

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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APPLICATION OF ADVENTIST : DPA 13-02
HEALTHCARE & CABIN BRANCH COMMONS :
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A hearing in the above-entitled matter was held on August 14, 2013, commencing at 9:35 a.m., at the Office of Zoning and Administrative Hearings, 100 Maryland Avenue, Rita Davidson Memorial Hearing Room, Rockville, Maryland 20850 before:

Lynn A. Robeson
Hearing Examiner

A P P E A R A N C E S

On Behalf of the Petitioner:

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APPEARANCES:

Tatiana Franklin 12
Sandra Barrier 52
Melane Hoffmann 62
Paul Whit Cobb 168
Boa Zhu Wei 218

C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Leonard Bogorad				
By Mr. Kline:		82		
By Mr. Chen		138		
Gary Unterberg				
By Mr. Harris:	221			

E X H I B I T S

Exhibit No.		Marked/Received
60A	Approved and Adopted Master Plan	7
60B	Technical Addendum	7
61	Green space exhibit Seneca Meadows Corporate Center	127
62	Detail of Exhibit 61	128
63	Sectional Map split zoning	263

1 P R O C E E D I N G S
2 MS. ROBESON: This is a continuation of a public
3 hearing in the application of Adventist Healthcare, Inc. and
4 Cabin Branch Commons, Inc. This is an amendment to the
5 development plan approved by the District Council on
6 September 9, 2003, in LMAD 806. Are there any preliminary
7 matters?
8 MR. HARRIS: Yes, Madam Examiner. You talked
9 about the Clarksburg Master Plan last time. I understand
10 you did find yours, but I think you asked that we submit one
11 for the record in this.
12 MS. ROBESON: Okay. That's fine.
13 MR. HARRIS: It was the end of July.
14 MS. ROBESON: Well, the only thing is if I did
15 find it in our library, there is some red underlining on it,
16 I don't know why, and there are some penciled in notes that
17 relate to the exhibits in this case, I think, because it's
18 one of those, the notes are 106f. The red underlining is on
19 page 2. I didn't put it there.
20 MR. HARRIS: We don't have 106 exhibits. You said
21 106?
22 MS. ROBESON: Well, then it relates to -- that's
23 right. It relates to a different case. So if -- I can take
24 official notice and you can keep your copy. I can show you
25 the red underlining.

Page 6

1 MR. CHEN: Madam Examiner?
2 MS. ROBESON: Yes?
3 MR. CHEN: If I may?
4 MS. ROBESON: Yes.
5 MR. CHEN: I think that you are certainly well
6 enough able to distinguish underlining and notes of a
7 different case with a copy of the, a hard copy of the Master
8 Plan that you're going to use. So I, on behalf of my
9 client, we don't have any objection to you using the
10 document you've got. However, with regard to Mr. Harris's
11 offer of making an exhibit, the hard copy, we would request,
12 we think it is appropriate that the hard copy of the Master
13 Plan be made an exhibit in these proceedings.
14 MS. ROBESON: All right. All right. I agree
15 because I have a have feeling this is going to, well, it
16 would help any appeal, I know a hard copy.
17 MR. HARRIS: So is that Exhibit 60 then?
18 MS. ROBESON: Yes.
19 MR. HARRIS: And you have both the body of the
20 Master Plan and I provided the technical appendix with it.
21 Are they both Exhibit 60?
22 MS. ROBESON: Oh, yes, I'll make 60A the approved
23 and adopted Master Plan and 60B will be the technical
24 addendum.
25 (Exhibit Nos. 60A and 60B were

Page 7

1 marked for identification.)
2 MS. ROBESON: I've got them right out at the
3 moment, it will have the full title, I'm just not going to
4 write it out. All right. Anything else?
5 MR. HARRIS: Second, Ms. Robeson, we talked about
6 another hearing date with two additional hearing dates if
7 for some reason we don't finish today. My goal would still
8 be to finish today, but if that doesn't happen I have talked
9 with opposing counsel and I understand, and they can answer
10 for themselves, that September 4 date you proposed as the
11 next hearing date is available. It is okay with us as well
12 as the applicant.
13 MS. ROBESON: Okay. Any other -- is that fine
14 with everyone else?
15 (No audible response.)
16 MS. ROBESON: Okay. That's good. I was hoping to
17 finish. Out of an abundance of caution so that we have a
18 date, we have this other case going that's hogging all our
19 dates. So the 4th will be in this room.
20 MR. HARRIS: Okay. And then I think --
21 MS. ROBESON: I think it will be the --
22 MR. HARRIS: Excuse me. I believe that you also
23 had held, put a hold on September 6th, heaven forbid we go
24 that long, but --
25 MS. ROBESON: We will strive not to.

Page 8

1 MR. HARRIS: Okay.
2 MR. CHEN: Madam Examiner.
3 MS. ROBESON: Yes?
4 MR. CHEN: I apologize on one aspect of this. And
5 I think this came up too at the hearing before last. The
6 4th is very much up in the air for Mr., my client, Mr. Cobb,
7 because if you recall, there was another previously
8 scheduled obligation involving a family member.
9 MS. ROBESON: Right.
10 MR. CHEN: Possibly the way we can handle this is
11 provide that Ms., that he would testify today at some --
12 probably towards the end of the day or wherever we are in
13 the afternoon in the probability that he would not be able
14 to be present on the 4th. You know, I, my calendar is clear
15 and I am available, as I said, and this was noted before
16 my --
17 MS. ROBESON: Do you have an objection to that,
18 Mr. Harris?
19 MR. HARRIS: No, that would be okay with us.
20 MS. ROBESON: All right. Then we still have
21 cross-examination and then Mr. Unterberg has to finish his
22 testimony and cross-examination. So let's try to get
23 through them and then, and then we can take Mr. Chen's
24 client. Do you have an objection to that?
25 MR. HARRIS: I don't have an objection to that,

Page 9

1 but let me add to the complexity a little bit. I understand
2 there is another witness here who would like to speak at
3 some point this morning in opposition to this and then I
4 believe there also are a couple of additional community
5 members coming to testify in support. So it might be a
6 little bit, you know --
7 MS. ROBESON: We'll get it all in.
8 MR. HARRIS: Okay. Yes.
9 MS. ROBESON: We're going to get it all in. Do
10 you wish to take the opposition witness now so then they
11 don't have to --
12 MR. CHEN: That would be fine.
13 MR. HARRIS: That would be fine.
14 MS. ROBESON: What I'd like to do is sort of get
15 your case-in-chief continuing.
16 MR. HARRIS: Defer to that and so --
17 MS. ROBESON: Well, it's helpful to me to have it
18 in one piece. So if we can get the community witnesses in
19 without too much delay and then I realize we're going to
20 have to make time. So you guys may have to limit your
21 cross-examination. Well, actually I'm not being serious for
22 the record.
23 MR. KLINE: With regard to the person Mr. Harris
24 referenced, my understanding is she'd like to kind of
25 understand how the flow of this works just to overcome a

Page 10

1 little bit of uneasiness about testifying. I suggest that
2 after Mr. Bogorad's cross-examination, if we could go back
3 to Mr. Unterberg. I don't know if it's mandatory, but that
4 would be her preference just to give a level of comfort.
5 MS. ROBESON: Well, I've got to run the hearing
6 and I've got to get through the hearing in the best way to
7 get a decision out for me. And so I would like her to go
8 first with all due deference and we can be very nice. So we
9 will try to be easy on her. Is she your witness or an
10 independent witness?
11 MR. KLINE: I have talked to her, but she came
12 independently in terms of, as Mr. Harris said in support of
13 the application, I'm sorry, in opposition.
14 MS. ROBESON: Okay. Well, I would like to take
15 her first and then we can get that out of the way. All
16 right. Just does this person who has been unnamed, but does
17 she, can she come forward?
18 MS. FRANKLIN: Good morning.
19 MS. ROBESON: Good morning. We will try to be
20 easy on you.
21 MS. FRANKLIN: Thank you.
22 MS. ROBESON: Let me just explain a few things
23 before we get into the formalities. Your testimony will be
24 under oath and I'm going to swear you in as soon as I finish
25 talking. And you can say what you want to say. You will

Page 11

1 get -- your testimony is subject to cross-examination, which
2 means the parties can ask you questions about your testimony
3 if they feel it's not accurate, that type of thing. So
4 that's just to prepare you. And so if you could kindly
5 raise your right hand?
6 (Witness sworn.)
7 MS. ROBESON: And please state your name and
8 address for the record.
9 MS. FRANKLIN: My name is Tatiana Franklin and I
10 live at 22620 Clarksburg Road --
11 MS. ROBESON: Okay.
12 MS. FRANKLIN: -- in Boyds, Maryland. The zip is
13 20841.
14 MS. ROBESON: Okay. Now we have a sign-in sheet.
15 Sometimes we have to contact the parties after the hearing.
16 Have you signed the sign-in sheet and put your e-mail
17 address?
18 MS. FRANKLIN: I can do that.
19 MS. ROBESON: Okay. I would appreciate that --
20 MS. FRANKLIN: Sure.
21 MS. ROBESON: -- because you will get notices of
22 different things after this hearing concludes, all right?
23 Okay, Ms. Franklin, what would you like to say?
24 MS. FRANKLIN: Well, first of all, I'll tell you
25 just a little bit about myself. I bought a house in, on

Page 12

1 Clarksburg Road about 10 years ago and my house is directly
2 across the street from the Cabin Branch project. And I am
3 also a business owner. I do business in Clarksburg and the
4 surrounding areas and I'm also the co-president of the
5 Clarksburg Town Center Farmer's Market, which at this time
6 is located in the historic district of Clarksburg. And I've
7 been volunteering for the Clarksburg Farmer's Market for the
8 last six years now.
9 If I can show you where my house is up here on the
10 map? Is that possible?
11 MS. ROBESON: It would be --
12 MR. KLINE: This is what, Exhibit 59.
13 MS. ROBESON: Exhibit 59? Okay. That's fine.
14 Why don't you do that?
15 MR. KLINE: Ms. Franklin, you're going to have to
16 speak up so the microphones can pick you up.
17 MS. FRANKLIN: Thank you. Okay. This would be my
18 house right here.
19 MR. KLINE: Can you describe where you're
20 pointing?
21 MS. FRANKLIN: Right here is going to be the west
22 side of 270 and this is Clarksburg Road. And across the
23 street, this is going to be the new Clarksburg Road. I
24 believe this is Gosnell Adventist Concordia Daycare.
25 MS. ROBESON: Okay. You mean the Gosnell

Page 13

1 development?
2 MS. FRANKLIN: The retail center is right here.
3 MS. ROBESON: Okay. So --
4 MS. FRANKLIN: -- and then you have Adventist
5 where they're proposing to put the outlets.
6 MS. ROBESON: Okay. So A in the blue is the
7 outlets, then the triangle directly to the east of you --
8 MS. FRANKLIN: Right here. That's all like a
9 little strip mall.
10 MS. ROBESON: -- the red area?
11 MS. FRANKLIN: Uh-huh.
12 MS. ROBESON: The pink/red area? Okay. And you
13 are on Old Clarksburg Road?
14 MS. FRANKLIN: We're on Old Clarksburg Road and
15 the three homes that are here --
16 MS. ROBESON: On the west side?
17 MS. FRANKLIN: Right next -- on the west side of
18 Clarksburg Road that are together, the first person, the
19 owners live in California, so it's a renter. The other side
20 of me, the owner is Frederick County and his house is a
21 decking company. So there's only somebody there from 9:00
22 to 5:00, you know, Monday through Friday.
23 MS. ROBESON: Okay.
24 MS. FRANKLIN: So really I'm like the closest
25 resident to what's going on that actually owns a home there.

1 MS. ROBESON: Okay. All right.
 2 MS. FRANKLIN: So I just wanted to point out where
 3 I am. And in the last, say, eight, nine years, I've
 4 received plats from what's going on across the street and I
 5 look at them very carefully. I have a magnifying lens that
 6 I actually study it. We know where the retail is going in.
 7 My husband and I have been, you know, looking at this for a
 8 long time. Behind my house is the Pulte thing. And so
 9 we've also been looking at that. So we're very aware of
 10 what's going on.

11 And then I get this notice for the development
 12 plan amendment which takes the retail space from 120,000
 13 square feet to 484 square feet and that I wasn't okay with
 14 and there's many reasons why I'm not okay with that. It
 15 would allow the outlets to actually continue to be built
 16 across the street from our house. Once everything is done,
 17 if it all gets approved and they build everything on this
 18 side of 270, which would be the west side of 270, it kind of
 19 takes the heart away of the Clarksburg historic district
 20 which I am very proud to have supported for so many years.
 21 The Master Plan wasn't designed that way. I was
 22 around when Newland was trying to do their thing. After all
 23 that, Elm Street came in. So I've been really paying
 24 attention. I talked to a lot of the residents that come to
 25 the, for farmer's market. I kind of give up 22 weeks of a

1 year every Sunday from June until October to run the
 2 farmer's market and I'll listen a lot and I'll listen to
 3 people and I hear what they have to say.
 4 The historic district is faltering. The septic
 5 systems are horrible. And to take all the town center
 6 amenities and put them on the west side of 270 would
 7 literally kill the center of Clarksburg which is the
 8 historic district area. The Master Plan always said that
 9 you're building the new, you take the old with it. You put
 10 it together. It has to flow together.
 11 Well, if I walk outside my house and I walk across
 12 the street, Clarksburg Road, I can be at the outlets in no
 13 time at all. I can be at the retail. I can be at the new
 14 town center because that's exactly what's going to happen.
 15 If I were to walk over 270 and walk down a mile, I would get
 16 to the historic district, which absolutely would be
 17 desolate. There would be nothing there.
 18 I network a lot in Clarksburg, so I know a lot of
 19 business owners in Clarksburg. I know some big companies
 20 that have actually left Clarksburg because there's no
 21 amenities over there for them. However, they are willing to
 22 come back and they'll go right down the street, right down
 23 the corridor to Germantown, but there's nothing up in
 24 Clarksburg for their visitors that come in. So we're losing
 25 business.

1 So the historic district was supposed to be
 2 vibrant. It was supposed to be -- somebody was supposed to
 3 not leave it behind and that's exactly what's happened. And
 4 this is just going to get worse and worse if this continues.
 5 So basically that's what I'm here to say. I'm here to
 6 support the historic district. I would like this
 7 development plan amendment to be denied. I cannot see that
 8 amount of retail space being quadrupled and put across the
 9 street from my house, not to mention how I feel about all
 10 the lights and losing my sky and everything else. Yes.
 11 But I'm not against development. I've kind of
 12 signed off on everything that's been sent to me. I have a
 13 folder this thick of plats and letters and hearings and
 14 pretty much I've kind of signed off, said, okay, all right,
 15 we moved in here, we signed on the dotted line, we knew what
 16 we were getting into, we knew there was going to be
 17 development across the street, development behind our house,
 18 we're okay with that. But I'm not okay with this and that's
 19 the reason I'm here today.

20 MS. ROBESON: Okay. Thank you for coming.
 21 MS. FRANKLIN: Thank you.
 22 MS. ROBESON: I'm going to let Mr. Kline and Mr.
 23 Chen ask any follow-up questions so you can base your cross-
 24 examination on their follow-up questions. Do you have any
 25 questions for Ms. Franklin?

1 BY MR. KLINE:
 2 Q Well, Ms. Franklin, just to kind of get the
 3 parties straight for the Hearing Examiner, you mentioned the
 4 name Newland and Elm Street. Can you give us a little bit
 5 more precise detail about who those people were and what
 6 their role was in the town center so she understands who the
 7 players are?
 8 A Sure. Newland Communities as a developer from
 9 Virginia that came in and they had plans, they had a vision
 10 to build the town center and they built it. They wanted to
 11 streamline it in with the historic district so it would all
 12 be together. However, there was some infractions and the
 13 residents raised arms about certain infractions that were
 14 done by the developer by building some of the homes too
 15 tall, taller than the steeple of the church because really
 16 what it was about was keeping it, you know, downtowning it a
 17 little bit from the historic district, however, making paths
 18 for everybody to come through. Well, after the years,
 19 Newland pulled out because everything that they proposed got
 20 denied. So they actually pulled out and they sold all this
 21 portion of land over there to Elm Street Development for \$1.
 22 And the reason I have ties in with Newland and Elm
 23 Street is because with Clarksburg Farmer's Market was
 24 originally put in the location in a field where the farmer's
 25 market was supposed to be built for the town center. They

Page 18

1 were going to pave it first. They were going to put
2 awnings, everything. That was supposed to be the gathering
3 place for everybody. So the idea was to get people used to
4 going there before it was even built. But then all that
5 went away, so then I had to deal with Elm Street Development
6 to see, well, can we still use your land, you know, can we
7 still have our farmer's market there? And they said pretty
8 much you can do whatever you want because we're not doing
9 anything with that piece of land for a long time. We paid
10 \$1 for it and we're not going to do anything until we get
11 ready to do something. Again, the historic district gets
12 left behind. So that's my dealings with Elm Street and with
13 Newland.

14 Q Were you aware that the applicant of this
15 development plan amendment is proposing not to include a
16 grocery store within the Cabin Branch retail capacity?

17 A Yeah, and I think there was some type of amendment
18 done to the Master Plan just so that we could get a grocery
19 store in Clarksburg at all on the east side of 270.

20 Q Do you feel that the loss of a grocery store in
21 the Cabin Branch community would be a detraction from you in
22 terms of the neighborhood-oriented services you expected
23 would be delivered by the original development plan
24 approval?

25 A I think for me personally it would be a detraction

Page 19

1 because that's been one of the problems that they've had on
2 the east side of 270 is they really didn't need something
3 like that.

4 Q Well, would you have been capable of walking to
5 the grocery store from your house through Cabin Branch
6 itself?

7 A Oh, yeah, absolutely.

8 Q And now you'll at best, I guess, be driving across
9 I-270 to whatever gets built on the east side of I-270?

10 A Exactly.

11 Q Were there any other neighborhood services that
12 you expected to be delivered as part of the development plan
13 amendment that may not occur because it had been usurped by
14 the regional outlet mall?

15 A Well, I didn't have any problems with the hospital
16 being there, you know, and what I had, what I had problems
17 with is the amount of retail space that is now being
18 proposed to go in there and it's not the type of amenities
19 that I'm looking for personally.

20 Q Okay. And you say amenities, but the services
21 that you would need from a neighborhood-oriented retail
22 operation?

23 A Uh-huh.

24 Q You have to, unfortunately --

25 A Yes. Yes.

Page 20

1 Q -- it's transcribed. Okay.

2 A It doesn't translate well, yes.

3 Q The last question is you sound like you're really
4 close to the farmer's market and --

5 A Oh, yes.

6 Q -- can you explain --

7 A -- lots --

8 Q -- is it serving the function? The Master Plan
9 talks about the town center as being the focal point of the
10 community and having some of the civic activities. Does the
11 farmer's market represent one of those kind of things in
12 terms of animating the town center and do you see a risk of
13 it not being able to survive if the proposal is approved
14 with more retail development on the west side of I-270?

15 A Oh, absolutely. The Clarksburg Farmer's Market is
16 the only place that the residents get to come and bring
17 their dogs, their kids, listen to music. There's no
18 amphitheaters in Clarksburg. There's nothing. It's, you
19 know, there needs to be and one day I hope to see it there,
20 but there's nothing over there right now and so the
21 Clarksburg Farmer's Market is the only place. We moved it
22 to the historic district for that reason to try to attract
23 more people to come to the historic district, to spend some
24 money, spend some time and then hopefully get other people
25 interested in that area and help it become something good

Page 21

1 again, help it thrive and all. So, yes, the answer to your
2 question I do see that there would be a problem. We
3 probably would lose the farmer's market at that point if
4 nothing is done in the historic district.

5 Q Thank you very much.

6 MR. KLINE: No further questions.

7 MS. ROBESON: Mr. Chen?

8 MR. CHEN: One or two questions please.

9 BY MR. CHEN:

10 Q Good morning, ma'am.

11 A Good morning.

12 Q Did I -- your testimony was that your property
13 where you reside is literally right across the street from
14 this proposed development plan amendment?

15 A Correct.

16 Q And you are aware that the proposal is to develop
17 an outlet center, are you aware of that?

18 A Oh, very, very so, yes, very much so.

19 Q And what is your understanding as to how close the
20 actual outlet center part of the development will be to your
21 home?

22 A What did my what? I'm sorry.

23 Q How close, if you --

24 A It's extremely close. I could walk there in less
25 than a couple minutes.

Page 22

1 Q Are you aware of the outlet center at Hagerstown?
2 A Yes.
3 Q How about the outlet center in Queenstown?
4 A Yes.
5 Q Have you been to the outlet center in Leesburg?
6 A Yes.
7 Q Are you aware that the owner of those three
8 outlets is Simon Properties, will also be the owner or the
9 developer at the outlet center in Clarksburg?
10 A Correct. The Simon Properties are the ones that
11 are built in the Premium Outlets.
12 Q So you are aware of the nature of an outlet
13 center?
14 A Absolutely. I woke up one morning to see big,
15 white circus tents across the street from my house and I
16 went over there with my husband to check it out and it's
17 basically they were passing out brochures and food and drink
18 and all and showing us where the outlets are going to be and
19 where the homes are going to be and I said, what outlets?
20 They said, oh, the ones -- I said, well, when where they
21 approved? Oh, they were approved. Yes, we're building
22 outlets. And I was like going home going like oh my God,
23 you know. It's like, yeah, I'm very aware about it and I
24 know who is building them and --
25 Q So that when you appeared before the examiner and

Page 23

1 you expressed your concerns about that form of development
2 so close to your home, you are familiar with that type of
3 development?
4 A Absolutely. They're going to be nice outlets.
5 They do, zoning does a wonderful job, but they're going to
6 be high-end, they're going to be absolutely gorgeous and
7 beautiful. That itself is not so much the problem as, I
8 mean I, personally I have a problem because it's across the
9 street from my house. But my main focus is, again, the
10 historic district being left behind. Now this outlet area
11 with amphitheaters and everything, it's going to transfer
12 the heart of Clarksburg to the west side of 270, completely
13 transfer it. It's going to leave nothing on the east side.
14 That's my biggest issue.
15 Q Am I correct in understanding, and you may have
16 not, I apologize, I'm asking you to repeat something, but
17 I'm not sure that you did. When you testified a little bit
18 ago about purchasing your home with your husband --
19 A Uh-huh.
20 Q -- I took it you were aware of the Clarksburg
21 Master Plan?
22 A Yes.
23 Q Okay. You were aware that you were in the Cabin
24 Branch community?
25 A Correct.

Page 24

1 Q And at that point in time the Master Plan was --
2 MR. HARRIS: Objection. These are leading
3 questions. I think it would be appropriate to ask a more
4 open question than a leading question like that. It's not
5 an adverse to this gentleman.
6 MS. ROBESON: That is true.
7 MR. CHEN: Okay. I think I can handle that.
8 BY MR. CHEN:
9 Q Ma'am, what was your understanding of the form of
10 development that would occur in the Cabin Branch community?
11 A Oh, homes, a little bit of retail, schools,
12 hospital. I even joked with my mom, you know, we've got to
13 get you a place across the street, you know, there's going
14 to be services for senior citizens and all; school, you
15 know; and I looked at all the plats that came over. I saw
16 from where it started with nothing and grew.
17 Q That's all I've got. Thank you very much, ma'am.
18 A Uh-huh.
19 MS. ROBESON: Okay. Mr. Harris.
20 MR. HARRIS: Okay. Thank you.
21 CROSS-EXAMINATION
22 BY MR. HARRIS:
23 Q Ms. Franklin, a few questions for you. The -- you
24 indicate that you've been aware of the Cabin Branch project
25 from the time you purchased your house?

Page 25

1 A Uh-huh.
2 Q And you did not oppose any of the multiple
3 applications for development at Cabin Branch?
4 A Uhn-huh.
5 Q And are you aware that the Cabin Branch project --
6 MS. ROBESON: What did you say?
7 THE WITNESS: No, I'm sorry.
8 MR. HARRIS: I'm sorry.
9 MS. ROBESON: Mr. Robins pointed out you can't
10 say, uh-huh --
11 THE WITNESS: Yes.
12 MS. ROBESON: -- because the transcript --
13 THE WITNESS: I just remembered.
14 MS. ROBESON: -- won't know. So you --
15 MR. HARRIS: Thank you, Steve. Thank you. All
16 right. So let me make sure the record is clear.
17 BY MR. HARRIS:
18 Q Are you aware of the Cabin Branch project?
19 A From the beginning, then I started receiving all
20 the literature and facts, yes.
21 Q And were you aware of the Cabin Branch project
22 when you purchased your home?
23 A Yes. I was not aware of the Cabin Branch --
24 Q Not what's proposed here, but what's approved
25 today?

Page 26

1 A Right. I was aware that there was going to be
2 development across the street. I didn't know whether it was
3 Cabin -- I didn't even know names or anything. I just knew
4 there was going to be development across the street from me
5 and development behind my house. It wasn't until, you know,
6 a year down the road that we started finding out who was
7 going to be developing over there, who was purchasing the
8 land.
9 Q Okay. You said that you bought your house 10
10 years ago.
11 A Uh-huh.
12 Q Is it correct then to say that was in 2013 that
13 you bought the house or what year was it?
14 A 2013? You mean --
15 Q I mean 2003.
16 A 2003?
17 Q Bad math.
18 A Yeah. So 10 years ago, about 2003, and I think
19 the first plats we started getting or anything was like,
20 well, the first letters we started getting was 2004, around
21 2004 but, you know, I could be wrong. We got letters from
22 everybody, Mr. Gosnell, et cetera, just letting us know that
23 things were going to be happening.
24 Q Are you aware that when you bought your house the
25 Cabin Branch project had already been approved?

Page 27

1 A No.
2 Q You did not look at any development approvals
3 across the street from you when you bought your house?
4 A No, not when we purchased our house, no.
5 Q Later on, though, you became aware of the Cabin
6 Branch project?
7 A Oh, yeah, uh-huh.
8 Q And are you aware that the Cabin Branch project
9 has approval for 1,886 homes?
10 A Not the exact number, but I know that they have
11 approval for single-family homes, plus the town homes.
12 Q And a large number of single-family homes?
13 A A large number of single-family homes. It goes
14 all the way down to West Old Baltimore Road.
15 Q Yes, correct. And that didn't bother you?
16 A That did not bother me.
17 Q And are you aware that it also has approval for
18 2,420,000 square feet of non-residential development there?
19 A No. Whose property? The non-residential
20 development? You mean like Gosnell, the retail center?
21 Q Part on the Gosnell, part on Adventist Healthcare
22 property --
23 A Yes.
24 Q -- are you aware of that?
25 A I was fine with that and I'm not against

Page 28

1 development.
2 Q And you are not, you have no problem with the
3 hotel and the retail that's approved on the Gosnell property
4 directly across the street from you?
5 A It was approved prior to what this amendment is,
6 yeah, I'm aware of that.
7 Q And you have no problem with that?
8 A I have no problem with that.
9 Q You mentioned that you received this mailing that
10 you have in your hand here from us. Do you remember when
11 that was?
12 A No, because if I go and I show you a file of all
13 these things that get sent to me, all of them, and I went
14 through this with my husband last night. We tried to find
15 dates. There are no dates when any of these get sent out.
16 So it's really hard to see --
17 MS. ROBESON: On the second page there's no page,
18 no page --
19 THE WITNESS: It will give you a date of --
20 MS. ROBESON: -- on page 2?
21 THE WITNESS: -- something that's going on in a --
22 MS. ROBESON: Well, there should be --
23 THE WITNESS: -- future date.
24 MS. ROBESON: There should be an issue date.
25 THE WITNESS: But --

Page 29

1 MS. ROBESON: What is that paper?
2 THE WITNESS: This is the one for the development
3 plan amendment that tells us that there's going to be a
4 hearing for the development plan.
5 MR. HARRIS: It's probably an exhibit in the
6 file --
7 MS. ROBESON: Is it a notice of public hearing?
8 MR. HARRIS: -- from your office.
9 THE WITNESS: Yes, notice of public hearing, yeah.
10 MS. ROBESON: The second page should have an issue
11 date on it.
12 THE WITNESS: And then when I go back to them, we
13 weren't able to find, you know, dates on them either. So it
14 was kind of hard to tell when I was trying to do a time line
15 of when we got them as to, and then it says you're going to
16 receive within 10 days of the hearing, you know, them
17 telling you where it's going to be and we'd never get a
18 follow-up on that, so we always took the initiative to call
19 and find out and all.
20 BY MR. HARRIS:
21 Q The, was the first you found out about the outlet
22 retail from a notice from the applicant or was it from
23 someone with either the Peterson Company or somewhere else?
24 A The first time I found out about the outlets, I
25 woke up, I looked across the street. There's tents across

Page 30

1 the street from my house and I went over there to find out
2 myself. And then I started inquiring and then we got this
3 later on, but I did a lot of inquiring after that to find
4 out, you know, what was going on because I didn't know.
5 Q Have you ever contacted Streetscape Partners, New
6 England Development or the Simon Property Group?
7 A Contacted them for what?
8 Q About what was planned there?
9 A I've talked to some of them, absolutely.
10 Q To whom did you speak?
11 A I've talked to the Peterson Companies and also
12 the, not what's going across the street too, but also with
13 Pulte because we do, at the Clarksburg Farmer's Market, we
14 do take sponsors and stream, the Peterson Company is one of
15 our sponsors and so is Pulte and I like what their company
16 is proposing on that side of 270 because I think that's the
17 only developer that has actually stepped up to the plate and
18 said, hey, you know what, I'm going to pledge to do this for
19 the historic district. And I'm all for that, 100 percent
20 all for that.
21 Q Okay. So you've talked with Peterson multiple
22 times?
23 A Yes, I see him at the farmer's market here and
24 there. I see Susan Singer-Bart as well representing Pulte
25 through her PR firm all the time.

Page 31

1 Q Okay. So you've talked with them, but I didn't
2 hear you say that you've ever spoken with anyone from the
3 Simon Property Group, New England Development or --
4 A Cabin Branch I have. I've called over there to
5 complain about the dynamite blasting. I don't have her name
6 with me, but I have it in my files at home because I have a
7 home-based business and sitting on the phones with clients
8 and there is dynamite blasting, so I did call to say, hey,
9 how about some warning here, you know, if this is going to
10 be going on. At least give us an idea of what hours.
11 So I have called and also I have been contacted by
12 Cabin Branch several times to find out throughout the years,
13 you know, is things going well. Like Greg Gosnell sent me a
14 letter, can we talk? And like I said, I've been okay with
15 the development. I've signed off on it. I've been okay
16 with it.
17 Q I appreciate that, but I still am trying to
18 determine, you've mentioned a lot of people's names, none of
19 whom have you indicated is employed by Streetscape Partners,
20 New England Development or the Simon Property Group who are
21 the developers of this outlet mall. So I am going to
22 assume, unless you can indicate otherwise, that you've never
23 had a discussion with any of the people from the people who
24 are going to operate this outlet center.
25 MR. CHEN: Objection

Page 32

1 MR. KLINE: Objection. You can go first.
2 MR. CHEN: The lady testified that she was across
3 the street when the, I guess it was Simon, had their tents
4 up and she walked over to find out what was going on and
5 talk to people there about the development. So I think the
6 characterization is just misleading.
7 MR. KLINE: Well, and my comment was going to be
8 so what's the relevance? Did she have an obligation to go
9 talk to them? Maybe there's a question to follow that --
10 MS. ROBESON: No, I think it goes to impeachment.
11 That's, well, Mr. Harris?
12 MR. HARRIS: I mean --
13 MS. ROBESON: I think it --
14 MR. HARRIS: Yes.
15 MS. ROBESON: -- in my -- I'm going to let it in
16 because in my opinion it goes to the basis for her
17 assertions and it is valid impeachment.
18 THE WITNESS: Could you explain to me what that
19 means?
20 MS. ROBESON: That means that perhaps you have
21 not, your opinions may not be valid balanced because you
22 have had all these simple discussions with other competing
23 developers, particularly the Peterson Company, but not with
24 the applicant.
25 THE WITNESS: Well, to be fair --

Page 33

1 MS. ROBESON: Okay.
2 THE WITNESS: -- I'm also involved in the CBRT,
3 which is Clarksburg Business Referral Team, and we asked
4 Clarksburg Business Referral Team to ask Cabin Branch to
5 come out and bring a representative and talk to our group
6 and show us what their vision was. We asked Pulte to come
7 out and share their vision with us so that everybody is on
8 the same frame. We asked the Peterson Companies to come
9 out. We asked all three developers to come out and speak to
10 Clarksburg Business Referral Team so that everybody,
11 business owners in Clarksburg, would understand what's
12 happening.
13 Everybody was allowed to speak. It was very fair
14 all the way around for all the developers. So it's not like
15 it's just one --
16 MS. ROBESON: Did Simon Properties speak or --
17 THE WITNESS: They sent out a representative from
18 Cabin Branch to let us know what was going on.
19 MS. ROBESON: Okay. Could you explain for the
20 record what this CBRT does?
21 THE WITNESS: Clarksburg Business Referral Team is
22 pretty much where a lot of businesses get together and give
23 each other referrals and pretty much the mission is to try
24 to be the go to team in Clarksburg. If you're looking for
25 somebody in Clarksburg, whether it be a plumber, whether it

1 be a travel agency, whether it be restaurants, and maybe we
2 will get some, then you would come to CBRT and ask and we'd
3 be able to refer you to somebody. In the meanwhile, it's a
4 great networking way that we, you know, give business to
5 each other and help other businesses get referrals.

6 MS. ROBESON: Okay.

7 THE WITNESS: So there's a lot of people that pay
8 attention in Clarksburg that are with, the Clarksburg
9 Business Referral Team, and all three developers were asked
10 to come out and share their vision with us.

11 MS. ROBESON: Okay. Mr. Harris.

12 BY MR. HARRIS:

13 Q And so did Mr. Kaplan come to that meeting?

14 A I'm not sure because that's the meeting I missed
15 and I'm sorry, but I was at --

16 Q All right.

17 A -- I was at the beach.

18 Q Okay.

19 A And I know you guys miss things too as well
20 sometimes when you've had previous plans, but I did make the
21 Pulte and I did make the Peterson Group --

22 Q Okay.

23 A -- meeting.

24 Q So if the record will ultimately show that the
25 Streetscape Simon Property, New England Development people

1 did come to the business referral meeting and you weren't
2 there and they spoke, you have no disagreement with that?

3 A Disagreement with what?

4 Q With that they came, but you weren't there?

5 A Well, I didn't disagree that they came. I
6 actually was, you know, good with them coming and sharing
7 the vision --

8 Q Okay.

9 A -- with everyone else. I see in the group, CBRT,
10 there's a couple people that really know what's going on in
11 the area, but there's a lot of people that had no clue
12 whatsoever and it was really important for them to hear all
13 three sides, all three visions.

14 Q Are you aware that other members of the CBRT have
15 supported this proposal?

16 A 100 percent and I'm friends with them.

17 Q And is it my understanding, is my understanding
18 correct that the farmer's market has disallowed the
19 Streetscape, New England Development, Simon Property team
20 from presenting at the farmer's market the way the Peterson
21 Company has been allowed?

22 A That must have been that PR firm that called me
23 and wouldn't tell me who the client was, but they called and
24 they said that they had one more developer that wanted to
25 come on board and be a sponsor for the Clarksburg Farmer's

1 Market. We have it in writing for the Clarksburg Farmer's
2 Market that we only allow two businesses, two real estate
3 agents, two this, two that. We've got to cut it off
4 someplace. So we said we already had our two developers,
5 however, in the same conversation that I had, and this woman
6 that called me was from a PR firm, but she wouldn't tell me
7 who the client was which to me, it was like, okay, I know
8 it's probably, you know, you know, over from --

9 MS. ROBESON: Did you say you probably know?

10 THE WITNESS: To myself.

11 MS. ROBESON: Oh.

12 THE WITNESS: But, and then I said, well, is it a
13 developer? And she said, yes. And I said, well, I'm sorry,
14 we already have two developers. I said, however, I said I
15 can hook you up with someone over at CBRT, which I know you
16 know Ibi Sofillas and she can go ahead and arrange
17 everything, what you might need for you to present your
18 vision at CBRT. I said I'd be more than happy to do that
19 for you and that was my conversation with -- and I don't
20 recall her name, but I'm sure you probably know who it is.

21 BY MR. HARRIS:

22 Q Okay. So I'm concluding that Streetscape
23 Partners, New England Development, Simon Property Group has
24 been, has not been allowed to present at the farmer's
25 market?

1 A Has not been allowed to present their vision at
2 the farmer's market, correct.

3 Q Correct. And so your information, it sounds to me
4 as if you haven't talked with anybody from the applicant
5 team about the project. They've not been allowed to come to
6 the farmer's market, but you have talked multiple times with
7 the Peterson Company about their project. So am I correct
8 in concluding that your information about this project comes
9 in part from your discussions with the Peterson Company?

10 A No, that's not -- that's not true. When I'm at
11 the farmer's market, they sent their representative just
12 like Pulte does. Peterson Company sends a representative,
13 and this is once a month, just like Pulte does and they do
14 their thing. I'm all the way on the other side. They do
15 their thing. They talk to people. They show them what
16 their vision is and all and I'm on the other side of the
17 market. I'm market manager. I'm running around sweating
18 all day putting up tons of tents and talking to other
19 people, trying to get the music going, this mad -- we have a
20 lot of vendors that come out, you know, and we're really
21 business. It's a very, yes, it's a very, you know, small
22 committee. We're a handful of girls that do this and I
23 don't have time to sit over there and listen to --

24 Q Fair enough. Would you --

25 A -- what they're talking about.

Page 38

1 Q -- consider altering your policy to allow Simon
2 Property Group and their people to sponsor the farmer's
3 market?
4 A I would have to, well, I'll tell you one thing, if
5 you're the first one knocking on the door next year, we
6 would have to look at it, you know, as a committee and vote
7 on it. It's not just me that decides. I also had the
8 Livable Coalition that wanted to come on board and we have
9 other rules against, you know, coalitions or, you know, et
10 cetera, could be in the market. So, you know, unfortunately
11 we had to say we couldn't go that route either. But it's
12 not my decision. I --
13 Q Does sponsorship involve money?
14 A Sponsorship involves money.
15 Q So you're telling me that the farmer's market is
16 struggling, but you're declining to have sponsorships? That
17 puzzles me.
18 A Well, no, it shouldn't puzzle you at all because
19 why would you want to, a place where people come to be able
20 to relax, bring their dogs, bring their kids and all that
21 and now you've got everything but farmers there? I mean to
22 have a farmer's market in Montgomery County you need at
23 least three farmers because, you know what, it's about the
24 agriculture. It's about the farmers. It's about the
25 people. It's not about having three and four developers

Page 39

1 there and RE/MAX and this and that and -- it's not about
2 that. It's mainly about the food. That's why we only do
3 that once a month. We allow them to come in and do that
4 once a month, along with CBRT. We don't accept businesses
5 unless you're under the CBRT umbrella and the reason being
6 is, A, we don't have the room; and, B, it takes away from
7 what the farmer's market is about.
8 Q You indicated that the historic district is
9 faltering, that there are not amenities there and nothing
10 really to bring people there. Do you remember that
11 testimony?
12 A Yes, I do.
13 Q And so I'm puzzled. You say that building an
14 outlet mall at Cabin Branch is going to take away that when
15 there seems to be nothing there today. What would it be
16 taking away that exists today?
17 A Well, if you were able to go ahead and build the
18 outlets on your side of 270, that will kind of also knock
19 the Peterson Companies off kilter and we all know there's
20 not going to be two sets of outlets in Clarksburg. That's
21 just not going to happen. So outlets on the Peterson side
22 would not be built and I've already said in my testimony
23 that they seem to me as the only developers that would step
24 up to the plate and pledge to do something for the historic
25 district. If they did something for the historic district,

Page 40

1 it could become vibrant again. We could get more, you know,
2 back to the Master Plan of incorporating --
3 MS. ROBESON: I don't understand the --
4 THE WITNESS: -- the town center.
5 MS. ROBESON: I'm sorry.
6 THE WITNESS: Uh-huh.
7 MS. ROBESON: I don't understand what you mean by
8 step up to the plate. Are they promising something?
9 THE WITNESS: They're pledging.
10 MS. ROBESON: Pledging what?
11 THE WITNESS: They're pledging to go ahead and fix
12 the septic systems --
13 MS. ROBESON: All right.
14 THE WITNESS: -- the failing septic systems in the
15 Clarksburg historic district, also to put in a new road to
16 take away the congestion on 355, build a new road.
17 MS. ROBESON: Build the --
18 THE WITNESS: Right, the bypass.
19 MS. ROBESON: -- the town bypass. I've heard
20 references --
21 THE WITNESS: Right.
22 MS. ROBESON: -- to a bypass.
23 THE WITNESS: And then also pathways that will go
24 from their retail center to the Clarksburg historic
25 district. And like I said, whether they build the outlets

Page 41

1 or whether you build the outlets, they're going to be
2 pristine. They're going to be very, very nice outlets. But
3 if that is all taken away, there's nothing left over on the
4 east side of 270. What's left there?
5 MR. HARRIS: So it sounds --
6 THE WITNESS: What would you propose to --
7 THE WITNESS: Well --
8 THE WITNESS: -- do for them then? Would you fix
9 the civic center?
10 MR. HARRIS: I would --
11 MR. KLINE: That's the solution to the whole thing
12 I would decide.
13 MR. HARRIS: I would support the Cabin Branch
14 outlet mall without exception.
15 MS. ROBESON: Well, no, no, no. This is not your
16 time to ask questions.
17 THE WITNESS: Okay.
18 MS. ROBESON: Unfortunately, this is your time to
19 answer. So do you have any more questions?
20 MR. HARRIS: A couple more please.
21 BY MR. HARRIS:
22 Q It would seem to me that if an outlet mall were
23 built, frankly, either at the Peterson site or at Cabin
24 Branch, it would bring people into the Clarksburg area who
25 might then use the historic district and support it and

Page 42

1 might use the farmer's market. Wouldn't that seem logical
2 to you as well?
3 A No.
4 Q Okay.
5 A I would not seem logical. It would seem like it
6 would take away from the historic district of where the town
7 center really should be. A lot of times when people go to
8 outlets, they don't take the exit going away from the
9 outlets, they take the exit going towards the outlets. It's
10 going to be a self-contained community over on the west side
11 of 270 and you're going to have your outlets, you're going
12 to have your home, you're going to have everything on the
13 west side of 270. There won't be anything happening on the
14 east side of 270.
15 Q The -- you say you're in support of the town
16 center retail in Clarksburg?
17 A The town center retail on the --
18 Q The proposed retail.
19 A The proposed retail on the east side?
20 Q Yes. Are you aware of the Elm Street development
21 proposal?
22 A Oh, yeah.
23 Q And are you in support of that?
24 A In support of them finally building something for
25 the residents? Yes. I would like to see that happen. It's

Page 43

1 not going to happen anytime soon. It's way, way down the
2 road, but I am in support of that because those people have
3 been waiting for something for a long time and there's
4 nothing over there for them.
5 Q How far down the road do you believe the Peterson
6 outlet proposal is?
7 A From where?
8 Q From today. You said the town center retail is
9 way, way, way down the road.
10 A A lot further than the Peterson and I guess --
11 Q Why --
12 A -- that all depends on you guys how far that is.
13 Q Can you explain why you believe the town center,
14 doesn't the town center retail already have its zoning in
15 place?
16 A They were zoned before, but everything has been
17 stopped.
18 Q But they have their zoning in place?
19 A They have their zoning in place.
20 Q Are you aware that the Peterson property is zoned
21 for single-family residential, not for commercial use?
22 A Well, they're working on that.
23 Q They're working on that?
24 A And that's why you send me all those little things
25 explaining that.

