11, 157:15, 157:16, 158:11, 205:9 wedge 33:12 wednesday 203:24, 203:25, 204:1, 206:1 weeks 23:1 welcome 161:8, 161:12 welfare 148:3 wellness 20:24 went 16:11, 16:12, 35:4, 55:7, 143:8, 143:24 weren't 73:25, 168:6 west 3:14, 14:5, 43:6, 59:20, 59:22, 84:3, 118:10, 138:12, 138:22, 138:24, 139:14, 149:17, 150:13, 150:24, 151:16, 158:21, 163:23, 164:2, 164:17, 174:11, 174:12, 174:13, 174:19, 175:7, 179:20, 180:2, 189:2, 189:3, 194:2, 200:13 westbound 151:17 western 174:23	wet 180:19 wetlands 164:9 whatever 110:21, 132:6, 175:1, 191:4 whatsoever 141:10 whereof 207:12 whether 9:21, 29:17, 40:19, 54:9, 106:23, 110:2, 127:16, 138:8, 148:5, 150:3, 155:23, 181:12, 195:1, 202:5 white 31:16, 53:25, 56:24, 111:9, 111:10, 118:15, 118:25, 179:22 whoever 33:17 whole 41:13, 76:17, 103:25, 146:13, 200:22 widened 100:23, 100:24 wider 100:12 width 83:7, 96:8, 97:23, 98:3, 100:19, 100:22 willingness 185:12 wilson 12:2, 127:13, 128:2, 128:7, 128:16, 128:23, 129:8, 134:16, 148:13, 148:14, 148:19, 152:3, 155:4, 161:17	wilson's 128:11 window 69:20, 115:1, 115:9 windows 55:10, 69:20, 113:17, 114:23, 115:3, 115:5, 187:16 wing 47:8, 47:9, 84:25, 103:24 wisconsin 3:13 wish 5:17, 6:1, 190:2 within 18:2, 22:23, 27:17, 28:3, 29:21, 35:8, 35:10, 38:19, 39:3, 47:7, 47:11, 53:21, 55:3, 65:22, 83:20, 84:12, 84:19, 94:17, 109:25, 135:3, 135:4, 138:14, 138:19, 140:25, 204:25 without 114:3, 189:21 witnesses 4:10, 5:22, 6:4, 8:18, 8:19, 8:23, 8:25, 12:16, 19:7, 42:8, 49:4, 72:19, 125:22, 126:20, 185:13, 198:22 woman 4:20 wonder 184:7 wondered 100:7	wonderful 184:16, 187:8 wood 56:13, 56:14, 70:24 wooded 50:9 wooden 33:24, 205:22 woods 196:21 word 153:15, 157:17 words 92:17, 157:1 wore 94:12 work 6:15, 15:4, 15:16, 26:5, 29:21, 63:16, 64:3, 64:6, 70:8, 74:16, 76:12, 76:14, 76:18, 171:6 worked 5:5, 16:2, 17:8, 27:15, 27:25, 67:23, 68:3, 77:4, 77:10 workers 130:22, 132:5 working 15:5, 82:19, 101:18, 155:21, 190:19 works 204:10 world 16:8, 16:11 worried 206:4 worry 198:3 worth 144:21 wouldn't 8:5, 31:6,
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Transcript of Hearing
Conducted on February 16, 2024