Page 44

1 Q So they have to get their property rezoned, you're
2 aware of that?
3 A Uh-huh.
4 Q Yes?
5 A Uh-huh. So you're saying it's going to be a long
6 time down the road for all that to happen?
7 Q That's my, that's my contention.
8 A That's your -- but you know that. I'm sorry.
9 Q Pardon?
10 MS. ROBESON: No.
11 BY MR. HARRIS:
12 Q No. Do you believe it's going to be a long time
13 down the road for the Peterson project?
14 A Not as long as you believe.
15 Q How long do you believe it is?
16 A Probably around no more than 2006 if things go
17 really bad.
18 Q 2006 what?
19 A 2006 if things go really --
20 Q 2006?
21 A If things go really bad and --
22 Q I think --
23 MS. ROBESON: I think what he's saying is it's
24 2013 --
25 THE WITNESS: 2013, yeah.

Page 45

1 MS. ROBESON: -- so when you say 2016, is that
2 what you're --
3 THE WITNESS: Three years from now, yes.
4 MR. HARRIS: Three?
5 MS. ROBESON: We keep losing if that date is
6 right.
7 THE WITNESS: I know.
8 MR. HARRIS: I started it.
9 MS. ROBESON: You started it.
10 MR. HARRIS: I started it and --
11 THE WITNESS: He started it.
12 MS. ROBESON: You didn't start it. It's your
13 fault.
14 BY MR. HARRIS:
15 Q Are you aware that the developer of the town
16 center retail has said that were a grocery store to be built
17 at Cabin Branch, they would not be able to go forward with
18 the town center retail because they need a grocery and
19 there's not enough capacity for two?
20 A No.
21 Q Would you rather see a grocery store at Cabin
22 Branch than at the town center retail or vice versa?
23 A Well, I would rather see it over at the, on the
24 east side of 270 because those are the people that have been
25 waiting the longest for it. However, I wouldn't mind having

Page 46

1 a grocery store across the street from my house.
2 Q Okay. I don't think I have any further questions.
3 MS. ROBESON: Okay. I am going to allow you some
4 follow-up questions, but I would like them not to be leading
5 questions.
6 MR. KLINE: We'll be brief. Sure. And they will
7 be brief.
8 REDIRECT EXAMINATION
9 BY MR. KLINE:
10 Q Ms. Franklin, this is going to be sort of a memory
11 test question.
12 A All right.
13 Q I'm showing you a copy of Exhibit 5 in the record
14 of the case which is the resolution approving the rezoning
15 of the Cabin Branch property. I mean you can see that that
16 occurred on September 9th of 2003. So the question is do
17 you recall when you bought your property, because you were
18 asked when you bought your property did you know that the
19 Cabin Branch property had been rezoned? And so my question
20 is did you buy it before or after September 9, 2003?
21 A I bought it before September 9, 2003.
22 Q So you bought it before the property --
23 A I bought it in July of that year. Does anybody
24 remember the year the jail was actually opened? That was
25 the year that I bought it because our house was actually the

Page 47

1 field office for the jail. So Montgomery County was renting
2 out our house when we bought it. We had to wait until they
3 got out of there before we could rebuild it.
4 Q You assume the people in this room know more than
5 you do and that's not the case. You know, when you were
6 talking about the pile of materials you got, I thought you
7 were probably talking about notices that applicants have to
8 send out dealing with plans submitted to the Park and
9 Planning Commission.
10 A Uh-huh.
11 Q But I just realized based on something you said a
12 minute ago, you have received correspondence from the Cabin
13 Branch combined about events to attend or news releases or
14 status reports, am I correct on that?
15 A Uh-huh.
16 Q Okay. Just describe a little bit what those are.
17 Are they letters telling you what the status of their plans
18 are and what they're going to process?
19 A Yeah. We have received letters giving us the
20 status and comparisons of what they are in comparison to the
21 Peterson Group. And I'm sorry if I don't have all my
22 mirrors correct on as to what I've read as far as when they
23 plan to be, you know, operational or be able to build if
24 everything gets approved, but it's just a lot of dates and
25 it's a lot of like if this happens, if that happens, if this

Page 48

1 happens, if that happens. And being a resident, I mean I
2 know what I believe and that's the reason we're here, but I
3 don't know all the little details that everybody is asking
4 me. But we have been receiving from the very beginning all
5 the plats and the notices and --
6 Q Well, I prematurely --
7 A -- literature.
8 Q -- objected to a question that Mr. Harris asked
9 you and I realize when the Hearing Examiner kind of pointed
10 out why. I guess there was a possibility that all of your
11 information about the Cabin Branch project was formulated
12 based on talking to someone --
13 MS. ROBESON: Okay.
14 MR. HARRIS: Objection.
15 MS. ROBESON: Is this a leading --
16 MR. KLINE: No. Okay. I --
17 MS. ROBESON: Just --
18 MR. HARRIS: It's a --
19 MS. ROBESON: Is that your objection, Mr. Harris?
20 MR. HARRIS: My objection is that that's a
21 statement and a leading question that at the minimum --
22 MS. ROBESON: Why don't you just ask her where her
23 information --
24 MR. KLINE: I appreciate your --
25 MS. ROBESON: -- came from?

Page 49

1 MR. KLINE: -- the caveat.
2 THE WITNESS: I did a lot of homework. That's
3 where my information came from. I talked to a lot of
4 residents. I talked to a lot of store owners. The one
5 thing I don't do at the farmer's market is I don't talk to
6 residents and tell them what my vision is or what my views
7 are. That's a place where people can come and talk and vent
8 and believe me you have good and bad from the beginning with
9 the Newland community even. But I don't express my feelings
10 there. I found out and I'm sorry that my husband couldn't
11 be here this morning to testify as well because he would,
12 even though he's not as outspoken as I am, he believes in a
13 lot of this as well. So --
14 MS. ROBESON: Okay.
15 BY MR. KLINE:
16 Q My specific question is there are other sources of
17 information other than talking --
18 MR. HARRIS: Objection.
19 MS. ROBESON: Yes. It is leading.
20 MR. HARRIS: Another statement.
21 THE WITNESS: Oh, yeah, I, you know --
22 MR. HARRIS: Are there?
23 MR. KLINE: Yes, thank you.
24 THE WITNESS: There's a lot of PR firms that have
25 been hired, you know, by everybody here, the developers, and

Page 50

1 they're all making phone calls. I make phone calls. I get
2 literature dropped off at my house. I get literature mailed
3 to my house. So, yeah, I've been hearing from quite a few
4 and it's not just from one developer, but pretty much from
5 all the developers.
6 MS. ROBESON: Okay. Mr. Chen?
7 MR. CHEN: I have no questions. Thank you.
8 MS. ROBESON: Any recross?
9 MR. HARRIS: No, ma'am.
10 MS. ROBESON: Okay.
11 MR. HARRIS: Thank you, Ms. Franklin.
12 MS. ROBESON: Thank you, Ms. Franklin, for coming
13 out and you may be excused. I am going to take a 5-minute
14 break and we will get to, if there are any citizens here, we
15 will get to them.
16 (Recess.)
17 MS. ROBESON: We are back on the record. And are
18 there any other individuals who wish to testify at this
19 time? I see two hands. Okay. Is there any objection to
20 them going forward?
21 (No audible response.)
22 MS. ROBESON: All right. Why don't -- is, now is
23 this anybody, any of the attorney's witnesses?
24 MR. HARRIS: No, ma'am.
25 MS. ROBESON: Okay. So you're testifying

Page 51

1 independently?
2 MS. BARRIER: Yes, I am.
3 MS. ROBESON: Did you sign the sign-up sheet --
4 MS. BARRIER: Over here?
5 MS. ROBESON: -- and put your e-mail on it?
6 MS. BARRIER: I did.
7 MS. ROBESON: Okay.
8 MS. BARRIER: I did.
9 MS. ROBESON: Because you will be entitled to
10 notices after this hearing concludes. Okay.
11 MS. BARRIER: That's your blanket. Where's mine?
12 MS. ROBESON: Please raise your right hand.
13 (Witness sworn.)
14 MS. ROBESON: Okay. Please state your name and
15 address for the record.
16 MS. BARRIER: I'm Sandra Barrier. I live at 23720
17 Bennett Chase Drive in Clarksburg, Maryland 20871.
18 MS. ROBESON: Okay. Can you spell Barrier?
19 MS. BARRIER: It's B, as in boy, A-R-R-I-E-R.
20 MS. ROBESON: All right. And what would you like
21 to say?
22 MS. BARRIER: This is what I'm going to do, is I'm
23 going to read the letter that I actually wrote to you --
24 MS. ROBESON: Okay.
25 MS. BARRIER: Which kind of gives you an overview

Page 52

1 of how I feel about the project and --
2 MS. ROBESON: Okay.
3 MS. BARRIER: -- what's going on in Clarksburg.
4 MR. KLINE: Could I ask a question of
5 clarification? This is a letter that's in the record?
6 MS. BARRIER: I would, yes, I did send it to Mrs.
7 Robeson.
8 MR. KLINE: Okay. Fine.
9 MS. BARRIER: So absolutely. It says,
10 "I'm a homeowner in Clarksburg. I have lived
11 in the Boyds/Clarksburg area all of my life.
12 Lately I have been concerned about the future of
13 Clarksburg. I think the residents here have
14 waited patiently for a proposed walkable town
15 center village.
16 "I feel Phase 3, the Cabin Branch area, will
17 be an asset to the community. Specifically, I
18 feel like the Clarksburg Premium Outlets at Cabin
19 Branch will benefit my community in a huge way. I
20 know there is another outlet center proposed in
21 Clarksburg. I feel like the other project will be
22 compromising to the land along, with the Ten Mile
23 Creek. However, the outlet center at Cabin Branch
24 will not have an environmental impact on Ten Mile
25 Creek and surrounding areas.

Page 53

1 "I have been told that there will be changes
2 in access to the Clarksburg Premium Outlet Center.
3 We will be able to access the shops using a
4 widened off-ramp from I-270 and a new ramp onto I-
5 270. This will help to migrate traffic impacts on
6 the neighborhoods and Route 355. In fact, the
7 developers of the outlet center have said that
8 they will be investing 15 million in
9 transportation improvements, including widening
10 Route 121. Many of the improvements are already
11 happening today and are expected to be completed
12 before the opening of the outlet center.
13 "I travel on I-270 on a regular basis and see
14 how bad traffic is in this area, so I'm happy to
15 see the outlet center's plan include traffic
16 mitigation. The facts also stand strong that the
17 plans of Clarksburg Premium Outlets are basically
18 ready to go, more than the other proposed project
19 in my community. Many of the approvals have been
20 completed for the site, including zoning,
21 infrastructure and sewer, so they are ahead of the
22 process.
23 "I feel confident that this project will be
24 done with great care and respect for Clarksburg
25 and our residences. Clarksburg deserves the

Page 54

1 opportunity to flourish. I respectfully ask a
2 recommended approval of the outlet center at Cabin
3 Branch. Our community is ready, is more than
4 ready for this opportunity."
5 MS. ROBESON: Thank you, Ms. Barrier. And just
6 for the record, I believe the letter is Exhibit 38MM. Mr.
7 Kline, any questions?
8 MR. KLINE: I thought you'd probably give Mr.
9 Harris the same courtesy you gave me in the sense of she's
10 in support, so he can go first.
11 MS. ROBESON: Oh, okay. Mr. Harris.
12 MR. HARRIS: That is fine. I have no questions.
13 MS. ROBESON: Okay. There you go.
14 MS. BARRIER: Yay.
15 MS. ROBESON: Mr. Kline?
16 MR. KLINE: And I have no questions.
17 MS. ROBESON: Okay. Mr. Chen?
18 MR. CHEN: Thank you.
19 CROSS-EXAMINATION
20 BY MR. CHEN:
21 Q Good morning, Ms. Barrier.
22 A Good morning.
23 Q Wasn't your testimony, I couldn't help but note
24 that you said to the examiner that you were aware of the
25 other outlet project on the east side of 270, is that right?

Page 55

1 A Correct, the Peterson Outlet?
2 Q Yes.
3 A Yes.
4 Q And your testimony, as I recall, said that you
5 supported this outlet because the other outlet would have an
6 impact, in your opinion, on Ten Mile Creek, is that correct?
7 A Absolutely.
8 Q Okay. And you also stated that, by the way, as I
9 understand it, and I have no connection to that project at
10 all, I represent an individual, they would still, any
11 possible impact will be regulated --
12 MR. HARRIS: Objection.
13 MR. CHEN: I'll throw that question.
14 BY MR. CHEN:
15 Q Are you aware that there are regulations that are
16 applicable to any development that would have any connection
17 to the Ten Mile Creek area?
18 A I'm going to be honest with you, I'm not any kind
19 of, I don't know a lot about that, so I do realize there
20 probably are regulations and I know that -- but in terms of
21 being an expert, I wouldn't know anything about that --
22 Q Okay.
23 A -- in terms of being an expert on that.
24 Q I also believe you testified and I, please, I --
25 A No, that's fine.

Page 56

1 Q -- if I make a statement about what I understood
2 your testimony was, you correct me if I'm not accurate.
3 A Okay.
4 Q I believe you said that you also supported the
5 development plan amendment in this case because, quote, it's
6 ready to go, end quote. Is that right?
7 A The Cabin Branch?
8 Q Yes.
9 A Yes, the zoning and everything is in place.
10 Q Okay. And that it was, quote, ahead of the other
11 projects, end quote, is that correct also?
12 A Correct.
13 Q Have you done any comparison of what the Master
14 Plan provides for in Cabin Branch, the Cabin Branch
15 community for this area?
16 A I'm not clear on what your question is.
17 Q Do you know what the Master Plan proposed is for
18 the Cabin Branch community?
19 A The Phase 3 Master Plan?
20 Q Yes.
21 A I'm aware of it to the point of what I have seen
22 basically with brochures and talking to Dana and Ellen
23 Bagage (phonetic sp.), so I'm very --
24 MS. ROBESON: Can you just explain who Dana and
25 Ellen Bagage are?

Page 57

1 MS. BARRIER: They work with Cabin Branch, so I
2 have --
3 MS. ROBESON: Okay.
4 MS. BARRIER: -- I have asked questions and tried
5 to get some more information from them regarding what's
6 going on there. I do believe that we are going to get some
7 sort of development over there and I'm in the dealings that
8 I would rather have a nice, well-developed center in Cabin
9 Branch center than some ugly strip mall which is what's
10 going to happen, not to mention I believe it will bring in
11 business as well. Business has a tendency to want to
12 migrate to areas that have some sort of pull to the
13 community and right now we're all getting in our cars and
14 we're driving east or, you know, north or south to get
15 anything that we need for the most part. So I am highly for
16 the Cabin Branch and I am really, I am highly opposed to the
17 Peterson project at this point.
18 BY MR. CHEN:
19 Q Who told you there would be a strip development?
20 A Nobody did.
21 Q Okay.
22 A I'm just saying as a, as looking outside the box,
23 if this did not get approved and we did not get a nice,
24 nicely developed Simon Streetscape community, if something
25 is going to go over there and we're going to end up with an

Page 62

1 MS. HOFFMANN: Melane Kinney Hoffmann, and that's
 2 M-E-L-A-N-E, Kinney Hoffmann, H-O-F-F-M-A-N-N, 23801
 3 Peachtree Road, Clarksburg 20871.
 4 MS. ROBESON: Thank you. And did you sign the
 5 sign-in sheet and put your e-mail on there?
 6 MS. HOFFMANN: I did.
 7 MS. ROBESON: Thank you.
 8 MS. HOFFMANN: I also will give you copies of my
 9 testimony, which also has my address on it afterwards if you
 10 would like.
 11 MS. ROBESON: Well, we have to take it in as an
 12 exhibit.
 13 MS. HOFFMANN: Okay.
 14 MS. ROBESON: So if you sent your -- I don't think
 15 we need it if you're going to put it in the record verbally.
 16 MS. HOFFMANN: Okay.
 17 MS. ROBESON: Okay?
 18 MS. HOFFMANN: Okay. Well, thank you for the
 19 opportunity share my views today. I have lived in
 20 Clarksburg for 19 years since it was just a rural crossroads
 21 and my husband and I very, we're very active in the original
 22 process of citizen input on the 1994 Master Plan and we
 23 expressly moved to Clarksburg with two very small children
 24 and a third on the way expecting and hoping for this Master
 25 Plan vision that would combine the best of both worlds,

Page 63

1 preserving the rural nature and historic nature of
 2 Clarksburg with a new village concept that would provide
 3 really nice, basic services and create a sense of community.
 4 And we jumped in full bore and we actively
 5 volunteered and took leadership roles in the Clarksburg
 6 schools from Clarksburg Elementary to Rocky Hill Middle
 7 School to Clarksburg High School. We were involved in
 8 scouts and sports and we helped build Clarksburg's fledgling
 9 annual Relay for Life, among other things. And,
 10 unfortunately, we've also spent way too much time immersing
 11 ourselves in the excruciating details relating to the
 12 dysfunctional build-out of Clarksburg. And, yes, I have
 13 read the entire Master Plan. I have not memorized it, but I
 14 have read it cover to cover several times.
 15 Through the years we've been repeatedly
 16 disappointed by the lack of the promised amenities and
 17 developers, specifically developers, repeatedly failing to
 18 deliver on their promises while they maximize their profits
 19 at the expense of the community. And now we finally have a
 20 chance to get, see some real material, some real amenities
 21 materialize sooner rather than later and it's about time.
 22 So I'm here in very strong support of the proposal for a
 23 retail center from Streetscape Partners and Simon and New
 24 England Development on the Cabin Branch parcel.
 25 I and many of my neighbors unwaveringly support

Page 64

1 this development plan amendment to build an outlet mall and
 2 mixed retail and office use and mixed use on that site. We
 3 all know that a very upscale mall will not only provide some
 4 basic amenities that we all want locally and will
 5 dramatically improve our quality of life, but it also will
 6 attract desirable eating places which will be so nice and
 7 other businesses in the planned office space, including the
 8 high-tech jobs we all hope for eventually.
 9 And you've heard so many different views and
 10 excruciating technicalities, so I'm just going to boil it
 11 down to a few basic points that I think are most important
 12 to the community and that I keep hearing over and over.
 13 Number one is traffic. Our traffic nightmares cannot be
 14 understated. We never got the promise to transit that our
 15 density was based on and that transit still is going to be a
 16 long time coming.
 17 This proposal for an outlet mall on the Cabin
 18 Branch parcel is the only possible location in Clarksburg
 19 that won't multiply the traffic disaster. With its direct
 20 access ramps on and off 270, the traffic congestion for an
 21 outlet mall would be minimized on our local thoroughfares
 22 which are Clarksburg 121 and 355 by the road. Even the road
 23 widening and the construction itself, that process would be
 24 contained west of 270 instead of bleeding over into our
 25 regular, every-day traffic. So even if for nothing else,

Page 65

1 approve this proposal because it reduces our traffic misery.
 2 We deserve a break on traffic.
 3 Number two, Ten Mile Creek. The Cabin Branch
 4 proposal does no damage to Ten Mile Creek, zip, none, no
 5 damage. It doesn't need the maximum pushing the envelope
 6 environmental site design to protect Ten Mile Creek that
 7 anything on the other side needs. And the creek is
 8 critically important. It's not just that it's fragile that
 9 we need to protect it, it's important. It's our last clear,
 10 clean stream in Montgomery County and it supplies the
 11 reservoir which we have tapped into in the last few
 12 droughts.
 13 Ten-mile creek is important and we keep hearing,
 14 oh, people in Clarksburg don't really care about Ten Mile
 15 Creek, but they really do. And if you look at the report
 16 that the Planning Staff prepared for the Planning Board,
 17 there were, in the attachments to that there were 60 odd
 18 letters. Well more than half of those mention Ten Mile
 19 Creek.
 20 Number three, it's almost ready and we waited so
 21 long. As part of this stage three of the Master Plan, this
 22 proposal is very close to the coming of reality for us. If
 23 this plan is approved, we'll have much needed retail within
 24 two or three years. If it's denied, we'll have to wait
 25 another five years or more for all the approvals needed for

Page 66

1 a rehash of that site or a rehash of anything else and we've
2 waited long enough.

3 We have a great proposal in front of us from a
4 team of developers who are known to develop and deliver on
5 high-quality. How could we possibly justify letting this
6 opportunity pass us by? We just see it as a great
7 opportunity we need to take advantage of.

8 And I have one closing thought. I think it's very
9 interesting and it's extremely unusual that we have a
10 competing developer who has gone so negative on this
11 proposal. Are they concerned about our community getting
12 our amenities too soon? Are they concerned that we might
13 reduce the risk to Ten Mile Creek? Are they concerned about
14 fairness in the process that Stage 3, a proposal for Stage 3
15 might be proposed before a proposal for Stage 4? Are they
16 concerned that the Planning Board who unanimously approved
17 this proposal was somehow misguided? I think you have to
18 ask yourself that and I think it's fairly obvious why
19 they're pulling out all the stops to hold up this proposal
20 and it's not to benefit the people of Clarksburg.

21 Clarksburg gains significantly from the Cabin
22 Branch proposal, so I ask you to please ignore that
23 distraction and just focus on the basic needs of Clarksburg
24 and the proposal before us. So I urge you to approve the
25 zoning adjustments that will allow the Cabin Branch proposal

Page 67

1 to go forward. Clarksburg really deserves this development
2 now. Thank you very much.

3 MS. ROBESON: Thank you. Mr. Harris?
4 MR. HARRIS: No questions. Thank you.
5 MS. ROBESON: Mr. Kline.

6 CROSS-EXAMINATION
7 BY MR. KLINE:
8 Q Ms. Hoffmann, if I recall I've seen you down at
9 the Planning Board with the various discussions on the Ten
10 Mile Creek Master Plan. Are you not comfortable that
11 anything that were to occur on the east side of I-270 would
12 occur in accordance with whatever that plan determines is
13 appropriate development scale for that property?
14 A I'm not sure I understand your question. Are you
15 saying do I believe --
16 MS. ROBESON: Well, let him, let him rephrase
17 it --
18 MR. KLINE: Sure.
19 MS. HOFFMANN: Okay.
20 MS. ROBESON: -- in a --
21 BY MR. KLINE:
22 Q You're concerned about Ten Mile Creek and its
23 water quality?
24 A Uh-huh.
25 Q There is a Master Plan going on now reviewing the

Page 68

1 Ten Mile Creek.
2 A Right.
3 Q And --
4 A And the amendment, right.
5 Q Right. And it will determine development
6 potential of properties within the Ten Mile Creek area?
7 A Right and that's under review at the Planning
8 Board now.
9 MS. ROBESON: Those are questions, Mr. Kline,
10 right?
11 MR. KLINE: Yes.
12 MS. ROBESON: Yes.
13 MR. KLINE: I'm sorry.
14 MS. HOFFMANN: Yes, you're asking me if I'm aware
15 of that?
16 MR. KLINE: Yes.
17 MS. HOFFMANN: Yes, I'm aware and that's under
18 review at the Planning Board now, right. I'm aware.
19 BY MR. KLINE:
20 Q So when the Planning Board finally adopts the Ten
21 Mile Creek Master Plan, development in accordance with that
22 plan would be environmentally sensitive, would it not?
23 A Well, that's a very good question. We've seen a
24 lot of proposals about what environmental site design, ESD
25 features, would be utilized and, frankly, I don't think some

Page 69

1 of them are credible. I, if you look at the slopes of that
2 land, if you know how it's got three streams on it.
3 Q And for the Hearing Examiner, when you say that
4 land, you probably need to clarify --
5 A I'm sorry.
6 Q -- what property you're speaking of.
7 A I think you're talking about the Peterson Miles
8 Coppola property, right. Right. I understand that, yes,
9 the, what will be approved will be required to meet
10 standards, but what we know often happens, and it's happened
11 all over this county, as the development goes forward it
12 doesn't happen the way it's supposed to and the damage is
13 done and then it's too late.
14 Q So you are skeptical that the process of the Ten
15 Mile Creek plan will still result in potential development
16 that may not, that might hurt the Ten Mile Creek?
17 A Absolutely. I think that is possible.
18 Q Okay. You made a comment about traffic and maybe
19 my geography is not good, but don't you live on the west
20 side of I-270?
21 A Uh-huh. Uh-huh.
22 Q All right. So aren't you actually going to be
23 closer to where all the traffic is coming if you have the
24 Cabin Branch development and why are you, therefore,
25 concerned about what's happened on the east side?

Page 70

1 A No, because if you know anything about the, no to
2 the first part, yes to the second. If you know anything
3 about the geography of Clarksburg, yes, I live on the west
4 side of 270, but because of the way it's laid out,
5 everything happens on the 355 thoroughfare.
6 Q Uh-huh.
7 A We've got a little bit of traffic relief now with
8 Snowden Farm Parkway, but to get to the grocery store, to
9 get to my kids' schools, to get to where all of my friends
10 live, to get to the drycleaner, to get to anything, I have
11 to go down 355 and cross 121. So, and to get on 270 and go
12 south and north, you have to go on 121.
13 Q Okay.
14 A So if where that Cabin Branch development is now,
15 it's kind of contained in a corner between 121 and 270 that
16 doesn't interfere with the traffic in the town and where the
17 historic town is.
18 Q Okay.
19 MR. KLINE: Could I use the exhibit over here?
20 Maybe I can get a little bit more clarification?
21 MS. ROBESON: 59?
22 MR. KLINE: Yes.
23 BY MR. KLINE:
24 Q So this is basically the development plan put out
25 by the applicants in Exhibit 59 and what you were talking

Page 71

1 basically about, 121 and I-270, I pointed that when you are
2 going from your home to do whatever your errands or whatever
3 you were just talking about, do you have to go through this
4 intersection to get to those locations?
5 A No.
6 Q No? How do you get to them?
7 A I usually go Comus Road. I mean it depends, but I
8 used to go Comus Road to 355.
9 Q And then it comes out on 355?
10 A Uh-huh. Right, south on 355.
11 Q So whatever happens here in terms of traffic there
12 doesn't bother you, doesn't affect you at all because you
13 just want to be transit?
14 A Getting on 270 it does and getting to that parcel
15 when it's developed, I expect that I'll be using it.
16 Q Sure.
17 A Yeah.
18 Q Well, and using it to do the errands you were just
19 talking about, the grocery store and the --
20 A Well, I don't think there will be -- there's not a
21 grocery store proposed for that. So, no, the grocery store
22 wouldn't be possible.
23 Q So you would be going to the fashion retail
24 locations then?
25 A Not fashion, but maybe the --

Page 72

1 Q Whatever the tenant --
2 A -- dining.
3 Q Oh, okay. All right. Okay. All right. Yes,
4 okay.
5 MS. ROBESON: She looks pretty fashionable right
6 now, so she doesn't need them.
7 MS. HOFFMANN: I just shop online.
8 MR. KLINE: I have no further questions.
9 MS. ROBESON: Okay. Mr. Chen.
10 MR. CHEN: Thank you.
11 BY MR. CHEN:
12 Q Ms. Hoffmann, my name is Bill Chen and I'm an
13 attorney and I represent an individual who has a small
14 business on the east side in the historic district.
15 A Uh-huh.
16 Q That's who I represent and that is, this gentleman
17 is named Whit Cobb and he's my client.
18 A Uh-huh. What's his business?
19 Q He has a --
20 MS. ROBESON: Okay.
21 MS. HOFFMANN: I'm not allowed to ask questions?
22 MS. ROBESON: No.
23 MS. HOFFMANN: Okay.
24 MS. ROBESON: And you're essentially testifying.
25 I know you're setting a basis, but can you ask a question?

Page 73

1 MR. CHEN: Yes.
2 BY MR. CHEN:
3 Q I just want to make it very clear, your latest
4 concern about who is representing whom from her comments.
5 Ma'am, looking at Exhibit 59, is your residence located on
6 that map?
7 A No.
8 Q Can you give the Examiner, would you go up to the
9 map and give the Examiner an idea of where your residence
10 would be even though it's off the map?
11 A My residence? Yeah, I would also say I'm here as
12 an individual, but I've been a person who has really worked
13 hard in this community and I'm here representing a lot of
14 people in the community who care about this.
15 Q Well, excuse me, just, ma'am --
16 A I know --
17 Q If you were going to draw a line --
18 MS. ROBESON: Just.
19 MS. HOFFMANN: -- I would be sort of up there.
20 MS. ROBESON: Okay. Can you, can you stop?
21 MS. HOFFMANN: If you put, if somebody has a copy
22 of the Master Plan --
23 MS. ROBESON: Can you stop one minute please?
24 MS. HOFFMANN: Uh-huh.
25 MS. ROBESON: Okay. Your job now is to answer the

Page 74

1 questions he asks, okay?
2 MS. HOFFMANN: It's up here. If you have a copy
3 of the Master Plan, I could show you where it is on the map.
4 MS. ROBESON: Now when you say up here, you're
5 pointing generally northwest?
6 MS. HOFFMANN: Yes, exactly. If 270 goes up here
7 and Comus Road would run right about like that and I live
8 just right around here, the corner of the intersection of
9 Comus and Peachtree.
10 MS. ROBESON: Okay. But it's not shown on the
11 map?
12 MS. HOFFMANN: No.
13 MS. ROBESON: Okay.
14 MS. HOFFMANN: This stops at 121.
15 MR. CHEN: Thank you very much, ma'am.
16 MS. HOFFMANN: Uh-huh.
17 MS. ROBESON: Mr. Harris. Oh, I thought you were
18 finished.
19 MR. CHEN: I was, no, ma'am.
20 MS. ROBESON: Oh, you were inviting her to take a
21 seat? I'm sorry. I thought you were inviting Mr. Harris to
22 ask her questions. Go ahead.
23 MR. CHEN: Thank you very much.
24 BY MR. CHEN:
25 Q As I understand, therefore, your testimony just

Page 75

1 now where your residence is located, if this project goes
2 forward and I think your characterization of your testimony
3 was it's almost ready and you've waited so long, is that
4 correct, ma'am?
5 A Uh-huh, I said that.
6 Q And if this project, therefore, were approved, you
7 would have retail within two to three years?
8 A Uh-huh.
9 Q And you live on the west side of 270?
10 A Uh-huh.
11 Q And you've described to the Examiner, I believe,
12 in your testimony that where you presently have to go and
13 the route you have to presently take, which is over to
14 355 --
15 A Uh-huh.
16 Q -- which is on the east side --
17 A Uh-huh.
18 Q -- so that if this project goes forward, you would
19 no longer have to do that, you could stay on the west side
20 and go down to the outlets that are being proposed by this
21 development plan amendment, is that right?
22 A Actually, no.
23 Q Oh, you wouldn't go to the outlets?
24 A I still would, most of what I need to do is get to
25 my kids' school and grocery store and drycleaner and that

Page 76

1 kind of thing. But even still I would have to go out to 355
2 because the only way to get to that parcel would be through
3 Ten Mile Creek which has a fjord in it and I don't like to
4 drive through the creek unless absolutely necessary.
5 Q But there is a road through the creek? There is a
6 road there? You choose not to take that road, but there
7 still is a road?
8 A If you get the fjord in the stream, you have to be
9 in a 4-wheel drive vehicle --
10 Q In, no --
11 A -- because it's up pretty high. You could go down
12 to West Old Baltimore if that's what you mean.
13 Q Excuse me.
14 A I'm sorry, I don't understand (indiscernible).
15 Q There are public roads on the west side that could
16 take you to this development without having to go to 355,
17 isn't that correct?
18 A Yeah, they're further. They're out of the way,
19 but they're there.
20 Q Or it has a fjord you'd have to, or the creek, is
21 that right?
22 A Yes.
23 Q So you choose not to use those roads?
24 A I've had two cars stuck in that creek, so I choose
25 not to use those roads.

Page 77

1 MS. ROBESON: Okay.
2 BY MR. CHEN:
3 Q Were you driving at the time?
4 A I was once and my son was driving another time.
5 Q Okay. Now have you -- I take it because of all
6 your experience that you know what the Master Plan provides
7 for?
8 A Uh-huh.
9 Q Yes?
10 A Yes, I'm sorry, yes, I know.
11 Q And you are aware then what the Master Plan
12 proposes for the town center?
13 A Yes.
14 Q And you also know what the Master Plan currently
15 calls for for the Cabin Branch community?
16 A Yes.
17 Q Are you aware that the Master Plan calls for a
18 shop/grocery store in the Cabin Branch community?
19 A Yes, I'm aware of that, but I know it's not part
20 of the proposal, the current proposal.
21 Q In fact, under this proposal there would be no
22 grocery store on the west side?
23 A Correct.
24 Q And are you aware of the numeric limitations on
25 retail that the Master Plan proposes for the west side in

Page 78

1 the Cabin Branch community?
2 A I am.
3 Q And are you aware of the increase that would
4 result in the retail on the west side in the Cabin Branch
5 community if this proposal was approved?
6 A I am.
7 Q Okay. Have, do you have any concerns about
8 compliance with the Master Plan?
9 A No, I don't because that parcel was approved for,
10 I think, roughly 2 million square feet of commercial space
11 and it was --
12 MS. ROBESON: I'm sorry, can I stop you one
13 moment? What is that parcel?
14 MS. HOFFMANN: I'm sorry, Cabin Branch.
15 MS. ROBESON: Okay.
16 MS. HOFFMANN: Which was a mix of hotel and
17 grocery store and retail and office and hospital. And, yes,
18 with the hospital no longer being part of that, it changes
19 things dramatically. They've got to fill up that space some
20 other way and a hospital takes up a lot of space. So that
21 square footage needs to be reused in a different way and I
22 think it's logical and you've got 2 million square feet of
23 commercial space, yes, of course it's going to mean that one
24 of those segments has to increase. So retail makes sense to
25 me.

Page 79

1 Q To fill up the space because the hospital won't be
2 there?
3 A To, yeah, to use the land, exactly.
4 Q So that, as I understand your testimony, that's a
5 reasonable trade-off for the fact that this development is
6 not recommended in the Master Plan?
7 MR. HARRIS: Objection.
8 MS. HOFFMANN: Well, I don't think there's any
9 specific --
10 MS. ROBESON: Basis?
11 MR. HARRIS: Objection. He's concluded that this
12 development is not recommended in the Master Plan. There's
13 no premise for that. That's --
14 MS. ROBESON: Well --
15 MR. HARRIS: That remains his argument.
16 MS. ROBESON: Well, I think that -- can you
17 rephrase that? I think there is a basis for that, I mean
18 relevance to that question. Is there a way to rephrase it
19 without characterizing the Master Plan as compliant or non-
20 compliant?
21 MR. CHEN: Let's do it this way. Let me try it
22 this way. Thank you.
23 BY MR. CHEN:
24 Q You are familiar with the Master Plan's proposals
25 for the Cabin Branch community?

Page 80

1 A Yes.
2 Q Now notwithstanding those provisions, as I
3 understand your testimony, you support this development
4 because the hospital will no longer be developed, is that
5 right?
6 A That's one of the reasons.
7 Q But that was one of the reasons you talked about
8 for the justification to have the increased retail?
9 A It was not part of my original testimony, but when
10 you asked me that, yes, and --
11 Q No, I just want to be clear because you, you do
12 know the amount of retail recommended in the Master Plan for
13 the Cabin Branch community, isn't that right?
14 A It was originally about 120,000 square feet and
15 now they're proposing something in the neighborhood of 400.
16 Q Yes, four times as much?
17 A Yes.
18 Q Okay. And I'm just trying to get some clarity
19 here. I'm not, it's not a trick question. As I understand
20 your testimony, notwithstanding the Master Plan and that
21 numeric limit of 120,000, as I understood your testimony,
22 and if I'm wrong please tell me, because the hospital would
23 no longer be there, the mound, that big space that won't be
24 there is appropriate, as I understand your testimony, to
25 have the increase in the retail that's proposed by this

Page 81

1 development plan amendment?
2 A Yeah, I think that's, that's accurate. It was
3 originally designed for about, in the Master Plan, for about
4 2 million square feet of commercial space and that was 1994.
5 That was a long time ago, different time economically. The
6 community as a whole varied differently than the original
7 Master Plan and I don't, the Master Plan was not so specific
8 that it said, you know, six of these and 12 of these and 14
9 of these. It basically described a general framework and I
10 think this proposal fits within that general framework,
11 particularly with the loss of a hospital which was the huge,
12 you know, no longer an option.
13 MR. CHEN: No further questions.
14 MS. ROBESON: Thank you. Mr. Harris.
15 MR. HARRIS: I have no questions. Thank you.
16 MS. ROBESON: Thank you.
17 MS. HOFFMANN: Thank you.
18 MS. ROBESON: Thank you for coming. You may be
19 excused.
20 MR. HARRIS: Thank you.
21 MR. KLINE: Thank you very much.
22 MS. ROBESON: Is there any other, are there any
23 other individuals that are not represented by any of these
24 attorneys that wish to testify?
25 (No audible response.)

Page 82

1 MS. ROBESON: Okay. Seeing none, we will go to
2 cross-examination of Mr. Bogorad. Did I say that correctly?
3 MR. BOGORAD: Very well, yes, thank you.
4 MS. ROBESON: Okay.
5 MR. BOGORAD: Not many people get that.
6 MS. ROBESON: All right. Mr. Kline. Well, let,
7 you're still under oath, Mr. Bogorad.
8 MR. BOGORAD: Yes.
9 (Discussion off the record.)
10 MS. ROBESON: Do you need a minute or are you
11 ready?
12 MR. KLINE: Yes, just 10 seconds please.
13 MS. ROBESON: Okay. Are you ready? All right.
14 Proceed, Mr. Kline?
15 BY MR. KLINE:
16 Q Mr. Bogorad, your publishers probably called you
17 and told you there was a great spike in the interest in your
18 publications that you told us about the other day because
19 all the people in the back of the room rushed out to
20 basically subscribe and get those. And I got my set also
21 and I guess what I'm going to say is we had trouble
22 determining the relevance of a 1982 article in the Handbook
23 for Analysis of the Impacts of New Developments on Older
24 Commercial --
25 A It was a best seller. I can't imagine.

Page 83

1 Q And your 2001 article on successful Master Plan
2 committee town centers. So am I correct in assuming you
3 reference these more to establish your credentials and being
4 able to comment on retail rather than the relevance of these
5 two articles to the premise that a retail outlet center will
6 draw office development?
7 A I don't believe either one dealt with the issue of
8 office development, correct.
9 Q You did give us a fiscal analysis that's in the
10 record in writing. And my question there was is there a
11 comparative component to it in the sense that had the plan
12 been developed, had the project been developed as all office
13 and the uses and vision when the MXPD zoning was placed on
14 it, and let me try that again. Is there a comparative
15 component to it comparing what would have occurred and what
16 will occur, or is it just an absolute here's what you're
17 going to get if you approve this plan?
18 A It just analyzes what's proposed here, but I --
19 it's quite easy to characterize what the results generally
20 would have been if we had analyzed that. The, obviously,
21 office will be positive fiscally. There is so much office.
22 We only do the analysis for 20 years which we think is as
23 long as would probably reasonably predict things will, what
24 the future will be and even that obviously has its
25 challenges.

Page 84

1 But, in any case, over the 20-year period I have
2 no doubt that there would be just as much office and, in
3 fact, I believe as I said Monday it will be more office with
4 the outlet. So you will have the same impact or, in fact,
5 more benefit from office because there would be more during
6 any sort of analysis period of 20 or 30 years. You would
7 have the full outlet impact, which is very positive, which
8 you will not have under the by right or whatever, under the
9 alternative I guess you'd call it, the current alternative.
10 And the outlet being substantially larger than the current
11 retail that's anticipated would have much more positive
12 impact. So no question this would be much more positive
13 than under the original plan, although we did not
14 specifically quantify that.
15 Q Yes. Well, maybe I didn't phrase it the way I
16 should have. If we are to substitute X amount of square
17 footage from, transferred from office to retail --
18 A Uh-huh.
19 Q -- is the net number, are you telling us the net
20 number is greater or higher or lower?
21 A Right. I understood the question. What I'm
22 saying is that the analysis is only for 20 years and, quite
23 honestly, we did it for 30 years. You would have the same
24 amount -- okay, let's do the two alternatives, keep it
25 simple. We have the proposed alternative and the, what's

Page 85

1 called the existing alternative. Under the --
2 MS. ROBESON: I'm sorry.
3 THE WITNESS: Okay.
4 MS. ROBESON: What is -- tell me the existing
5 alternative.
6 THE WITNESS: Yes. So the existing would be, I
7 believe, 120,000 square feet of retail and --
8 MS. ROBESON: Okay. I understand.
9 THE WITNESS: -- all the rest of commercial would
10 be office.
11 MS. ROBESON: I didn't know if you meant --
12 THE WITNESS: Yes, sorry to be -- it gets
13 confusing.
14 MS. ROBESON: I didn't know if you were including
15 the town center in that or what you were including. So --
16 THE WITNESS: No, no, just on the Cabin Branch
17 site.
18 MS. ROBESON: So just for the Cabin Branch?
19 THE WITNESS: Okay. So we'll call existing
20 120,000 square feet of retail --
21 MS. ROBESON: I understand.
22 THE WITNESS: -- which I would assume would be
23 built certainly within this 20-year time period and several
24 million square feet of office, most of which will not be
25 developed certainly without -- retail, most of it would not

Page 86

1 be developed under that 20-year period. So if we were doing
2 the analysis, we would be showing some amount of office. We
3 would have to analyze exactly how much but, you know, let's
4 say it's a quarter of the office that would be built. And
5 all these uses are positive, so the more you get,
6 essentially the better for the fiscal intent.

7 Under the proposed alternative, you would have
8 three, four times as much retail would certainly be within
9 this time period. That would all be very positive as our
10 analysis showed, so having more of that is much more
11 positive than having 120,000.

12 MS. ROBESON: In terms of revenue to the County?
13 THE WITNESS: Fiscal impact to the County, yes.
14 MS. ROBESON: Or in terms of attracting
15 employment? In terms of revenue to the County?
16 THE WITNESS: The question I'm answering is the
17 revenue of the County. I'm happy to move to the employment
18 also as the same sort of thing.
19 MS. ROBESON: Okay. No, let's --
20 THE WITNESS: Yes.
21 MS. ROBESON: -- I'll stick, I'm sorry, I'm
22 jumping the gun.
23 MR. KLINE: You've got a right to the floor. We
24 want to have, our whole scheme here is to make you, get
25 educated, so --

Page 87

1 THE WITNESS: Yes, no, it's a very good question.
2 Let me try to keep them separate.
3 MS. ROBESON: So right now --
4 THE WITNESS: So right now I'm talking about
5 revenues and net fiscal impact after you take account of any
6 expenditures that were required. So --
7 MS. ROBESON: Okay.
8 THE WITNESS: So this was, so at least as I, you
9 know, so, okay. So we have the existing plan. It has,
10 let's say for sake of argument five, by the time we get to
11 the end of our 20-year analysis period we have 500,000
12 square feet of office and 120,000 square feet of retail and
13 there's a lot of land waiting for future development. Okay.
14 So if we were to do the analysis of that, which we did not
15 specifically do, we would have that much development. It
16 would be positive, but only as positive as that development
17 would allow.
18 Under the proposal, we would have 400 some
19 thousand square feet of retail as we analyze, much more
20 positive from the retail, and at a minimum we would have
21 500,000 square feet of office because there is absolutely no
22 reason why with several million square feet of capacity,
23 there's no reason why any office would not come because you
24 have taken a relatively small portion of the site and
25 dedicated it to retail. And as I said on Monday and I

Page 88

1 believe very strongly, and I'm sure we'll get into this in
2 some of the other questions, the, having the outlet center
3 there, I have no doubt will make it more likely that the
4 site will actually attract office because of the benefits of
5 the retail to competing for office and, therefore, through
6 our 20-year analysis period we would have more office than
7 the 500,000 that I'm hypothesizing and, therefore, more
8 positive impact from office, more positive impact from more
9 retail and in total a much more positive results, you know,
10 10 years, 20 years, 30 years from now than we would have
11 under the current proposal.

12 The other thing is that the retail will come much
13 faster than the office in any case, so what we do in our
14 analysis, look at it year by year for 20 years and we see
15 what the cumulative impact is after 10 years and five years
16 and so on and, you know, the outlet center is going to be
17 built in the next, you know, couple of years, two, three,
18 four years, whatever, and that will be benefit to the County
19 much sooner.

20 Turning to your employment question, the answer is
21 quite similar, but they, because basically office generates
22 employment, retail generates employment. They all --
23 MS. ROBESON: Okay. What employment, what type of
24 employment does retail generate?
25 THE WITNESS: Yes. I --

Page 89

1 MS. ROBESON: Are you talking about in terms of
2 attracting employment or are you talking like office or R&D
3 or whatever, high technology --
4 THE WITNESS: Uh-huh.
5 MS. ROBESON: -- or are you talking in terms of
6 employees of the retail?
7 THE WITNESS: Yeah, all of the above basically.
8 You have, the retail will certainly have a lot of employees
9 in the stores and some of that is managers and maintenance
10 people and retail clerks and so on, so a range of salary
11 levels, but not, not high-tech in the center itself. The
12 economic activity that occurs there, the money that's being
13 spent by those who are in the, who are working there, some
14 of which will be used to buy services of all types and
15 doctor's, lawyer's insurance, lots of different types of
16 employment, as well as other retail and schools and so on.
17 So a range which is a huge range of salary from, you know, a
18 doctor to minimum wage in the community. So there will be
19 those types of jobs.
20 And then I think very importantly it will also,
21 having that amenity of the retail there has, you know, been
22 demonstrated over and over again of all different types of
23 retail increases the chances that you are going to be able
24 to attract those office and high-tech companies to this
25 location. And as I said in my direct testimony, there is a

Page 90

1 lot of competition for these office and high-tech employers
2 and those jobs and some of them are elsewhere within the
3 County, Germantown, Gaithersburg, some of them are in
4 Frederick, some of them are, quite honestly, Northern
5 Virginia and it's been tough for the County to compete with
6 Northern Virginia and this is, provides a location right on
7 the interstate that has these critical retail amenities
8 which are very important for office users these days and for
9 technology companies. They really do not want to be in an
10 office environment. They want to be in a multi-use
11 environment with that retail amenity and so I, I am
12 confident that there will be much, you know, more
13 opportunity for attracting those types of jobs to Clarksburg
14 if you have this retail built in if you don't.

15 MS. ROBESON: Okay. I hijacked Mr. Kline's cross-
16 examination and I'm going to give it back.

17 MR. KLINE: You're doing better than I was.

18 MS. ROBESON: Mr. Harris, are you -- what I'm
19 hearing, a major issue is the impact of this on the town
20 center's development. Is your, are you at some point, and I
21 know you may want to wait until after you hear the
22 opposition witnesses, but are you at some point going to
23 have a witness to address that?

24 MR. HARRIS: Mr. Bogorad did address that on
25 Monday, indicating that not only would this not have a

Page 91

1 negative impact on the town center, it would have a positive
2 impact on the town center. We also have Mr. Flanagan, the
3 developer of the town center retail, having written a
4 letter --

5 MS. ROBESON: Yes, I saw that.

6 MR. HARRIS: -- essentially to the same effect.

7 MS. ROBESON: Okay.

8 MR. HARRIS: So, no.

9 MS. ROBESON: Okay.

10 THE WITNESS: I would be happy to elaborate on
11 what I said on Monday if that would be helpful.

12 MS. ROBESON: Well, I guess my concern -- I'm
13 really coming out of order, but I would like to follow-up on
14 some questions that I had in my mind on, after his testimony
15 on Monday and then you can base your cross-examinations on
16 my questions. You -- what I'm hearing at least from some of
17 the individual witnesses is a strong concern that this will
18 detract from the -- Master Plan states that retail is vital
19 to the development of the town center and what I'm hearing
20 at least from the individual witnesses is that this is going
21 to suck the life out of the town center because it, the, it
22 will no longer be able to attract retail if this goes in.

23 And I remembered your testimony as simply saying
24 you didn't think that this retail would have that effect.
25 Can you elaborate on that?

Page 92

1 THE WITNESS: Yes, I'd be happy to because it is
2 an important point and I realize I didn't spend much time on
3 it on Monday.

4 MS. ROBESON: No, well, that's fine. Go ahead.

5 THE WITNESS: And I apologize if I take a while,
6 but it is an important, somewhat complicated, not that
7 complicated, but it is, takes a few minutes. The crux of
8 the matter is the following and I have done a lot of
9 analyses of impact on shopping center and another on retail
10 and establishment on what area of downtown, that kind of
11 thing, which was basis for this as well as, you know, my --
12 this is something I always, we always think about when we
13 analyze the market for a new retail center is what is that
14 going to, you know, what, where do those sales come from?
15 What effect might it have on competitors and so on? So, you
16 know, this is something I specialize in.

17 The key thing to remember when analyzing this kind
18 of question is, and to focus on, is what other types of
19 retailers and the type of retail that will be in one, in
20 this case in Cabin Branch versus in the planned town center.
21 If those are very much the same types of stores, then they
22 are, they're going to be to some extent competing for the
23 same shopping dollars and you may have potentially a
24 negative impact of one on the other, although that can be
25 outweighed by drawing in more customers from a broader area

Page 93

1 which I can get to in a minute. But the, in my view the
2 very clear situation here is that we have very different
3 types of stores that would be going into the outlet center
4 and the town center.

5 MS. ROBESON: What do you foresee going into the
6 town center?

7 THE WITNESS: Yeah. So the town center, the
8 absolutely critical aspect of that is that it have a full-
9 size supermarket. It will not, in my view it will not
10 happen if it cannot get a full-size supermarket. And that
11 will be, if you look at town centers and neighborhood
12 centers, which is the industry term for this type of retail,
13 the supermarket is the absolutely critical thing. The
14 average neighborhood center according to the industry
15 publication, Dollars and Cents of Shopping Centers, 66
16 percent of the sales in a typical neighborhood center are in
17 the supermarket. It just does not happen without that
18 supermarket.

19 Once you have that supermarket signed up, I would
20 expect a range of stores of the following. You would have
21 independently owned, typically restaurants, both sit down
22 and probably some take-out sorts of things, but in general
23 an occasional exception like a Chick-fil-A or Subway, but in
24 general they will be non-chain restaurants, a lot of
25 different ethnicities typically in this area which makes a

Page 94

1 real interesting combination of restaurants that for better
2 or for worse don't generally, don't go, for example, into an
3 outlet center. I'll get to the outlet center mix in a
4 minute.
5 There would be very limited, if any, apparel type
6 stores. You might have one independently owned children's
7 clothing store or something like that. You might have one
8 independently owned women's clothing store. Very few of
9 those end up even, you know, being around these days, but if
10 they are and they're not part of a chain, they would be
11 interested in going there, but they're, again, that's going
12 to be, you know, on average maybe, well, I don't see, in
13 fact I looked up the data, four percent of sales in a
14 typical neighborhood center are in clothing, apparel, shoes,
15 which is the biggest category by far in the outlet center.
16 So they're not, you're not getting the same kind of stores
17 there at all.
18 There would be, you know, I mean I have down a
19 list, through this, you know, there might be a frame shop.
20 There might be a radio shack. There might be an
21 independently owned gift shop. There might be a wine store.
22 There might well be a drugstore.
23 And then a lot of these tend to be personal
24 services really, a weight loss center, a yoga studio,
25 cleaners, barbers, hair salon, optician, nail store, fitness

Page 95

1 center, doctor's and dentist offices, real estate agents,
2 banks. So that's, that's what would make for a successful
3 town center in my view. If you can get the supermarket
4 there, you can get the other, the mix of other stores that
5 you need to have the full size and scale town center. And
6 other than the supermarket, probably the biggest component
7 is going to be the independently owned or non-chain
8 restaurants.
9 Go to the outlet center and you have a totally
10 different mix and I sort of pulled up what Premium Outlets
11 website and the mix of stores there and, you know, designer
12 fashion and --
13 MS. ROBESON: Where did you, oh, Premium Outlets?
14 THE WITNESS: Just on the web, yeah. So around
15 the country --
16 MS. ROBESON: Okay.
17 THE WITNESS: -- their typical anchor, their
18 typical stores, there are two pages of almost, you know, a
19 page and three-quarters of designer fashions and sportswear
20 which as I said is just not what you get at all in a town
21 center. Their next big category is, well, that doesn't even
22 include children's. That was basically women's clothing.
23 Children's clothing is another, you know, 40 stores. You
24 might possibly have one independent, but these are all going
25 to be chains. You would maybe have one independently owned

Page 96

1 children's store if you're lucky.
2 Shoe store is another half a page. It's very
3 unlikely you'll have a shoe store at the town center. Fine
4 leather and luggage, no likelihood at all. Accessories and
5 jewelry, probably none. And then some restaurants which are
6 generally, they're all, typically all chain restaurants.
7 You would -- and there will be amenities for the area, no
8 question, but they are stores and restaurants that would not
9 ever find themselves into a town center. They would never
10 make that choice and so you're not -- and, you know, quite
11 honestly, you know, there are going to be, there will be
12 fine restaurants. They'll be good for people living there.
13 They'll be good for people in the area, the area desperately
14 needs any, any of this they can get. But they're, you have
15 demand for plenty of restaurants in the area. So that's --
16 MS. ROBESON: Do you know --
17 THE WITNESS: -- not going to be competing.
18 MS. ROBESON: -- how large the types of town
19 center in terms of total retail, how large are they? The
20 Master Plan has, I think, 300 or 153.
21 THE WITNESS: For the Clarksburg Town Center?
22 MS. ROBESON: Yes.
23 THE WITNESS: I don't specifically know the square
24 footage.
25 MS. ROBESON: Yes.

Page 97

1 THE WITNESS: You know, they, I mean they do,
2 they do go from 100 to 300 some thousand, I guess sometimes
3 even a little bit more, but generally in those ranges. But,
4 again, it's going to be the same mix of stores.
5 MS. ROBESON: Okay.
6 THE WITNESS: And they really are not competitive
7 with the outlet center stores any, any, you know, to any
8 extent at all and that's, that is one of the two main
9 reasons why I do not think there will -- well, that's
10 probably the main reason why I don't think there will be any
11 negative impact of the outlet center on the town center.
12 There are also two reasons why I think it will
13 actually have a positive impact, the outlet center and other
14 retail at Cabin Branch as proposed will actually be more
15 positive for the town center than the current plans at Cabin
16 Branch. By far the most important is the commitment to not
17 have a full-size supermarket at Cabin Branch which, as you
18 know, is currently provided for. And that is, as I said,
19 the absolute critical thing for the town center is to get a
20 supermarket.
21 Now, you know, I think one of the citizens earlier
22 today, reasonably enough as a citizen, said I'd like to have
23 both, you know, I'd want them to have a supermarket but,
24 sure, I'd like one on my side as well. That's, you know, we
25 all would like as much as things we want, but there are

Page 98

1 market realities and that's what we're really dealing with
2 in Clarksburg and in many other places is what is realistic
3 from a market perspective. And I'm very concerned that
4 there's not demand for, especially with Wegmans which is,
5 you know, is now going in Germantown as a major draw of
6 supermarket spending.
7 MS. ROBESON: Right.
8 THE WITNESS: It's made things, a whole new world
9 in the supermarket business, not to mention Walmart is
10 coming in with supermarkets and so on. So things are much
11 different than they were when the plan was written. And I'm
12 very concerned that there is only room for one more
13 supermarket beyond what's currently underway in Clarksburg
14 in, not room, not room physically, there's room for --
15 MS. ROBESON: Right.
16 THE WITNESS: -- several, but from a market
17 perspective and that if a supermarket, first of all, were to
18 be built at Cabin Branch, that that might well be the death
19 now of the town center because they would not be able to get
20 a supermarket and that's not, that development is just not
21 going to happen, that critically needed amenity is not going
22 to occur from a market perspective if you don't have a
23 supermarket and if the supermarket is spoken for at Cabin
24 Branch, that may well be the end of the town center.
25 And even without building that supermarket, if I

Page 99

1 were, the developer, trying to attract a supermarket to get
2 the town center going and I were going to one of the major
3 supermarket chains, I might well find them saying I'm
4 nervous, you know. There may be a supermarket going into
5 Cabin Branch. We're not going to be able to survive if
6 there's a supermarket there. So, sorry, I can't sign my
7 lease. I'm going to go somewhere else. If they know, as
8 they would if this proposal were approved that there's not
9 going to be a supermarket at Cabin Branch, that threat is
10 removed and I believe, and I believe that's probably why the
11 owner of the shopping center is, has come out in favor of
12 the Cabin Branch expansion of retail, is that without that
13 threat it will be substantially easier to get that
14 supermarket that's so critically needed to get that town
15 center going.
16 MS. ROBESON: Okay.
17 THE WITNESS: So that's, that's probably the
18 biggest benefit of this change in retail. And the third
19 thing is that having more economic activity is positive for
20 the town center just in terms of demand. You'll have
21 workers over at the, at this Cabin Branch. At the retail
22 you'll have the office workers who I think you have a better
23 chance of getting, as I said, with the retail. So you'll
24 have those workers. And they're going to want to do, get
25 supermarket type shopping done, they're going to want to

Page 100

1 go -- sometimes they'll eat at the restaurants in Cabin
2 Branch, sometimes at a lot of, you know, a maybe unique
3 restaurant that's over at the town center. That will add
4 demand to the town center.
5 And generally, just to put this on the map in
6 terms of a place where, you know, I mean to be honest
7 Clarksburg sort of has a bad reputation at this point in the
8 development community as a place where it's been really
9 tough to get things done and when, you know, you could argue
10 about whose fault it is, and I'm certainly not claiming that
11 it was anybody's fault other than some past developer
12 perhaps but, nevertheless, it's, it has sort of a bad image
13 in the development community and it's, and I think, you
14 know, potential tenants, especially a major tenant of the
15 town center might be saying, you know, they never seem to be
16 able to get anything built there. If this were actually a
17 major 150 million or whatever investment, we're going into
18 the Clarksburg area, I think that would be an additional
19 positive for the town center.
20 MS. ROBESON: Okay.
21 THE WITNESS: Sorry for the long-winded answer.
22 MS. ROBESON: No, I asked. Okay. Mr. Kline, I'm
23 going to hand it back to you.
24 MR. KLINE: I think both parties would probably
25 encourage you to do just what you just did because you're

Page 101

1 kind of getting to the core where we're all sorting around.
2 So I'm going to encourage you to do that all the time. And
3 thank you for the education.
4 BY MR. KLINE:
5 Q So let me go back. There is a binding element on
6 the new Exhibit 59 that basically, and I don't believe you
7 were at the Planning Board discussion?
8 A No, that's correct.
9 Q Okay. Are you aware of the binding element
10 dealing with this gross square footage of tenant bays within
11 the retail outlet center and what was the purpose for that?
12 A In general I'm familiar with the element. I'm
13 not, I wouldn't say I know the purpose exactly.
14 Q All right. Let me read it to you so you can kind
15 of help us out. Binding Element No. 10 was added after the
16 Planning Board's session and it reads,
17 "No single retail store will have gross core
18 area that is greater than 50,000 square feet."
19 And do you have an understanding of why the Planning Board
20 recommended that be added to the development plan?
21 A Not specifically, I could speculate though.
22 Q Yes. Well, go ahead and speculate then.
23 A I think I read one reason was to avoid big box
24 stores, that they do not want this to be a power center sort
25 of like Milestone in Germantown and I don't know to what

1 extent that related to this supermarket commitment, but it
2 could have been related to that.

3 Q Following up here. Your answer would be
4 consistent with, never mind, let me try to -- that line --

5 MS. ROBESON: Can I ask one question?

6 MR. KLINE: Yes, of course.

7 MS. ROBESON: Does, in my former days I used to
8 represent Giant back when Izzy Cohen -- is 50,000, if the
9 limitation is 50,000, is that in and of itself going to
10 prevent a full-service grocery store or there's nothing in
11 the binding elements that says I'm not going to do a full-
12 service grocery store --

13 THE WITNESS: Most --

14 MS. ROBESON: -- if you know?

15 THE WITNESS: Yes. Most, I mean, yeah, things
16 have changed since, probably since you worked for Giant that
17 most --

18 MS. ROBESON: Yes.

19 THE WITNESS: -- full-size supermarkets are more
20 than 50,000 square feet. I suppose it's possible that
21 something could be gotten that would be just under the wire,
22 but if that's, but that's, generally they're more than 50,
23 50, 50,000 to 60,000 and sometimes a little more.

24 MS. ROBESON: Now the Planning Board's rationale
25 for the, the stated rationale in their recommendation is

1 that they say the intent of this condition is to address a
2 concern that if the high-end retail outlet currently planned
3 should not come to pass, the amount of approved square
4 footage could be attractive to larger retailers that would
5 present excessive competition for the nearby Clarksburg Town
6 Center. But what you're saying is -- do you find that
7 valid --

8 THE WITNESS: Yes, I don't think that's --

9 MS. ROBESON: -- or not?

10 THE WITNESS: I don't, well, two parts of it I
11 don't find valid, I guess. I, let's assume for the moment
12 that if you did not have that restriction you would get big
13 box stores, you know, Walmarts and things of that sort. I
14 guess that's three parts I don't find valid. That I don't,
15 I think that's relatively unlikely given the huge
16 concentration of them in Germantown, but let's run with it,
17 in fact, those were to be built if you had, did not have
18 that prohibition, in my view those are also not at all
19 competitive with the retail in the town center and I would
20 not see that as the reason to do it. I see there are other
21 reasons why the Planning Commission might not want to have a
22 big box concentration. The kind of place making that you
23 get with the modern outlet center is much different than
24 what you would get with a so-called power center with a lot
25 of exclusively big box stores. And in my view the kind of

1 center that's being planned here would be much more likely
2 to help attract office to the site and high-tech employment
3 to the site than another power center would, but --

4 MS. ROBESON: So what's the difference between a
5 power center and this?

6 THE WITNESS: Yes. A power center in my, my view,
7 and there are different definitions I suppose floating
8 around, but in general it is a conglomeration of very large,
9 predominantly very large, so-called big box stores. It's
10 challenging to make them attractive, quite honestly. They
11 tend to be difficult to have a nice setting to sit and enjoy
12 the day or get some food outside or things of that sort.

13 An outlet center in its, you know, and these have
14 changed a lot and I think it's important, it's hard for us
15 to recognize them if we live, spend most of our time in the
16 D.C. area because most of the outlet centers were built many
17 years ago here in Hagerstown, Queenstown, Leesburg and so on
18 and so these, if one goes to other places and sees the more
19 recently built ones, it's a whole different ballgame.

20 They're similar types of stores by and large, but they have
21 much more of a nice place to them. They have a more, better
22 mix of restaurants and so on, you know, they're all going to
23 be chain restaurants, but there is still a better mix of
24 restaurants than you had in the past. And that's the kind
25 of thing that is particularly appealing to a potential

1 office user. They don't really, you know, it's not
2 necessarily bad to have a Walmart down the street, but what
3 they really want is places where people can go during lunch
4 or after work and sort of see it as a place that has an
5 appeal to it. And a modern outlet center very much fits
6 that bill. Usually a power center doesn't. I mean I think
7 there's one, the new Reston Town Center which you could
8 argue has done a pretty nice job and I can, I can see a few
9 others I've seen around the country, but in general that's
10 not going to fit the bill in terms of being a real
11 attraction to an office user, while I think the outlet
12 center would be.

13 MS. ROBESON: Okay. Okay. I'm going to try this
14 again. Mr. Kline, can you remember where you were?

15 MR. KLINE: Yeah. No, no. Well, you came well-
16 prepared because I notice you had all the lists of all the
17 various tenants for the different kinds of situations. So
18 the list you talked about, if I don't, you don't mind me
19 looking over you, town center --

20 MS. ROBESON: Well, we can introduce that as an
21 exhibit if that's helpful.

22 MR. KLINE: I don't mean to impose.

23 THE WITNESS: No.

24 MR. KLINE: I --

25 MS. ROBESON: Okay. Go ahead.

Page 106

1 MR. KLINE: I don't need it for the question I
2 would like to ask.
3 MS. ROBESON: Okay.
4 MR. KLINE: Put it that way. I mean the way he
5 did it was fine for my purposes.
6 MS. ROBESON: Okay.
7 BY MR. KLINE:
8 Q Many of the uses you list on there, which as I
9 understand you said would be appropriate for the town
10 center, were uses that would be appropriate for a
11 neighborhood center in the Cabin Branch neighborhood as
12 well, correct? Probably not as broad, but many of those
13 would approve?
14 A Yeah, I, because I was taking so long, I didn't
15 get back to that other answer to hers. There, as you know,
16 there will still be neighborhood serving retail plan at the
17 Cabin Branch with the proposal. It, and which will be, I
18 think, helpful and will cover some of these same types of
19 stores. Now, obviously, those would also happen under the
20 current plan, but they would be, be with that major
21 difference of having a supermarket as the anchor. And it's
22 going to be much, they're going, it's going to be much
23 easier to attract a depth of those stores, a variety of
24 those stores and restaurants with a supermarket than without
25 it. And so, again, comparing these two alternatives, if you

Page 107

1 have the current mix with only 120,000 square foot of retail
2 at Clarksburg, you will have a supermarket most likely and
3 you will have a good number of these other stores very much
4 competing with the town center and making it even more
5 difficult for that to get built.
6 Alternatively, if the supermarket is at the town
7 center, that's really going to get the first dibs on a lot
8 of, you know, a lot of these types of stores. I do think
9 there are going to be -- some of these stores will still be
10 available to fill the space at Cabin Branch. It may well
11 take longer. They will tend to be ones that can be
12 supported by the housing and the employment as it gets built
13 at Cabin Branch, not that those residents aren't going to
14 still need to go to a supermarket and when they do, they're
15 going to shop at other stores near there so that they will
16 still be a major source of demand for the town center. But
17 it will not have nearly the same impact on the town center
18 as it would if it had the supermarket.
19 Q The reduction, there will be a reduction in the
20 neighborhood serving retail on the east, in the Cabin Branch
21 neighborhood if the proposal was accepted, correct?
22 A I can't remember the exact numbers, but if there
23 is, that's all for the better for the town center, quite
24 honestly.
25 Q Do you know if the 1994 Clarksburg Master Plan

Page 108

1 recommended the grocery store for the town center?
2 A For the town center?
3 Q Yes.
4 A I believe so.
5 Q Yes. You certainly believe it would be important,
6 if not essential, to the optimum development of the town
7 center?
8 A Optimum development, maybe even development at
9 all, yeah.
10 Q What I want to ask you is why doesn't the
11 applicant still reserve the right to build a grocery store
12 in Cabin Branch rather than say we're not going to do it at
13 all because in no less an authority than a 2001 article
14 about Master Plan town centers, you say a lot of this retail
15 doesn't occur until well into the residential development of
16 the community. So if the plan envisioned a grocery store
17 for Cabin Branch and we have yet to have any of the
18 residential development or other development, ultimately
19 there will be a demand for a grocery store there, so why
20 don't we just put it in the staging element and say we'll do
21 it, but we won't do it until we have 2,000 homes or
22 something?
23 A I mean I, I think you probably should ask them for
24 their motivation. I think it's a very positive move for
25 Clarksburg as a whole, as we've been talking about, because

Page 109

1 it does in the, you know, we all know how difficult it's
2 been to get the town center built and the town center is a
3 critical thing that people are, I think, appropriately very
4 eager to have finally done and built as an amenity that they
5 were promised originally. And I'm assuming that the reason
6 that this was offered, and there's no reason to add a
7 restriction to what you can do unless you're trying to help
8 other people or help something else or, you know, hopefully
9 in the process I am assuming that they are making a
10 commitment in the interest of not being damaging to the town
11 center.
12 Q Yes.
13 MS. ROBESON: Are you, if you can answer this, is
14 the commitment to no grocery store at all or is the
15 commitment to no full-service grocery or whatever that term
16 is?
17 THE WITNESS: Full-size, yeah. I mean I'm
18 probably not the definitive person to answer this. My, from
19 what --
20 MS. ROBESON: -- I mean can there be a High's?
21 THE WITNESS: From what I had heard, there's,
22 yeah, from what I heard and from a market perspective I
23 think you could certainly have, you could certainly have a
24 convenience store, High's, 7-Eleven. I think you could also
25 have a sort of an alternative type store. You might call

Page 110

1 it, you could have, it could be a natural food store that
2 might be 20,000 square feet. There's some of those chains.
3 MS. ROBESON: Not a Trader Joe's?
4 THE WITNESS: Mom's or something like that. It
5 could be a Trader Joe's. Those are not, you know, I think
6 supermarkets realize that they are not going to have every
7 segment of the food shopping business covered in their store
8 and they're used to competing with those types of stores and
9 there's a market for those as well, but that's really a
10 different, different thing.
11 MS. ROBESON: But do you know --
12 THE WITNESS: So those --
13 MS. ROBESON: -- exactly, and maybe you can't
14 answer this, do you know exactly what the applicant's
15 proposal is as far as their agreement not to build a grocery
16 store?
17 THE WITNESS: What I've heard is that it is, the
18 commitment is for the full-size supermarket, to not have
19 that. I don't know what the market reality would be of this
20 mall. I think they can do a convenience store, I'm sure,
21 but I believe there may be a plan for that already in that
22 area. But the, I, you know, my -- I don't, I don't know
23 what the exact plan is for those other alternatives. I do
24 think they would not keep the town center from getting a
25 supermarket and from that supermarket being successful which

Page 111

1 is really, I think, the key issue.
2 MS. ROBESON: Okay, Mr. Kline, I'll give it back
3 to you.
4 BY MR. KLINE:
5 Q Well, I'll just go back to -- when we had the,
6 when you testified the other day, you were talking about
7 office development in the corridor could be as much as 20 to
8 30 years out. Why don't we reserve a space for a grocery
9 store that may not be built for 10 years when there is the
10 population and the office to support it, but still reserve
11 that because the Master Plan suggests that's a good idea?
12 Why not have that in the plan?
13 A Again, I'm talking from the point-of-view of
14 overall public policy, which is, which I sometimes do. I do
15 revitalization studies and economic development studies as
16 well and I happen to believe it's very important that the
17 town center be built and that it be successful and that, and
18 I also have no doubt that it won't happen without a
19 supermarket. And as I said, I'm concerned that even this
20 threat of a supermarket on the west side being there given
21 the change since the Master Plan was adopted, it was a fine
22 idea when it happened. I think they, as I believe, I
23 believe they actually said you could not build a supermarket
24 until you had one at the town center. They recognized the
25 supermarket was critical to having the town center built,

Page 112

1 but they did allow for several other ones after that.
2 But they had no idea that Wegmans was going to
3 come down from Rochester. They had no idea that a Walmart
4 could possibly have groceries in it. There are a lot of
5 changes in the retail business and in the supermarket
6 business and, you know, I don't know whether I would have
7 advised my client to do this from their perspective, but I
8 think it's a very important gesture for the sake of the town
9 center that they not have this threat of a full-size
10 supermarket on Cabin Branch and I don't see it as a
11 conflict. And I'm not an expert on Master Plans, but it
12 seems to me it's entirely consistent with the character of
13 the development that was planned for.
14 Q I actually have some more questions in that
15 regard, but I actually want to go back to kind of where I
16 was way at the beginning where I started. And --
17 MS. ROBESON: That's my fault.
18 MR. KLINE: Well, no, no, I mean I think we all
19 want to get down to the core of what the issues are. I'll
20 start by sort of making an anecdotal statement and that is
21 when I left your testimony the other day, I thought I better
22 go back and sell all my office REIT stock that have any
23 interest in developing the I-270 corridor because it was
24 kind of a dower discussion of what's going on. You used the
25 phrase, something about in this section of the corridor and

Page 113

1 I'd like you to kind of, well, maybe you don't remember the
2 context of what you said, but do we have sections of the
3 corridor that are treated differently from an office
4 perspective?
5 A Yeah. I mean, first of all, from a data
6 perspective and, secondly, from the perception of tenants, I
7 think we do. And it gets a little confusing in the data.
8 The main data serves, as a mentioned on Monday, as, is
9 CoStar which --
10 Q Okay.
11 A -- collects all the office and other types of
12 commercial real estate data. And they, I believe they
13 actually define at one place the I-270 corridor as even
14 including Bethesda/Chevy Chase. So it's, and it certainly
15 includes Rockville, Gaithersburg, Germantown and Clarksburg,
16 and they do separate out each of those areas.
17 And I would say that, you know, it's been a
18 difficult time for office in general in the country and
19 certainly in Montgomery County. It's probably fair to say
20 it's been less challenging in Bethesda than it has been
21 farther out and that it's been more challenging the farther
22 out you go. And I think a lot of that is the desire of
23 office tenants to be, to be near amenities, retail amenities
24 in particular and to have places where they can tell their
25 employees, you know, you're not going to be stuck here with

1 no place to go for lunch or you have to get in your car for
 2 lunch or whatever.
 3 And then, so then I narrowed in, and I do think
 4 beyond that that there is a tendency for office tenants to
 5 want to be closer to the downtown, to the Beltway, to NIH,
 6 to other drivers of demand and so that's made it more and
 7 more, you know, increasingly difficult to get office tenants
 8 as you go farther north on I-270, not that any of this is
 9 impossible and there certainly are tenants that would choose
 10 Clarksburg and would choose Germantown and choose
 11 Gaithersburg, but -- and so in any case I do think, I do
 12 think tenants make distinctions between these different
 13 areas like the data certainly does. The data that I quoted
 14 was for the combined area of Germantown and Gaithersburg and
 15 Clarksburg and that's what I referred to as that area that
 16 had very high vacancy rates and rents that had actually gone
 17 down a little bit over the past five years and a low
 18 absorption rate.
 19 Q So as a general principle, the further you go, out
 20 you go, the more difficult it is to basically attract an
 21 office user?
 22 A I mean I hate to over-generalize, but in
 23 general --
 24 Q A generalization.
 25 A -- it's (indiscernible).

1 Q Well, then to kind of get away from the
 2 generalizations, could you say, Mr. Kline, there's a ranking
 3 and somebody who wants to build, be in an office building or
 4 build an office building is going to look at these criteria
 5 and the rankings are going to be what five things and where
 6 does the amenities, services, the retail component fit into
 7 that? Am I not correct in assuming that it's the classic
 8 real estate line, location, location, location is probably
 9 the highest priority?
 10 A Well, that's, I'd say, an overused term and so let
 11 me comment on that for a minute. First of all, there's no
 12 question that they're only going to go into locations that
 13 have a basic logic to them from an office demand perspective
 14 and that's one reason that I think you may have asked one of
 15 the other witnesses, you know, why isn't their office near
 16 Hagerstown or Queenstown? Those are not, you know, until
 17 recently outlet centers were only built in outlying areas
 18 and inherently there's no office demand there. So would
 19 building retail in Hagerstown get you office? No. No way.
 20 But once you have --
 21 Q So concept is sort of an aberration, the concept
 22 facility on the east side of I-270, standalone, probably 20
 23 years old, build to suit for a specific user? There may be
 24 another one of those out there, but they are few and far
 25 between.

1 A Well, at that point it would certainly, I think,
 2 fair to call it an aberration. It was a single, you know,
 3 government-type use that decided they just, I don't even
 4 know what the basis for going there, but they just, they
 5 were way out in the middle of nowhere at that point. The, I
 6 think the reality is that whole 270 corridor within
 7 Montgomery County is now within the sphere of reasonable
 8 office locations. So we now have areas that, you know,
 9 every tenant is going to have their own decision-making
 10 process. Every government agency or corporation is going to
 11 have their own decision-making process. But we are now, and
 12 obviously have offices up as far as Frederick, and so that
 13 whole area is competing for potential office users and I
 14 think has a decent shot at it. I don't think it's crazy to
 15 have land planned for office at Cabin Branch or elsewhere in
 16 Clarksburg. I do think it will compete for that.
 17 Does it have some disadvantages competitively
 18 relative to closer-in areas? Yes. And that relative
 19 distance is a factor that office users will consider. But
 20 another important factor, once you're in that area that is a
 21 reasonable location, it is the amenities that you can offer
 22 your employees and how, especially if you're considering
 23 going relatively far out, and we see the same thing in
 24 Leesburg where it's, you know, in Loudoun County, rather,
 25 where, where there are, you know, a lot of users. You know,

1 AOL went in there. Worldcom went in there years ago and got
 2 a lot of flak really from their employees, you know, we're
 3 buried here. We have a cafeteria. This is not the kind of
 4 place we want to be and that's even become more and more
 5 true as millennials basically said we want to be near
 6 certain amenities and retail being the prime one,
 7 restaurants and so on.
 8 If an office user is interested in going out onto
 9 the interstate, and there are a lot of reasons why they
 10 might, if they're interested in going relatively far north
 11 and it could be as simple as probably going to be a little
 12 lower rent than being closer in. They're going to feel very
 13 strongly about trying to lease, keep their employees happy
 14 enough by having a retail amenity as part of that
 15 development and so I do think that we are in the area where
 16 we have a reasonable shot of Clarksburg getting this and if
 17 you're trying to do an office development in Clarksburg, it
 18 would be strongly advisable to do it in the context of a
 19 retail concentration like is being proposed for this. So I
 20 do think it's an important factor once you're in that
 21 general area of acceptability.
 22 Q Going back more to a numbers issue, you had some
 23 depressing numbers the other day about the absorption within
 24 the corridor. How did you get to the 500,000 square feet of
 25 build-out that I heard you mention within 20 years? How was

Page 118

1 that built up? What did you use to come up with that
2 number?
3 Q Yeah. I mean that was hypothetical with the
4 purpose of saying that there was plenty of capacity so that
5 there, you know, 10, 20, even 25, 30 years from now there
6 will still, even with taking some of the land out for retail
7 there will be still office land left in my view at the Cabin
8 Branch and elsewhere in Clarksburg and elsewhere in
9 Germantown and Gaithersburg. I mean it's going to take a
10 long time for all the office land to be absorbed. I did not
11 mean to say that I had come up with a specific forecast for
12 when the office would be developed here.
13 Q Well, I guess I didn't understand the answer to
14 that. Your 500,000 has to assume a certain amount of
15 absorption build-out, so --
16 A Right.
17 Q -- where do you come up with that number?
18 A As I said, maybe I -- you're talking about the
19 500,000 that I mentioned today?
20 Q Yes. Yes.
21 A Yes. Okay. I think I was clear in saying that
22 was, that was hypothetical. It was, it might be less, it
23 might be more. It's not --
24 MS. ROBESON: 500,000 of office, right?
25 THE WITNESS: Right. Yes.

Page 119

1 MS. ROBESON: Okay.
2 THE WITNESS: So what I was, I mean let me clarify
3 the statement since it sounds like that was unclear. What I
4 was saying is that even though I am not forecasting, and it
5 probably would be impossible to forecast exactly how much or
6 even close to how much office will be attracted to
7 Clarksburg or to Cabin Branch in a given year, I'm confident
8 in saying based on my understanding of the office market and
9 so on that there will be, it will take more than 20 to 30
10 years to absorb all that office land that's currently
11 planned for office. And even if you subtract the land for
12 the outlet center, first of all you will still have, even if
13 you don't need exactly the same amount of office, you would
14 still have office land left over and in my view you would
15 have actually more office buildings with the retail for the
16 reasons we've talked about a number of times than you would
17 without it.
18 But, you know, is it 500,000 in 20 years? Is it
19 300,000? Is it 700,000? There are a lot of ways that one
20 could estimate that. Unfortunately, some of them end up
21 being even longer, they could be a hundred years, but
22 there's, you know --
23 BY MR. KLINE:
24 Q Well, I understand. My question isn't challenging
25 the economic return to the County that, was really why you

Page 120

1 had the fiscalality. It was more to understand how what you
2 thought would be the build-out rate as it is under the
3 Master Plan today and I understand your premise of -- and if
4 you put some services, it's going to make it a little bit
5 better. But I'm trying to determine how realistic is your
6 basic rate of growth. If there's only 74,000 square feet of
7 absorption going on historically a little after three years,
8 then, and we're competing with the places you've mentioned,
9 that seems kind of generous if you think we're going to get
10 that much in Clarksburg within the time frame you're talking
11 about.
12 A Well, I respectfully would say for this purpose it
13 doesn't matter how much you would get without the retail.
14 You're -- if it's, hypothetically again --
15 Q Okay.
16 A -- but if it's 20,000 without the retail and it's
17 30,000 with the retail, you're getting an impact of the
18 retail in the office. More likely if it's 500,000 without
19 the retail and 600,000 with the retail or 700,000 with the
20 retail or, you know, zero without the retail --
21 Q Okay.
22 A -- and 300,000 with the retail, any of those have
23 a different forecast, but they all involve what I'm
24 comfortable saying and testifying to under oath which is
25 that you have a significant likelihood of getting more

Page 121

1 office with the additional retail than without it regardless
2 of what the base number is.
3 Q Yeah. I'm just wondering how you get that first
4 one? That's --
5 A Respectfully, I don't see why that is relevant to
6 the --
7 Q Well, it is.
8 MS. ROBESON: Well --
9 MR. KLINE: Go ahead.
10 MS. ROBESON: It's your time to ask questions,
11 so --
12 MR. KLINE: Well, actually if, to find something,
13 well, go right ahead and ask your question.
14 MS. ROBESON: All right.
15 THE WITNESS: Did you have a question you want --
16 MS. ROBESON: No, no, I was --
17 THE WITNESS: Yes. I mean I would just say --
18 MS. ROBESON: I -- hold on until you have a
19 question on the floor.
20 THE WITNESS: No, I just wanted to -- okay.
21 MR. KLINE: Well, there is and I say --
22 MS. ROBESON: Mr. Harris will get a chance to ask.
23 THE WITNESS: That's fine.
24 BY MR. KLINE:
25 Q The reason I say it's relevant is because page 9

1 of the applicant's justification statement says the fashion
 2 center employment retail proposed to the EPA will be a
 3 catalyst for the development and there is a proven track
 4 record that the fashion center will stimulate office
 5 development. Your phrase, and I believe I wrote it down
 6 correctly, it's an untested proposition that the outlet will
 7 stimulate development. So I'm saying how will the outlet
 8 bring that first office building there? I understand that
 9 it probably makes it a little bit more attractive, but I
 10 don't see the jump to what's the stimulus to suddenly say
 11 I'm going to be in Clarksburg because I can go shop at
 12 Coach.

13 A Okay. If I could answer that, and I did take the
 14 occasion of the last two days to dig into that issue a
 15 little bit more, so I would like to elaborate on what I said
 16 on Monday. What I think I said, or at least meant to say,
 17 was that it's, and I'm going to amend this somewhat, but I,
 18 at that point I could not think of any examples of an outlet
 19 center that had been a catalyst for office development. I
 20 very much believe that retail in general has been proven
 21 over and over and over again to be a catalyst for office
 22 development and in my professional view the types of things
 23 that are going to be done at this outlet center, in a modern
 24 sort of outlet center with the outdoor seating, with the
 25 square, with the fountains, with the restaurants and so on

1 has the types of things that have been proven over and over
 2 again to make it easier to get office development with that
 3 retail than without it.

4 Now I did, I did take the occasion of the break
 5 between my direct testimony and indirect and cross to survey
 6 basically the other members of my firm around the country
 7 and see, because I could not think of any examples in the
 8 D.C. area, but whether there were any other examples that I
 9 was missing and actually did, did find out that I had been,
 10 you know, mistaken in saying that there were no, there was
 11 no track record. It's still limited. The reason why it's
 12 limited, quite honestly, is that the, as I said, most of the
 13 outlet centers until recently have not been in areas with
 14 which could have office at all. There's no market.

15 But Round Rock Premium Outlets, which was also
 16 developed by Simon, opened northeast of Austin, Texas, in
 17 2006 and it's one of the earliest examples of these outlet
 18 centers being built in locations that are sort of outer
 19 suburban as opposed to more rural or small town. And a
 20 hospital opened at about the same time, followed by some
 21 more retail, another hospital and a 135,000 square foot
 22 office building that opened in 2009. And from what my
 23 colleague in Austin says, the outlet center is being given a
 24 lot of credit for attracting and helping to sort of attract
 25 these other types of employment generating development

1 within the office. So we are not seeing this kind of
 2 example of this amenity being helpful in attracting office.

3 It turns out there's actually an example of -- to
 4 some extent from way back, which I had forgotten about, but
 5 back in 1990, Trammell Crowe, a major developer, developed a
 6 project called Citadel and really in the city of Los
 7 Angeles, east of downtown Los Angeles. And it's hard to
 8 parse out the timing because they did it all at once, but
 9 they build an outlet center, five office buildings, food
 10 courts and a hotel all back around that time. And these
 11 have all complimented each other very much since then. If
 12 you look at the listing for the office, any vacant office
 13 space there touting the outlet center as being one of the
 14 key amenities and so there's clearly a lot of complimentary,
 15 they complement each other very well and they do seem to be
 16 helping each other, you know, stay full and so on.

17 It's early to see, but there's another example in
 18 the Salt Lake City area, the outlets at Traverse Mountain
 19 has just opened recently, another outlet developer. It's
 20 new and existing adobe office buildings south of Salt Lake
 21 City. So there was already office there, but there's more
 22 spec office that's going up and my colleague that works in
 23 Salt Lake City believes that that's, the outlet center is
 24 helping to synergize more office that well, that might
 25 otherwise have occurred.

1 And the last thing that these outlet centers have
 2 done in some cases, and I should have thought of it before,
 3 but in the D.C. area even, Arundel Mills in Anne Arundel
 4 County, because of that there was more infrastructure built,
 5 highway improvements and things like that and they have
 6 attracted quite a bit of office development around there and
 7 I think part of that is due to the fact that there were
 8 this, was this infrastructure improvement that would not
 9 have occurred most likely without that large outlet center
 10 if you want to call it an outlet center.

11 So I think there is, to amend what I said on
 12 Monday, some track record even of outlet centers catalyzing
 13 office development. But I still think by far the most
 14 critical point is that the type of retail that we're talking
 15 about is as well as various other types of retail have been
 16 critical elements in catalyzing office development. Even
 17 more so these days office developers are very reluctant and
 18 tenants very reluctant to go into office settings where you
 19 don't have retail. And the retail that's going to catalyze
 20 the officer here has to have a market support for it and the
 21 only type of retail other than the town center retail, which
 22 I don't think we would want to compete with directly, is
 23 outlet that's really feasible here.