114

69:10, 95:1, 105:1, 123:16, 140:10, 146:11, 147:3, 153:1, 159:22, 160:9, 160:15, 173:21, 173:22, 178:2, 178:6, 197:22 woven 18:2 wp-content 158:2 written 62:22, 63:8, 138:7, 185:17 wrong 21:12, 53:7, 99:12, 145:25, 157:20, 157:25, 160:20 wssc 180:20 <hr/> x <hr/> x 1:3, 1:13 <hr/> y <hr/> yay 190:20 yea 34:15 yeah 10:15, 21:10, 46:19, 51:1, 51:15, 55:20, 55:22, 77:14, 85:18, 86:1, 87:8, 87:9, 88:8, 89:20, 91:6, 91:13, 92:25, 94:10, 96:11, 97:9, 97:13, 97:22, 98:9, 98:12, 98:16, 100:11, 100:20, 101:10, 102:9, 102:23, 	104:9, 104:17, 105:13, 105:17, 106:16, 107:2, 107:6, 108:2, 109:20, 109:21, 111:25, 112:13, 115:4, 115:8, 115:17, 115:25, 116:6, 118:11, 120:18, 120:24, 121:25, 123:1, 123:20, 124:5, 125:4, 125:6, 125:14, 125:17, 132:17, 139:10, 176:6, 181:24, 193:21, 194:13, 203:7 year 15:9, 24:13, 24:20, 24:21, 96:6, 107:17, 142:23, 188:4, 198:8 years 14:19, 15:14, 17:4, 17:5, 17:15, 17:16, 17:19, 21:3, 23:6, 23:20, 23:24, 27:10, 27:11, 61:13, 65:4, 76:5, 77:11, 96:7, 96:10, 96:12, 111:23, 112:8, 112:20, 112:21, 113:1, 114:4, 116:18, 122:13, 141:11, 187:8, 193:5 yellow 36:10, 36:13, 86:14, 86:24, 111:8, 111:12, 111:15, 111:16, 119:7 yellow 86:25	young 17:5, 17:8, 184:1 yourself 21:24 <hr/> z <hr/> zero 87:18, 87:22, 87:25, 88:11, 90:18, 93:10, 94:24, 105:24, 180:3, 180:5 zimmerman 41:15 zone 9:11, 9:21, 99:16 zoned 39:12, 191:17 zoning 1:1, 3:4, 29:13, 30:16, 30:18, 35:6, 35:8, 43:20, 60:17, 60:19, 63:5, 71:17, 81:15, 147:10, 159:24, 160:11, 194:10, 194:11 zoom 4:19, 6:16, 6:18, 11:24, 12:23, 21:19, 25:4, 25:15, 25:17, 33:2, 36:5, 36:17, 36:24, 46:16, 46:18, 48:21, 50:25, 51:1, 52:5, 72:20, 75:7, 75:20, 86:9, 87:1, 87:4, 87:5, 87:8, 87:12, 92:10, 118:9, 118:13, 120:18, 127:8, 193:15,	206:19 zoomed 79:1 zooming 193:14, 193:20 <hr/> . <hr/> .01 116:16, 116:18, 117:1 .1 86:18, 86:25, 87:15, 118:14, 180:3 .3 98:24 .31 60:21 .32 60:19 .9 99:19 <hr/> 0 <hr/> 0.1 117:6, 179:15, 180:1, 180:2 00 45:6, 49:22, 134:20, 134:21, 134:23, 135:2, 135:3, 135:6, 135:7, 135:20, 135:21, 145:13, 153:7, 162:1, 194:1, 206:22 07728 14:6 <hr/> 1 <hr/> 1 1:28, 127:5, 127:10 10 113:1, 114:4, 153:7, 168:11 100 2:3, 3:6
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Transcript of Hearing
Conducted on February 16, 2024

115

105 145:4 1054 74:17 107 52:14 109 187:25, 189:2, 189:3 11 15:6, 135:20, 135:21, 153:7, 163:12, 163:15, 168:12 12 1:8, 15:8, 27:11, 46:14, 68:17, 69:7, 142:16, 158:3, 168:12, 168:24, 169:4, 200:5, 200:6, 200:11 120 191:25 13 85:25, 86:1, 92:9, 107:25, 118:17, 121:7, 168:18, 179:14 13.4 22:14 133 9:18 14 95:16, 96:5, 111:22, 118:17, 119:5, 120:19, 120:21 140 126:23 15 97:10, 113:1, 116:18, 135:3, 197:13 150 24:18 16 1:16, 9:10,	109:10, 145:13, 207:4 17 46:15, 78:7, 78:8, 97:11, 97:12, 120:15, 132:23, 171:15, 171:16, 171:22 17.2 22:13 19 38:13, 38:22, 39:1, 39:3, 39:4, 39:6, 39:9, 43:3, 150:6, 151:1 1900 16:12 19400 116:25 196 71:9 198 138:17, 139:1, 139:4, 139:9, 139:13, 140:1, 143:2, 143:5, 143:20, 144:4, 144:10, 146:16, 146:25, 149:1, 149:17, 150:19, 150:24, 151:8, 151:12, 151:17, 152:15, 154:19, 183:23, 188:7, 193:22, 193:24, 194:6, 195:4 1981 9:25 1988 194:14 1997 9:22, 30:23, 34:19, 37:10, 41:21, 155:20, 159:11, 160:5, 160:14, 160:18, 160:22, 191:1,	194:23, 195:8 1a 77:21 1f 147:11, 180:15 1g 147:19, 181:11 1st 205:15 <hr/> 2 <hr/> 2 153:7 2) (e) (c) (2 60:19 20 17:19, 23:24, 27:15, 47:22, 65:23, 76:5, 96:10, 112:6, 112:8, 112:20, 112:21, 112:24, 114:4, 132:24, 145:18, 193:5 20,000 168:25 200 2:4, 9:11, 30:19, 43:20, 52:14, 114:24, 188:2 2003 39:20 2004 39:20, 198:9 201 162:15 2013 128:20 2020 183:19, 196:6 2021 140:12 2022 61:14, 140:15, 140:22, 141:2, 143:8, 143:24, 148:19, 152:4,	152:18, 152:20, 188:4, 188:19, 194:7 2023 141:2, 141:9, 152:21, 158:3 2024 1:16, 41:11, 48:11, 152:21, 207:4, 207:13 2025 24:13 2030 24:14 204 162:15 205 154:4, 154:5 2050 161:5, 161:9 208 1:28 20814 3:15 20850 2:5 21 16:8, 17:5, 27:11, 130:4, 203:25, 204:7, 206:1 21236 128:9 22 16:8, 17:5, 136:4, 137:23 220 191:9 222 26:6 23 1:8, 145:18 2312 4:2 23347 9:13 24 59:15, 154:3,
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