24 MR. KLINE: I just wanted to check, how are we
 25 doing here?

Page 126

1 MS. ROBESON: We, I think we're going to break at
2 12:30 --
3 MR. KLINE: Okay.
4 MS. ROBESON: -- for lunch.
5 MR. KLINE: I think that just about works for me.
6 Taking a cue from the witness, I'm passing it around --
7 (Discussion off the record.)
8 MS. ROBESON: Okay. Can you -- thank you, Mr.
9 Chen. Can you describe what these are? Are these in the
10 record or --
11 MR. KLINE: Can I get a little organized here,
12 Madam? They are not in the record and I'll describe, first
13 of all, in response to Mr. Bogorad's comment about their
14 little sketch, you need to blame --
15 THE WITNESS: Smudgy isn't it?
16 MR. KLINE: You need to blame Mr. Unterberg since
17 they were taken from his firm's website. The one that's
18 labeled down at the bottom, Seneca Meadows Corporate Center
19 green space exhibit, is basically a layout of the corporate
20 center park at Seneca Meadows which is the home for the
21 Wegmans which Mr. Bogorad mentioned. And the second
22 drawing, which down at the lower left says Lot 8, is
23 actually a blow-up of just -- on the first page is on the
24 left-hand side in browns and taupes and greens.
25 MS. ROBESON: Wait.

Page 127

1 THE WITNESS: Wait, I'm sorry, what was the blow-
2 up?
3 MR. KLINE: The blow-up --
4 MS. ROBESON: Where is the blow-up from?
5 MR. KLINE: Sure. The blow-up is on the left-hand
6 side of the corporate center drawing. There are --
7 MS. ROBESON: Wait. Wait.
8 MR. CHEN: Madam Examiner --
9 MS. ROBESON: Which exhibit?
10 MR. KLINE: Okay. On the corporate center drawing
11 titled Green Space Exhibit.
12 MS. ROBESON: Oh, I'm sorry. I think I'm too cold
13 to think.
14 MR. CHEN: No, that's all right.
15 MR. HARRIS: Why don't we mark these as exhibits
16 so --
17 MR. KLINE: Yes.
18 MS. ROBESON: I think that's what I was getting
19 ready --
20 MR. KLINE: Sure.
21 MS. ROBESON: -- to do. So the --
22 (Discussion off the record.)
23 MS. ROBESON: Yes. 61 will be Green Space Exhibit
24 Seneca Meadows Corporate Center.
25 (Exhibit No. 61 was marked for

Page 128

1 identification.)
2 MS. ROBESON: And then 62 will be blow-up, or
3 detail of Exhibit 61.
4 (Exhibit No. 62 was marked for
5 identification.)
6 MS. ROBESON: Okay. Go ahead.
7 BY MR. KLINE:
8 Q If everybody understands what's, the reason I've
9 got these two exhibits is, one, because the Seneca Meadows
10 project is mentioned in the applicant's justification
11 statement as an example of how the introduction of, I'm
12 sorry, retail contributes to an office park.
13 MR. HARRIS: Objection. It was not offered for
14 that purpose. It was offered to show that a Master Plan
15 recommendation is a flexible recommendation. It had nothing
16 to do with amenities or anything of that sort.
17 MR. KLINE: Mr. Harris is probably more familiar
18 and I will take his clarification. That's fine.
19 MS. ROBESON: Okay. Are they still relevant to
20 your --
21 MR. KLINE: Yes, ma'am.
22 MS. ROBESON: -- cross-examination?
23 MR. KLINE: Yes, ma'am, they are.
24 MS. ROBESON: Okay.
25 MR. KLINE: Sure.

Page 129

1 BY MR. KLINE:
2 Q Just for an orientation, if you take Exhibit 61
3 and turn it so that the legend or the colors is on the
4 bottom, the left-hand side of the green area you'll see
5 fairly distinguishable you'll see something called
6 Interstate 270. And up in the, I would say about 11 o'clock
7 is the interchange of I-270 and Father Hurley Boulevard.
8 And the improvements that are shown in the brown boxes and
9 the taupe box in the upper right-hand corner are blow up in
10 Exhibit 62.
11 If you look at Exhibit 62, there is something
12 marked Lot 11 and that is the Wegmans food store that Mr.
13 Bogorad alluded to. In the front of that is a multi-story
14 parking structure and to the east of the Wegmans store and
15 in southeast are a, I'll use the term strip center, plus
16 some pad buildings for various retail uses?
17 MR. HARRIS: I hate to interrupt at this point in
18 time, but Mr. Kline is doing a lot of testifying here and --
19 MR. KLINE: That was orientation. That was not
20 testifying.
21 MS. ROBESON: Well --
22 MR. HARRIS: So --
23 MS. ROBESON: Well, it is. It is. And --
24 MR. HARRIS: You can ask a question.
25 MR. KLINE: Well, I can't ask him a question if he

Page 130

1 said he doesn't know what it is.
2 MS. ROBESON: Well, but that --
3 MR. KLINE: Well, then I think you have to
4 introduce it --
5 MS. ROBESON: Yes, that --
6 MR. KLINE: -- with one of your witnesses and --
7 MS. ROBESON: Just a second.
8 MR. KLINE: Okay.
9 MS. ROBESON: Okay. You can't -- it is testimony.
10 You could ask a hypothetical because he is an expert
11 witness, but Mr. Harris has the right to cross-examine based
12 on your, the reality of that hypothetical. Although, do you
13 have a witness that's going to testify as to what this is?
14 MR. KLINE: Well, I don't know the answer to that,
15 but I'll know by the end of the day.
16 MS. ROBESON: Well, that's good because I figured
17 it out. You have until August, well, I have the date down
18 when you need your expert witness. So you can
19 hypothetically ask --
20 MR. KLINE: I can do this, for Mr. Bogorad's
21 purposes I can work with what I've got here. Okay.
22 MS. ROBESON: But I would, I don't want to hear a
23 huge amount of detail as to --
24 (Discussion off the record.)
25 MS. ROBESON: Go ahead.

Page 131

1 MR. KLINE: No, no, I'll take the guidance.
2 MS. ROBESON: Okay.
3 MR. KLINE: Finish your sentence.
4 MS. ROBESON: No, go ahead. You can go ahead.
5 BY MR. KLINE:
6 Q Mr. Bogorad, let me start by saying this. Are you
7 familiar with the Seneca Meadows Corporate Center?
8 A Very, just very generally, not very much.
9 Q Okay. Then let me phrase it this way. You
10 mentioned the Wegmans food store as being a competition for
11 what could occur in the Clarksburg area.
12 A Competition for supermarkets, yes.
13 Q Right. And Wegmans is a grocery store on
14 steroids?
15 A I suppose one could say that.
16 MS. ROBESON: If you understand the question --
17 THE WITNESS: Yes, that's fair.
18 MS. ROBESON: Well, can you rephrase it some way
19 besides steroids --
20 THE WITNESS: Okay. It's --
21 MS. ROBESON: -- for the record? How would you --
22 Mr. Bogorad, how do you characterize Wegmans as relative to
23 other grocery stores?
24 THE WITNESS: It is much larger than most other,
25 not all, but most other supermarkets, more than twice the,

Page 132

1 you know, maybe on the order of twice as large typically.
2 It has a very extensive selection of food items and so on,
3 both the types that you would find in a normal, sort of
4 historically in a supermarket and also a lot of prepared
5 food items, much more so than you find in most other
6 supermarkets.
7 MS. ROBESON: Okay.
8 BY MR. KLINE:
9 Q Wegmans, because of the way you described it,
10 Wegmans would draw from a larger market area than would a
11 normal grocery store, would it not?
12 A Yes.
13 Q So it has a draw, maybe regional would be too much
14 to say, the larger than a local community draw?
15 A Yes.
16 Q Assuming that the pad sites in the strip center
17 that are included as part of the retail component in the
18 Seneca Meadows Corporate Center, have the uses that you
19 listed on your list for town center uses, you can remember
20 what that was?
21 A Yes.
22 Q All right. Would those uses not provide a greater
23 service to the tenants in the office buildings you see in
24 the taupe shown on Exhibit 61 to the south the way we saw it
25 and have greater utility to the tenants than does the

Page 133

1 Wegmans food store?
2 A That would be -- I would have to speculate about
3 that. I don't --
4 MS. ROBESON: If you know. If you can assume.
5 THE WITNESS: Would those other stores have more
6 impact on the Wegmans? I, more benefit than --
7 MS. ROBESON: Mr. Kline, I'm -- just a second, Mr.
8 Bogorad. I'm not sure where you're going with this
9 testimony. Are you saying there's no room even for a
10 supermarket in the town center and, therefore -- okay.
11 MR. KLINE: I wasn't going there, no.
12 MS. ROBESON: What?
13 MR. KLINE: I wasn't going there, no.
14 MS. ROBESON: Oh, okay. Are you going to clarify
15 where you're going pretty soon?
16 MR. KLINE: I guess I better.
17 MS. ROBESON: Thank you.
18 THE WITNESS: I mean I --
19 MR. HARRIS: Objection. I'm not sure --
20 MS. ROBESON: Well, just --
21 MR. KLINE: Well, no, you can't object, I haven't
22 asked a question.
23 MR. HARRIS: Well, no, you did. He's trying to
24 answer the question.
25 THE WITNESS: There's still a question.

Page 134

1 MR. KLINE: He's trying to figure out the answer.
2 MS. ROBESON: Mr. Bogorad, don't say anything
3 until I say to say something. Okay. Now do we have an
4 objection on the table?
5 MR. HARRIS: No, no, no. I think he's rephrasing
6 the question which is why I was --
7 MS. ROBESON: Oh, okay.
8 MR. HARRIS: -- speaking. Thank you.
9 MR. KLINE: With the tightrope you folks have me
10 on, I'm just trying to make sure I get this right.
11 MS. ROBESON: We're tough.
12 BY MR. KLINE:
13 Q What are the uses that an office, yes, one of the
14 things you've talked about is let's get all the basic, the
15 service uses out of office buildings -- let me rephrase
16 that. What uses would you typically find in an office
17 building that would serve the tenants?
18 A In an office building?
19 Q Yes, they would be of a retail service quality?
20 A Often you don't have any. If you're lucky, you
21 have some sort of a coffee or you might have a coffee,
22 probably more a deli type of thing, a place to get
23 sandwiches. That's probably the most commonly found. It's
24 tough to support retail with an office building usually, so
25 there's not usually very much.

Page 135

1 Q Pick up laundry operation, not a full, but a pick-
2 up laundry?
3 A Possible.
4 Q Delicatessen?
5 A I mean, you know, quite honestly you rarely see
6 very much. I mean you might see, you know, if you're in --
7 the office building itself is rarely going to support
8 anything other than a very minimal operation. So if they
9 are in an area where they can attract other demand, they,
10 Tyson's Corner, you have office buildings with wonderful
11 restaurants in them, for example, but if it's a freestanding
12 office building in Germantown or Clarksburg, it's going to
13 be tough to have any retail and if you have one thing, it's
14 probably going to be a deli, convenience type thing.
15 Q All right. A florist?
16 A It would be very difficult to get that in there.
17 Q Why?
18 A Not enough demand from the office users. It's,
19 the retailer would die.
20 Q Assuming that the amount of office development
21 that exists today is 900,000 square feet, we're not talking
22 about people only in that building buying flowers, we're
23 talking about a larger population buying flowers. Isn't
24 that enough to support a florist?
25 A I'll do the calculation. The florist is a tough

Page 136

1 business these days in general. I suspect not, but I would
2 have to do some analysis.
3 Q Let's not stretch this out too far.
4 MS. ROBESON: Go.
5 BY MR. KLINE:
6 Q What we don't find grocery stores or retail, we
7 don't find grocery stores, we don't find fashion retail in
8 office buildings, correct?
9 A In suburban areas, especially. Downtown you get a
10 lot of it. Generally not. I don't think it's for the
11 reasons I suspect you're going to, but that's not something
12 that office users might not want or use --
13 Q Right.
14 A -- but it just generally doesn't fit within a --
15 Q I think you're anticipating my next question.
16 That is some of the things that are on your town center list
17 are the kinds of retail services that are actually more
18 attractive to office users than would be a fashion outlet
19 center, correct?
20 A I think a range of things are attractive to office
21 users and, quite honestly, the most important thing is the
22 place making and having a place to go and do things during
23 lunch break and having at least some restaurants and things
24 of that sort that you can do during lunch or do after work.
25 And, you know, they, I also -- sure some things, having a

Page 137

1 cleaners nearby is convenient. I think there will be as
2 part of the neighborhood serving aspects of Cabin Branch,
3 they will most likely be, as I said, some of the types of
4 stores that we talked about, particularly if you do get a
5 lot of office you will see, you will see a cleaners, you
6 will see a, you know, a pizza place, probably things of that
7 sort and you won't get it without either one.
8 Q The Master Plan prescribed for the Cabin Branch
9 neighborhood, 120,000 square feet of retail, neighborhood
10 serving. We are talking about, no, I'm sorry, the applicant
11 is talking about changing that. That will necessarily
12 reduce the amount of neighborhood-serving retail, will it
13 not?
14 A I don't know the details or the numbers.
15 Q All right.
16 MR. KLINE: No further questions.
17 MS. ROBESON: All right. Mr. Chen, let's -- how
18 long do you think you're going to be?
19 MR. CHEN: Half hour at least, if not more. I sat
20 here and took notes.
21 MS. ROBESON: Okay. Let me do this. Let's break
22 for lunch and we'll see how Mr. Bogorad goes and whether we
23 can fit Mr. Chen's client in. How many more witnesses do
24 you have, Mr. Harris?
25 MR. HARRIS: Mr. Unterberg has to return and

Page 138

1 finish his cross and --
2 MS. ROBESON: That's right.
3 MR. HARRIS: -- and his direct, and then cross.
4 MS. ROBESON: And is he your last witness?
5 MR. HARRIS: He is.
6 MS. ROBESON: Okay. Let's take an hour and thaw
7 out and we will be back at 1:30. And I will try to get the
8 heat.
9 (Discussion off the record.)
10 (Recess.)
11 MS. ROBESON: We are back on the record in a
12 warmer room. Just for the record, I did see Mr. Robbins and
13 Mr. Chen in the hall and I told them we were going to be in
14 this room, so I'm glad I found, everyone found their way.
15 Now we were in the midst, I think Mr. Kline had
16 finished his cross-examination of the witness and now it is
17 Mr. Chen's turn to cross-examine Mr. Bogorad.
18 MR. CHEN: Thank you, Madam Examiner.
19 BY MR. CHEN:
20 Q Good afternoon, sir.
21 A Hi.
22 Q I'm going to ask you a series of questions.
23 Hopefully they'll be clear to you, but if I'm not clear,
24 just tell me, okay?
25 A Yes.

Page 139

1 Q As I understood your testimony at the first
2 hearing, you used the word challenge to state that the
3 office market between Clarksburg and Gaithersburg is
4 extremely challenged and you did not see a short-term
5 change, is that correct?
6 A I said it was a challenge. I'm not sure I went so
7 far to say I, or I guess what I meant to say is that I think
8 there's a good chance that it will not get a lot better
9 soon.
10 Q And what would be your horizon for soon?
11 A To be a honest, it's a very difficult time to
12 predict what's going to happen since everybody in the
13 industry is very concerned about what's going on with, so it
14 could, you know, it's possible it will never improve.
15 Hopefully that won't be the case and it will be a few years.
16 Q Will there be a change within two to three years?
17 A I'm not, I can't say whether, what's going to
18 happen in the future. I can, I could comment at length
19 about reasons why it's challenged and why those might or
20 might not change, but I suspect you don't want me to take
21 all that time.
22 Q Well, wait a minute, I would very much like to
23 know why it's challenging.
24 A Okay, sir. To be, try to be brief about it, it's,
25 it's a challenge for various reasons. First of all, job

Page 140

1 growth is not as good as we've seen in some past periods in
2 the D.C. region, although it's actually not bad, but it
3 could be better. And typically office demand has been
4 correlated quite closely with employment. Specifically, the
5 Federal Government has been cutting back for budget reasons
6 and so on and so a major source of office use has dropped
7 dramatically.
8 And, third, both public clients, public tenants
9 and users like the Federal Government and private sector
10 office users are using a lot less space, leasing a lot less
11 space per employee. So even if you have 40,000 job growth
12 annually in the D.C. region and a good portion of that is in
13 offices, it will use a lot less office than we've grown
14 accustomed or than we've typically assumed. And, you know,
15 hopefully the budget situation will be resolved, at least in
16 a clearer fashion, before too long at which point at least
17 agencies will know what their future looks like, but most
18 likely that's going to be, continue to be a budget challenge
19 given all the issues that we know well. And the consensus
20 in the industry is that the decreased amount of office space
21 per employee is probably a permanent condition, although I
22 always have trouble saying anything is permanent.
23 Q I have in my notes, and I've got it in quotes,
24 that you testified that,
25 "Absorption has been declining because lease

Page 141

1 space demand is dropping."
2 Is that accurate, sir?
3 A Yes.
4 Q And you then went on to say that this situation
5 will exist for many years until office space will be, before
6 office space will be utilized fully in Germantown and
7 Gaithersburg?
8 A Yes.
9 Q Do you have the Master Plan there, Mr. Harris?
10 Would you go to the general one? Do you have it there, sir?
11 A I do.
12 Q Thank you. Would you please go to page 67?
13 A This is the Master Plan from June 1994, yes.
14 Q Yes. Page 67, do you see the --
15 A Yes.
16 Q Thank you. Do you see the middle bullet there,
17 sir, in the middle of the page?
18 A The middle bullet? Yes.
19 Q Could you please read the emphasized bold
20 language?
21 A "Encourage an employee pattern which is supportive
22 of I-270 as a high technology corridor."
23 Q Now as I understand it, that is one of the plan
24 objectives, the Master Plan objectives, is that correct?
25 MR. HARRIS: Objective, objection. I don't

Page 142

1 believe Mr. Bogorad talked at all about the Master Plan or
2 its purposes or objectives, so this is going beyond the
3 scope of his direct testimony.
4 MR. CHEN: I heard him testify even today about
5 the Master Plan and he's a planner. He's got a master's
6 degree in land planning.
7 THE WITNESS: Not land planning.
8 MS. ROBESON: No, I don't think he does.
9 MR. CHEN: Well, planning, excuse me.
10 MS. ROBESON: He doesn't. Although, I think the
11 question here is, well, where are you going with this?
12 MR. CHEN: It goes to his testimony on retail
13 attracting office use and --
14 MS. ROBESON: Okay. And that was the subject. So
15 I'm going to give him a little leeway, but nobody is going
16 to interpret the Master Plan. So go ahead.
17 MR. CHEN: Thank you.
18 BY MR. CHEN:
19 Q Do you see that plan objective, sir?
20 A That's encouraging an employment pattern which is
21 supportive of I-270 as a high-technology corridor, yes.
22 Yes.
23 Q Could you please explain how your testimony about
24 future attraction of office use will satisfy that plan
25 objective?

Page 143

1 A Yes, I think it's a very important point in my
2 testimony. I do think that having the retail that's been
3 proposed with the various aspects of it that I have
4 elaborated on, including the retail itself, the restaurants
5 that would be there, the place making that would be very
6 appealing to office users will be a significant advantage as
7 this site competes with many others in this County and
8 elsewhere for high technology as they call it there.
9 Q Okay. So it's your opinion that outlet use will
10 attract high technology employment?
11 A That this, the modern form of outlet centers as
12 proposed here will help to attract high tech and other
13 office users. It doesn't mean that it's sufficient.
14 Obviously, a lot else has to be going on, including a
15 decision to want to be in this general area, but I do think
16 this is a viable office corridor and that given all the
17 competition for other, with other sites along the corridor
18 and Loudoun County and with Leesburg, I mean with Fairfax
19 and Frederick County, that there will be more high tech
20 employment with the outlet center than without it.
21 Q Okay. And, in fact, you prefaced your statement
22 just now by saying, and I wrote it down, with the modern
23 form of outlet center as proposed here?
24 A That's correct.
25 Q Okay. What is the modern form of outlet center,

Page 144

1 sir?
2 A There's a lot more attention being paid to place
3 making. It's not considered sufficient to just have stores
4 in a strip setting. If you think of like, you know,
5 Rehoboth where I happened to be last weekend, there's three
6 different outlet centers. They're not places you go to
7 have, you know, shopping is fun for a lot of people, but
8 just you wouldn't go there to relax, hang out. There is
9 some food there, but it's not something that, you know, if
10 you weren't going to shop, you would never go there to have
11 food. Even if you were working nearby, you might well go to
12 some other, get in the car and drive someplace else.
13 Q Okay. But --
14 A The modern form of outlet center is quite
15 different in that regard, even though the mix of stores on
16 the fashion side is quite similar, but they pay a lot more
17 attention to making it a really appealing place. Like so
18 it's a place where there's typically a square or a fountain,
19 restaurants that you can eat inside and outside, depending
20 on the weather. And so it has a real appealing aspect to it
21 that is the kind of thing that office tenants and office
22 employees are looking for.
23 Q Okay. Yes, this morning in your testimony, in
24 fact, you said that the proposal by this application, there
25 would be fountains, outdoor seating and restaurants, is that

Page 145

1 correct?
2 A Those are examples of the types of things that I
3 know are included in there as another modern outlet center.
4 I'm not testifying about an exact plan. I'll leave that to
5 others.
6 Q Well, your testimony is being offered, sir, in
7 support of the application, isn't that right?
8 A Yes. And what I said was that the types of things
9 that are included in centers these days by Simon and others
10 are what, as I described, things that are appealing to
11 office tenants and office employees. You know, if they
12 ended up not putting in a fountain, but they had a square or
13 they had a circle or they had this or that, the details of
14 it would not change my opinion one bit.
15 Q What do you juxtapose the modern form of outlet
16 center against?
17 A I think I just explained that, but I can answer
18 again.
19 Q If you could do it again?
20 A The types of centers like Hagerstown or Queenstown
21 or Rehoboth where really a strip center with, you know,
22 convenient parking, places for the stores, but not a place
23 to actually enjoy yourself, not any emphasis at all on
24 quality restaurants.
25 Q You mentioned Hagerstown, I believe, and

Page 146

1 Queenstown and Leesburg in your earlier testimony?
2 A I think I mentioned Leesburg as well, yes.
3 Q Yes. And you also testified earlier that, as I
4 understood your testimony, that there was not a great deal
5 of data yet available for quantifying at least, or that was
6 not your word, but determining how the modern form of outlet
7 centers attract office use, although you said you think it
8 does, isn't that right?
9 A Yes, because there have been so few examples of
10 outlet centers in places that have a possible office market.
11 Q What type of analysis, sir, did you do -- by the
12 way, the Simon organization owns those three outlet centers,
13 isn't that right?
14 A They do.
15 Q And they're relatively close? I mean they're
16 closer than the examples you gave us of Traverse Mountain in
17 Austin, Texas, and Citadel, Los Angeles, isn't that right?
18 A They are, but the two centers, the Hagerstown and
19 Queenstown, as I said before, are in areas that clearly have
20 no potential for office and so one would not expect even if
21 you set aside the fact that they are old and of the old
22 style, you would not expect them to have any impact on
23 office. The one in Leesburg is interesting. It is in an
24 area that potentially could have some office and there is
25 office not too far away. And I did take the advantage of a

Page 147

1 2-day break here to, between here and my direct testimony to
2 look into a site. There is a vacant site just east of the
3 Leesburg Center. The Leesburg Center itself was built by
4 Chelsea when formerly, which was later bought by Simon.
5 Their only business was outlet center business development,
6 so they bought a site that was big enough for the outlet
7 center.
8 Q When was that?
9 A The outlet center.
10 Q When was it built?
11 A I don't know that I have that. It's possible I
12 have it in my notes. I'm not sure. But the point I was
13 making is that there is a site owned by somebody else
14 adjacent to it and I looked into that with some of my
15 contacts in Loudoun County and it's owned by somebody from
16 Belgium who inherited it from their father and they
17 somewhat, you know, everyone is sort of surprised that they
18 haven't done more to try to actually move ahead with the
19 development of it but, because they do consider it to be,
20 you know, a good location for office, although it's far at
21 the end of the office corridor in Loudoun County.
22 But as is often the case, there seems to be a
23 particular ownership issue. So that's not, you know, not
24 any indication one way or the other of the effect on that on
25 office.

Page 148

1 Q Leesburg was, assume if you will for the moment,
2 developed in the late 1990's. Does that sound reasonable to
3 you?
4 A It sounds probably right. Let me see if I happen
5 to have it with me. I'll accept that as a premise for the
6 moment.
7 Q Do you want to check your notes?
8 A I don't know whether I have it or not. Probably
9 not. No, I don't have it, sir.
10 Q And it's next to town of Leesburg, isn't that
11 right, sir?
12 A It's in the town of Leesburg, I believe.
13 Q Yes, it's within the corporate limits?
14 A Yes.
15 Q And it's right up against a major highway, isn't
16 that right?
17 A Yeah, it's not right on Route 7. It's on the
18 bypass.
19 Q Yes. It's right on the bypass, isn't that right?
20 A Yes.
21 Q And it's been there about 20 years?
22 MR. HARRIS: Objection.
23 THE WITNESS: I'll accept your premise. I don't
24 know.
25 BY MR. KLINE:

Page 149

1 Q Okay. It has fountains?
2 MS. ROBESON: We have -- what's your basis?
3 MR. HARRIS: He answered that he did not know when
4 it was built.
5 MS. ROBESON: Oh.
6 MR. HARRIS: And Mr. Chen is --
7 MR. CHEN: He also said he accepted my premise.
8 MR. HARRIS: -- purporting to say it's been there
9 20 years.
10 MS. ROBESON: Yes. Assuming it was, it's been
11 there, correct?
12 MR. KLINE: Yes.
13 MS. ROBESON: Okay.
14 MR. KLINE: I thought I said that.
15 MR. HARRIS: He said he accepted your premise as
16 an assumption.
17 MS. ROBESON: That's, that's true.
18 THE WITNESS: Not that I'm assuming it's correct,
19 but assuming it is premise to the question, yeah.
20 MS. ROBESON: Let's move forward.
21 BY MR. CHEN:
22 Q Okay. It has fountains, doesn't it, sir?
23 A I haven't been there awhile. I believe it
24 probably does, yes.
25 Q And it has restaurants?

Page 150

1 A It has some. They're not, it wasn't the focus of
2 it and they're not particularly attractive restaurants.
3 It's in terms of drawing anybody from outside the center.
4 Q Well, it's got an Arby's, doesn't it? Do you
5 know?
6 A That sounds about right.
7 Q Okay. And it has a food court?
8 A It has somewhat of a food court, yes. I have not
9 been there in a while. I'm not -- I really can't answer the
10 details about my --
11 Q Well --
12 A I do know that the modern outlet centers are much
13 more appealing, they are much more oriented towards outdoor
14 setting, pedestrian orientation, the kinds of places one
15 actually would have formally like to go. I actually think
16 the Leesburg center is quite nice as the older generation
17 went.
18 Q It has outdoor seating, do you know that?
19 A I'm sure it does, yes.
20 Q It also has provision to eat outside if you
21 wanted, are you aware of that?
22 A I'm not, I don't remember that, but I wouldn't be
23 surprised.
24 Q And it's a self-contained outlet center in the
25 sense that it's a pedestrian-used outlet center. You walk,

Page 151

1 in other words, from store to store rather than getting into
2 a motor vehicle?
3 A Pretty much all outlet centers are that way, as
4 are most other strip centers.
5 Q And it also has outdoor play areas for children,
6 isn't that right, sir?
7 A I don't remember.
8 Q Okay. And assuming it's been there for 20 years,
9 and it is owned by one of your clients, you didn't bother to
10 get information about the features of the Leesburg center
11 contacting Simon center, Simon Group?
12 A I didn't think it was relevant.
13 Q Now you, I believe you characterize Hagerstown, so
14 just on, back up on that for a minute, I know -- strike
15 that. What quantifiable study did you undertake, sir, as to
16 these three existing outlet centers, as to the correlation,
17 if any, between office use and the outlet center?
18 A I didn't believe one was appropriate. I did not
19 take, did not undertake it quantitative, no.
20 Q Okay. Have you been to the Hagerstown center?
21 A I don't remember actually.
22 Q Are you aware that you can eat at the Hagerstown
23 center?
24 A As I said, you can eat at any town center, any
25 outlet center, I believe, pretty much. There's always an

Page 152

1 effort to keep the shoppers there and to provide food so
2 they stay longer, but that's quite different from an
3 attractive destination almost that people would actually
4 affirmatively go to to eat at.
5 Q It's off of a major highway, isn't it?
6 A Yes, it's not in an office, it's not in an office
7 location. There's no way that it would ever attract office
8 in that location.
9 Q Okay. Queenstown is also off of a major highway,
10 isn't that right, sir?
11 A Yes.
12 Q And it has eating facilities also, isn't that
13 right?
14 A I'm sure it does.
15 Q In your, developing your opinion that you
16 expressed to the Hearing Examiner, you did not undertaken
17 any evaluation of these three outlet centers?
18 MR. HARRIS: Objection. Asked and answered.
19 MS. ROBESON: Yes. Yes, that is true.
20 MR. CHEN: Okay. Okay. I'll accept that. My
21 thing is that he didn't, but I maybe my recollection is
22 mistaken, but if that's the Examiner's recollection of his
23 testimony, fine. He doesn't have to answer a second
24 question.
25 MS. ROBESON: I thought he said that he didn't

Page 153

1 because they weren't comparable.
2 MR. HARRIS: And not appropriate.
3 MS. ROBESON: Or, yes.
4 MR. CHEN: Is Mr. Harris testifying now?
5 MS. ROBESON: No, he's not. But --
6 MR. HARRIS: Well, but I'm clarifying your
7 misconstruing --
8 MS. ROBESON: Okay.
9 MR. HARRIS: -- the testimony.
10 MS. ROBESON: That's enough. That's enough.
11 BY MR. CHEN:
12 Q Why is Leesburg not worthy of being considered in
13 comparison to Clarksburg, sir?
14 A There's, and whether it's worthy or not, there's
15 no office site adjacent to it. As I said, the only site
16 that one could possibly build office adjacent to it is not
17 available. The developer, the owner of it has not pursued
18 any plans for it. It's quite possible that if they build
19 there, it would have been a possible amenity. I actually
20 think it probably would be, but it's not, no way to test it
21 because the owner of it chose not to build there.
22 Everything else is built up.
23 Q But you are testifying to the examiner that office
24 will come if the outlet is there?
25 A That it will make it more likely it will come but,

Page 154

1 again, it didn't make any sense to do a quantitative
2 analysis of Leesburg when I knew that there was no office
3 land around it. This is a totally different situation where
4 you have predominantly office development that's planned and
5 the question is will that office land be used at a faster
6 pace if you have retail added of this outlet center sort or
7 not and clearly there's plenty of land here to do the office
8 development. There's a developer that is very eager to
9 build the office and so it's, you need to have -- to be
10 analogous, you need to meet several criteria and if you
11 don't meet those criteria, it doesn't make any sense to
12 analyze it.

13 One, it has to be in an area that is a reasonable
14 office market. That eliminates Hagerstown and Queenstown.
15 Arguably, it does not eliminate Leesburg. And you have to
16 actually have land available for office to see whether that
17 land was, in fact, developed as a result of, potentially as
18 a result of the outlet center and you don't have that here.

19 Q What study did you undertake to determine that
20 Queenstown and Hagerstown were not, I don't want to mis-
21 state what your words were, appropriate for office
22 development?

23 A I do a lot of office market analyses as part of my
24 main business and I feel very comfortable saying that those
25 are not office locations. The, I don't think it was, I mean

Page 155

1 it's -- I hate to say it's obvious, but I think it is
2 obvious. If somebody came to me and called me up and said
3 I'd like to pay \$20,000 for you to study the office market
4 near the center of Hagerstown, I would say, you know, well,
5 we'll take your money, but it's a waste of your money. It's
6 not --

7 Q Well --

8 A -- going to be --

9 Q -- have you done any study of office demand in
10 Hagerstown?

11 A No, I haven't.

12 Q Have you done any analysis of the zoning of the
13 property surrounding the outlet center in Hagerstown?

14 A I would consider that irrelevant if there's not a
15 market and I'm confident that there's not a market.

16 Q Okay. You're confident there's not a market in
17 Hagerstown, but you haven't undertaken any study?

18 A Yes, based on what I said a minute ago.

19 Q Okay. Are you also confident that Queenstown does
20 not have a market also?

21 A In that, that area there is some demand for office
22 further west on Route 50 and some, you know, some modest
23 amount has been built, very modest, but --

24 Q Did you undertake any study of the demand for
25 office space in Queenstown?

Page 156

1 A No, I didn't.

2 Q Have you undertaken any study of the demand for
3 office space in Leesburg?

4 MR. HARRIS: I think that's been asked and
5 answered.

6 THE WITNESS: I have. I have actually.

7 MS. ROBESON: Yes.

8 THE WITNESS: Not for this --

9 MS. ROBESON: I don't think, just a second.

10 Before you continue, let me rule on the objection. I don't
11 think that that was covered by his earlier testimony, so go
12 ahead. Mr. Chen, do you want to ask a question?

13 MR. CHEN: I want an answer to the question I just
14 asked that he objected to because I haven't asked before. I
15 have not asked that question.

16 MS. ROBESON: No, I understand. I'm saying can
17 you repeat it for me --

18 MR. CHEN: Oh, I'm -- yes.

19 MS. ROBESON: -- because I forget all of it. Go
20 ahead.

21 BY MR. CHEN:

22 Q Sir, have you undertaken any study of office
23 demand in Leesburg?

24 A Coincidentally I have in earlier projects and
25 actually, I think it actually confirms my general conclusion

Page 157

1 which is that it's also a challenge, the office market out
2 there. Most of the demand for office is closer in to the
3 airport and to Reston and so on. But there is a project out
4 there that does have retail, the Village at Leesburg, and
5 they have been more successful at attracting office over the
6 last few years than other developments. It's not, it's not
7 been a credible amount because it is a challenged location
8 in general, but it's, but they would certainly say that
9 that's been key to their attracting office, is one of them,
10 a client of ours, Kettler, and they have been doing
11 comparatively well on that and they do have sort of, some
12 retail nearby, so that's in the development.

13 Q And you did identify one vacant parcel of land
14 that's owned by a gentleman who is Belgian, is that right,
15 sir?

16 A That's correct.

17 Q And you have no knowledge as to why that land has
18 not been developed with office over the last 20 years?

19 A Well, I talked to one of the main zoning attorneys
20 in the County and engineer, a person who was a planner at
21 the engineering, the key engineering firm and that's where I
22 got the information I mentioned a minute ago that --

23 Q Did anybody contact the owner?

24 A No, I didn't try to contact the owner.

25 Q Anybody else that you know try to contact the

Page 158

1 owner?

2 A I think, I don't know whether the attorney has

3 ever talked with him personally or not.

4 Q Okay.

5 A As I said, they're Belgian.

6 Q I also understand this is, again in quotes from my

7 notes, that you testified that the, in describing the Cabin

8 Branch community, sir, you, again, I hope I have this right

9 in my quotes, you said that it was, a source of activity

10 that will put Clarksburg on the map as a retail center, end

11 quote. Do you recall that testimony?

12 A In general terms, yes.

13 Q Okay. Is there anything in the Master Plan that

14 describes the Cabin Branch community as a retail center?

15 A I haven't read most of the Master Plan.

16 Q Okay. Are you aware of any?

17 A Not aware or not aware, (indiscernible). The

18 reason I made the comment is that I do think my recollection

19 of the Master Plan, at least hearing about it relative to

20 the town center is that that was one of the key elements of

21 the town center. The plan is to make that town center

22 happen and what I was talking about was that this, in my

23 view, would help to make this an area that retailers would

24 think about and would see that actual development was

25 happening and had some life to it.

Page 159

1 Q I also recollect, and again I apologize because

2 sometimes my scribblings are maybe not accurate and

3 sometimes I even forget what I write down, but I believe

4 this morning you testified that the, a supermarket in the

5 Cabin Branch community would threaten the town center having

6 a supermarket?

7 A Yes.

8 Q Are you aware that the Master Plan specifically

9 calls for a grocery store in the Cabin Branch community?

10 A I'm aware generally. My recollection in the plans

11 is going back a number of years is that the plan called for

12 at least three supermarkets in Clarksburg and that it was

13 holding off any of them until the one in the town center was

14 built. I think that may have been modified later. But the,

15 so I think there was an anticipation that that would be one

16 of the three supermarkets as I think I talked about at

17 length. I'd be happy to elaborate.

18 It's, you know, things have changed. Wegmans is

19 competing now and in my view that, having that supermarket

20 there would be very detrimental to one of, what I saw as one

21 of the key objectives of the overall plan which was to make

22 that town center happen and be successful.

23 Q Similarly, with regard to a grocery store, I've

24 got in quotes your testimony that, quote, a grocery store,

25 and here's the quote, is absolutely, that's your word,

Page 160

1 absolutely critical to a neighborhood center, end quote. Is

2 that your testimony, sir?

3 A Well, I was talking about the town center and --

4 Q No.

5 A -- to have a true neighborhood center I think it

6 is important, very important. As I think I said during that

7 cross-examination as well, I do think there is going to be

8 demand for some neighborhood serving retail as Cabin John,

9 Cabin Branch moves along. And I think it's also important

10 to recognize that some of the retail within the outlet

11 center is going to certainly serve the neighborhood

12 restaurants and so on in particular.

13 Q I may be mistaken, and I apologize, but I believe

14 your testimony pertained to a neighborhood center?

15 A A true neighborhood center as we define it in the

16 industry includes a supermarket.

17 Q Yes, I believe another quote that I have that, as

18 far as viability of a neighborhood center, you stated,

19 quote, does not happen without the supermarket, end quote.

20 Is that an accurate statement, sir?

21 A The town center, yes.

22 Q How about for a neighborhood center?

23 A Well, I think it's important to distinguish

24 between a neighborhood center and a neighborhood serving

25 retail. I don't know that any, you know, in my view what is

Page 161

1 now planned or proposed at Cabin Branch is not a

2 neighborhood center. It, that was what was sort of

3 contemplated originally with anchoring, anchored by a

4 supermarket. Without a supermarket there, it would not be a

5 neighborhood center, it would still be neighborhood serving

6 retail.

7 Q It just would not be a neighborhood center?

8 A And a neighborhood center is what I was talking

9 about specifically, dealing with the town center that would

10 in my view not happen without the supermarket.

11 Q Okay.

12 MR. CHEN: Can I have your indulgence one second?

13 BY MR. CHEN:

14 Q Could you please go to page 64 of the Master Plan?

15 A Yes.

16 Q Do you have it, sir?

17 A I do.

18 Q Do you see the second paragraph?

19 A The second -- this area lies to the west of I-

20 270.?

21 Q Yes. It's a two-sentence paragraph.

22 A Yes.

23 Q Could you please read that paragraph?

24 A This areas lies, we're talking about Cabin Branch,

25 "This area lies to the west of I-270 and is the

Page 162

1 only portion of the western side which is proposed
2 for significant residential development. The
3 following characteristics of the site have led to
4 its designation as a mixed use neighborhood
5 center."
6 Q And could you bear with me for just --
7 A And I just wanted to see what chapter we're in
8 here. Okay.
9 Q It is the section on the Cabin Branch neighborhood
10 or community?
11 A Yes.
12 Q Okay. And could you please then jump to page 68?
13 A Yes, I have it.
14 Q Okay. And do you see the bullets in the middle of
15 the page?
16 A Yes.
17 Q Do you see the sentence leading up to the bullets?
18 A Sentence? The design of the neighborhood --
19 Q Yes. Could you please read that?
20 A We're talking about the, the Cabin Branch
21 neighborhood.
22 "Should adhere to the following guidelines
23 for transit and pedestrian service ability."
24 Q Could you jump down to the third bullet?
25 A Locate a grocery store within the core.

Page 163

1 Q By the way, just that paragraph I had, do you see
2 the middle sentence that begins with, the core.?
3 A "The core should consist of a cluster of higher
4 density residential uses, retail services, office
5 uses and civic uses.
6 Q Thank you.
7 MR. HARRIS: Madame Examiner, we're getting into
8 great detail about the Master Plan here and I can sense
9 where this question is going. It is well beyond the scope
10 of Mr. Bogorad's direct testimony.
11 MR. CHEN: I'm sorry. His direct testimony was
12 heavily on supermarkets and grocery stores and I'm just
13 addressing that area of his testimony.
14 MS. ROBESON: Well, I guess what I've been
15 wondering, however, is that he's using one nomenclature for
16 neighborhood center that may not necessarily be what the
17 Master Plan intended to be.
18 MR. CHEN: That may be for Mr. Harris to take care
19 of.
20 MS. ROBESON: Well, how much more do you have on
21 this?
22 MR. CHEN: I'm not done yet with my cross-
23 examination.
24 MS. ROBESON: I know that.
25 MR. CHEN: Oh, you mean quoting the Master Plan?

Page 164

1 I --
2 MS. ROBESON: Yes.
3 MR. CHEN: -- think I'm pretty much done with
4 quoting the Master Plan.
5 MS. ROBESON: Okay. You also characterized the
6 proposal before the District Council in this DPA as
7 providing for, quote, very different types of stores, end
8 quote. Do you recall that testimony, sir?
9 A I don't know the context, I'm sorry, I do not know
10 specifically.
11 Q Okay. It was in describing the types of uses
12 that --
13 A Oh, different types of stores than at that the
14 town center, that I would expect to have at the Clarksburg
15 Town Center?
16 Q Yes.
17 A Yes. Yes.
18 Q Are those types of stores any different than the
19 types of stores that would be found at any other outlet
20 center?
21 A Well, I talked about two sets of stores. The sets
22 of stores that I would expect in an outlet center were, in
23 fact, taken exactly from the Simon website and are the types
24 of the stores that are at other, other outlet centers, yes.
25 Q Does the proposal before the District Council

Page 165

1 identify any specific store to be located in the outlet
2 center?
3 A Not that I've seen.
4 Q Does the DPA before the Board specify any specific
5 type of eating facility?
6 A I haven't seen anything. I haven't seen it one
7 way or the other.
8 Q Assuming the District Council were to approve the
9 development plan amendment, sir, do you know how much retail
10 square footage would be available for development in the
11 Cabin Branch community outside of the retail specialty store
12 area?
13 A I'm not sure, would be available, in Cabin Branch
14 you're saying --
15 Q Yes. Yes, sir.
16 A -- is that your question then?
17 Q Yes, sir.
18 A Leave, well, I'm not sure it's outside of. I
19 think the number I've heard and I, this is really Mr.
20 Unterberg's specialty, but --
21 Q Well, I don't want to put you on the spot if --
22 A -- I think 120,000 square feet of neighborhood
23 serving retail, but I don't know that that's necessarily
24 outside of the outlet portion of this. I don't know.
25 Q Does -- is the Gosnell commercial area located

Page 166

1 within the Cabin Branch community?
2 A I, let's, I don't, I have not studied the specific
3 ownership.
4 Q Okay. One more second. Do you have any
5 information, sir, that a specific retail store would locate,
6 a specific retail store would locate in the town center
7 rather than the outlet center?
8 A As far as I know, nobody has any specific stores
9 in either one identified at this point. It would be unusual
10 to have it at this stage.
11 Q And certainly this DPA doesn't identify any such
12 stores, does it?
13 A I, I haven't read the DPA, I don't believe, but I
14 would not expect it to identify stores.
15 Q And I believe your testimony, the words you used
16 that the biggest benefit, and I've got those words in
17 quotes, in the change in the retail that's being proposed by
18 the DPA is that there would not be a grocery store in the
19 Cabin Branch community?
20 A Yes, I had various reasons why I did not think it
21 would have any detrimental effect, but among the factors
22 that would be positive in my view that's probably the most
23 important.
24 MR. CHEN: That's all I've got. Thank you. Thank
25 you, sir.