154:6 240 2:6, 3:8 25 14:21, 17:15, 23:20, 96:7, 111:23, 112:3, 112:14, 112:17, 112:18, 112:24, 116:18, 193:6, 197:11 2500 24:12 27 9:17, 47:10, 52:25, 53:1, 53:6, 54:5, 54:22, 54:23, 55:20, 58:9, 89:23, 105:14, 129:17, 130:9, 133:1, 204:8, 204:20, 204:21, 204:22, 206:3 2707 3:16 28 205:14, 207:13 29 41:12, 41:14, 138:13, 139:14, 150:14, 166:14, 166:17, 166:18 <hr/> 3 3 135:20 3,000 110:3, 111:3, 111:8, 203:15 30 36:9, 37:23, 78:20, 78:23, 79:15, 97:25, 112:9, 114:4, 163:20, 204:23 300 16:13, 16:17	31 74:17 310 3:16 32 187:8 333 16:17 35 53:23, 54:1, 112:9 36 31:25, 130:4 37 1:17 <hr/> 4 4 45:6, 49:22, 134:21, 134:23, 135:2, 153:7, 206:22 4,000 110:3, 110:12, 111:9 4.1 163:21 40 15:7, 112:17, 112:19, 127:5 41 7:16, 164:24 411 153:17 42 7:10, 7:14, 7:17, 73:17 43 7:7, 7:8, 7:23, 73:17, 193:4 4300 190:15 4308 116:7 4320 22:6 4324 62:16	4327 192:10 44 73:18, 132:22, 134:2, 136:5, 136:10, 136:19, 137:12, 137:24, 145:9, 145:16, 203:12 45 26:14, 26:15, 73:18, 127:10 46 73:19, 74:1 47 73:19, 74:1, 130:10 48 73:20, 73:23, 74:1 49 75:9, 77:25 <hr/> 5 5 162:1, 194:1 5.86 9:13 50 23:21, 24:21, 57:13, 57:16, 57:20, 57:22, 65:3, 65:15, 68:3, 91:8, 114:3, 130:11, 154:17, 154:21, 184:3, 193:2 500 23:10, 58:22 51 128:14 511503 1:27 52 163:4 53 145:4, 145:7 55 187:6	580 23:11 59.3 60:19 59.7 60:21 59731 147:10 <hr/> 6 6 134:21, 134:23, 135:3 6.2 81:21, 95:12, 98:9, 98:15, 99:19 6.29 98:8, 98:20, 98:22 6.5 97:20, 98:14, 98:18, 98:19, 98:20, 98:24, 99:7 6.53 99:9, 99:14, 99:17, 99:20, 181:25, 182:2 60 63:18 600 23:8, 23:10, 23:11 629 182:9 64 9:16, 47:10, 129:18 6447 85:21 65 22:13, 23:2 653.29 99:24 6660 2:6, 3:8 <hr/> 7 7 134:20, 134:23,
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

135:2, 135:6, 135:7, 145:13 70 35:1, 35:14 73.9 130:8 7315 3:13 74 22:7 75 23:2, 24:21, 191:5, 191:9 770 2:6, 3:8, 3:16 78 21:14	900 16:12 95 52:12, 116:8 97 41:16 99 40:1, 40:4 9900 128:8	
8	@	
8 145:13 8,000 24:14 80 15:15, 21:14, 43:2, 63:18 800 3:14, 24:19 82 21:14 83 35:1 84 21:15, 43:2 85 23:2 850 128:19 88 9:16, 47:8, 129:17	@gmail 116:8	
9		
9 1:17, 134:20, 134:23, 135:2 90 46:23, 83:4		