Page 167

1 MS. ROBESON: Mr. Harris.
2 MR. HARRIS: No further questions.
3 MS. ROBESON: No recross. So how -- it's 10 after
4 2:00. I have a feeling Mr. Unterberg is going to take a
5 little bit of time. Mr. Chen, how long do you expect your
6 client to take?
7 MR. CHEN: 15 minutes, half hour maybe. I will
8 advise the Examiner, I, during the break, the luncheon
9 break, I spoke with Mr. Cobb and he definitely cannot make
10 the scheduled hearing on the 4th of September, so that I
11 think we better do it today because I can't, we're either
12 going to finish today, I think Mr. Harris is planning on
13 finishing today. Even if we don't finish today and we slip
14 into the 4th of September, I can't see us going past the 4th
15 of September myself.
16 MR. HARRIS: I have no problem with him testifying
17 now.
18 MS. ROBESON: Okay. Then we'll do that. Why
19 don't you have him come forward?
20 MR. CHEN: Thank you, Mr. Harris.
21 MR. HARRIS: Yes, no problem.
22 MR. CHEN: Thank you, Madam Examiner.
23 MS. ROBESON: Mr. Bogorad, you are excused.
24 THE WITNESS: Thank you. Thank you.
25 MS. ROBESON: Thank you. Although, I don't think

Page 168

1 this is the last we've seen of you, but okay. Please raise
2 your right hand.
3 (Witness sworn.)
4 MS. ROBESON: Thank you. Mr. Chen.
5 BY MR. CHEN:
6 Q Mr. Cobb, I believe you have a statement that you
7 prepared that you would like to read to the Examiner?
8 A I do.
9 Q Okay. Please go and do so.
10 A Thank you. Good afternoon, Madam Hearing
11 Examiner. As the owner of a small, historically protected
12 commercial property in the Clarksburg historic district, and
13 as someone whose family has made a major commitment to the
14 historic district, I would like to request that this
15 development plan amendment be denied. The Clarksburg
16 Premium Outlets concept is -- it's very attractive. I don't
17 have a problem with it standing alone, but the development
18 plan amendment would effectively move the heart of
19 Clarksburg across Interstate 270. It, therefore, violates
20 the express terms of the Clarksburg Master Plan and would
21 fundamentally alter the vision set forth in the Master Plan.
22 By way of background, the Clarksburg historic
23 district is located along Maryland Route 355 and according
24 to the Master Plan it's one of the County's oldest and most
25 significant early communities. A number of 19th Century and

Page 169

1 early 20th Century buildings remain there, including the
2 property that my wife and I own, the Gardner House. This is
3 the only commercial property that we own. Despite its
4 location on Maryland Route 355, there's only, there are only
5 a few businesses in the historic district and those that are
6 there have struggled due to the lack of nearby businesses
7 and civic uses that would bring more activity.
8 For two principle reasons, this development plan
9 amendment is directly contrary to the letter and the spirit
10 of the Clarksburg Master Plan. First, it turns the Master
11 Plan on its head by shifting the focal point of Clarksburg
12 from the town center, which includes the historic district,
13 to Cabin Branch. Second, it quadruples the amount of retail
14 permitted by the black and white text of the Master Plan. I
15 would like to discuss these issues and conclude with a
16 discussion of what Clarksburg could look like if the vision
17 of the Master Plan is upheld.
18 To show how this development plan amendment turns
19 the Master Plan on its head by moving the focal point of
20 Clarksburg across the highway, it's helpful to explain the
21 overall concept of the Master Plan. The town center is
22 called the town center for a reason. The Clarksburg Master
23 Plan emphasizes that it creates a town center which will be
24 a strong, central focus for the entire study area.
25 It further states, I'm quoting,

Page 170

1 "This plan continues the historic function of
 2 Clarksburg as a center of community life. The
 3 historic district will be part of an expanded town
 4 center, 635 acres, which will include a variety of
 5 uses, a school, civic uses, car, retail centers
 6 and a mix of housing types. This plan provides a
 7 concentration of civic uses, library, post office,
 8 elementary school, et cetera, to help define the
 9 town center as the focal point of public
 10 activities."
 11 The town center is an area of 635 acres that
 12 includes the historic district, the proposed Elm Street
 13 neighborhood and retail area east of the historic district
 14 and commercial and housing areas west of the historic
 15 district and adjacent to Interstate 270. And this is the
 16 area where Peterson is proposing development, going to
 17 develop his stream side. The town center is this much
 18 larger than the relatively small neighborhood retail center
 19 that Elm Street owns. And contrary to Ms. Hulley's
 20 statement I believe on July 29th, I don't think it's at all
 21 consistent with the Master Plan to consider the Cabin Branch
 22 area that's across Interstate 270 to be within the town
 23 center.
 24 The Master Plan, thus, intended that a mix of
 25 retail, civic and transportation uses be located within the

Page 171

1 town center. This DPA would establish competing uses across
 2 the highway in Cabin Branch, thus, making the establishment
 3 of a town center area, including the historic district, as a
 4 focal point of Clarksburg unlikely, if not impossible. The
 5 development now proposed for Cabin Branch is permitted
 6 across the interstate from the town center. The town center
 7 is unlikely to ever achieve the vision of the Master Plan.
 8 Explicitly reflecting the priority given to the town center,
 9 the Master Plan seeks to spur retail development in the town
 10 center. It states,
 11 "What this plan recognizes, that retail uses
 12 are critical to the validity of a community and
 13 can play a significant role in reinforcing the
 14 town center as a central focus for the entire
 15 Clarksburg area."
 16 There's no indication that the intent of the Master Plan was
 17 to omit a regional retail center across the interstate to
 18 supplant the town center as a central focus for the entire
 19 Clarksburg area.
 20 Moreover, the outlet now proposed for Cabin Branch
 21 does almost nothing for the town center and the historic
 22 district. The Cabin Branch amenities will not be in walking
 23 distance of the town center. It's not credible or intuitive
 24 that a regional outlet mall across the interstate highway
 25 from, as well as about a mile away from the town center,

Page 172

1 will draw people into the town center. If anything, it will
 2 draw people out of the town center district across the
 3 highway into Cabin Branch and it would leave development
 4 scattered on the fringes of Clarksburg. For all the good it
 5 does for the town center, the Clarksburg Premium Outlets
 6 could be located anywhere up and down Interstate 270.
 7 In fact, Ms. Kinney Hoffmann's testimony earlier
 8 today, I think, supports my point where she testified that
 9 there would be no impact on 355 of the Clarksburg Premium
 10 Outlets. The customers will get off the interstate and go
 11 to the outlet center and they'll get right back on the
 12 interstate. Unless someone happens to make a wrong turn,
 13 it's unlikely that they will wind up coming to the town
 14 center or the historic district. You know, unfortunately,
 15 if the development plan amendment is permitted to go
 16 forward, it's highly unlikely that many amenities promised
 17 for the town center will ever arrive as most development in
 18 the town center won't be economically viable.
 19 Now exacerbating the damage done to the town
 20 center by shifting the focal point of Clarksburg across the
 21 highway, the development plan amendment quadruples the
 22 retail uses permitted by the Master Plan within the Cabin
 23 Branch area and will, thus, severely limit the amenities
 24 available in the Clarksburg town center within the historic
 25 district. The Master Plan very clearly proposes 120,000

Page 173

1 square feet of retail in Cabin Branch. It does not state
 2 that this retail should be augmented by the two to 2.3
 3 million square feet of proposed employment uses.
 4 Nothing in the Master Plan indicates that the MXPDP
 5 zoning is meant to increase the retail uses. In fact, the
 6 Master Plan discusses the MXPDP zoning for Cabin Branch in
 7 terms of, including residential uses in the employment area.
 8 Also in discussing the employment uses in Cabin Branch, the
 9 Master Plan emphasizes that it, quote, encourages an
 10 employment plan which is supportive of I-270 as a high
 11 technology corridor. I don't believe that retail employment
 12 can be considered high technology.
 13 Also, I note that the type of retail contemplated
 14 by the development plan amendment is not the type of
 15 neighborhood retail expressly required by the Master Plan.
 16 Page 68 of the Master Plan specifically calls for a grocery
 17 store in the Cabin Branch neighborhood, but this development
 18 plan amendment would prohibit a grocery store in Cabin
 19 Branch. By quadrupling and changing the retail uses
 20 permitted by the Master Plan, the development plan amendment
 21 by its express terms of the plan, it will keep the town
 22 center and historic district in their current, largely
 23 deserted and underused state for the foreseeable future.
 24 Now if the vision of the Master Plan is simply
 25 upheld, I believe that the historic district and the town

Page 174

1 center can be lively, successful places. For example, in
2 June the historic district came alive during the annual
3 Clarksburg Day celebration. The event brought many people
4 to the historic district to learn about the town's history,
5 enjoy children's activities, have a good meal, buy a book.
6 There were pedestrians walking on the street and the
7 atmosphere was vibrant and festive. The Gardner House was
8 the site of historical displays, as well as a train ride and
9 moon bounce for the kids.

10 The Master Plan envisions the types of amenities
11 for the historic district and the town center that would
12 make the Clarksburg Day experience an everyday experience.
13 There's been a lot of talk about place making during this
14 proceeding. I believe that the Master Plan already
15 designates a place for Clarksburg and that's in the historic
16 district and the town center.

17 In closing, I think that the development plan
18 amendment should be denied outright. This would preserve
19 the possibility that development in the town center would
20 proceed according to the Master Plan's vision. That
21 concludes my statement.

22 MS. ROBESON: Thank you. Do you have follow-up
23 questions?

24 MR. KLINE: No, ma'am. No.

25 MS. ROBESON: I, I, I have, I guess I've been

Page 175

1 sorting through what I've been hearing here and I'm trying
2 to get to -- it seems to me that there's an assumption and
3 you have to understand that I may not -- you probably know
4 far more of the ins and outs of the different players in
5 Clarksburg and what's going on than I do. There seems to be
6 an assumption -- what's the basis of your assumption? You
7 just heard --

8 MR. HARRIS: Bogorad.

9 MS. ROBESON: -- Mr. Bogorad's testimony that this
10 will not impact the town center retail. What's your basis
11 for the assumption that the town center would be dead if
12 this goes forward?

13 THE WITNESS: Well, the basis for the assumption
14 is, or my basis for the assumption is just that if you've
15 got this major, massive retail center across the interstate
16 highway, then, you know, folks aren't going to want to open
17 competing stores in Clarksburg town center in the historic
18 district.

19 MS. ROBESON: Okay. All right. All right. Thank
20 you for your -- you now get, Mr. Kline, do you have follow-
21 up questions?

22 BY MR. KLINE:

23 Q Well, I heard you use the phrase, and actually I
24 think you were quoting off the Master Plan, but specific
25 uses and things that would go on in the town center. Those

Page 176

1 are not stores, so why wouldn't some of the public quasi-
2 public facilities get built in the town center to sort of
3 jump start it and then encourage the businesses to -- why do
4 you have this skepticism about what's going to happen if the
5 retail outlet center occurs?

6 A Well, because I think the civic uses follow the,
7 follow the people. And if the people are all across the
8 highway, then there won't be the demand that would drive the
9 creation of the libraries and the fire department and all
10 that stuff that you need.

11 Q You were here for Mr. Kaplan's testimony, part of
12 Mr. Kaplan's testimony?

13 A For part of his testimony, that's correct.

14 Q And you heard his description or actually let me
15 rephrase that. Have you read the applicant's justification
16 statement of the, what I'll call the activity program,
17 what's going to occur along with the actual retail in the
18 stores?

19 A I have not.

20 Q Mr. Kaplan talked about some of the activation
21 factor that would occur with implementation of the retail
22 outlet center, you heard that?

23 A Yes, I did.

24 Q Okay. Do you see some of those activation factors
25 as taking away from the vitality of the town center, which

Page 177

1 is a separate question on the retail at issue?

2 A I do. I do. I think that, you know, the locust
3 of activity, people, transportation is going to be across
4 interstate highway.

5 Q Well, let me use it as a template. Mr. Kaplan
6 talked about the potential of having a thousand-seat
7 amphitheater on the west side, it's on the development plan.
8 There was an amphitheater contemplated for the town center,
9 was there not?

10 A I believe so.

11 Q Okay. Likely we're going to have two
12 amphitheatres, one on each side of the highway?

13 A I think that's, I think that's unlikely.

14 Q Yes. If you had a up to a thousand seat
15 amphitheater, isn't that likely to create an activation
16 factor that would draw away from what could occur at the
17 town center?

18 A I believe it would. I believe it would.

19 Q To the detriment of the town center?

20 MR. CHEN: You have to say yes or no. You can't
21 nod your head.

22 THE WITNESS: Thank you. Yes. Yes. Yes, I do.

23 BY MR. KLINE:

24 Q So I'd like you to articulate that. You used the
25 phrase a couple times the focal point. The plan clearly

1 says it's supposed to be in the town center. Does the way
2 this is set up with what it could accomplish change the
3 focal point to the west side of I-270 and away from the town
4 center to the detriment of the latter?

5 A I believe that's exactly what my testimony is, is
6 that, is that you're going to have a different focal point
7 for Clarksburg and that's not consistent with what the
8 Master Plan, you know, vision spelled out. If, you know,
9 if -- you know, obviously it's possible to change the Master
10 Plan and you could go through the process to amend it to say
11 that, well, no, the focal point of Clarksburg was going to
12 be in Cabin Branch and that would be okay, but that's not
13 what I think the Master Plan currently says.

14 Q Thank you.

15 MR. KLINE: I have no further questions.

16 MS. ROBESON: Okay. So is it your testimony then
17 say the town center's retail does develop to the full amount
18 with a grocery store, it's your testimony that the civic
19 uses wouldn't be developed or -- assume for the moment that
20 town center was redeveloped to the maximum square footage of
21 the retail, what, in what way would that, would this project
22 detract from that, detract from Clarksburg be the focal
23 point?

24 THE WITNESS: Well, if the town center district,
25 you know, including the historic district, the east side,

1 the west side, all of it together, you know, was developed
2 to the maximum potential, then I, you know, then I don't
3 think that this would detract from that, but the problem is
4 that it hasn't been developed yet and it's unlikely to
5 happen, certainly not in our lifetimes.

6 MS. ROBESON: Now that's the one I'm trying to
7 figure out. Why is it that if this goes forward, you, this
8 will prevent both? That's what I'm missing.

9 THE WITNESS: Well, I mean I, you know, I'm --

10 MS. ROBESON: What's going on that says -- why
11 can't they both be developed?

12 THE WITNESS: The, you know, I think the question
13 is partly a question of timing. I think that if, you know,
14 Cabin Branch goes forward first, then until that is fully
15 built out and have capacity, which will be 20, 30 years, I
16 mean I think that's the time frame we're talking about.
17 There's not going to be much demand across the highway.
18 Everything will be --

19 MS. ROBESON: Well, I --

20 THE WITNESS: -- drawn over there.

21 MS. ROBESON: -- guess, okay, what I'm missing is,
22 though, if the grocery store comes, and there may be
23 something that is going on that I don't know about, but if
24 the grocery store comes to town center, but why would this
25 prevent the grocery store from jump-starting retail in the

1 town center?

2 THE WITNESS: Well, I think that -- maybe this is
3 the, this is the area I should clarify. It's not just the
4 grocery store in the neighborhood retail --

5 MS. ROBESON: Okay.

6 THE WITNESS: -- center that Elm Street is
7 proposing. That's just one small part of the town center
8 district.

9 MS. ROBESON: Okay.

10 THE WITNESS: You know, there's, there's a whole,
11 you know, Miles Coppola property, the streamside development
12 that Peterson is proposing that's adjacent to 270 that's
13 separate from --

14 MS. ROBESON: And, see, I don't know what that
15 development is. So you're saying that this Peterson
16 development, which is in part retail, that is in the town
17 center, is that in the town center --

18 THE WITNESS: It is in the town --

19 MS. ROBESON: -- in the Master Plan?

20 THE WITNESS: It is in the town center as defined
21 by the Master Plan.

22 MS. ROBESON: Okay. And so you're saying that
23 won't go forward?

24 THE WITNESS: That's correct.

25 MS. ROBESON: What's in that -- are there

1 competing uses in that proposal?

2 THE WITNESS: I believe so.

3 MS. ROBESON: Are there uses in that proposal,
4 because I hear about another regional outlet center? Is --

5 THE WITNESS: Yes.

6 MS. ROBESON: Is that what's going in there? But
7 that's not recommended by the Master Plan either, is it?

8 THE WITNESS: It's the same, it's the same zoning,
9 I believe it's the same zoning on both sides of the highway.

10 MS. ROBESON: Well, but the Master Plan only
11 recommended 153,000 square feet of retail for the town
12 center. So I'm having trouble figuring out -- what you're
13 saying is, and correct me if I'm wrong because I'm really, I
14 do not have all the background that you do. What you're
15 saying is you need, that that retail center, if it's another
16 outlet, wouldn't that be -- that won't go into 153,000
17 square feet, will it?

18 THE WITNESS: Yes, I'm not, I'm not familiar
19 enough with the details to tell you what, you know, how many
20 square feet is proposed. I know that they're proposing not
21 just retail, but housing and hotel uses and so there's a mix
22 of uses that they are proposing and they're proposing at the
23 same time to basically, you know, build out the town center
24 concept that was laid out in the Master Plan, including, you
25 know, the transportation roadways, the transit center

Page 182

1 providing sewer.

2 MS. ROBESON: So what you're saying is they're --

3 okay. So there is an elephant in the room which is this,

4 and maybe Mr. Kline will introduce it, but what you're

5 saying is that there is a competing center and that

6 competing center is going to provide the infrastructure

7 necessary to town center, is that what you're saying?

8 THE WITNESS: That's my understanding. That's

9 correct.

10 MS. ROBESON: And, therefore, all right. I'm just

11 sorting this through in my head. So -- and this assumes

12 that you can't do both?

13 THE WITNESS: That's correct, at least not --

14 MS. ROBESON: You're assuming you can't do both?

15 And what's the basis of that assumption?

16 THE WITNESS: Well, I mean I think that, well,

17 first of all just for, you know, common sense, if you're got

18 the same thing across the highway, you're not going to,

19 you're not going to, you know, build the same thing and I

20 think that was Mr. Bogorad's testimony that if you had,

21 well, it would be detrimental to, you know, if you had the

22 same kind of thing across the highway. And I think there's

23 also just, you know, again it's timing, a timing issue. If

24 the priority for development, you know, contrary to Master

25 Plan is given to Cabin Branch, then the town center is going

Page 183

1 to languish.

2 Q Okay. I understand your testimony. I just wanted

3 to fully understand what you were saying in light of what we

4 just heard. So with that, I'm going to let Mr. Harris

5 cross-examine.

6 BY MR. HARRIS:

7 Q Good afternoon, Mr. Cobb. Do you live in

8 Clarksburg?

9 A I live in Sandy Spring, Maryland.

10 Q Sandy Spring? Okay. And what is the address of

11 the property you own?

12 A It's 23330 Frederick Road in Clarksburg, Maryland.

13 Q Okay. And would you agree with me that that's at

14 least a half a mile away from where the Cabin Branch outlet

15 is planned?

16 A Approximately, yes, I guess.

17 Q And so from your property there, you can't see the

18 Cabin Branch property, can you?

19 A I haven't tried to look from the top of the roof,

20 but not from the ground floor.

21 Q Okay. You've got no evidence of any particular

22 adverse traffic impact from the Cabin Branch development on

23 your property on Frederick Road, do you?

24 A No, I don't.

25 Q Okay. The -- I'm going to assume that you've had

Page 184

1 no experience building an outlet center?

2 A No, I'm a real estate amateur. I'm probably

3 opposite of Simon, which is the largest real estate company

4 in the world.

5 Q Fair enough. Fair enough. And I think you

6 answered the Hearing Examiner's questions that you've done

7 no fiscal impact studies or market studies with respect to

8 the impact of outlet retail or other development on other

9 neighboring development?

10 A That's correct.

11 Q The, let's see here, let's, we separate for a

12 moment the historic district and the rest of the town

13 center, okay? I believe you would agree with me that the

14 historic district is part of the town center district in the

15 Master Plan?

16 MR. CHEN: Is this a question or, I mean Mr.

17 Harris has been --

18 MS. ROBESON: He said I assume you would agree

19 with me. You can ask --

20 MR. HARRIS: Would you agree with me --

21 MS. ROBESON: Yes.

22 MR. HARRIS: -- that the historic district is a

23 portion of the town center district in the Master Plan?

24 MR. COBB: I do.

25 BY MR. HARRIS:

Page 185

1 Q And so when we talk about, quote, "The town

2 center," and if we're talking about retail development or

3 commercial development, there's multiple parts of that,

4 there is the town center retail that Dave Flanagan of Elm

5 Street development, that's one component, is that correct?

6 A That's correct.

7 Q There's another retail component on Stringtown

8 Road that's been built for a number of years there, I

9 believe, right?

10 A I'm not sure that's technically part of the town

11 center.

12 Q I think you're right. I think it's technically

13 just south of that. There is the historic district, if you

14 will, along 355. And then you have mentioned the Peterson

15 property, the Miles Coppola property. That is within the

16 town center district in the Master Plan, correct?

17 A That's my understanding.

18 Q So let's first deal with the impacts that you're

19 talking about with respect to the historic district because

20 that's where your property is and that's where your concern

21 is. So today in the historic district, and I walked it the

22 other day, correct me if I'm wrong, I saw an antique shop,

23 no customers. I saw a beer and wine deli store.

24 MR. CHEN: Excuse me.

25 MR. HARRIS: I saw --

Page 186

1 MR. CHEN: Pardon me.
2 MR. HARRIS: Well, okay, would you agree, would --
3 MS. ROBESON: Well, he said correct me if I'm
4 wrong. Is that your --
5 MR. CHEN: Well, he's testifying.
6 MR. HARRIS: Okay.
7 MR. CHEN: I mean he's, it's not a hypothetical.
8 MR. HARRIS: Would you -- all right. I can do it
9 differently.
10 BY MR. HARRIS:
11 Q Would you agree with me that there is an antique
12 store in the historic district?
13 A I would.
14 Q Have you been in it?
15 A I have, there was a previous one that I was in,
16 but not in the current one.
17 Q Okay. There is a deli of some sort, correct?
18 A That's correct.
19 Q There is a book store?
20 A That is correct.
21 Q I believe the book store is owned by someone who
22 leases the space from you, I believe that's your property?
23 A That's correct. That's correct.
24 Q There is a brand new, relatively brand new
25 restaurant that the Buffington's built, the Bennigans, is

Page 187

1 that correct?
2 A That's correct.
3 Q Are there any other retail establishments in the
4 historic district?
5 A Not that I'm aware of and you could, might
6 consider the gas station or the bank a little bit north,
7 but --
8 Q Oh, because you're north of 121?
9 A Yeah.
10 Q Would you agree with me that there are a number of
11 run-down buildings in the historic district?
12 A Yes, I would.
13 Q So basically I think I heard you saying that
14 retail development at Cabin Branch was somehow going to hurt
15 the historic district, was that what you were saying?
16 A That's my concern.
17 Q It isn't going to hurt the antique store I don't
18 think, is it?
19 A I really can't comment on, on its impact on --
20 Q Okay.
21 A -- the antique store or other businesses.
22 Q Or other businesses? So you have no knowledge of
23 how it would affect any of those businesses, whether for
24 good or bad?
25 A Well, let me clarify that. You know, I can't

Page 188

1 comment on how it would affect a particular store. I
2 believe that --
3 Q Okay.
4 A -- I believe that, you know, with the businesses I
5 am most familiar with, including the book store and the
6 Bennigans that having the traffic drawn across the highway
7 will not benefit the historic district.
8 Q Will not benefit the historic district?
9 A That's correct.
10 Q But it wouldn't harm it?
11 A Well, actually it might very well harm it because,
12 you know, some of the customers who would be coming to
13 Bennigans because right, for instance, Bennigans is
14 currently the only sit-down restaurant in Clarksburg. Well,
15 now the, instead drawn across the highway to the Cabin
16 Branch area.
17 Q Do you believe there's only room for one sit-down
18 restaurant in Clarksburg?
19 A No, I'm sure that there's, there's room for more.
20 Q So it probably could survive even with another one
21 or two or three?
22 MR. CHEN: Objection. He's already answered that
23 question that he doesn't know what the impact would be on
24 any separate --
25 MS. ROBESON: That's fair.

Page 189

1 MR. HARRIS: Okay.
2 BY MR. HARRIS:
3 Q The tenant of your book store, Mr. Darby, he has
4 not entered any opposition to this application, has he?
5 A Not that I'm aware of.
6 Q Is it -- what likelihood do you think there is
7 that Hugo Boss, Armani, J. Crew, or name any other retailers
8 that Mr. Bogorad talked about this morning as being a
9 premium outlet, what is the likelihood of any of them going
10 into the historic district?
11 A I don't think I've, I have any basis to answer
12 that question.
13 Q So you have no reason to believe they would go in
14 for the town, into the historic district?
15 A Would have not. Would have not.
16 Q Okay. And isn't it true that the historic
17 district, the development there is severely limited by the
18 Master Plan?
19 A Actually, well, actually the Master Plan
20 encourages development in the historic district, but it's
21 only, it's only a very small area, only a very few number of
22 lots. I mean there's really not that much they have right
23 in the historic district. It's really what happens out, in
24 the, sort of sandwiched in between these other areas and so
25 what happens in these other areas is going to drive, you

Page 190

1 know, what, the success of the historic district.
2 Q I'm showing you the 1994 Clarksburg Master Plan,
3 page 47. Would you read for me the two bullets here that
4 I've marked?
5 A Sure. Out loud?
6 Q Yes, please.
7 A "Encourage the renovation of existing buildings in
8 the Clarksburg historic district for both
9 residential and compatible like commercial uses,
10 e.g. professional offices, antique stores, tea
11 rooms, small restaurants, bed and breakfasts and
12 small grocery stores."
13 Q Now are any of those uses that are encouraged for
14 the historic district the uses you heard Mr. Bogorad talk
15 about as likely at Cabin Branch and the outlet center?
16 MR. CHEN: Excuse me. I'm not objecting because
17 I'm going to get redirect on this and I'm just reminding the
18 Examiner that I'm going to go down the same road.
19 MS. ROBESON: Well, I don't know what that means,
20 but if you're, I guess I'll find out if I want to go down
21 that road.
22 MR. CHEN: I could object that this gentleman does
23 not have the credentials that Mr. Bogorad had to testify as
24 to what is going to go where. But I'm allowing Mr. Harris
25 to ask the question because in fairness I'm going to be able

Page 191

1 to ask the same question myself as to whether or not Armani
2 and these other stores are going to go into the rest of the
3 town center area that is outside of the historic district.
4 And that's the point where I'm coming from, that it well may
5 be that in the historic district an outlet center cannot
6 go --
7 MS. ROBESON: Well, is, well, before you go down
8 that road --
9 MR. CHEN: Yes, ma'am.
10 MS. ROBESON: -- is the rest of the historic, I
11 mean the rest of the town center zoned for that?
12 MR. CHEN: I believe that you will hear evidence
13 that, yes, that there are two outlets that you've already
14 heard and that the stores that you've heard Mr. Bogorad
15 identify in his testimony this morning that would go into
16 the Simon outlet center on the west side, that there's going
17 to be an outlet center on the east side and the same type of
18 comparable retail stores will be on the east side.
19 MR. ROBBINS: But you didn't answer the Hearing
20 Examiner's question. Is it zoned now for that?
21 MR. CHEN: I don't know what it's zoned for right
22 now. I mean and that's already came up, come up.
23 MS. ROBESON: I guess what I'm getting to, I guess
24 what I'm getting to is the issue here but, again, I was just
25 trying to figure out the background of what's going on,

Page 192

1 quite frankly. And I mean the issue here is whether this
2 meets the Master Plan. Now part of the Master Plan, there
3 are many, many things in this Master Plan, maybe it was a
4 good idea to do and maybe it wasn't in hindsight, it relies
5 on private financing of infrastructure to a heavy degree and
6 it tries to designate specific industries and shops at
7 specific locations. Whether that was a good idea, not a
8 good idea, I don't know, but what I'm going to do here is
9 the issue here for me is whether it will prevent the
10 development of the town center as envisioned, currently
11 envisioned by the Master Plan.
12 MR. CHEN: My, in responding to the Examiner, I
13 represent Mr. Cobb.
14 MS. ROBESON: I know that.
15 MR. CHEN: Mr. Cobb has property in the historic
16 district.
17 MS. ROBESON: Yes.
18 MR. CHEN: The concern that you have raised as I
19 understand, and it's not my client, that there, is
20 answerable, but that's not my client's interest and --
21 MS. ROBESON: Well, I'll give you some leeway. I
22 will give you some leeway because these two, at least the
23 individuals that come in have all raised the issue which was
24 the basis of my trying to figure out what was going on. So
25 I will give you some leeway to go into that. At the end of

Page 193

1 the day, at this moment, and maybe you'll change my mind, at
2 this moment what I have here is one developer and the vision
3 for the town center and will this impact what's in the
4 Master Plan for the town center. But I will give you leeway
5 because it's been raised numerous times.
6 MR. CHEN: All that I was alerting the Examiner to
7 is Mr. Cobb has understandings about what will happen with
8 this development and what can happen and is supposed to
9 happen in the town center. And that's where I would be
10 asking questions about. Candidly, there are other
11 interested parties to what can happen in the rest of the
12 town center that have much better information on that than I
13 have.
14 MS. ROBESON: Okay. All right.
15 MR. CHEN: And that's the caveat I'm giving you
16 right now --
17 MS. ROBESON: Okay.
18 MR. CHEN: -- on where I'm coming from with my
19 client.
20 MS. ROBESON: Okay. Well, I am going to give you
21 leeway as far as doing that. I think he did raise the
22 competitive aspect. So I will give you leeway, some leeway
23 to do that. Okay.
24 MR. HARRIS: Okay. So --.
25 MS. ROBESON: Okay. So finish your question. Or

Page 194

1 re-ask it please.
2 BY MR. HARRIS:
3 Q Yes. Back to page 47 of the 1994 Clarksburg
4 Master Plan, the one, two, three, four, fifth bullet there.
5 And what we're talking about is the historic district
6 portion of the town center. And would you read for me what
7 that bullet recommends for the historic district. I'm
8 sorry, you already did read it.
9 A I read that first.
10 Q Yes. Thank you. Yes. And I think you agreed
11 with me that those are not likely uses for the Cabin Branch
12 outlet?
13 A Well, I think your question was what did Mr.
14 Bogorad say and, you know, did he say that any of these uses
15 that I just reads would be in Cabin Branch outlet and at
16 least two of the categories, small restaurants and small
17 grocery stores, I think he did say could be in the Cabin
18 Branch outlet. In fact, he was specifically talking about
19 small grocery stores being in Cabin Branch.
20 Q Okay. As far as the grocery store, the Master
21 Plan, you've heard exhaustively, already recommended a
22 grocery store for Cabin Branch, so that would not be a new
23 use at Cabin Branch competing with the historic district,
24 would it?
25 A No, no, no, otherwise, I understand it this, this

Page 195

1 development plan amendment does not permit a grocery store
2 within Cabin Branch.
3 Q And small restaurants, are you aware that
4 restaurants have always been contemplated at Cabin Branch?
5 A Oh, yes, yes, I was --
6 Q So that's not a new use to compete with the
7 historic district?
8 A Part of the buildings, retail center, yes.
9 Q I'm sorry, so that's not, this development plan
10 amendment does not introduce a new use there to compete with
11 the historic district, it's a use that already was provided
12 there?
13 A Right, in the context of 120,000 square feet.
14 Q Okay. And then would you read the second bullet
15 there for me please?
16 A "Encourage a limited amount of new construction,
17 as long as the new buildings are compatible with
18 the historic ones in terms of size, scale, rhythm,
19 percentage of lot coverage, relationship to the
20 street and relationship to open space."
21 Q Thank you. Now I'm interpreting that as allowing
22 limited new development in the town center and basically
23 requiring uses there to reuse the historic structures that
24 are there, is that your understanding as well?
25 A I think that's correct.

Page 196

1 Q Now let's go to the rest of the town center. The
2 other two, quote, retail, key components there, the Dave
3 Flanagan retail let's call it --
4 MS. ROBESON: No, I don't know what that means.
5 MR. HARRIS: Okay. Most people call it the town
6 center retail and it is within the Clarksburg --
7 MS. ROBESON: Well, you can't testify.
8 MR. HARRIS: Okay. All right. Well, let me --
9 all right, then I -- are you familiar with the retail
10 that --
11 MS. ROBESON: Why don't you assume something?
12 MR. HARRIS: Okay.
13 BY MR. HARRIS:
14 Q Clarksburg Square Road and if you go, I forget
15 what the other road is there, is there another shopping
16 center planned in the Clarksburg Town Center?
17 A That's right. It would be, it would be, I guess,
18 north or west of the historic district.
19 Q Inside the partially developed residential
20 community that's there?
21 A Yes. Yes.
22 Q And some several hundred feet, maybe a thousand
23 feet, west of 355?
24 A Well, actually, no. I think it's east, I'm
25 assuming it's east.

Page 197

1 Q East, yes, thank you for correcting me, yes, east.
2 Yes. Okay. So let's call that the town center retail
3 because I think that's what most people refer to it as. So
4 are you aware that Mr. Flanagan has indicated that the
5 Clarksburg outlet retail would not have a negative impact on
6 the town center retail?
7 MR. CHEN: Objection.
8 MS. ROBESON: His, yes, just a second. Yes?
9 MR. CHEN: I understand this is in the nature of,
10 generically a hypothetical. If counsel is going to do that,
11 counsel has to proffer that the facts, the hypothetical
12 facts underlying the hypothetical will be introduced in
13 evidence through the appropriate witness and that is the
14 proper basis for a hypothetical.
15 MR. HARRIS: It wasn't a hypothetical. It was a
16 question of whether he was aware that Mr. Flanagan, a
17 developer of the town center retail, had said Cabin Branch
18 will not adversely affect it so long as Cabin Branch doesn't
19 have a grocery store.
20 MS. ROBESON: Let me do this. Mr. Cobb, are you
21 aware of a retail development approximately in the location,
22 a proposed retail development approximately in the location
23 that Mr. Harris described?
24 MR. COBB: I am.
25 MS. ROBESON: And is it owned by Elm Street

Page 198

1 Development?
2 MR. COBB: I don't know. I think the legal
3 ownership is by a company called Third Try, LLC, and I
4 believe they are associated with Elm Street in some way.
5 MS. ROBESON: Okay. And would David Flanagan be a
6 representative for that property?
7 MR. COBB: I believe he would be.
8 MS. ROBESON: Okay.
9 MR. HARRIS: So --
10 MS. ROBESON: Mr. Harris, what is your question?
11 BY MR. HARRIS:
12 Q Are you aware that he, that Mr. Flanagan has
13 submitted a letter to this Hearing Examiner indicating that
14 he supports the Cabin Branch outlet retail and that he does
15 not see it having an adverse impact on the Third Try/town
16 center retail?
17 A I've heard people mention that during this
18 proceeding, but I have no direct knowledge of that.
19 MS. ROBESON: Well, before -- does it say he
20 doesn't, he supported it? Let me limit that question to
21 until I look at the letter because I don't want you putting
22 words in his mouth.
23 MR. HARRIS: Objection.
24 MS. ROBESON: 37. 37. 37.
25 MR. HARRIS: Okay. Exhibit 37?

Page 199

1 BY MR. HARRIS:
2 Q Please read Exhibit 37 and then if you can answer
3 my question after you've read that?
4 (Discussion off the record.)
5 BY MR. HARRIS:
6 Q Have you read it then?
7 A I've read it.
8 Q Okay. And would you agree with me that Mr.
9 Flanagan has indicated that he is not opposed to the Cabin
10 Branch -- in fact, he may even say that he supports it.
11 Well, I don't see that word in there, but would you agree
12 with me that he does support the Cabin Branch outlet?
13 MR. CHEN: Objection. The document is in
14 evidence. It speaks for itself.
15 MS. ROBESON: I agree --
16 MR. HARRIS: Okay.
17 MS. ROBESON: -- with Mr. Chen.
18 MR. HARRIS: That's fine. So, and are you aware
19 that the Planning Board at the hearing a few weeks ago at
20 which, where you were in attendance, that the Planning Board
21 agreed by a 5-0 vote that this would not adversely impact
22 the town center retail?
23 MR. CHEN: Objection. The Planning Board has
24 issued its report and recommendations.
25 MS. ROBESON: And the document speaks --

Page 200

1 MR. HARRIS: Okay.
2 MS. ROBESON: But I --
3 MR. HARRIS: So --
4 MS. ROBESON: -- sustain.
5 BY MR. HARRIS:
6 Q So you have no evidence other than what you've
7 testified to that it would adversely impact the town center
8 retail?
9 A Yeah, I presented the evidence that I have --
10 Q Correct.
11 A -- during my testimony.
12 Q All right. And you've never developed town center
13 retail of that sort or out-graded, have you?
14 A I have not, no.
15 Q Okay. The --
16 A I have, however, you know, had to, you know, try
17 to lease the space and understand the economics of the
18 historic district probably better than a lot of people and I
19 know that it needs more activity surrounding it in order to
20 be successful.
21 Q Fine. Let's then, the third component of the
22 potential retail in the town center, the first being the
23 historic district, we talked about that; the second being
24 the town center retail; the third being the Miles Coppola
25 property. We talked about that. That's the third potential

Page 201

1 component.
2 A Yes.
3 Q Are you aware that that property is zoned R-200,
4 which is a single-family residential zone?
5 A I'm really not familiar with the zoning of the
6 property.
7 Q Okay. And are you, well, would you read for me,
8 yes, can you tell us where that Peterson, Miles Coppola
9 property is located?
10 A Well, it's, you know, approximately it's between
11 I-270 and the historic district, I guess. So it's to the
12 east of I-270 to the west of the historic district --
13 Q And --
14 A -- relatively speaking.
15 Q -- north of 121?
16 A Largely. I think it may cross some of 121.
17 Q So in layman's terms, it's in the northeast
18 quadrant of the 121 I-270 interchange?
19 A I think that's roughly accurate.
20 Q Okay. And would you read for me what the Master
21 Plan recommends --
22 A Where are you?
23 Q Page 44 and the first bullet there and the, and
24 the rest of that paragraph under the bullet.
25 A I'm sorry.

Page 202

1 Q I'm sorry, starting --
2 MS. ROBESON: Wait. What page are you on?
3 MR. HARRIS: Page, excuse me, 44. Near the top of
4 the page there's a bullet that starts, reinforce.
5 MS. ROBESON: Okay.
6 MR. HARRIS: Okay.
7 MR. COBB: Do you want me to read --
8 MR. HARRIS: I don't think you need to --
9 MS. ROBESON: He'll let -- do you want to read?
10 MR. HARRIS: -- read it --
11 MS. ROBESON: Yes, I don't think --
12 MR. HARRIS: -- because it stands for itself,
13 but --
14 MS. ROBESON: And keep in --
15 MR. HARRIS: -- but I would like you to read it to
16 yourself --
17 MS. ROBESON: Okay.
18 MR. HARRIS: -- because I have a question about
19 it.
20 MS. ROBESON: Well, keep in mind that he's not
21 an -- Mr. Chen, you didn't --
22 MR. HARRIS: No, he's --
23 MS. ROBESON: -- offer him as an expert?
24 MR. CHEN: He's a layman.
25 MS. ROBESON: Okay.

Page 203

1 MR. CHEN: He's a property owner before the
2 Hearing Examiner.
3 MS. ROBESON: This may be appropriate for another
4 witness, but go -- I'm assuming what you're going to say.
5 Why don't you take a minute and read it and then you can ask
6 your question.
7 BY MR. HARRIS:
8 Q Okay. Would you agree with me, and I saw you look
9 at another page there which is perfectly appropriate, would
10 you agree with me that the Master Plan notes that this is
11 zoned R-200, but it recommends that property for MXPDP
12 zoning --
13 A Okay.
14 Q -- but that it limits the development --
15 MS. ROBESON: Let me hear the --
16 MR. HARRIS: -- to 470,000 square feet?
17 MR. CHEN: Same objection.
18 MS. ROBESON: Wait. Okay. I have an objection.
19 What's your objection?
20 MR. CHEN: The -- this is even more so than the
21 other documents. This is the Master Plan. It's in the
22 record. To ask a layman to read text out and then to
23 characterize it, there's no fact. On a lay person, it's not
24 appropriate. Number two, if the point is to reinforce what
25 the Master Plan provides, it's already in evidence and

Page 204

1 presumably if the, if counsel does not think the Examiner is
2 going to look at the Master Plan, counsel can point it out
3 to the Examiner.
4 MS. ROBESON: I do, I am going to -- I don't know
5 if that's a basis for an objection, but I don't think it's
6 an efficient use of time right now, especially with the lay
7 question, lay witness. Are you -- what are you trying to
8 get to?
9 MR. HARRIS: Madam Examiner, the witness testified
10 effectively that development of the Peterson property was
11 going to somehow or other --
12 MS. ROBESON: Save the town center?
13 MR. HARRIS: -- save the town center, save the
14 historic district.
15 MS. ROBESON: I got that. And I'm --
16 MR. HARRIS: And my point simply is that it's not
17 zoned for that, that it's got a maximum of --
18 MS. ROBESON: Yes.
19 MR. HARRIS: -- 470,000.
20 MS. ROBESON: Just a second. Let me stop you.
21 You can get to that with a witness of your own, I think.
22 MR. HARRIS: Okay.
23 MS. ROBESON: I don't think you need to belay a
24 lay witness with this, all right?
25 BY MR. HARRIS:

Page 205

1 Q Let me ask one final question on that. Are you
2 aware that the Miles Coppola Peterson property is in Stage 4
3 of the Master Plan whereas the Cabin Branch property is in
4 Stage 3?
5 MR. CHEN: If he knows.
6 MR. COBB: I'm aware that Miles Coppola is in
7 Stage 4.
8 BY MR. HARRIS:
9 Q Okay. Which is the last stage of development?
10 MS. ROBESON: Yes, I read it. I read it.
11 BY MR. HARRIS:
12 Q To what extent have you had discussions with the
13 Peterson Company or any of their representatives about their
14 project, their proposed project?
15 A I've had some discussions with them about what
16 they're planning to do there. They made a presentation to a
17 number of people interested in Clarksburg about what they
18 were proposing to do, including providing sewer service to
19 the historic district, finishing the transportation
20 arterial.
21 MS. ROBESON: Is that Observation Drive, Bay 16,
22 the transportation arterial?
23 MR. COBB: Yes.
24 MS. ROBESON: If you know?
25 MR. COBB: Essentially it's, they modified it a

Page 206

1 little bit from that, but that's what --
2 BY MR. HARRIS:
3 Q And have you met with them, I'll say one on one,
4 but outside of a larger community meeting?
5 MR. CHEN: Objection. What -- I don't know where
6 this is going.
7 MS. ROBESON: I think it goes to credibility.
8 I'll let him answer, but we don't need too much of this
9 line.
10 MR. COBB: Yeah. I've met with and talked with
11 many, many people, including people from Peterson and other
12 developers one-on-one, in groups, you know, there's a lot of
13 discussion in Clarksburg about these issues.
14 BY MR. HARRIS:
15 Q Another witness testified that Peterson had told
16 them that they, the Peterson Companies, if and when they
17 develop their property, would provide sewer service to the
18 historic district. Have they made that representation to
19 you as well?
20 A They have.
21 Q And is it your understanding that they are
22 committing to pay for it?
23 A Maybe if you could clarify what you mean by pay
24 for it?
25 Q Will they pay for the main trunk line sewer that

Page 207

1 will serve the historic district?
2 A Yes, I believe that's their, that was their
3 intent.
4 Q And would you agree with me that they would need
5 sewer for that property whether they developed it as multi-
6 family residential, as office or as even single-family
7 residential?
8 A I assume so. I'm not a sewer expert, but I assume
9 so.
10 Q So the sewer could come to them and if they pay
11 for it, to the historic district under any number of
12 developments as scenarios?
13 A I'm sorry, I'm not sure I understand your
14 question.
15 Q I think you answered it already. One second
16 please.
17 MR. HARRIS: Okay. That's all the questions I
18 have.
19 MS. ROBESON: Okay. Redirect --
20 MR. CHEN: Yes. Thank you.
21 MS. ROBESON: -- Mr. Chen?
22 REDIRECT EXAMINATION
23 BY MR. CHEN:
24 Q Mr. Cobb, you were asked a series of questions by
25 Mr. Harris about the uses that were being proposed in the

Page 208

1 DPA that's before the Hearing Examiner, including
2 restaurants, is that correct?
3 A That's correct.
4 Q And you noted that those were uses that were being
5 recognized in the current Master Plan, isn't that right?
6 A That's correct.
7 Q Is a grocery store a use proposed in the current
8 Master Plan for the Cabin Branch community?
9 A Yes, it is.
10 Q Does the DPA propose a grocery --
11 MS. ROBESON: Okay. Do you have an objection?
12 MR. HARRIS: I do. Five minutes ago we were
13 talking about what the Master Plan recommended was off
14 limits and now it's back on.
15 MR. CHEN: Can I question -- I'm just following up
16 on the same questions he asked.
17 MS. ROBESON: Okay. Just a minute. You can
18 answer if you know.
19 MR. COBB: Yes, in fact, I believe I already
20 testified to that. Yes.
21 BY MR. CHEN:
22 Q It's not being proposed?
23 A Oh, I'm sorry. In the DPA is it being proposed?
24 Q Yes.
25 A Oh, no, my understanding is that there is no

Page 209

1 grocery store and that was a condition of the Planning
2 Board's approval.
3 Q Okay. And he noted that restaurants are being
4 proposed, is that right?
5 A That's correct.
6 Q And, they're recognized in the Master Plan?
7 A That's correct.
8 Q Does the Master Plan recognize an outlet center in
9 the Cabin Branch community?
10 A I do not believe so.
11 Q Does the Master Plan recognize 484,000 square feet
12 of retail in the Cabin Branch community?
13 A It does not.
14 Q I believe Mr. Harris asked you to read a short
15 bullet from the Master Plan, do you recall that testimony,
16 sir?
17 A I do.
18 Q Directing your attention to page 46 of the Master
19 Plan, I think Mr. Harris used the word bullets. I'd like
20 you to take a look at the third bullet from the bottom of
21 the page on 46 and please read that bullet.
22 A "A retail center designation is proposed east of
23 the historic district as part of a large-scale,
24 mixed use development. See Figure 19, page 43.
25 By incorporating the retail center proposal into a

Page 210

1 larger plan development, there will be a greater
 2 opportunity to assure a strong integration of the
 3 retail center to adjoining residential and public
 4 uses and to ensure a compatible relationship to
 5 the Clarksburg historic district.”
 6 Q Now the historic district is just part of the
 7 retail center, is that right, sir?
 8 A That's correct.
 9 Q Turning your attention to the reference on that
 10 page to Figure 19 on page 45, is the historic district shown
 11 on that figure?
 12 A Yes.
 13 Q Okay. Is it possible for the benefit of the
 14 Hearing Examiner for you to locate your property, sir, on
 15 that figure?
 16 A Yes.
 17 MS. ROBESON: Are you on Figure 20?
 18 MR. CHEN: Yes.
 19 MS. ROBESON: Okay.
 20 MR. CHEN: Yes, Your Honor.
 21 BY MR. CHEN:
 22 Q Can you orally describe where your property is for
 23 the Examiner, looking at the same figure, would be able to
 24 follow your directions to where your property is located on
 25 the figure?

Page 211

1 A I will try. It's along Frederick Road, Maryland
 2 355, you see the label for that road, and then starting from
 3 the south, if you go up north along 355, it's two blocks
 4 north where there's a building there at the corner.
 5 MS. ROBESON: Of what?
 6 MR. COBB: And, right, the corner, the corner
 7 street is not marked, but it goes directly into a, the
 8 center of --
 9 MS. ROBESON: The square kind of or rectangular?
 10 MR. COBB: Right. It, the street dead-ends at a,
 11 at a kind of a V-shaped intersection.
 12 MS. ROBESON: Yes.
 13 MR. COBB: And that's actually Redgrave Place,
 14 which turns into Clarksburg Square Road north of 355.
 15 BY MR. CHEN:
 16 Q And which --
 17 MS. ROBESON: And where is your home? Oh, where
 18 is your property?
 19 MR. COBB: It is on the, I guess that's the south,
 20 what is that, southeast corner of 355 and Redgrave Place.
 21 MS. ROBESON: Okay.
 22 BY MR. CHEN:
 23 Q By the way, do you see an amphitheater illustrated
 24 on that figure?
 25 A There does appear to be an amphitheater, you know,

Page 212

1 I'm not totally sure what it -- it does look somewhat like
 2 an amphitheater.
 3 Q Sir, do you know the size of the historic
 4 district?
 5 A The size of the historic district?
 6 Q Yes.
 7 A No, I do not.
 8 Q I take it -- well, clearly looking at Figure, I'm
 9 sorry, 20, by the way what is this figure captioned?
 10 A Town Center illustrative sketch.
 11 Q Is this area, as you know it, the town center of
 12 Clarksburg?
 13 A Right, roughly speaking there's, you know,
 14 different areas, but this is the main part of the town
 15 center, yeah.
 16 Q And your property is located within the historic
 17 district, which is within the town center?
 18 A That's correct.
 19 Q Thank you.
 20 MR. CHEN: That's all I have.
 21 MS. ROBESON: All right. Mr. Kline.
 22 MR. KLINE: One question.
 23 MS. ROBESON: Yes.
 24 BY MR. KLINE:
 25 Q Peterson Companies has Miles Coppola property in

Page 213

1 the contract, correct?
 2 A I --
 3 MS. ROBESON: If you know.
 4 MR. COBB: That's my understanding, yes.
 5 BY MR. KLINE:
 6 Q Okay. Maybe I can phrase it this way. Is it your
 7 understanding, do you know if the Miles Coppola property is
 8 within the area of the Ten Mile Creek in the Master Plan
 9 amendment and that there are alternative design scenarios
 10 that are being reviewed at that time that would allow the
 11 limitation of a retail outlet center when the plan is
 12 adopted?
 13 A I believe that is correct.
 14 Q Okay.
 15 MS. ROBESON: Okay. Any --
 16 BY MR. HARRIS:
 17 Q Isn't it correct that one of the options being
 18 considered in that Master Plan would allow it and one would
 19 not?
 20 A I believe there's a number of options.
 21 MS. ROBESON: Well, does one, to your knowledge,
 22 does one not allow it?
 23 MR. COBB: I actually couldn't, couldn't say.
 24 MS. ROBESON: You couldn't? Okay.
 25 BY MR. HARRIS:

Page 214

1 Q Do you have a copy of the Planning Board's letter
2 that says a grocery, the absence of a grocery is a condition
3 of the Planning Board approval because that's news to me. I
4 don't see that in the --
5 A I was at the, well, you know, I don't know what's
6 in there, the actual recommendation. I was at the hearing,
7 the Planning Board hearing where they voted on this and
8 that's what they said. That was a condition they said they
9 were going to put on it, so I just assumed it was included,
10 but maybe they didn't.
11 Q If someone testifies differently that that was not
12 what they said, you don't have anything to disprove that
13 they did say that -- you don't have anything to prove that
14 they said that was a condition, do you?
15 A I think we could review the transcript and
16 determine that.
17 MS. ROBESON: Well, they're bound by what they
18 wrote, well, I guess.
19 MR. HARRIS: That's fine. I think it will speak
20 for itself.
21 MS. ROBESON: Yes.
22 BY MR. HARRIS:
23 Q Are you aware that the MXPD zone allows up to 20
24 percent retail?
25 MR. CHEN: Objection. Calls for a legal

Page 215

1 conclusion.
2 MR. HARRIS: It was, you asked him whether you
3 could build 484,000 square feet of retail at Cabin Branch.
4 MR. CHEN: I was talking about the Master Plan and
5 I was following up the same line of, type of questions that
6 you asked.
7 MR. HARRIS: Okay. Well, then let me ask him
8 about the zoning ordinance.
9 MR. CHEN: The zoning --
10 MS. ROBESON: Okay.
11 MR. HARRIS: Do you know what the zoning
12 ordinance --
13 MR. CHEN: The zoning --
14 BY MR. HARRIS:
15 Q Do you know what the zoning ordinance is?
16 MS. ROBESON: Stop. Stop. Stop. I can read the
17 Master Plan and I don't think asking him -- maybe what the
18 point is is that do you know whether this Miles Coppola
19 property has all the -- are you aware or not aware whether
20 the Miles Coppola property has all the zoning approvals that
21 you need?
22 A I do not. I do not know about the zoning of
23 the --
24 Q Okay.
25 MR. COBB: -- Miles Coppola property.

Page 216

1 MS. ROBESON: All right.
2 BY MR. HARRIS:
3 Q Okay. Final question. I've looked at my notes
4 and I don't see that Mr. Bogorad said that you could not do
5 two outlet centers here, one at Cabin Branch, in other
6 words, and one at Peterson. Do you have any evidence that
7 he said that where they could not do two?
8 A Well, my notes that I wrote down at the time say
9 that if you had the same types of stores, potentially a
10 negative impact. And then you want to say, well, you know,
11 a supermarket wouldn't be the same type of store. So that
12 was, that was, that was my notes and my recollection of what
13 he was saying.
14 Q Okay. Thank you.
15 MS. ROBESON: You may be excused. Thank you for
16 testifying, Mr. Cobb.
17 MR. COBB: Thank you, Madam Examiner.
18 MS. ROBESON: Yes, time out? Yes.
19 MR. HARRIS: May I present --
20 MS. ROBESON: And then we'll come back with Mr.
21 Unterberg.
22 MR. ROBBIN: We have, there's a citizen
23 representative here that came in during the cross-
24 examination. If it would be possible to just --
25 MS. ROBESON: Do you, before we take a break, Mr.

Page 217

1 Kline or Mr. Chen, do you have any objection?
2 MR. KLINE: No, that's fine.
3 MS. ROBESON: Okay.
4 MR. CHEN: Of course not. Anything for Mr.
5 Robbins or Mr. Harris.
6 MR. ROBBINS: Thank you.
7 MS. ROBESON: We'll take a 10-minute break.
8 MR. ROBBINS: Okay. 10 minutes and then you can
9 go.
10 (Recess)
11 (Discussion off the record.)
12 MS. ROBESON: Please raise your right hand.
13 (Witness sworn.)
14 MS. ROBESON: Thank you. Is he, are you
15 represented by --
16 (Discussion off the record.)
17 MS. ROBESON: Are you represented by any of the
18 attorneys here?
19 MR. WEI: No.
20 MS. ROBESON: No? Okay. Did you sign the sign-up
21 sheet with your e-mail address?
22 MR. WEI: Yes.
23 MS. ROBESON: Thank you. Okay. Please state your
24 name and address for the record.
25 MR. WEI: My name is Boa Zhu Wei. I live in

Page 218

1 Clarksburg. Address is 12642 Granite Road, Clarksburg.
2 MS. ROBESON: Okay. Thank you. And what would
3 you like to say?
4 MR. WEI: What I say is this project need to,
5 people need, I think, I think the mall serve to the not only
6 Clarksburg, also the whole County, this County, also
7 Frederick County because this mall is basically sells brand
8 name products, right? It's premium mall.
9 What I see is, I don't think it's conflict with,
10 with town center retails because this is premiere mall. It
11 sells brand name. Right now we need to drive 40 miles to
12 Hagerstown or Leesburg. So if we have such a mall, we would
13 just close, save both time and save gas.
14 MS. ROBESON: Okay.
15 MR. WEI: And that's all, that's one, and what I
16 say, it's not conflict with town center retail because you
17 don't buy groceries from this mall, you know? So it's not
18 conflict.
19 MS. ROBESON: Okay.
20 MR. WEI: And for some people say maybe it cause
21 traffic jam or something like that. What I see is you don't
22 go to the mall at the same clock. A traffic jam now, it's
23 basically people's work time and say from 6:30 to 9:00. But
24 the mall opens after 9:00, so I don't see any, any conflict.
25 MS. ROBESON: Okay.

Page 219

1 MR. WEI: So I don't read, I'm not clear with the
2 Master Plan or zoning, but I think whatever people like you,
3 it's, well, probably it serve people's need, right?
4 MS. ROBESON: Yes.
5 MR. WEI: Make people's life better. So what I
6 see is if we have such a mall here developed, we will make
7 people's lives better.
8 MS. ROBESON: Okay.
9 MR. WEI: So that's what I say.
10 MS. ROBESON: All right. Thank you.
11 MR. WEI: Uh-huh.
12 MS. ROBESON: Mr. Harris, any questions?
13 MR. HARRIS: No questions. Thank you for your
14 comments.
15 MS. ROBESON: Mr. Kline?
16 CROSS-EXAMINATION
17 BY MR. KLINE:
18 Q Sir, I didn't write your name down, so I'll just
19 call you sir. What was the source of knowledge from which
20 you formulated this position or where did you get the
21 information to come to those conclusions?
22 A (Indiscernible.) Some call it common sense. Like
23 I will say, I say not conflict with town center retail. It
24 is common sense, you don't buy groceries from the premium
25 mall, right? The town center retail especially is a service

Page 220

1 type. You buy grocery, cut your hair, whatever, something
2 other than this. You go to premium mall by planning
3 (indiscernible), right? It's not conflict.
4 Q Well, I probably didn't focus my question tight
5 enough. Did you go to any of the community meetings
6 where --
7 A Yes.
8 Q -- either Mr. Harris's clients --
9 A Yes.
10 Q -- or my clients --
11 A Yes.
12 Q -- were making presentations to learn about the --
13 A Yes, I did go to community meeting.
14 Q That's all I wanted to know. And on the basis of
15 that information, did you get mailings or letters from
16 either one of our clients describing what's going on in
17 Clarksburg?
18 A Yes.
19 Q You did?
20 A Yeah.
21 Q Okay. That's all I need to know. Thank you.
22 A Okay.
23 BY MR. CHEN:
24 Q Sir, good afternoon. How do you spell your first
25 and last name please?

Page 221

1 A My first name spelled B, like boy, A, American, O,
2 Z is the last letter, H like high and U like umbrella.
3 That's first name. Last name W-E-I.
4 Q I had it.
5 A Okay.
6 Q Thank you very much, sir. Thank you.
7 MS. ROBESON: Any other questions? Mr. Chen, no?
8 MR. CHEN: No.
9 MR. HARRIS: No.
10 MS. ROBESON: Okay.
11 MR. ROBINS: Okay. Thank you very much for taking
12 the time to come down. Appreciate it.
13 MR. WEI: Okay. Thank you.
14 MR. ROBINS: Okay.
15 MR. CHEN: Okay. Thank you.
16 MS. ROBESON: Okay. Are we, there's no other
17 individuals?
18 MR. HARRIS: No. I believe we're back --
19 MS. ROBESON: Okay.
20 MR. HARRIS: -- with Mr. --
21 MS. ROBESON: Mr. Unterberg.
22 MR. HARRIS: -- Unterberg.
23 MS. ROBESON: You're still under oath, Mr.
24 Unterberg. I believe you left us, you were pointing out
25 compliance with the Master Plan. That's my recollection.

Page 222

1 THE WITNESS: That is mine also.
2 MS. ROBESON: And you were at a specific page, but
3 I didn't have the transcript, so can you direct us to where
4 you are going to pick up?
5 THE WITNESS: Actually page 30. We finished page
6 28 last I --
7 MR. HARRIS: Yes, I think so.
8 THE WITNESS: And I don't know, do you want me to
9 just jump in, Bob, or --
10 MR. HARRIS: Yes, please.
11 THE WITNESS: -- do you have any of the -- okay.
12 I'll pick up where we left off. We were talking about the
13 general recommendations of the Master Plan and I believe
14 this is the last one before we get into the specifics of the
15 neighborhood. So page 30, which is a policy aide employment
16 and this is the, to highlight it, it talks about the
17 employment along 270 and particularly it also talks about
18 the I-270 corridor and the employment on both the east side
19 and the west side of 270 and what is encouraged by the
20 Master Plan.
21 The last, second to last bullet from the bottom
22 states that it incorporates office and retail uses as part
23 of a neighborhood development. And a couple thoughts with
24 that with the proposed development plan. This DPA continues
25 to establish that the, at 270 is place for employment use

Page 223

1 and it also broadens the employment base by identifying
2 opportunities for office, research and development, light
3 industrial, hotel, urgent care, medical office and
4 professional services, as well as retail, entertainment and
5 public uses.
6 With this proposal, there is a cap of \$2,420,000
7 and with the 20 percent retail of 484,000 spoken of, there
8 is still just under 2 million square feet of employment to
9 be realized in a variety of ways. Also, as noted in the
10 Park and Planning staff report from the July 18th hearing,
11 this variety of uses is consistent with other employment
12 centers in Montgomery County located outside central
13 business districts and transit stations, areas such as
14 Washingtonian, Park Potomac and Rock Spring. And this was
15 instead of an antiquated office park.
16 The DPA is trying to include this mix in a wider
17 mix of uses that will attract other types of employment and
18 particularly to enhance the 270 technology corridor. And
19 that, and with that we believe, or I believe that policy 8
20 in the employment, and the importance of employment for this
21 corridor is realized by this development plan.
22 And I think with that, Bob, we go to specific --
23 BY MR. HARRIS:
24 Q How about the specific recommendations in the
25 Master Plan, can you walk us through those as well?

Page 224

1 A Yes. And to begin, what I'd like to do, the,
2 again, the staff report from Park and Planning outlined all
3 these particulars and from the July 18th hearing, pages 14
4 through 17, and I would also like to adopt that as my
5 testimony, but would like --
6 MS. ROBESON: But the technical staff?
7 THE WITNESS: Of the technical staff report, yes.
8 But I would also like to go, go through them as we,
9 particularly as we talk about pages 64 through 67 for the
10 Cabin Branch neighborhood.
11 MS. ROBESON: Of the Master Plan.
12 THE WITNESS: Of the Master Plan, yes. In
13 particular, for the overall, the Master Plan provides for a
14 mix of uses, including employment per the Master Plan. And
15 one of the visions of the Master Plan and the development
16 plan is for a comprehensively designed employment center.
17 And there's a variety of mix of uses that are recommended
18 and ranges of numbers and so forth.
19 Particularly one of the mixes or one of the uses
20 that's recommended is residential and we have not changed
21 the amount of residential on this development plan
22 amendment. Specifically, there's a cap of 11,039 units and
23 it includes a mix of single-family, detached townhouses or
24 single-family attached and multi-family units. Overall, the
25 Cabin Branch is a project and has preliminary plan approval

Page 225

1 for 1,886 units and, again, it reflects that mix. In
2 addition to that, there's 500 senior units and that also has
3 not changed with this amendment.
4 Employment uses recommends 2,420,000 square feet
5 of employment retail and that is, that has not changed and
6 that cap has not changed.
7 MS. ROBESON: Wait. Where does -- what did you
8 say?
9 THE WITNESS: It recommends 2,420,000 square feet
10 of employment and retail.
11 MS. ROBESON: Oh, you added --
12 THE WITNESS: I've added, yes.
13 MS. ROBESON: -- the two together. I'm sorry.
14 THE WITNESS: Yes. Yes. Because it gives a range
15 of employment and the retail --
16 MS. ROBESON: Yes.
17 THE WITNESS: -- square footage. Okay. So with
18 that, I would like to talk about the retail a little bit and
19 there's been a lot of discussion already today. This
20 proposal with the, which is also reflected in the technical
21 staff report proposes to have 50 to 120,000 square feet of
22 neighborhood retail, okay? This would not include a grocery
23 store and, or a supermarket that's typically of a size of
24 60,000 square feet or above. There's been a lot of
25 discussion about that.

1 The Master Plan recommends a mix use, a mix of
2 uses and also recommends the MXPDP zone. Particularly if we
3 talk about the neighborhood retail, one, there's no
4 definition for neighborhood retail either in the Master Plan
5 or in the zoning ordinance. And then when we look at the
6 specialty retail because we're requesting and particularly
7 to clarify that the Master Plan allows and the MXPDP zone
8 allows up to 20 percent retail, which is the increase from
9 120,000 to 484,000 square feet.

10 The balance from a range of 50 to 120,000
11 neighborhood retail services, the balance of that would be
12 specialty retail and/or fashion retail as it's been also
13 mentioned. But more to the point, there's probably --

14 MS. ROBESON: What specialty retail?

15 THE WITNESS: The, particularly in the staff
16 report, it's the fashion retail of the outlet mall has been
17 termed specialty retail.

18 MS. ROBESON: Okay.

19 THE WITNESS: And not neighborhood. Okay. Let's
20 see if this works sitting and with the microphone. What I'd
21 like to do is walk you through where our neighborhood retail
22 is located and envisioned, and with the balance being the
23 specialty or the outlet or the fashion retail. In
24 particular, there's three areas that we have neighborhood
25 retail. I'm going to start to the north which is north of

1 the relocated 121 and is shown as retail on development
2 plan, and that has not changed from the prior plan. That's
3 where the north of 121, there's an approved site plan for
4 SMTM, also known as the Gosnell property, and they're
5 approved for 8,600 square feet of retail and that includes a
6 gas station, a car wash and a convenience store.

7 MR. HARRIS: Okay.

8 THE WITNESS: The balance of that site plan
9 includes employment uses which is 87,500 square feet of
10 primarily a hotel, but also of two banks, with banks being
11 in the office where employment category per the approvals
12 from Park and Planning.

13 MS. ROBESON: What about the hotel, the same?

14 THE WITNESS: The hotel is also employment. Our
15 second location for retail is located between area B and
16 area A, and one of our main streets -- we're trying to
17 create a place and we'll, I'll be speaking more to how we do
18 create that place as we go through the different pages. But
19 along Well Spring, which from 121 is, and this is Cabin
20 Branch Avenue that comes through the B on the plan --

21 MS. ROBESON: Are those labeled on the plan? It
22 bisects the B?

23 THE WITNESS: It bisects the B and Cabin Branch
24 Avenue is labeled on the plan --

25 MS. ROBESON: Okay.

1 THE WITNESS: -- and actually I'll go through the
2 ones that are labeled on the plan because there's, I'm going
3 to be mentioning a number of roads that are not labeled on
4 the plan --

5 MS. ROBESON: Okay.

6 THE WITNESS: -- but they are on subsequent or
7 approved site plans.

8 MS. ROBESON: Okay.

9 THE WITNESS: Maryland Route 121, or Clarksburg
10 Road, and there's the label and that's to the west. West
11 Old Baltimore Road is to the south. I-270 is to the east.
12 As we come from the 121 interchange, there's a first
13 roundabout that's right between area A and area B. There's
14 a second roundabout that intersects Cabin Branch Avenue
15 which goes from north to south and that terminates at
16 another roundabout at New Cut Road, which is now known as
17 Little Seneca Parkway.

18 Coming west to the second roundabout on Little
19 Seneca Parkway is Broadway, which is also labeled. And
20 Broadway with the orange dashed line is the zoning boundary
21 where everything east of Broadway is MXPDP. Everything west
22 of Broadway is RMXTDR.

23 The second neighborhood retail is, as we come down
24 from the circle on 121 down Cabin Branch Avenue, right where
25 the B is, this intersection is a street known was

1 Wellspring. And Wellspring is one of our east-west
2 connections. On the western side, it terminates at what is
3 known as Burn Park and this is also the elementary school
4 site and the local park. And it, yes, with the, primarily
5 at the park is where it terminates.

6 Along Wellspring there is a Greenway about 30 feet
7 that connects the Green Park and School, it fronts units
8 through the neighborhood, the residential units, and that
9 Greenway will be continued through the site past the Stream
10 Valley through Little Seneca, again, and just to the right
11 of the B and up through the site into one of our places and
12 our core or main activity areas which is on A.

13 MS. ROBESON: What do you mean when you say
14 Greenway?

15 THE WITNESS: This is literally, we've called it
16 the Wellspring Greenway, but it's literally an area that's
17 about 30-feet wide, plus or minus, that is landscaped lawn
18 area. It has, the street has --

19 MS. ROBESON: Is there paving, it's a paved
20 street?

21 THE WITNESS: The street is paved, but the
22 Greenway is to the side. So you have the --

23 MS. ROBESON: Got you.

24 THE WITNESS: -- you have the street, you have two
25 sidewalks. The Greenway is literally 30 plus or minus feet

1 of park area. It also has a meandering path and it's
 2 landscaped. The units that face the Greenway, and they do
 3 literally face the Greenway, they have that extra front yard
 4 or village green in the fronts of their units. And that
 5 green space is also one of our civic amenities that links
 6 our park and elementary school east to west. It also
 7 connects and provides a visual opening and tie to the Stream
 8 Valley buffer at the intersection of Wellspring and Cabin
 9 Branch, and then that will continue through our mixed use
 10 area on, in the area B on the development plan and then will
 11 also carry through and into one of our focal points in area
 12 A where, as testified or mentioned before, this generally of
 13 the northern area is the outlet mall or specialty retail.

14 We also see, which between the mixed use area
 15 there is some freestanding restaurants which we're putting
 16 in the neighborhood retail category. There's also food
 17 court and restaurants within the outlet or specialty retail.
 18 And then there are a number of uses that could, and we don't
 19 have the specific tenant, et cetera, but there are a number
 20 of uses that overlap with the outlet and serve both as
 21 neighborhood retail and as specialty retail. So the outlet
 22 uses do double-duty such as the restaurants, such as and, I
 23 know there was a list mentioned earlier today, but the, some
 24 of the apparel shops, coffee shop and then also there could
 25 be neighborhood furniture, Home Goods and so forth, and

1 that's probably a very incomplete list of what could overlap
 2 as far as uses that are allowed. And they will not only
 3 serve the neighborhood and provide those services for the
 4 neighborhood, but they will also be part of the outlet
 5 center and provide those services to people that come to
 6 that destination.

7 The third area which is in, to the southern along
 8 Cabin Branch Avenue in area C, we show two mixed use blocks.
 9 And these are at the roundabout. There's another roundabout
 10 in Cabin Branch Avenue right at the label here. And this is
 11 a skimmer, which is the cross street. And this is our
 12 southern, one of our major southern east-west connections.
 13 And the connection to the west is our community center and
 14 pool, which is the No. 8 on the plan. That's in the RMX
 15 zone. It's an approved site plan. And that is the
 16 terminating view along a skimmer with the pool in the
 17 foreground and then a 2-story community building as the
 18 terminus of that view that climbs the hill.

19 The skimmer itself is a boulevard and we also have
 20 what we call the north lawn and south lawn, which is mid-
 21 block between Broadway and Cabin Branch. And those are
 22 green spaces, open space lawn areas provided for the
 23 neighbors all these units face on those green lawn areas.

24 And as we come to the roundabout and the gateway
 25 or entrance to our employment area, we have mixed use which

1 also will include neighborhood retail. And, again, there
 2 will not be a supermarket or larger grocery store. There
 3 could be some type of food store. Whether it's a general
 4 store, whether it's a pharmacy and the pharmacy is right
 5 now, if you look at a CVS or a Walgreens, they carry milk
 6 and staples for food.

7 The other thing with these mixed use areas is we
 8 would have neighborhood retail, but also with the emphasis
 9 on employment, we're going to have neighborhood employment
 10 where, as we mentioned before with the Gosnell approval,
 11 banks are in the employment or office category similar to
 12 medical office, doctor's office, dentist office, realtor, so
 13 there's a number of neighborhood services that are in the
 14 employment category. And this is our southern hub and this
 15 is really a secondary mixed use area with the primary mixed
 16 use along Wellspring.

17 In addition to the residential, the seniors, the
 18 employment and retail uses, public uses are also required by
 19 the Master Plan. And we've shown up 275,000 square feet of
 20 public uses. Most of these, well, it's a combination --
 21 these could include a place of worship, a daycare center,
 22 and those are also in addition to, which are outside the
 23 MXP, the elementary school.

24 And I think from there, Bob, do you want to go to
 25 page 68 or do you want me to just keep going?

1 BY MR. HARRIS:

2 Q No, no, go ahead. And what other specific
 3 recommendations in the Master Plan with which you believe
 4 this complies?

5 A Okay. If you go to page 68, one of the
 6 requirements is to maximize access to open space and to the
 7 open space system. As a whole, we've already discussed how
 8 the Little Seneca Stream Valley is preserved. And as I
 9 mentioned, we have a series of east to west Greenways or
 10 green links, either a physical park system, road or
 11 combination thereof and those are east-west connections
 12 through the development and the to the western tributary
 13 which is in the RMX, which is the Cabin Branch tributary.

14 We have a Greenway along Maryland Route 121 that
 15 will continue and that is, buildings are set back and
 16 there's a three to 4-foot high stone fence and then at the
 17 entrances, particularly Burn, Broadway and Cabin Branch,
 18 there are entrance monuments that are on the approved site
 19 plan and that Greenway will continue through in front of the
 20 remainder of the employment and retail area for area B and A
 21 along 121. The Gosnell's plans, with their site plan
 22 approval, they also have a low stone wall and a green edge
 23 along 121.

24 We've spoken about Wellspring Greenway, which is,
 25 again, goes from west to east and connects the residential

1 and integrates the residential via the road and the green
2 park system to our mixed use core and to our employment
3 area. As we go further south, we have Tribute Parkway,
4 which is also a, we've called it our Central Park, which is
5 a divided road and the median in the middle is larger. It
6 has a series of outdoor rooms and actual sculptures of
7 different native animals.

8 As we come further down, we have a skimmer, which
9 is a community center on the left. The skimmer is a
10 Greenway. We have the north and south lawn on either side.
11 Continue through to the roundabout and that road comes
12 through. And we also have a perimeter road along most of
13 area C that takes advantage of the view to the Greenway
14 itself.

15 MS. ROBESON: On the eastern side of areas --
16 THE WITNESS: Correct.

17 MS. ROBESON: -- northeast --

18 THE WITNESS: Northeast.

19 MS. ROBESON: -- north and east sides of area C.

20 THE WITNESS: Okay. And then as we come further
21 down Little Seneca Parkway itself is a boulevard with
22 roundabouts with landscaping and then as that, we've
23 continued a front lawn or a Greenway, there's no road, but
24 units face this Greenway and path system that connect with a
25 sidewalk system and then that connects with the trail system

1 within the Cabin Branch tributary.

2 BY MR. HARRIS:

3 Q What about recommendation in the Master Plan with
4 respect to creating neighborhood focal points?

5 A As I just discussed, we consider all these focal
6 points, .but I will again point out the Wellspring Greenway.
7 In particular, we have Burn Park Road, the west side at no
8 units and then it has the elementary school and the local
9 park all green. The Greenway connects that through from
10 Broadway going east to Cabin Branch and that Greenway will
11 continue through our mixed use area.

12 And then it also is, has development on one side
13 which is the north and east side. The southern side then
14 opens up to the views along the Stream Valley. And this is
15 one of our focal points which was shown on some earlier
16 drawings, one of our plazas, roundabout.

17 MS. ROBESON: When you say this --

18 MR. HARRIS: Yes.

19 MS. ROBESON: -- can you describe it?

20 THE WITNESS: Yes. The northern, for the Seneca,
21 Little Seneca tributary, the northern tip of that which
22 connects to the Wellspring Greenway, about two-thirds the
23 way between the large A and the large B, this is our main
24 focal point which transitions to the specialty retailer of
25 the outlet mall and also connects our mixed use areas

1 together, and by doing so with the Greenway and the views
2 onto the Stream Valley.

3 BY MR. HARRIS:

4 Q And does the MXPDP zoning for the property conform
5 with a recommendation in the Master Plan?

6 A Yes, it does, and which is on page 98 of the
7 Master Plan where it's recommended be rezoned MXPDP. And it
8 is zoned MXPDP since it was rezoned in 2003. And we're
9 amending the development plan for the clarification for this
10 hearing.

11 Q To what extent was the MXPDP recommendation a
12 desired objective in the Master Plan?

13 A It is a desired objective and particularly the
14 MXPDP. There's potentially two ways the property could be
15 developed under the existing zoning, which was RMX, and I-3
16 or MXPDP. And the MXPDP was an option that was highly
17 encouraged to have the flexibility and also the overall mix
18 to better accomplish the goals of the Master Plan through
19 the MXPDP zone.

20 Q What about the variety of housing types, is that
21 recommended in the Master Plan?

22 A Yes. And we are accomplishing that. And as I
23 mentioned, approved for 1,886 units which includes both the
24 MXPDP portion and the RMX as a whole. There is a percentage
25 mixture where multi-family cannot exceed 20 percent and it's

1 on page 67 of the Master Plan. There's a range. Detached,
2 single-family cannot go below 45 percent. And then the
3 attached are townhouses are in the middle. And with all the
4 approvals, we have obtained the date. We are within those
5 ranges and have not exceeded the minimum or the maximum for
6 the appropriate unit type.

7 In addition to that, you have the three main unit
8 types, but with the couple builders out here, particularly
9 Winchester and Toll Brothers, they have a variety of unit
10 types, for instance, townhouses. They have, each builder
11 has a number of townhouses, different locations in the
12 project, different looks. Some have flat roof architecture
13 for the townhouses and in particular the Winchester towns
14 that are along Cabin Branch have a flat roof so they can
15 better relate to the urban fabric of the mixed use and
16 employment zone and that transition, whereas some of the
17 townhouses in the orange on the western edge are more
18 traditional with a pitch roof and that variety is provided.

19 Q I want you to cover roadway recommendations in a
20 moment, but before that are there recommendations at page
21 105 of the Master Plan with which this proposal conforms?

22 A Yes, and I'll read those four on the top of page
23 105 as Cabin Branch neighborhood key land use recommendation
24 to encourage a variety of housing types which was just --

25 MS. ROBESON: Right. I --

Page 238

1 THE WITNESS: -- discussed.
 2 MS. ROBESON: You don't have to read them.
 3 THE WITNESS: Okay.
 4 MS. ROBESON: I can read them.
 5 BY MR. HARRIS:
 6 Q Does this conform with those recommendations?
 7 A Yes, it does.
 8 Q Thank you. Roadway recommendations, does it
 9 conform with roadway recommendations in the Master Plan?
 10 A Yeah, and pages 69 and then also pages 112 through
 11 126 with the roadway and transportation recommendation,
 12 particularly page 69 speaks of an inter-connected roadway
 13 system. We've walked through the roadways, particularly
 14 with the north/south Cabin Branch Avenue, the north/south
 15 Broadway Avenue and then the inter-connecting grid east to
 16 west links accomplish that. Also, the road dedications,
 17 pages 112 through 126, speak to the fact that these should
 18 be public roads and dedicated to the County, and the
 19 majority of these roads are public roads and will be
 20 dedicated to the County.
 21 Q Can you address the ways in which it conforms with
 22 any transit plan recommendations in the Master Planning?
 23 A Yes. And pages 110 through 111 outline the
 24 transit plan. Particularly for Cabin Branch, there are to
 25 be a series of bus loops and convenient bus locations or bus

Page 239

1 stops. And those can easily accomplish along Cabin Branch
 2 and along Broadway with anticipated stops within our mixed
 3 use areas to the south in area C on Broadway and the cross
 4 street skimmer.
 5 As we go north again along Wellspring, a series of
 6 bus stops will be available or made available and then also
 7 along 121. The bigger picture with the Master Plan, the bus
 8 stops are envisioned for the Cabin Branch neighborhood, so
 9 the bus loops can circle back to the eastern side of the, of
 10 Clarksburg and to the corridor of the east transit way.
 11 MS. ROBESON: I'm sorry, I didn't hear that last
 12 phrase.
 13 THE WITNESS: To the future corridor city's
 14 transit way where bus service will be able to take people to
 15 the eastern side and there's a planned transit station on
 16 the Comsat property to the east of the Cabin Branch. And
 17 those --
 18 MS. ROBESON: And that's all bus?
 19 THE WITNESS: That's all bus and --
 20 MS. ROBESON: What happened to Observation Drive?
 21 Is that out of the picture or is that the transit way you're
 22 talking about?
 23 THE WITNESS: Observation Drive is, the transit
 24 way goes up the center of Observation Drive which is off the
 25 sheet --

Page 240

1 MS. ROBESON: I know.
 2 THE WITNESS: The Comsat property is to the east
 3 of Cabin Branch across 270 and Observation Drive goes
 4 through that property and to the south. The transit is in
 5 the median of Observation Drive.
 6 MS. ROBESON: And what is that transit, if you
 7 know?
 8 THE WITNESS: Currently what they're moving
 9 forward for the southern lag is bus rapid transit and it was
 10 proposed either be light rail or bus rapid transit. The
 11 current announcement from the Governor in the state is bus
 12 rapid transit that will go from Shady Grove up to
 13 Metropolitan Grove Road as the first phase and then the
 14 future for Metropolitan Grove Road, it will come up through
 15 Germantown to Clarksburg and the current plan show the
 16 station stopping at the COMSAT property --
 17 MS. ROBESON: Okay.
 18 THE WITNESS: -- or the end station at the COMSAT
 19 property.
 20 MS. ROBESON: Which is south of the town center?
 21 THE WITNESS: Correct. Correct.
 22 BY MR. HARRIS:
 23 Q Can you identify ways in which it conforms with
 24 the bike way plan in the Master Plan?
 25 A Yes. And we have a, with our number of, the

Page 241

1 infrastructure site plan in particular and then the
 2 subsequent site plan have been approved. There's a number
 3 of bike trails that have been added, particularly an 8-foot
 4 hiker/biker trail that has been added instead of a 5-foot
 5 sidewalk. And that bike way will be on Maryland Route 121
 6 from all the way at the top down to West Old Baltimore Road.
 7 There's a leg along Old Baltimore Road and then it comes up
 8 part of Broadway. And then part of that continues, actually
 9 continues right here, continues over which is known as
 10 Fulmer, which is the western road. That leg continues all
 11 the way up and then is adjacent to the park and the school
 12 and it inter-connects.
 13 There's also a bike route along Cabin Branch
 14 Avenue north to south and a bike route along, dedicated bike
 15 lane along Little Seneca Parkway. That will continue in the
 16 future when the interchange is built. That bike route will
 17 continue across 270. Likewise, the bike route on 121 with
 18 the interchange improvements plan will also continue across
 19 270. And that is consistent and conforms with the Master
 20 Plan.
 21 Q What page of the Master Plan are those bike way
 22 recommendations?
 23 A That's page 134.
 24 Q Okay. Moving on to environmental issues. Can you
 25 identify the ways in which this conforms with the

Page 246

1 Board makes a recommendation, that needs to go to the County
2 Council and so that still has a few steps to go later this
3 year, if not into next year before that's approved.
4 Q And based on your planning and development
5 approval experience in Montgomery County, do you have an
6 estimate for how long that project would take to proceed
7 were the zoning changed and were the Master Plan changed to
8 accommodate it?
9 A Yeah. And based on our experience with Cabin
10 Branch, we've been working on that for 12 years. There was
11 a period in there called a great recession or great
12 depression where a couple, two, two, three years where
13 there, it slowed down a little bit. But based on zoning
14 approvals, preliminary plan approval, site plan approvals,
15 and then finally engineering to get to construction, my
16 estimate is that property is somewhere in the window of five
17 to seven years to proceed to construction.
18 Q Any final conclusions with respect to the Master
19 Plan conformity?
20 A Yes. In summary, the development plan and the
21 development plan amendment in my opinion is in complete
22 conformance with the 1994 Master Plan which has also been
23 reconfirmed by the staff report, technical staff report from
24 July 18th and the Planning Board approval as noted in their
25 July 25th memo to the hearing office. And what I'd like to

Page 247

1 do is read two of those paragraphs from that recommendation.
2 Q In keeping with the Zoning Hearing Examiner's
3 direction for it, would you just identify what paragraph
4 you're talking about there?
5 A These are both on the first page and it's the
6 paragraph at the bottom and then the one above that. And
7 it's the Planning Board's findings and reiterates the
8 unanimous approval and also how the project, the amendment
9 conforms with the Master Plan and the zoning.
10 MS. ROBESON: Okay. Thank you. Are you going to
11 address, my recollection there was a limited amendment to
12 the Master Plan addressing the staging on page 196 about
13 retail commercial development in New Cut Road and Cabin
14 Branch neighborhoods will be deferred until 90,000 square
15 feet of retail uses have been established. It's my
16 recollection that that was amended.
17 THE WITNESS: Yes.
18 MS. ROBESON: Can you explain that or just --
19 THE WITNESS: Yeah, and a little bit of
20 background.
21 MS. ROBESON: Because I want to know how your plan
22 fits into the amendment.
23 THE WITNESS: Okay.
24 MS. ROBESON: And I am going to take official
25 notice of that resolution that adopted that limited

Page 248

1 amendment of --
2 THE WITNESS: Which was adopted in 2011?
3 MS. ROBESON: Right.
4 BY MR. HARRIS:
5 Q Would you provide the resolution number so --
6 MS. ROBESON: Or we could have the, if you have a
7 copy --
8 MR. HARRIS: I have one copy.
9 MS. ROBESON: Okay.
10 THE WITNESS: It's Resolution No. 17-188,
11 introduced and adopted June 28, 2011. Subject approval
12 Planning Board draft amendment to the Clarksburg Master Plan
13 Hyattstown special study area.
14 BY MR. HARRIS:
15 Q And what was the essence of that Master Plan
16 amendment?
17 A The, they changed the, basically they did away
18 with the staging component. A little bit of background,
19 Clarksburg has three neighborhood centers that are set up.
20 One is Cabin Branch, one is in the town center district and
21 the other is in the New Cut neighborhood. And the condition
22 in the Master Plan was that other retail could not go
23 forward until the town center went forward. That has not
24 gone according to plan before the Master Plan in particular.
25 There is an amendment introduced, limited amendment by Park

Page 249

1 and Planning and what that did do is it got rid of that
2 timing element.
3 And the result of that is the New Cut neighborhood
4 center has gone forward and that's currently under
5 construction. So they --
6 MS. ROBESON: Is there -- I guess what I want you
7 to do is say is there a, isn't there a criteria in that
8 amendment that allows it if there's an approved preliminary
9 plan? And so my question is, for the record, that is my
10 recollection.
11 THE WITNESS: Yes. And from this resolution, page
12 196, revise the first paragraph as follows. Stage 3
13 includes all portions of Clarksburg that do not drain to Ten
14 Mile Creek watershed, i.e., most development east of I-270
15 and the Cabin Branch neighborhood. See Figure 54, page 215.
16 Retail, commercial development in the New Cut Road and Cabin
17 Branch neighborhoods will be deferred, however, until 90,000
18 square feet of retail uses have been established, approved
19 with a preliminary plan in the Clarksburg Town Center. And
20 there is an approved preliminary plan in the Clarksburg Town
21 Center and, therefore, particularly the New Cut has preceded
22 two approvals and is currently under construction which is a
23 Harris Teeter grocery store in the New Cut neighborhood.
24 MS. ROBESON: Okay.
25 BY MR. HARRIS:

Page 250

1 Q Thank you. Can you, you mentioned earlier about
2 the site being split-zoned to RMX and MXP. Can you explain
3 that a little bit for us?
4 A Yes. And as mentioned, there's two zones and also
5 there are two options envisioned with the Master Plan. But
6 particularly I'd like to talk about the RMX zone and --
7 MS. ROBESON: I'm motioning, asking Mr. Robins now
8 to turn some of the cool air on.
9 THE WITNESS: I thought it was just me getting
10 warm in here.
11 MS. ROBESON: No.
12 MR. ROBINS: No, it's actually very warm.
13 MS. ROBESON: Just for the record, if there's some
14 kind of whispering, that's what it is.
15 MR. KLINE: Why don't we just move to the 7th
16 floor?
17 MS. ROBESON: No, I'm not ready to go there.
18 Okay. I'm sorry, Mr. Unterberg.
19 THE WITNESS: Okay. The, what I'd like to do is
20 talk about the RMX zone in particular and the requirements
21 and also the difference in the MXP zone and the
22 requirements.
23 MS. ROBESON: Wait. Why are we doing that? Why
24 are we talking about the RMX zone?
25 MR. HARRIS: Because it relates to the Master Plan

Page 251

1 recommendations as far as retail.
2 MS. ROBESON: All right.
3 THE WITNESS: The RMX, which is Chapter 59-C-
4 10.2.2 speaks to specific density and numerical limitations
5 and briefly, which is the optional method --
6 MS. ROBESON: Right.
7 THE WITNESS: -- which allows commercial or
8 retail.
9 MS. ROBESON: Right.
10 THE WITNESS: Under this method, general
11 commercial uses and higher density residential uses are
12 allowed in the RMX zones provided they are, provided they
13 are in accordance with the provisions of Section 59-C-10.3,
14 as well as the density, numerical limitations and other
15 guidelines contained in the applicable Master Plan approved
16 by the District Council. And that's the optional method
17 which you can do commercial.
18 BY MR. HARRIS:
19 Q So do you have an interpretation as to whether the
20 RMX requires a Master Plan recommendation for retail in the
21 RMX zone?
22 A Sorry, say that again, I lost it a sheet here.
23 Q Do you have an interpretation of the zoning
24 ordinance as to whether the RMX zone requires an affirmative
25 Master Plan recommendation for retail to be included in the

Page 252

1 RMX zone?
2 MR. CHEN: Objection.
3 MR. KLINE: The same here.
4 MR. CHEN: It calls for a legal conclusion. The
5 zoning ordinance is for the Examiner, if anybody, to
6 interpret, not a land planner.
7 MS. ROBESON: Yes, Mr. Kline?
8 MR. KLINE: And my objection is a little bit more
9 to the content and it probably goes back to where you
10 started, I think, a second ago. If you took half of the
11 property and rezoned it in the MXP zone because it was more
12 flexible for what they wanted to accomplish, there's no
13 reason to go back and study the zone that was there before
14 which was thought to be deficient and inadequate for what
15 they wanted to accomplish. We should only be dealing with
16 the MXP zone and not what might have been recommended in
17 RMX because we trash canned that because it wasn't going to
18 accomplish the vision for Cabin Branch.
19 MS. ROBESON: Where are you going with this?
20 MR. HARRIS: The property is split-zoned today.
21 The RMX zone has not been trashed and this is highly
22 relevant than was crucial to the Planning Board's
23 interpretation of the Master Plan.
24 MS. ROBESON: Explain why and where this line of
25 questioning is going.

Page 253

1 MR. HARRIS: Okay. The, at the time the Master
2 Plan was written --
3 MS. ROBESON: Yes.
4 MR. HARRIS: -- the property was designated for
5 two zones. And I'll have Mr. Unterberg testify to this so
6 that Mr. Chen is not concerned about --
7 MS. ROBESON: Yes, I'm asking you to proffer why
8 it's going --
9 MR. KLINE: You projected?
10 MR. HARRIS: Yes.
11 MR. CHEN: Yes.
12 MR. HARRIS: Because it will explain how the
13 Planning Board recommendation for 120,000 square feet in the
14 Master Plan relates to the ability to now do more retail
15 than that given the change in zoning to MXP for, I'll call
16 it half the property. Mr. Unterberg, this was explained to
17 the Planning Board at their hearing?
18 MS. ROBESON: So you're proffering, just let me
19 summarize, you're proffering that -- you're, okay, I'm
20 sorry. You're proffering that something, say why it's
21 relevant again.
22 MR. HARRIS: It is relevant because the Master
23 Plan can only be interpreted in connection with its zoning
24 and the Master Plan provided two options for zoning this
25 property. And if you interpret recommendations in the

Page 254

1 Master Plan applicable to one, you need to understand how
2 the change in zoning makes those recommendations
3 inapplicable in the case of a rezoning.
4 MS. ROBESON: Are you going back, well, can you be
5 more specific as what you're trying to get him to say?
6 MR. HARRIS: He will state that Broadway is the
7 boundary line today between the MXP zone and the RMX zone,
8 RMX --
9 MS. ROBESON: Yes.
10 MR. HARRIS: -- being to the west. That the
11 Master Plan recommended 120,000 square feet --
12 MS. ROBESON: Oh, because that's --
13 MR. HARRIS: -- in the RMX zone.
14 MS. ROBESON: -- all you could get in the RMX?
15 MR. HARRIS: Correct.
16 MS. ROBESON: Okay. Now I don't think that's an
17 interpretation of -- I'm not sure that's an interpretation
18 of the Master Plan, but I would ask do you have any, well,
19 let me ask you this because this would be important to me.
20 Do you have any knowledge that that 120 was based on an
21 assumption that -- I guess my problem is the Master Plan to
22 me was pretty encouraging of the MXP. Do you have any
23 reason to believe that the 120,000 square feet was based on
24 development in the existing RMX zone?
25 THE WITNESS: I do and my opinion is this

Page 255

1 property, if the owners chose not --
2 MS. ROBESON: Just a minute. Just a second.
3 MR. CHEN: Respectfully, this seems to be
4 indirectly getting at the initial objection. You asked for
5 a proffer from counsel and I did not object to that. That
6 is proper. But it sounds right now that the Examiner is
7 asking the witness to express the opinion as to which there
8 is an objection on the table.
9 MS. ROBESON: I guess -- okay. Well, what I was
10 asking him, and your objection is what, he's not a legal, it
11 calls for a legal conclusion, correct?
12 MR. CHEN: Well, number one, that's what it was
13 when I first heard --
14 MS. ROBESON: Right.
15 MR. CHEN: -- counsel.
16 MS. ROBESON: And now what is it?
17 MR. CHEN: But now I think we're going beyond
18 that, that this is now going to be an attempt to explain
19 away an explicit standard in the Master Plan. And, let me
20 just finish, as to which there is virtually, virtually no
21 that I know of, virtually no explanation or discussion in
22 the Master Plan for what I now think I'm about to hear.
23 MS. ROBESON: Well, we have allowed witnesses to,
24 as far as interpreting the Master Plan to give -- what I was
25 trying to elicit from them is a factual basis, not his basis

Page 256

1 as a legal expert, but we have considered contemporaneous
2 considerations or, you know, legislative history in that
3 sense. So that is what I was asking him for.
4 MR. CHEN: That's what I thought you were asking,
5 is there, where I thought you were going, frankly, when you
6 started out was is there any legislative history for the
7 standards contained in the adopted and approved Master Plan.
8 I appreciate that type of inquiry and I don't think I'd have
9 a hard time objecting if counsel were to sit here and say,
10 yes, we have checked the record on the adoption and the
11 approval and exhibit such and such provided such and such,
12 here's a copy of it out of the record, can you give that to
13 the Examiner? I think that's germane. I, you know, that's
14 admissible evidence. What I've heard this gentleman say is,
15 yes, I have an opinion and I don't think that is proper.
16 MS. ROBESON: Well, part of the problem is we
17 can't get to the basis, I can't get to the basis of -- I
18 don't know what his opinion is yet. I mean, no, I don't
19 know what the basis for his opinion yet, all right? We've
20 had a proffer and I don't know what Mr. Unterberg is going
21 to say as far as the basis for his opinion. If it --
22 MR. CHEN: He didn't say, he didn't say I have
23 looked at --
24 MS. ROBESON: Well, I don't know what he's going
25 to say.

Page 257

1 MR. CHEN: But he, please, my only problem is he
2 skipped the stage that you have just identified. He, his
3 words were it is my opinion.
4 MS. ROBESON: Well, that could have been anything.
5 MR. HARRIS: He will explain it amply. Madam
6 Examiner, we've had the farmer's market lady, Mr. Whit Cobb
7 who says he doesn't know anything about that. Both offer
8 their non-expert opinions of what the Master Plan says. I
9 would find it highly irregular not to allow an expert on the
10 topic to offer his opinion. That's what experts are here to
11 do.
12 MS. ROBESON: I guess what I'm going to ask Mr.
13 Unterberg is what is the basis for your opinion? I mean
14 what type of evidence do you have that, that the 120,000
15 figure in the Master Plan was the result of the RMX zone
16 being the base zoning on the property, if you can call RMX a
17 base zone?
18 THE WITNESS: The property could under the Master
19 Plan, could move forward two different ways based on the
20 zoning of RMX optional within --
21 MS. ROBESON: Yes. But the Master Plan doesn't
22 envision one way -- I didn't read it to envision one way or
23 the other.
24 THE WITNESS: But specific and with the RMX zone
25 that I read, it talked about location and numeric which is

Page 258

1 very specific and the Master Plan has a sketch that shows
2 where that would be.
3 MS. ROBESON: Okay. Let me stop you there because
4 I haven't ruled on Mr. Chen's objection yet. Mr. Chen, he
5 can testify to it as a basis for an opinion, an expert
6 opinion. I'm going to let it in for the weight it deserves.
7 I don't know how much weight it deserves, but I will let it
8 in and he can testify as the basis and you can cross-examine
9 on that, all right?
10 So, Mr. Unterberg --
11 MR. HARRIS: Let's take one step back and see if
12 we can break this into smaller pieces so that everyone can
13 follow.
14 MS. ROBESON: Well, one, I am going to warn the
15 parties I have to break at 5 o'clock tonight.
16 MR. HARRIS: Okay.
17 MS. ROBESON: So keep that in mind.
18 MR. HARRIS: Okay.
19 BY MR. HARRIS:
20 Q Mr. Unterberg, would you turn to the RMX zone,
21 Section 59-C-10.3.4, specifically paragraph C. And it's a
22 short paragraph, so if the Hearing Examiner will indulge us,
23 I'd like you to read it because I think it will help
24 understand where we're going.
25 (Discussion off the record.)

Page 259

1 THE WITNESS: 10.2, I just need to go a few more
2 pages, 10.3.4, maximum commercial density?
3 BY MR. HARRIS:
4 Q Yes, paragraph C.
5 A Paragraph C.
6 "The density of development approved by the
7 Planning Board must not exceed the density shown
8 on the approved and adopted master or sector
9 plan."
10 Q Now I don't think it takes a lawyer to interpret
11 that to say that that --
12 MS. ROBESON: Well, are you --
13 MR. HARRIS: Well, yes. Never mind. Never mind.
14 Okay.
15 MS. ROBESON: You can make that argument --
16 MR. HARRIS: Yes, and I --
17 MS. ROBESON: -- later.
18 MR. HARRIS: -- shall, but --
19 MS. ROBESON: You're free to.
20 MR. HARRIS: -- yes, you're correct.
21 BY MR. HARRIS:
22 Q So let's go to the MXPDP zone and would you let me
23 know if you find anything in the MXPDP zone that requires,
24 that says the Planning Board approval must not exceed the
25 density shown in the approved and adopted master or sector

Page 260

1 plan --
2 A I --
3 Q -- density of commercial development?
4 A I cannot find that language in the MXPDP zone.
5 Q So would you -- let's turn to the MXPDP zone and
6 walk through two of the provisions on there, specifically
7 59-C-7.5 and paragraph D, David.
8 A D. D.,
9 "To ensure internal capability of residential
10 and non-residential uses by providing a suitable
11 residential environment that is enhanced by the
12 commercial recreational employment and
13 institutional amenities within commercial and
14 industrial components of the multi-use center is
15 D."
16 Q Let's skip reading that. Let's jump to --
17 MS. ROBESON: Wait. We just did read it.
18 MR. HARRIS: No, I'm sorry, there's more. There's
19 more.
20 MS. ROBESON: Oh.
21 MR. HARRIS: Yes, I don't want to belabor that.
22 BY MR. HARRIS:
23 Q The -- would you walk us through how the zoning on
24 this property evolved from the time of the Master Plan to
25 its current status with MXPDP zoning and how that relates to

Page 261

1 the recommendation in the Master Plan for 120,000 square
2 feet?
3 A Okay.
4 MR. KLINE: Could I have a point of origin? The
5 way I understood the phrase of the question was the sequence
6 was reverse of that and we had the Master Plan first and
7 then the rezoning. I thought I heard you ask him to explain
8 how the plan came first or, I'm sorry, the rezoning came
9 first. Did I misunderstand?
10 MR. HARRIS: Yes. Okay. Let me clarify that.
11 MS. ROBESON: No, I got it.
12 MR. HARRIS: There actually were two rezonings.
13 There would have been a sectional map amendment after the
14 Master Plan, but then a local map amendment --
15 MS. ROBESON: I see.
16 MR. HARRIS: -- for the MXPDP.
17 MS. ROBESON: Right.
18 MR. HARRIS: So I'm asking him to --
19 MS. ROBESON: Okay.
20 MR. HARRIS: -- explain the relationship between
21 the sectional map amendment zoning following the Master Plan
22 and the local map amendment zoning to the MXPDP.
23 MS. ROBESON: Okay.
24 THE WITNESS: State that one more time.
25 MR. HARRIS: Okay.

Page 262

1 BY MR. HARRIS:
2 Q Was the, after the, following the Master Plan, was
3 the site split zoned?
4 A Yes, and actually we have an exhibit that helps
5 illustrate that.
6 MS. ROBESON: I don't think -- what was the split
7 zoning?
8 MR. HARRIS: Why don't you use the exhibit? I
9 think that will help.
10 MS. ROBESON: Is it a new exhibit?
11 THE WITNESS: New exhibit.
12 MR. HARRIS: It is.
13 MS. ROBESON: And this will be Exhibit 63. What
14 do I call that exhibit? Diagram of split zoning?
15 THE WITNESS: Yes, and this is --
16 MS. ROBESON: Sectional map split zoning, how is
17 that?
18 (Exhibit No. 63 was marked for
19 identification.)
20 THE WITNESS: And this is page 66 of the Master
21 Plan with the diagram.
22 MR. CHEN: What is the exhibit number?
23 MS. ROBESON: No. 63.
24 MR. CHEN: Thank you.
25 BY MR. HARRIS:

Page 263

1 Q Using Exhibit 63 then, Mr. Unterberg, would you
2 explain the zoning and the land use recommendations in the
3 Master Plan and how they relate with one another here?
4 A Yes. The zoning with the Master Plan, which is
5 the base zoning in '94, shows the western half in the RMX
6 and then part of the eastern half along 270 is zoned I-3.
7 Then parts of the north is also IMX. This chart talks about
8 how the employment corridor should be along 270 from the
9 legend.
10 With this map also is specifically located retail
11 core which was to be, which was in the RMX zone. In order
12 to implement that, you would need to go forward with the
13 optional method of the RMX which you could do. And then the
14 RMX talks with the portion sited at the location and numeric
15 has to be per. exactly per the Master Plan and then also the
16 other proportion, you cannot exceed that. And you could go
17 forward or the property could have gone forward without the
18 rezoning to MXPDP. Go down and the town center in this
19 location which is kind of north, but it's west because it's
20 in the RMX half. And that could have gone forward with that
21 location, a specific number, 120,000 square feet under the
22 optional method without rezoning to MXPDP. And if that went
23 forward, then part of the employment would need to go
24 forward under the I-3 zone per the zoning, the '94 Master
25 Plan.

Page 264

1 Q Does the I-3, did he I-3 zoning at that time allow
2 120,000 square feet of retail?
3 A It --
4 MR. CHEN: Objection. It calls for a legal
5 conclusion.
6 MS. ROBESON: No, he's a land planner and he can
7 say what the zone allowed or didn't allow. So overruled.
8 Go ahead.
9 THE WITNESS: It did not include the retail at
10 that time. Primarily it was an office zone.
11 BY MR. HARRIS:
12 Q What kind of retail could have been provided --
13 MR. CHEN: Objection.
14 MR. HARRIS: -- under the I-3 zone?
15 MS. ROBESON: Basis?
16 MR. CHEN: It's not in the zoning ordinance and he
17 is now asking a planner what could have. He's --
18 MS. ROBESON: No.
19 MR. CHEN: -- still going to be bound by --
20 MS. ROBESON: He can, he can, Mr. Unterberg can
21 testify what uses were permitted in the I-3, or the RMX and
22 the I-3 zone if he has --
23 MR. CHEN: I agree with you.
24 MS. ROBESON: -- knowledge.
25 MR. CHEN: I agree with what you just said.

Page 265

1 MS. ROBESON: Well, that's what he asked.
2 MR. CHEN: No, he said could. I mean permitted if
3 he, but the question is --
4 MS. ROBESON: Okay.
5 MR. HARRIS: Permitted. That's fine.
6 BY MR. HARRIS:
7 Q What retail uses were permitted in the I-3 zone at
8 the time of that Master Plan?
9 A I believe limited retail, which would be support
10 for an office such as a deli or something like that, coffee
11 shop, et cetera.
12 Q Okay. So did the Master Plan also recommend the
13 MXPDP zone?
14 A It did and that's on page 95.
15 Q And does the MXPDP zone require a specific Master
16 Plan recommendation in order to do retail?
17 A The, in order to do MXPDP you need that specific
18 recommendation and then per the commercial standard which is
19 59-C-7.52 under uses permitted, B, commercial, all permitted
20 and special exception uses are allowed in C-2, C-2 and HN
21 zones, including chancelleries and international
22 organizations are permitted in the mixed use plan
23 development zone. If we continue to sub-item 2, in order to
24 establish, well, actually I'll go with one first and then
25 with 2. One is,

Page 266

1 "The location of general type of commercial
2 uses proposed on the site must be shown on the
3 development plan submitted in accordance with the
4 provision in 59-D-1 and must be approved by
5 District Council as part of the approved
6 development plan."
7 Sub-item 2, in order to establish a dominant
8 employment character within the commercial industrial
9 component of the mixed use plan development zone, retail
10 commercial uses should not exceed 20 percent of the gross
11 commercial industrial floor area proposed on the site and
12 shown in either the concept plan or development plan.
13 Q So at the time of the Master Plan, did the
14 planners know that a portion of the property would
15 ultimately be rezoned to MXPDP?
16 A They did not and in my opinion there is an option
17 to proceed with the RMX and the I-3 or the option to proceed
18 with the MXPDP.
19 MR. CHEN: Objection. Move to strike. I mean
20 this is pure speculation, Madam Examiner. You know, what
21 would the planners think? Well, I think they would have
22 thought -- please.
23 MR. KLINE: If I might add to that? I mean it is
24 on page 97, the property is recommended for MXPDP zoning. So
25 that suggests to me using the RMX as a base zone in the MXD

Page 267

1 is the ultimate preferable zone. So I would say the
2 argument is that they probably did know it was going to be
3 put on property.
4 MS. ROBESON: Well, you can make that argument --
5 MR. KLINE: Yes. All right.
6 MS. ROBESON: -- in your case. I'm going to let
7 it in and give it the weight it deserves.
8 MR. KLINE: Okay.
9 BY MR. HARRIS:
10 Q Was part of this property zoned I-3?
11 A Yes, it was.
12 Q Not RMX?
13 A Correct.
14 Q So RMX was not the base zone for part of the MXPDP?
15 A Correct.
16 Q Are there properties in Montgomery County that are
17 recommended for MXPDP or that have been recommended for MXPDP
18 that did not get rezoned to MXPDP?
19 A Not --
20 MS. ROBESON: Is there an objection?
21 MR. CHEN: I, I know --
22 MS. ROBESON: Relevance?
23 MR. CHEN: Yes.
24 MS. ROBESON: Okay. I have the same question.
25 MR. HARRIS: It's a bit frustrating because he

Page 268

1 maintains that they knew it was going to -- they're
2 objecting to Mr. Unterberg saying that people did not know
3 at the time of the Master Plan whether the MXPDP zoning would
4 have it or not. To me that's intuitive. That's not a legal
5 conclusion. That's not trying to pick somebody's brain.
6 It's the fact that you need to apply for the MXPDP zone by a
7 local map amendment and no one knows whether somebody is
8 going to submit a local map amendment. Since he hasn't been
9 able to testify to that, I'm trying to get there through the
10 back door because it's, well, it's just intuitive to me.
11 MS. ROBESON: Well, Mr. Unterberg, what was your -
12 - repeat your question. Do you remember it?
13 MR. HARRIS: I do not.
14 MR. CHEN: You've said on other rulings, you have
15 said let it in and give it the weight to which you think
16 ultimately it should be afforded. Those are maybe my words.
17 Let's get it done.
18 MS. ROBESON: Thank you, because it is 4:45. So
19 just ask him.
20 BY MR. HARRIS:
21 Q Is the Miles Coppola property recommended for MXPDP
22 zoning?
23 A It is recommended in the Master Plan currently.
24 Q How long ago was it recommended for that?
25 A It was recommended in 1994 when the Master Plan

Page 269

1 was adopted.
2 Q Has it ever been rezoned to MXPDP?
3 A To my knowledge, no.
4 Q Who is in control of applying for that zone?
5 A The property owners.
6 Q Does the property owner have the right to apply or
7 not apply for that zone?
8 A They do.
9 Q Would the same be true for Cabin Branch?
10 A Yes.
11 Q If the property owner had not sought the MXPDP
12 zoning, what could they have done with respect to retail
13 development?
14 A Under the RMX optional method, they could have
15 proceeded with the neighborhood center under 20,000 square
16 feet. The --
17 Q And would that be as shown on Exhibit 60 --
18 A Three.
19 MS. ROBESON: Three.
20 BY MR. HARRIS:
21 Q 63?
22 A 63 and it would need this hatched out, black, dark
23 area retail core that would need per the zone would need to
24 be the location for that 120,000 square feet.
25 Q Now if the property owner subsequently sought the

Page 270

1 MXPDP zone, could the owner have sought more retail
2 development than they could have in the RMX zone?
3 A Yes.
4 Q And what is your interpretation of the, or your
5 opinion with respect to how much retail they could seek
6 under the MXPDP zone?
7 A Under the MXPDP zone, you can seek 20 percent of
8 the overall gross commercial area.
9 Q Does the Master Plan, the 1994 Clarksburg Master
10 Plan recommend a hotel within the MXPDP area?
11 A It does not. It's silent.
12 Q Did the Planning Board approve a hotel within the
13 MXPDP area?
14 A They have, which is on the SMGM site plan, a hotel
15 and two banks of 87,500 square feet.
16 Q Do you have a belief as to whether the MXPDP zone
17 requires a specific use recommendation in it for that use to
18 proceed?
19 A It does not in the Master Plan. The MXPDP, again,
20 is meant to be a flexible zone and has references, the C-2
21 and the HM zones for the permitted uses.
22 MR. HARRIS: One moment please.
23 BY MR. HARRIS:
24 Q Did you, in the heat of battle here I've lost
25 track. Did you identify the provision under 59-C-7, MXPDP

Page 271

1 zone 59-C-7.52(b) as in boy, (2), did you discuss that at
2 all?
3 A Yes, I did and that's, talks to the 20 percent.
4 In order to establish the dominant employment character
5 within the commercial industrial component in the mixed use
6 planned development zone, retail commercial uses should not
7 exceed 20 percent of the gross commercial/industrial floor
8 area proposed onsite as shown on either the concept plan or
9 development plan.
10 Q In terms of your interpretation of the Master Plan
11 and the MXPDP zoning, did the Park and Planning Commission
12 staff agree with you?
13 MS. ROBESON: Wait. I know they did.
14 MR. HARRIS: Okay.
15 MS. ROBESON: So we don't have to go there.
16 MR. HARRIS: Okay.
17 MS. ROBESON: I have a question. I see what
18 you're trying to say. I'm not sure I totally agree, so I'll
19 just let you know and then we're going to have to wrap up.
20 But if the objective and purpose of the MXPDP zone, it is
21 intended that this zoning category be utilized to implement
22 existing plans and policies in a matter and to a degree more
23 closely compatible than may be possible of other zoning
24 categories. So would they have in the Master Plan really
25 based this on the possibility that their recommended

Page 272

1 floating zone wouldn't develop? I guess my problem with
2 this argument that I think you're making is as I read the
3 Master Plan that they would have, both the MXPDP and the RMX
4 would have been bound by that 120,000 square foot
5 recommendation. Am I right or wrong?
6 MR. HARRIS: You're saying that's my argument?
7 No, mine is just the opposite. My argument is that the RMX
8 zone, because it requires a specific recommendation for the
9 use and density being proposed, you can only get a use and
10 density if it's specifically recommended in the Master Plan.
11 That's under --
12 MS. ROBESON: Right.
13 MR. HARRIS: Okay. The MXPDP zone --
14 MS. ROBESON: Oh, and that --
15 MR. HARRIS: -- is totally different. It does not
16 require that.
17 MS. ROBESON: I know, but okay. All right. Well,
18 I understand that argument. I'm not sure I agree that
19 they -- I understand the argument, but I'm not sure I
20 necessarily agree because of that purpose clause that when
21 they put in the 120,000 square feet, that was a result of
22 the RMX being on the, on the property be a sectional map
23 amendment. You're saying, but the Master Plan came first,
24 correct?
25 MR. HARRIS: Then the sectional map amendment,

Page 273

1 then the local map amendment.
2 MS. ROBESON: Right. And I think your argument
3 would be stronger had they not also very favorably
4 recommended the MXPDP.
5 MR. HARRIS: But they did not know whether anyone
6 would apply for the MXPDP. They knew they wanted retail
7 here, at least 120,000 square feet. So they recommended
8 120,000 square feet in the RMX zone because otherwise they
9 couldn't have done any. If the property owner did not seek
10 the MXPDP zone and it would have left half zoned I-3 and
11 half, or partly zoned --
12 MS. ROBESON: Well, they could have recommended a
13 two something.
14 MR. HARRIS: They could have.
15 MS. ROBESON: They could have said up to 484.
16 MR. HARRIS: They could have.
17 MS. ROBESON: So that's my issue with your
18 argument. And I'm not saying how I feel overall about your
19 case or whether you comply. I'm just saying I'm not sure
20 that this is strong enough to pursue as we have, but I'd
21 leave that up to you.
22 MR. HARRIS: Okay. I --
23 MS. ROBESON: And with that, I'm going to stop
24 there --
25 MR. HARRIS: Okay.

1 MS. ROBESON: -- because it's five minutes until
 2 5:00. Mr. Unterberg, you will have to return another day.
 3 Now if you can wait, I'm going to go off the record for two
 4 minutes. I want to see, I think that the 4th is scheduled
 5 for the 7th floor. I want to see if this room is available.
 6 MR. CHEN: While we're still on the record --
 7 MS. ROBESON: Yes?
 8 MR. CHEN: -- Madam Examiner, I about 10 minutes
 9 ago, I made some comments to the Examiner about how you have
 10 thus far said you would accept information and give it the
 11 appropriate weight as to which you've included. For that
 12 reason, I have not been a jack rabbit sitting over there,
 13 but I just remind you that because we're coming back, in a
 14 ways --
 15 MS. ROBESON: Well, if you want to note a
 16 continuing objection, that's fine, and I don't mean to cut
 17 you off, Mr. Harris, you're free to put in everything you
 18 want to put in. I, but I am letting you know as far as that
 19 argument goes, if you have something to respond to my
 20 question, you know, I would like to hear it. All right.
 21 I'm going to go off the record just for a couple of minutes.
 22 I want to see if this room is open because it still Council
 23 recess.
 24 (Recess)
 25 MS. ROBESON: Okay. We're back on the record. I

1 did, unfortunately, the Board of Appeals is in this room on
 2 the 4th, so we'll have the hearing on the 7th -- we're going
 3 to continue this hearing to Wednesday, September 4th at 9:30
 4 in the morning in the 7th floor. We will do everything
 5 possible to make sure that the HVAC is working, all right?
 6 And anything else before we go off the record?
 7 MR. HARRIS: One question I have for, I guess, Mr.
 8 Kline really. I think I heard you say upstairs this morning
 9 that you expected to know whether you would have an expert
 10 witness for the 4th. Have you, by the end of today --
 11 MR. KLINE: Having, well, I think the answer is
 12 having been here, I don't know what's come into my office.
 13 You said you have actually a date and you said you wanted --
 14 MS. ROBESON: Well, I did.
 15 MR. KLINE: -- me to be sure I gave you --
 16 MS. ROBESON: -- but they just, they didn't give
 17 me the calendar. I believe it was August 23rd, being 10
 18 days before September 4th.
 19 MR. KLINE: And the reason I said what I said was
 20 because I'm leaving, happily, for Canada --
 21 MS. ROBESON: I know.
 22 MR. KLINE: -- tomorrow because I like the cold
 23 weather so much. But I will make sure that Mr. Harris has
 24 his answer by the 23rd and I'll just --
 25 MR. HARRIS: Okay.

1 MR. KLINE: -- have somebody else take care of it
 2 since you have the able assistance of Mr. Robins. I'll get
 3 Mr. Robins involved.
 4 MR. HARRIS: There you go.
 5 MR. ROBINS: That's fine. Can we make sure that
 6 that is the cut-off date period?
 7 MS. ROBESON: Yes, I said I'm not going to
 8 postpone it.
 9 MR. KLINE: No, I'm not asking to postpone here.
 10 MS. ROBESON: If your answer isn't in by close of
 11 business August 23rd, then --
 12 MR. KLINE: Never had any intention to prejudice
 13 in this case.
 14 MS. ROBESON: Okay.
 15 MR. CHEN: And --
 16 MS. ROBESON: Yes, Mr. Chen, don't go off the
 17 record yet, Kathy. Yes?
 18 MR. CHEN: You've asked counsel, Mr. Harris, to
 19 provide you with his basis for this last legal argument. I
 20 would ask --
 21 MS. ROBESON: No, I didn't. Well, what's your,
 22 what do you want to say?
 23 MR. CHEN: Excuse me, I thought you were putting
 24 comments on that and you were giving your observation as to
 25 the legal argument and that I, I don't remember the words, I

1 didn't write it down, but I thought you told counsel that
 2 you wanted to receive from counsel information on that
 3 interpretation. Now if that's not what you said, okay, but
 4 if you did, and especially if it's a legal argument, I think
 5 we should have it before the 4th of September.
 6 MS. ROBESON: Oh, I wasn't asking for that.
 7 MR. CHEN: Oh.
 8 MS. ROBESON: I was, what I was saying is I'm not
 9 persuaded by that legal argument, if he has any additional
 10 evidence to offer then I would be, I will listen to it, but
 11 right now I'm not persuaded by that single argument. It
 12 doesn't mean overall that I've decided the case one way or
 13 the other, all right? Yes, Mr. Kline?
 14 MR. KLINE: If I, since I'm under the gun, could I
 15 ask that the applicant provide by the hearing on the 4th
 16 confirmation that all the parties along the land with the
 17 MXPD are parties to this application?
 18 MS. ROBESON: Is that acceptable to you?
 19 MR. HARRIS: I retain my objection to that being
 20 required. I've found nothing in the zoning ordinance that
 21 does require it.
 22 MS. ROBESON: Yes. But can you provide it by
 23 that -- no.
 24 MR. ROBINS: Yes.
 25 MR. HARRIS: Yes. I know what she wants. Yes.

Page 278

1 MS. ROBESON: He wants to know if you can provide
2 it, I've noted your objection.
3 MR. HARRIS: Yes.
4 MS. ROBESON: Mr. Kline -- I'm still asking you to
5 provide it --
6 MR. HARRIS: I understand.
7 MS. ROBESON: -- perhaps out of an abundance of
8 caution. Can you provide it by August 23rd or no later than
9 September 4th?
10 MR. HARRIS: Subject to my objection, yes.
11 MS. ROBESON: Okay. So which one is it, August
12 23rd or September 4th? August 23rd?
13 MR. KLINE: Well, from my point-of view, I just
14 want to know are we walking on the 4th --
15 MR. HARRIS: September 4th.
16 MR. KLINE: -- have we got all the parties? So
17 I'm okay with that.
18 MS. ROBESON: So September 4th?
19 MR. CHEN: Yes, right.
20 MS. ROBESON: All right. So we've agreed on that
21 with Mr. Harris's objection noted.
22 MR. KLINE: May I ask a question and that is I
23 probably have at least two legal arguments I want to make
24 and I have --
25 MS. ROBESON: Two what?

Page 279

1 MR. KLINE: Two legal arguments sort of
2 independent of all this and I haven't had a chance to get to
3 them. If I may, you know, and if you're telling me, well, I
4 was going to try and have it done as soon as I returned from
5 Canada.
6 MS. ROBESON: And when is that?
7 MR. KLINE: I'm back in town on the 26th.
8 MS. ROBESON: Well, see, technically I have to get
9 our rules. I think it would be helpful. Well, if you
10 return to town on the 26th, when could you have it
11 available? Or do you have cell phone capability in Canada?
12 MR. KLINE: That's why I go where I go.
13 MS. ROBESON: Yes.
14 MR. KLINE: To avoid all that. I could have it in
15 everybody's hands on the 28th.
16 MS. ROBESON: Mr. Harris? August 28th?
17 MR. KLINE: Yes, ma'am.
18 MS. ROBESON: Mr. Harris, do you have an
19 objection?
20 MR. HARRIS: No.
21 MS. ROBESON: All right.
22 MR. HARRIS: Thank you.
23 MS. ROBESON: August 28th then.
24 MR. HARRIS: Okay.
25 MS. ROBESON: And with that, anything else? Mr.

Page 280

1 Kline, those are -- you're talking about in, you're going to
2 put these legal arguments in --
3 MR. KLINE: Yes, I'll be submitting them.
4 MS. ROBESON: -- writing?
5 MR. KLINE: Yes, ma'am.
6 MS. ROBESON: Okay. August 28th for your legal
7 argument; August 23rd for your pre-hearing statement,
8 correct?
9 MR. KLINE: Yes, ma'am.
10 MS. ROBESON: And September 4th for Mr. Harris's
11 submission of the owners' consent, correct?
12 MR. HARRIS: Yes.
13 MS. ROBESON: Okay. With that we will adjourn
14 until September 24th at 9:30 in the --
15 MR. ROBINS: September 4th.
16 MR. CHEN: 4th.
17 MS. ROBESON: I mean September 4th at 9:30 in the
18 morning in the 7th floor hearing room. Yes, one more?
19 MR. KLINE: No, no, no. Go off --
20 MS. ROBESON: Oh.
21 MR. KLINE: -- the record because I was going to
22 tell you the whole --
23 MS. ROBESON: Just a second. Kathy, we're off the
24 record.
25 MR. KLINE: The whole process may be actually

Page 281

1 invalid because if you're opening --
2 (Whereupon, at 5:03 p.m., the hearing was
3 concluded.)
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C E R T I F I C A T E

DEPOSITION SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the Office of Zoning and Administrative Hearings for Montgomery County in the matter of:

Petition of Adventist Healthcare and
Cabin Branch Commons
DPA 13-02

By:

Tracy Hahn, Transcriber

	Accessories (1) 96:4	113:13;114:16;119:15; 121:12;123:9;124:3; 126:23;136:17;140:2; 145:23;147:18;150:15; 15;151:21;152:3; 153:19;154:16;156:6; 25,25;175:23;176:14; 188:11;189:19,19; 196:24;211:13;213:23; 222:5;228:1;241:8; 250:12;261:12;262:4; 265:24;275:13;280:25	27:21 adverse (3) 24:5;183:22;198:15 adversely (3) 197:18;199:21;200:7 advisable (1) 117:18 advise (1) 167:8 advised (1) 112:7 affect (4) 71:12;187:23;188:1; 197:18 affirmative (1) 251:24 affirmatively (1) 152:4 afforded (1) 268:16 afternoon (5) 8:13;138:20;168:10; 183:7;220:24 afterwards (1) 62:9 Again (34) 18:11;21:1;23:9; 40:1;58:24;83:14; 89:22;94:11;97:4; 105:14;106:25;111:13; 120:14;122:21;123:2; 145:18,19;154:1; 158:6,8;159:1;182:23; 191:24;224:2;225:1; 229:10;232:1;233:25; 235:6;239:5;243:20; 251:22;253:21;270:19 against (6) 16:11;27:25;38:9; 60:1;145:16;148:15 agencies (1) 140:17 agency (2) 34:1;116:10 agents (2) 36:3;95:1 ago (15) 12:1;23:18;26:10,18; 47:12;81:5;104:17; 117:1;155:18;157:22; 199:19;208:12;252:10; 268:24;274:9 agree (20) 6:14;183:13;184:13, 18,20;186:2,11; 187:10;199:8,11,15; 203:8,10;207:4; 264:23,25;271:12,18; 272:18,20 agreed (3) 194:10;199:21; 278:20 agreement (1)	110:15 agriculture (1) 38:24 ahead (21) 36:16;39:17;40:11; 53:21;56:10;74:22; 92:4;101:22;105:25; 121:9,13;128:6; 130:25;131:4,4; 142:16;147:18;156:12, 20;233:2;264:8 aide (1) 222:15 air (2) 8:6;250:8 airport (1) 157:3 alerting (1) 193:6 alive (1) 174:2 allow (15) 14:15;36:2;38:1; 39:3;46:3;66:25;87:17; 112:1;213:10,18,22; 243:3;257:9;264:1,7 allowed (11) 33:13;35:21;36:24; 37:1,5;72:21;231:2; 251:12;255:23;264:7; 265:20 allowing (2) 190:24;195:21 allows (5) 214:23;226:7,8; 249:8;251:7 alluded (1) 129:13 almost (5) 65:20;75:3;95:18; 152:3;171:21 alone (1) 168:17 along (33) 39:4;52:22;143:17; 160:9;168:23;176:17; 185:14;211:1,3; 222:17;227:19;229:6; 231:7,16;232:16; 233:14,21,23;234:12; 235:14;237:14;239:1, 2,5,7;241:7,13,14,15; 245:22;263:6,8;277:16 alter (1) 168:21 altering (1) 38:1 alternative (11) 84:9,9,25;85:1,5; 86:7;109:25;213:9; 243:15,16;245:21 Alternatively (1) 107:6
\$	accommodate (1) 246:8			
\$1 (2) 17:21;18:10	accomplish (7) 178:2;236:18; 238:16;239:1;252:12, 15,18			
\$2,420,000 (1) 223:6	accomplishing (1) 236:22			
\$20,000 (1) 155:3	accordance (4) 67:12;68:21;251:13; 266:3	add (4) 9:1;100:3;109:6; 266:23		
‘	according (4) 93:14;168:23; 174:20;248:24	added (7) 101:15,20;154:6; 225:11,12;241:3,4		
“I (4) 52:16;53:1,13,23	account (1) 87:5	addendum (1) 6:24		
A	accurate (7) 11:3;56:2;81:2; 141:2;159:2;160:20; 201:19	addition (6) 225:2;232:17,22; 237:7;243:15;244:18		
aberration (2) 115:21;116:2	accustomed (1) 140:14	additional (5) 7:6;9:4;100:18; 121:1;277:9		
ability (1) 253:14	achieve (1) 171:7	address (14) 11:8,17;51:15;61:24; 62:9;90:23,24;103:1; 183:10;217:21,24; 218:1;238:21;247:11		
ability” (1) 162:23	acres (3) 170:4,11;243:22	addressing (2) 163:13;247:12		
able (21) 6:6;8:13;20:13; 29:13;34:3;38:19; 39:17;45:17;47:23; 53:3;83:4;89:23;91:22; 98:19;99:5;100:16; 190:25;210:23;239:14; 268:9;276:2	across (41) 12:2,22;14:4,16; 15:11;16:8,17;19:8; 21:13;22:15;23:8; 24:13;26:2,4;27:3; 28:4;29:25,25;30:12; 32:2;46:1;168:19; 169:20;170:22;171:1, 6,17,24;172:2,20; 175:15;176:7;177:3; 179:17;182:18,22; 188:6,15;240:3; 241:17,18	adhere (1) 162:22		
above (3) 89:7;225:24;247:6	activation (3) 176:20,24;177:15	adjacent (6) 147:14;153:15,16; 170:15;180:12;241:11		
absence (1) 214:2	active (1) 62:21	adjoining (1) 210:3		
absolute (2) 83:16;97:19	actively (1) 63:4	adjourn (1) 280:13		
absolutely (17) 15:16;19:7;20:15; 22:14;23:4,6;30:9; 52:9;55:7;60:8;69:17; 76:4;87:21;93:8,13; 159:25;160:1	activities (3) 20:10;170:10;174:5	adjustments (1) 66:25		
absorb (1) 119:10	activity (8) 89:12;99:19;158:9; 169:7;176:16;177:3; 200:19;229:12	admissible (1) 256:14		
absorbed (1) 118:10	actual (5) 21:20;158:24; 176:17;214:6;234:6	adobe (1) 124:20		
absorption (5) 114:18;117:23; 118:15;120:7;140:25	actually (57) 9:21;13:25;14:6,15; 15:20;17:20;30:17; 35:6;46:24,25;51:23; 69:22;75:22;88:4; 97:13,14;100:16; 111:23;112:14,15;	adopt (1) 224:4		
abundance (2) 7:17;278:7		adopted (10) 6:23;111:21;213:12; 247:25;248:2,11; 256:7;259:8,25;269:1		
accept (5) 39:4;148:5,23; 152:20;274:10		adoption (1) 256:10		
acceptability (1) 117:21		adopts (1) 68:20		
acceptable (1) 277:18		advantage (4) 66:7;143:6;146:25; 234:13		
accepted (3) 107:21;149:7,15		Adventist (4) 5:3;12:24;13:4;		
access (4) 53:2,3;64:20;233:6				

<p>alternatives (3) 84:24;106:25;110:23</p> <p>although (9) 84:13;92:24;130:12; 140:2,21;142:10; 146:7;147:20;167:25</p> <p>always (7) 15:8;29:18;92:12,12; 140:22;151:25;195:4</p> <p>amateur (1) 184:2</p> <p>amend (3) 122:17;125:11; 178:10</p> <p>amended (1) 247:16</p> <p>amending (1) 236:9</p> <p>amendment (50) 5:4;14:12;16:7; 18:15,17;19:13;21:14; 28:5;29:3;56:5;64:1; 68:4;75:21;81:1;165:9; 168:15,18;169:9,18; 172:15,21;173:14,18, 20;174:18;195:1,10; 213:9;224:22;225:3; 245:5;246:21;247:8, 11,22;248:1,12,16,25, 25;249:8;261:13,14,21, 22;268:7,8;272:23,25; 273:1</p> <p>amenities (24) 15:6,21;19:18,20; 39:9;63:16,20;64:4; 66:12;90:7;96:7; 113:23,23;115:6; 116:21;117:6;124:14; 128:16;171:22;172:16, 23;174:10;230:5; 260:13</p> <p>amenity (7) 89:21;90:11;98:21; 109:4;117:14;124:2; 153:19</p> <p>American (1) 221:1</p> <p>among (2) 63:9;166:21</p> <p>amount (19) 16:8;19:17;80:12; 84:16,24;86:2;103:3; 118:14;119:13;130:23; 135:20;137:12;140:20; 155:23;157:7;169:13; 178:17;195:16;224:21</p> <p>amphitheater (6) 177:7,8,15;211:23, 25;212:2</p> <p>amphitheaters (3) 20:18;23:11;177:12</p> <p>amply (1) 257:5</p>	<p>analogous (1) 154:10</p> <p>analyses (2) 92:9;154:23</p> <p>Analysis (15) 82:23;83:9,22;84:6, 22;86:2,10;87:11,14; 88:6,14;136:2;146:11; 154:2;155:12</p> <p>analyze (4) 86:3;87:19;92:13; 154:12</p> <p>analyzed (1) 83:20</p> <p>analyzes (1) 83:18</p> <p>analyzing (1) 92:17</p> <p>anchor (2) 95:17;106:21</p> <p>anchored (1) 161:3</p> <p>anchoring (1) 161:3</p> <p>and/or (1) 226:12</p> <p>anecdotal (1) 112:20</p> <p>Angeles (3) 124:7,7;146:17</p> <p>animals (1) 234:7</p> <p>animating (1) 20:12</p> <p>Anne (1) 125:3</p> <p>announcement (1) 240:11</p> <p>annual (2) 63:9;174:2</p> <p>annually (1) 140:12</p> <p>answerable (1) 192:20</p> <p>answered (6) 149:3;152:18;156:5; 184:6;188:22;207:15</p> <p>anticipated (2) 84:11;239:2</p> <p>anticipating (1) 136:15</p> <p>anticipation (1) 159:15</p> <p>antiquated (1) 223:15</p> <p>antique (5) 185:22;186:11; 187:17,21;190:10</p> <p>AOL (1) 117:1</p> <p>apologize (5) 8:4;23:16;92:5; 159:1;160:13</p>	<p>apparel (3) 94:5,14;230:24</p> <p>appeal (2) 6:16;105:5</p> <p>appealing (6) 104:25;143:6; 144:17,20;145:10; 150:13</p> <p>Appeals (1) 275:1</p> <p>appear (1) 211:25</p> <p>appeared (1) 22:25</p> <p>appendix (1) 6:20</p> <p>applicable (3) 55:16;251:15;254:1</p> <p>applicant (9) 7:12;18:14;29:22; 32:24;37:4;60:13; 108:11;137:10;277:15</p> <p>applicants (2) 47:7;70:25</p> <p>applicant's (4) 110:14;122:1; 128:10;176:15</p> <p>application (6) 5:3;10:13;144:24; 145:7;189:4;277:17</p> <p>applications (1) 25:3</p> <p>apply (6) 242:18,20;268:6; 269:6,7;273:6</p> <p>applying (1) 269:4</p> <p>appreciate (5) 11:19;31:17;48:24; 221:12;256:8</p> <p>appropriate (15) 6:12;24:3;67:13; 80:24;106:9,10; 151:18;153:2;154:21; 197:13;203:3,9,24; 237:6;274:11</p> <p>appropriately (1) 109:3</p> <p>approval (18) 18:24;27:9,11,17; 54:2;209:2;214:3; 224:25;232:10;233:22; 242:13;246:5,14,24; 247:8;248:11;256:11; 259:24</p> <p>approvals (9) 27:2;53:19;65:25; 215:20;227:11;237:4; 246:14,14;249:22</p> <p>approve (6) 65:1;66:24;83:17; 106:13;165:8;270:12</p> <p>approved (42) 5:5;6:22;14:17; 20:13;22:21,21;25:24; 26:25;28:3,5;47:24; 57:23;65:23;66:16; 69:9;75:6;78:5,9;99:8; 103:3;227:3,5;228:7; 231:15;233:18;236:23; 241:2;242:9,10,11; 244:9;246:3;249:8,18, 20;251:15;256:7; 259:6,8,25;266:4,5</p>	<p>100:9;105:8</p> <p>argument (19) 79:15;87:10;259:15; 267:2,4;272:2,6,7,18, 19;273:2,18;274:19; 276:19,25;277:4,9,11; 280:7</p> <p>arguments (3) 278:23;279:1;280:2</p> <p>arise (1) 59:21</p> <p>Armani (2) 189:7;191:1</p> <p>arms (1) 17:13</p> <p>around (16) 14:22;26:20;33:14; 37:17;44:16;74:8;94:9; 95:14;101:1;104:8; 105:9;123:6;124:10; 125:6;126:6;154:3</p> <p>arrange (1) 36:16</p> <p>A-R-R-I-E-R (1) 51:19</p> <p>arrive (1) 172:17</p> <p>arterial (2) 205:20,22</p> <p>article (3) 82:22;83:1;108:13</p> <p>articles (1) 83:5</p> <p>articulate (1) 177:24</p> <p>Arundel (2) 125:3,3</p> <p>aside (1) 146:21</p> <p>aspect (4) 8:4;93:8;144:20; 193:22</p> <p>aspects (2) 137:2;143:3</p> <p>assertions (1) 32:17</p> <p>asset (2) 52:17;58:5</p> <p>assistance (1) 276:2</p> <p>associated (1) 198:4</p> <p>assume (13) 31:22;47:4;85:22; 103:11;118:14;133:4; 148:1;178:19;183:25; 184:18;196:11;207:8,8</p> <p>assumed (2) 140:14;214:9</p> <p>assumes (1) 182:11</p> <p>assuming (14) 83:2;109:5,9;115:7;</p>
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132:16;135:20;149:10; 18,19;151:8;165:8; 182:14;196:25;203:4 assumption (9) 149:16;175:2,6,6,11, 13,14;182:15;254:21 assure (1) 210:2 atmosphere (1) 174:7 attached (2) 224:24;237:3 attachments (1) 65:17 attempt (1) 255:18 attend (1) 47:13 attendance (1) 199:20 attended (1) 59:22 attention (6) 14:24;34:8;144:2,17; 209:18;210:9 attorney (2) 72:13;158:2 attorneys (3) 81:24;157:19;217:18 attorney's (1) 50:23 attract (16) 20:22;64:6;88:4; 89:24;91:22;99:1; 104:2;106:23;114:20; 123:24;135:9;143:10, 12;146:7;152:7;223:17 attracted (2) 119:6;125:6 attracting (8) 86:14;89:2;90:13; 123:24;124:2;142:13; 157:5,9 attraction (2) 105:11;142:24 attractive (8) 103:4;104:10;122:9; 136:18,20;150:2; 152:3;168:16 audible (3) 7:15;50:21;81:25 augmented (1) 173:2 August (10) 130:17;275:17; 276:11;278:8,11,12; 279:16,23;280:6,7 Austin (3) 123:16,23;146:17 authority (1) 108:13 authorized (2) 243:1;245:14	available (15) 7:11;8:15;107:10; 146:5;153:17;154:16; 165:10,13;172:24; 239:6,6;243:12,13; 274:5;279:11 Avenue (9) 227:20,24;228:14, 24;231:8,10;238:14, 15;241:14 average (2) 93:14;94:12 avoid (2) 101:23;279:14 aware (64) 14:9;18:14;21:16,17; 22:1,7,12,23;23:20,23; 24:24;25:5,18,21,23; 26:1,24;27:5,8,17,24; 28:6;35:14;42:20; 43:20;44:2;45:15; 54:24;55:15;56:21; 58:16;68:14,17,18; 77:11,17,19,24;78:3; 101:9;150:21;151:22; 158:16,17,17;159:8,10; 187:5;189:5;195:3; 197:4,16,21;198:12; 199:18;201:3;205:2,6; 214:23;215:19,19; 244:3;245:5,15 away (18) 14:19;18:5;39:6,14, 16;40:16;41:3;42:6,8; 115:1;146:25;171:25; 176:25;177:16;178:3; 183:14;248:17;255:19 awhile (1) 149:23 awnings (1) 18:2	140:2;187:24 Bagage (3) 56:23,25;58:25 balance (4) 226:10,11,22;227:8 balanced (1) 32:21 ballgame (1) 104:19 Baltimore (5) 27:14;76:12;228:11; 241:6,7 bank (1) 187:6 banks (5) 95:2;227:10,10; 232:11;270:15 barbers (1) 94:25 BARRIER (25) 51:2,4,6,8,11,16,16, 18,19,22,25;52:3,6,9; 54:5,14,21;57:1,4;59:6, 10,13;60:6,8;61:17 base (9) 16:23;91:15;121:2; 223:1;257:16,17; 263:5;266:25;267:14 based (14) 47:11;48:12;58:15; 64:15;119:8;130:11; 155:18;246:4,9,13; 254:20,23;257:19; 271:25 basic (8) 60:1;63:3;64:4,11; 66:23;115:13;120:6; 134:14 basically (29) 16:5;22:17;53:17; 56:22;58:20,22;59:3, 14,14,16;60:2;70:24; 71:1;81:9;82:20;88:21; 89:7;95:22;101:6; 114:20;117:5;123:6; 126:19;181:23;187:13; 195:22;218:7,23; 248:17 basis (29) 32:16;53:13;72:25; 79:10,17;92:11;116:4; 149:2;175:6,10,13,14; 182:15;189:11;192:24; 197:14;204:5;220:14; 255:25,25;256:17,17, 19,21;257:13;258:5,8; 264:15;276:19 battle (1) 270:24 Bay (1) 205:21 bays (1) 101:10	beach (1) 34:17 bear (1) 162:6 beautiful (1) 23:7 became (1) 27:5 become (3) 20:25;40:1;117:4 bed (1) 190:11 beer (1) 185:23 begin (1) 224:1 beginning (4) 25:19;48:4;49:8; 112:16 begins (1) 163:2 behalf (2) 6:8;60:4 Behind (6) 14:8;16:3,17;18:12; 23:10;26:5 belabor (1) 260:21 belay (1) 204:23 Belgian (2) 157:14;158:5 Belgium (1) 147:16 belief (1) 270:16 believes (2) 49:12;124:23 below (1) 237:2 Beltway (1) 114:5 benefit (10) 52:19;66:20;84:5; 88:18;99:18;133:6; 166:16;188:7,8;210:13 benefits (1) 88:4 Bennett (2) 51:17;59:8 Bennigans (4) 186:25;188:6,13,13 besides (1) 131:19 best (4) 10:6;19:8;62:25; 82:25 Bethesda (1) 113:20 Bethesda/Chevy (1) 113:14 better (19) 86:6;90:17;94:1;	99:22;104:21,23; 107:23;112:21;120:5; 133:16;139:8;140:3; 167:11;193:12;200:18; 219:5,7;236:18;237:15 beyond (5) 98:13;114:4;142:2; 163:9;255:17 big (11) 15:19;22:14;80:23; 95:21;101:23;103:12, 22,25;104:9;147:6; 243:2 bigger (1) 239:7 biggest (5) 23:14;94:15;95:6; 99:18;166:16 bike (9) 240:24;241:3,5,13, 14,14,16,17,21 Bill (3) 72:12;105:6,10 binding (4) 101:5,9,15;102:11 bisects (2) 227:22,23 bit (29) 9:1,6;10:1;11:25; 17:4,17;23:17;24:11; 47:16;70:7,20;97:3; 114:17;120:4;122:9, 15;125:6;145:14; 167:5;187:6;206:1; 225:18;245:8;246:13; 247:19;248:18;250:3; 252:8;267:25 black (2) 169:14;269:22 blame (2) 126:14,16 blanket (1) 51:11 blasting (2) 31:5,8 bleeding (1) 64:24 block (1) 231:21 blocks (2) 211:3;231:8 blow (1) 129:9 blow- (1) 127:1 blow-up (5) 126:23;127:3,4,5; 128:2 blue (1) 13:6 Boa (1) 217:25 board (26)
	B			
	back (39) 10:2;15:22;29:12; 40:2;50:17;82:19; 90:16;100:23;101:5; 102:8;106:15;111:2,5; 112:15,22;117:22; 124:4,5,10;138:7,11; 140:5;151:14;159:11; 172:11;194:3;208:14; 216:20;221:18;233:15; 239:9;252:9,13;254:4; 258:11;268:10;274:13, 25;279:7 background (5) 168:22;181:14; 191:25;247:20;248:18 Bad (10) 26:17;44:17,21;49:8; 53:14;100:7,12;105:2;			

<p>35:25;38:8;65:16; 66:16;67:9;68:8,18,20; 101:7,19;165:4; 199:19,20,23;214:3,7; 245:25;246:1,24; 248:12;253:13,17; 259:7,24;270:12;275:1</p> <p>Board's (6) 101:16;102:24; 209:2;214:1;247:7; 252:22</p> <p>Bob (3) 222:9;223:22;232:24</p> <p>body (1) 6:19</p> <p>Bogorad (24) 82:2,3,5,7,8,16; 90:24;126:21;129:13; 131:6,22;133:8;134:2; 137:22;138:17;142:1; 167:23;175:8;189:8; 190:14,23;191:14; 194:14;216:4</p> <p>Bogorad's (6) 10:2;126:13;130:20; 163:10;175:9;182:20</p> <p>boil (1) 64:10</p> <p>bold (1) 141:19</p> <p>book (5) 174:5;186:19,21; 188:5;189:3</p> <p>bore (1) 63:4</p> <p>Boss (1) 189:7</p> <p>both (22) 6:19,21;62:25;93:21; 97:23;100:24;132:3; 140:8;179:8,11;181:9; 182:12,14;190:8; 218:13;222:18;230:20; 236:23;244:20;247:5; 257:7;272:3</p> <p>bother (4) 27:15,16;71:12; 151:9</p> <p>bottom (5) 126:18;129:4; 209:20;222:21;247:6</p> <p>bought (14) 11:25;26:9,13,24; 27:3;46:17,18,21,22, 23,25;47:2;147:4,6</p> <p>Boulevard (3) 129:7;231:19;234:21</p> <p>bounce (1) 174:9</p> <p>bound (3) 214:17;264:19;272:4</p> <p>boundary (2) 228:20;254:7</p>	<p>box (7) 57:22;101:23; 103:13,22,25;104:9; 129:9</p> <p>boxes (1) 129:8</p> <p>boy (3) 51:19;221:1;271:1</p> <p>Boys (1) 11:12</p> <p>Boyd/Clarksburg (1) 52:11</p> <p>brain (1) 268:5</p> <p>Branch (175) 5:4;12:2;18:16,21; 19:5;23:24;24:10,24; 25:3,5,18,21,23;26:25; 27:6,8;31:4,12;33:4; 18;39:14;41:13,24; 45:17,22;46:15,19; 47:13;48:11;52:16,19, 23;54:3;56:7,14,14,18; 57:1,9,16;58:21;60:11, 12;61:7;63:24;64:18; 65:3;66:22,25;69:24; 70:14;77:15,18;78:1,4, 14;79:25;80:13;85:16, 18;92:20;97:14,16,17; 98:18,24;99:5,9,12,21; 100:2;106:11,17; 107:10,13,20;108:12, 17;112:10;116:15; 118:8;119:7;137:2,8; 158:8,14;159:5,9; 160:9;161:1,24;162:9, 20;165:11,13;166:1, 19;169:13;170:21; 171:2,5,20,22;172:3, 23;173:1,6,8,17,19; 178:12;179:14;182:25; 183:14,18,22;187:14; 188:16;190:15;194:11, 15,18,19,22,23;195:2, 4;197:17,18;198:14; 199:10,12;205:3; 208:8;209:9,12;215:3; 216:5;224:10,25; 227:20,23;228:14,24; 230:9;231:8,10,21; 233:13,17;235:1,10; 237:14,23;238:14,24; 239:1,8,16;240:3; 241:13;242:6,21; 243:1;244:3,19,22; 245:11;246:10;247:14; 248:20;249:15,17; 252:18;269:9</p> <p>brand (4) 186:24,24;218:7,11</p> <p>break (13) 50:14;65:2;123:4; 126:1;136:23;137:21;</p>	<p>147:1;167:8,9;216:25; 217:7;258:12,15</p> <p>breakfasts (1) 190:11</p> <p>brief (3) 46:6,7;139:24</p> <p>briefly (1) 251:5</p> <p>bring (9) 20:16;33:5;38:20,20; 39:10;41:24;57:10; 122:8;169:7</p> <p>broad (1) 106:12</p> <p>broadens (1) 223:1</p> <p>broader (1) 92:25</p> <p>Broadway (12) 228:19,20,21,22; 231:21;233:17;235:10; 238:15;239:2,3;241:8; 254:6</p> <p>brochures (2) 22:17;56:22</p> <p>Brothers (1) 237:9</p> <p>brought (1) 174:3</p> <p>brown (1) 129:8</p> <p>browns (1) 126:24</p> <p>budget (3) 140:5,15,18</p> <p>buffer (1) 230:8</p> <p>Buffington's (1) 186:25</p> <p>build (24) 14:17;17:10;39:17; 40:16,17,25;41:1; 47:23;63:8;64:1; 108:11;110:15;111:23; 115:3,4,23;124:9; 153:16,18,21;154:9; 181:23;182:19;215:3</p> <p>build- (1) 243:9</p> <p>builder (1) 237:10</p> <p>builders (1) 237:8</p> <p>building (21) 15:9;17:14;22:21,24; 39:13;42:24;98:25; 115:3,4,19;122:8; 123:22;134:17,18,24; 135:7,12,22;184:1; 211:4;231:17</p> <p>buildings (14) 119:15;124:9,20; 129:16;132:23;134:15;</p>	<p>135:10;136:8;169:1; 187:11;190:7;195:8, 17;233:15</p> <p>build-out (4) 63:12;117:25; 118:15;120:2</p> <p>built (40) 14:15;17:10,25;18:4; 19:9;22:11;39:22; 41:23;45:16;85:23; 86:4;88:17;90:14; 98:18;100:16;103:17; 104:16,19;107:5,12; 109:2,4;111:9,17,25; 115:17;118:1;123:18; 125:4;147:3,10;149:4; 153:22;155:23;159:14; 176:2;179:15;185:8; 186:25;241:16</p> <p>bullet (13) 141:16,18;162:24; 194:4,7;195:14; 201:23,24;202:4; 209:15,20,21;222:21</p> <p>bullets (4) 162:14,17;190:3; 209:19</p> <p>buried (1) 117:3</p> <p>Burn (3) 229:3;233:17;235:7</p> <p>bus (12) 238:25,25,25;239:6, 7,9,14,18,19;240:9,10, 11</p> <p>business (28) 12:3,3;15:19,25; 31:7;33:3,4,10,11,21; 34:4,9;35:1;37:21; 57:11,11;72:14,18; 98:9;110:7;112:5,6; 136:1;147:5,5;154:24; 223:13;276:11</p> <p>businesses (12) 33:22;34:5;36:2; 39:4;64:7;169:5,6; 176:3;187:21,22,23; 188:4</p> <p>buy (6) 46:20;89:14;174:5; 218:17;219:24;220:1</p> <p>buying (2) 135:22,23</p> <p>bypass (5) 40:18,19,22;148:18, 19</p>	<p>19:5;23:23;24:10,24; 25:3,5,18,21,23;26:3, 25;27:5,8;31:4,12; 33:4,18;39:14;41:13, 23;45:17,21;46:15,19; 47:12;48:11;52:16,18, 23;54:2;56:7,14,14,18; 57:1,8,16;58:20;60:11, 12;61:7;63:24;64:17; 65:3;66:21,25;69:24; 70:14;77:15,18;78:1,4, 14;79:25;80:13;85:16, 18;92:20;97:14,15,17; 98:18,23;99:5,9,12,21; 100:1;106:11,17; 107:10,13,20;108:12, 17;112:10;116:15; 118:7;119:7;137:2,8; 158:7,14;159:5,9; 160:8,9;161:1,24; 162:9,20;165:11,13; 166:1,19;169:13; 170:21;171:2,5,20,22; 172:3,22;173:1,6,8,17, 18;178:12;179:14; 182:25;183:14,18,22; 187:14;188:15;190:15; 194:11,15,17,19,22,23; 195:2,4;197:17,18; 198:14;199:9,12; 205:3;208:8;209:9,12; 215:3;216:5;224:10, 25;227:19,23;228:14, 24;230:8;231:8,10,21; 233:13,17;235:1,10; 237:14,23;238:14,24; 239:1,8,16;240:3; 241:13;242:6,21; 243:1;244:3,19,22; 245:11;246:9;247:13; 248:20;249:15,16; 252:18;269:9</p> <p>cafeteria (1) 117:3</p> <p>calculation (1) 135:25</p> <p>calendar (2) 8:14;275:17</p> <p>California (1) 13:19</p> <p>call (18) 29:18;31:8;84:9; 85:19;109:25;116:2; 125:10;143:8;176:16; 196:3,5;197:2;219:19, 22;231:20;253:15; 257:16;262:14</p> <p>called (16) 31:4,11;35:22,23; 36:6;82:16;85:1;124:6; 129:5;155:2;159:11; 169:22;198:3;229:15; 234:4;246:11</p>
--	---	---	--	--

C

C-2 (3)
 265:20,20;270:20
Cabin (177)
 5:4;12:2;18:16,21;

<p>calls (12) 50:1,1;58:6,17; 77:15,17;159:9; 173:16;214:25;252:4; 255:11;264:4</p> <p>came (18) 8:5;10:11;14:23; 17:9;24:15;35:4,5; 48:25;49:3;58:20; 105:15;155:2;174:2; 191:22;216:23;261:8, 8;272:23</p> <p>can (145) 5:23,24,24;7:9;8:10, 23;9:18;10:8,15,17,25; 11:2,18;12:9,16,19; 15:12,13,13;16:23; 17:4;18:6,6,8;20:6; 24:7;31:14,22;32:1; 36:15,16;43:13;46:15; 49:7;51:18;54:10; 56:24;70:20;72:25; 73:8,20,20,23;78:12; 79:16;91:15,25;92:24; 93:1;95:3,4;96:14; 101:14;102:5;105:3,8, 8,14,20;107:11;109:7, 13,20;110:20;113:24; 116:21;122:11;126:8, 9,11;129:24;130:18,20, 21;131:4,18;132:19; 133:4;135:9;136:24; 137:23;139:18;144:19; 145:17;151:22,24; 156:16;161:12;163:8; 171:13;173:12;174:1; 183:18;184:19;186:8; 193:8,11;199:2;201:8; 203:5;204:2,21; 208:15,17;210:22; 213:6;215:16;217:8; 222:3;223:25;235:19; 237:14;238:4,21; 239:1,9;240:23; 241:24;243:16;247:18; 250:1,2;251:17; 253:23;254:4;256:12; 257:16;258:5,8,8,12, 12;259:15;264:6,20,20, 20;267:4;270:7;272:9; 274:3;276:5;277:22; 278:1,8</p> <p>Canada (3) 275:20;279:5,11</p> <p>Candidly (1) 193:10</p> <p>canned (1) 252:17</p> <p>cap (3) 223:6;224:22;225:6</p> <p>capability (2) 260:9;279:11</p> <p>capable (1)</p>	<p>19:4</p> <p>capacity (5) 18:16;45:19;87:22; 118:4;179:15</p> <p>captioned (1) 212:9</p> <p>car (4) 114:1;144:12;170:5; 227:6</p> <p>care (6) 53:24;65:14;73:14; 163:18;223:3;276:1</p> <p>careful (1) 58:2</p> <p>carefully (1) 14:5</p> <p>carry (2) 230:11;232:5</p> <p>cars (2) 57:13;76:24</p> <p>case (18) 5:17,23;6:7;7:18; 46:14;47:5;56:5;84:1; 88:13;92:20;114:11; 139:15;147:22;254:3; 267:6;273:19;276:13; 277:12</p> <p>case-in-chief (1) 9:15</p> <p>cases (1) 125:2</p> <p>catalyst (3) 122:3,19,21</p> <p>catalyze (1) 125:19</p> <p>catalyzing (2) 125:12,16</p> <p>categories (2) 194:16;271:24</p> <p>category (8) 94:15;95:21;227:11; 230:16;232:11,14; 243:3;271:21</p> <p>cause (1) 218:20</p> <p>caution (2) 7:17;278:8</p> <p>caveat (2) 49:1;193:15</p> <p>CBRT (9) 33:2,20;34:2;35:9, 14;36:15,18;39:4,5</p> <p>celebration (1) 174:3</p> <p>cell (1) 279:11</p> <p>Center (355) 12:5;13:2;15:5,7,14; 17:6,10,25;20:9,12; 21:17,20;22:1,3,5,9,13; 27:20;31:24;40:4,24; 41:9;42:7,16,17;43:8, 13,14;45:16,18,22;</p>	<p>52:15,20,23;53:2,7,12; 54:2;57:8,9;58:2,7; 61:4;63:23;77:12;83:5; 85:15;88:2,16;89:11; 91:1,2,3,19,21;92:9,13, 20;93:3,4,6,7,14,16; 94:3,3,14,15,24;95:1,3, 5,9,21;96:3,9,19,21; 97:7,11,11,13,15,19; 98:19,24;99:2,11,15, 20;100:3,4,15,19; 101:11,24;103:6,19,23, 24;104:1,3,5,6,13; 105:5,6,7,12,19; 106:10,11;107:4,7,16, 17,23;108:1,2,7;109:2, 2,11;110:24;111:17,24, 25;112:9;119:12; 122:2,4,19,23,24; 123:23;124:9,13,23; 125:9,10,21;126:18,20; 127:6,10,24;129:15; 131:7;132:16,18,19; 133:10;136:16,19; 143:20,23,25;144:14; 145:3,16,21;147:3,3,5, 7,9;150:3,16,24,25; 151:10,11,17,20,23,24, 25;154:6,18;155:4,13; 158:10,14,20,21,21; 159:5,13,22;160:1,3,5, 11,14,15,18,21,22,24; 161:2,5,7,8,9;162:5; 163:16;164:14,15,20, 22;165:2;166:6,7; 169:12,21,22,23;170:2, 4,9,11,17,18,23;171:1, 3,6,6,8,10,14,17,18,21, 23,25;172:1,2,5,11,14, 17,18,20,24;173:22; 174:1,11,16,19;175:10, 11,15,17,25;176:2,5, 22,25;177:8,17,19; 178:1,4,20,24;179:24; 180:1,6,7,17,17,20; 181:4,12,15,23,25; 182:5,6,7,25;184:1,13, 14,23;185:2,4,11,16; 190:15;191:3,5,11,16, 17;192:10;193:3,4,9, 12;194:6;195:8,22; 196:1,6,16,16;197:2,6, 17;198:16;199:22; 200:7,12,22,24;204:12, 13;209:8,22,25;210:3, 7;211:8;212:10,11,15, 17;213:11;218:10,16; 219:23,25;224:16; 231:5,13;232:21; 234:9;239:24;240:20; 243:19,24;244:23,25, 25;245:6;248:20,23; 249:4,19,21;260:14;</p>	<p>263:18;269:15</p> <p>centers (29) 83:2;93:11,12,15; 104:16;108:14;115:17; 123:13,18;125:1,12; 143:11;144:6;145:9, 20;146:7,10,12,18; 150:12;151:3,4,16; 152:17;164:24;170:5; 216:5;223:12;248:19</p> <p>center's (3) 53:15;90:20;178:17</p> <p>central (5) 169:24;171:14,18; 223:12;234:4</p> <p>Cents (1) 93:15</p> <p>Century (2) 168:25;169:1</p> <p>certain (3) 17:13;117:6;118:14</p> <p>certainly (18) 6:5;85:23,25;86:8; 89:8;100:10;108:5; 109:23,23;113:14,19; 114:9,13;116:1;157:8; 160:11;166:11;179:5</p> <p>cetera (5) 26:22;38:10;170:8; 230:19;265:11</p> <p>chain (3) 94:10;96:6;104:23</p> <p>chains (3) 95:25;99:3;110:2</p> <p>challenge (5) 139:2,6,25;140:18; 157:1</p> <p>challenged (3) 139:4,19;157:7</p> <p>challenges (1) 83:25</p> <p>challenging (5) 104:10;113:20,21; 119:24;139:23</p> <p>chance (5) 63:20;99:23;121:22; 139:8;279:2</p> <p>chancelleries (1) 265:21</p> <p>chances (1) 89:23</p> <p>change (13) 99:18;111:21;139:5, 16,20;145:14;166:17; 178:2,9;193:1;243:3; 253:15;254:2</p> <p>changed (11) 102:16;104:14; 159:18;224:20;225:3, 5,6;227:2;246:7,7; 248:17</p> <p>changes (3) 53:1;78:18;112:5</p>	<p>changing (2) 137:11;173:19</p> <p>chapter (2) 162:7;251:3</p> <p>character (3) 112:12;266:8;271:4</p> <p>characteristics (1) 162:3</p> <p>characterization (2) 32:6;75:2</p> <p>center's (4) 83:19;131:22; 151:13;203:23</p> <p>characterized (1) 164:5</p> <p>characterizing (1) 79:19</p> <p>chart (1) 263:7</p> <p>Chase (2) 51:17;113:14</p> <p>check (3) 22:16;125:24;148:7</p> <p>checked (1) 256:10</p> <p>Chelsea (1) 147:4</p> <p>CHEN (162) 6:1,3,5;8:2,4,10; 9:12;16:23;21:7,8,9; 24:7,8;31:25;32:2; 50:6,7;54:17,18,20; 55:13,14;57:18;59:19; 60:9;61:12;72:9,10,11, 12;73:1,2;74:15,19,23, 24;77:2;79:21,23; 81:13;126:9;127:8,14; 137:17,19;138:13,18, 19;142:4,9,12,17,18; 149:6,7,21;152:20; 153:4,11;156:12,13,18, 21;161:12,13;163:11, 18,22,25;164:3; 166:24;167:5,7,20,22; 168:4,5;177:20; 184:16;185:24;186:1, 5,7;188:22;190:16,22; 191:9,12,21;192:12,15, 18;193:6,15,18;197:7, 9;199:13,17,23;202:21, 24;203:1,17,20;205:5; 206:5;207:20,21,23; 208:15,21;210:18,20, 21;211:15,22;212:20; 214:25;215:4,9,13; 217:1,4;220:23;221:7, 8,15;252:2,4;253:6,11; 255:3,12,15,17;256:4, 22;257:1;258:4; 262:22,24;264:4,13,16, 19,23,25;265:2; 266:19;267:21,23; 268:14;274:6,8;</p>
---	---	---	--	--

276:15,16,18,23;277:7; 278:19;280:16 Chen's (4) 8:23;137:23;138:17; 258:4 Chick-fil-A (1) 93:23 children (2) 62:23;151:5 children's (5) 94:6;95:22,23;96:1; 174:5 choice (1) 96:10 choose (6) 76:6,23,24;114:9,10, 10 chose (2) 153:21;255:1 church (1) 17:15 circle (3) 145:13;228:24;239:9 circus (1) 22:15 Citadel (2) 124:6;146:17 citizen (3) 62:22;97:22;216:22 citizens (3) 24:14;50:14;97:21 city (4) 124:6,18,21,23 city's (1) 239:13 civic (10) 20:10;41:9;163:5; 169:7;170:5,7,25; 176:6;178:18;230:5 claiming (1) 100:10 clarification (4) 52:5;70:20;128:18; 236:9 clarify (8) 69:4;119:2;133:14; 180:3;187:25;206:23; 226:7;261:10 clarifying (1) 153:6 clarity (1) 80:18 Clarksburg (161) 5:9;11:10;12:1,3,5,6, 7,22,23;13:13,14,18; 14:19;15:7,12,18,19, 20,24;17:23;18:19; 20:15,18,21;22:9; 23:12,20;30:13;33:3,4, 10,11,21,24,25;34:8,8; 35:25;36:1;39:20; 40:15,24;41:24;42:16; 51:17;52:3,10,13,18,	21;53:2,17,24,25;59:4, 24;60:1;61:4;62:3,20, 23;63:2,5,6,7,12;64:18, 22;65:14;66:20,21,23; 67:1;70:3;90:13;96:21; 98:2,13;100:7,18; 103:5;107:2,25; 108:25;113:15;114:10, 15;116:16;117:16,17; 118:8;119:7;120:10; 122:11;131:11;135:12; 139:3;153:13;158:10; 159:12;164:14;168:12, 15,19,20,22;169:10,11, 16,20,22;170:2;171:4, 15,19;172:4,5,9,20,24; 174:3,12,15;175:5,17; 178:7,11,22;183:8,12; 188:14,18;190:2,8; 194:3;196:6,14,16; 197:5;205:17;206:13; 210:5;211:14;212:12; 218:1,1,6;220:17; 228:9;239:10;240:15; 242:3,5;244:20,21; 248:12,19;249:13,19, 20;270:9 Clarksburg's (1) 63:8 classic (1) 115:7 clause (1) 272:20 clean (1) 65:10 cleaners (3) 94:25;137:1,5 clear (11) 8:14;25:16;56:16; 65:9;73:3;80:11;93:2; 118:21;138:23,23; 219:1 clearer (1) 140:16 clearly (6) 124:14;146:19; 154:7;172:25;177:25; 212:8 clerks (1) 89:10 client (12) 6:9;8:6,24;35:23; 36:7;72:17;112:7; 137:23;157:10;167:6; 192:19;193:19 clients (6) 31:7;140:8;151:9; 220:8,10,16 client's (1) 192:20 climbs (1) 231:18 clock (1)	218:22 close (10) 20:4;21:19,23,24; 23:2;65:22;119:6; 146:15;218:13;276:10 closely (2) 140:4;271:23 closer (5) 69:23;114:5;117:12; 146:16;157:2 closer-in (1) 116:18 closest (1) 13:24 closing (2) 66:8;174:17 clothing (5) 94:7,8,14;95:22,23 clue (1) 35:11 cluster (1) 163:3 Coach (1) 122:12 Coalition (1) 38:8 coalitions (1) 38:9 Cobb (30) 8:6;72:17;167:9; 168:6;183:7;184:24; 192:13,15;193:7; 197:20,24;198:2,7; 202:7;205:6,23,25; 206:10;207:24;208:19; 211:6,10,13,19;213:4, 23;215:25;216:16,17; 257:6 coffee (4) 134:21,21;230:24; 265:10 Cohen (1) 102:8 Coincidentally (1) 156:24 cold (2) 127:12;275:22 colleague (2) 123:23;124:22 collects (1) 113:11 colors (1) 129:3 combination (3) 94:1;232:20;233:11 combine (1) 62:25 combined (2) 47:13;114:14 comfort (1) 10:4 comfortable (3) 67:10;120:24;154:24	coming (17) 9:5;16:20;35:6; 50:12;61:16;64:16; 65:22;69:23;81:18; 91:13;98:10;172:13; 188:12;191:4;193:18; 228:18;274:13 comment (9) 32:7;69:18;83:4; 115:11;126:13;139:18; 158:18;187:19;188:1 comments (4) 73:4;219:14;274:9; 276:24 commercial (31) 43:21;78:10,23;81:4; 82:24;85:9;113:12; 165:25;168:12;169:3; 170:14;185:3;190:9; 247:13;249:16;251:7, 11,17;259:2;260:3,12, 13;265:18,19;266:1,8, 10,11;270:8;271:5,6 commercial/industrial (1) 271:7 Commission (4) 47:9;59:7;103:21; 271:11 commitment (7) 97:16;102:1;109:10, 14,15;110:18;168:13 committed (2) 242:6,6 committee (3) 37:22;38:6;83:2 committing (1) 206:22 common (3) 182:17;219:22,24 commonly (1) 134:23 Commons (1) 5:4 Communities (2) 17:8;168:25 community (60) 9:4,18;18:21;20:10; 23:24;24:10;42:10; 49:9;52:17,19;53:19; 54:3;56:15,18;57:13, 24;58:4,5;59:3,13; 61:7;63:3,19;64:12; 66:11;73:13,14;77:15, 18;78:1,5;79:25;80:13; 81:6;89:18;100:8,13; 108:16;132:14;158:8, 14;159:5,9;162:10; 165:11;166:1,19; 170:2;171:12;196:20; 206:4;208:8;209:9,12; 220:5,13;231:13,17; 234:9;243:8 companies (8)	15:19;30:11;33:8; 39:19;89:24;90:9; 206:16;212:25 company (12) 13:21;29:23;30:14, 15;32:23;35:21;37:7,9, 12;184:3;198:3;205:13 comparable (2) 153:1;191:18 comparative (2) 83:11,14 comparatively (1) 157:11 compare (1) 243:16 comparing (2) 83:15;106:25 comparison (3) 47:20;56:13;153:13 comparisons (1) 47:20 compatible (4) 190:9;195:17;210:4; 271:23 compete (5) 90:5;116:16;125:22; 195:6,10 competes (1) 143:7 competing (16) 32:22;66:10;88:5; 92:22;96:17;107:4; 110:8;116:13;120:8; 159:19;171:1;175:17; 181:1;182:5,6;194:23 competition (5) 90:1;103:5;131:10, 12;143:17 competitive (3) 97:6;103:19;193:22 competitively (1) 116:17 competitors (1) 92:15 complain (1) 31:5 complement (1) 124:15 complete (1) 246:21 completed (2) 53:11,20 completely (1) 23:12 complexity (1) 9:1 compliance (2) 78:8;221:25 compliant (2) 79:19,20 complicated (2) 92:6,7 complies (1)
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233:4 complimentary (1) 124:14 complimented (1) 124:11 comply (1) 273:19 component (12) 83:11,15;95:6;115:6; 132:17;185:5,7; 200:21;201:1;248:18; 266:9;271:5 components (2) 196:2;260:14 comprehensively (1) 224:16 compromising (1) 52:22 Comsat (4) 239:16;240:2,16,18 Comus (4) 71:7,8;74:7,9 concentration (4) 103:16,22;117:19; 170:7 concept (8) 63:2;115:21,21; 168:16;169:21;181:24; 266:12;271:8 concern (7) 73:4;91:12,17;103:2; 185:20;187:16;192:18 concerned (12) 52:12;66:11,12,13, 16;67:22;69:25;98:3, 12;111:19;139:13; 253:6 concerns (2) 23:1;78:7 conclude (1) 169:15 concluded (2) 79:11;281:3 concludes (3) 11:22;51:10;174:21 concluding (2) 36:22;37:8 conclusion (6) 156:25;215:1;252:4; 255:11;264:5;268:5 conclusions (2) 219:21;246:18 Concordia (1) 12:24 condition (7) 103:1;140:21;209:1; 214:2,8,14;248:21 confident (6) 53:23;90:12;119:7; 155:15,16,19 confirmation (1) 277:16 confirms (1)	156:25 conflict (7) 112:11;218:9,16,18, 24;219:23;220:3 conform (4) 236:4;238:6,9; 242:24 conformance (1) 246:22 conformity (1) 246:19 conforms (6) 237:21;238:21; 240:23;241:19,25; 247:9 confusing (2) 85:13;113:7 congestion (2) 40:16;64:20 conglomeration (1) 104:8 connect (1) 234:24 connection (4) 55:9,16;231:13; 253:23 connections (3) 229:2;231:12;233:11 connects (7) 229:7;230:7;233:25; 234:25;235:9,22,25 consensus (1) 140:19 consent (1) 280:11 conservation (2) 242:9,12 consider (7) 38:1;116:19;147:19; 155:14;170:21;187:6; 235:5 consideration (1) 245:25 considerations (1) 256:2 considered (5) 144:3;153:12; 173:12;213:18;256:1 considering (1) 116:22 consist (1) 163:3 consistent (6) 102:4;112:12; 170:21;178:7;223:11; 241:19 constraints (1) 242:17 constructed (1) 243:5 construction (7) 64:23;195:16;243:6; 246:15,17;249:5,22	contact (4) 11:15;157:23,24,25 contacted (3) 30:5,7;31:11 contacting (1) 151:11 contacts (1) 147:15 contained (4) 64:24;70:15;251:15; 256:7 contemplated (4) 161:3;173:13;177:8; 195:4 contemporaneous (1) 256:1 content (1) 252:9 contention (1) 44:7 context (4) 113:2;117:18;164:9; 195:13 continuation (1) 5:2 continue (13) 14:15;140:18; 156:10;230:9;233:15, 19;234:11;235:11; 241:15,17,18;265:23; 275:3 continued (2) 229:9;234:23 continues (7) 16:4;170:1;222:24; 241:8,9,9,10 continuing (2) 9:15;274:16 contract (1) 213:1 contrary (3) 169:9;170:19;182:24 contributes (1) 128:12 control (1) 269:4 convenience (4) 109:24;110:20; 135:14;227:6 convenient (3) 137:1;145:22;238:25 conversation (3) 36:5,19;59:23 conversations (1) 59:16 cool (1) 250:8 coordinate (1) 242:13 copies (1) 62:8 Coppola (16) 69:8;180:11;185:15;	200:24;201:8;205:2,6; 212:25;213:7;215:18, 20,25;243:19;244:24; 245:13;268:21 co-president (1) 12:4 copy (13) 5:24;6:7,7,11,12,16; 46:13;73:21;74:2; 214:1;248:7,8;256:12 core (10) 101:1,17;112:19; 162:25;163:2,3; 229:12;234:2;263:11; 269:23 corner (8) 70:15;74:8;129:9; 135:10;211:4,6,6,20 Corporate (8) 126:18,19;127:6,10, 24;131:7;132:18; 148:13 corporation (1) 116:10 correcting (1) 197:1 correctly (2) 82:2;122:6 correlated (1) 140:4 correlation (1) 151:16 correspondence (1) 47:12 corridor (22) 15:23;111:7;112:23, 25;113:3,13;116:6; 117:24;141:22;142:21; 143:16,17;147:21; 173:11;222:18;223:18, 21;239:10,13;244:2, 11;263:8 CoStar (1) 113:9 Council (9) 5:5;164:6,25;165:8; 243:2;246:2;251:16; 266:5;274:22 counsel (11) 7:9;197:10,11;204:1, 2;255:5,15;256:9; 276:18;277:1,2 country (4) 95:15;105:9;113:18; 123:6 County (33) 13:20;38:22;47:1; 65:10;69:11;86:12,13, 15,17;88:18;90:3,5; 113:19;116:7,24; 119:25;125:4;143:7, 18,19;147:15,21; 157:20;218:6,6,7;	223:12;238:18,20; 243:2;246:1,5;267:16 County's (1) 168:24 couple (14) 9:4;21:25;35:10; 41:20;59:7;60:21; 88:17;177:25;222:23; 237:8;243:22;245:18; 246:12;274:21 course (3) 78:23;102:6;217:4 court (3) 150:7,8;230:17 courtesy (1) 54:9 courts (1) 124:10 cover (4) 63:14,14;106:18; 237:19 coverage (1) 195:19 covered (2) 110:7;156:11 crazy (1) 116:14 create (4) 63:3;177:15;227:17, 18 creates (1) 169:23 creating (1) 235:4 creation (1) 176:9 credentials (2) 83:3;190:23 credibility (1) 206:7 credible (3) 69:1;157:7;171:23 credit (1) 123:24 Creek (33) 52:23,25;55:6,17; 65:3,4,6,7,13,15,19; 66:13;67:10,22;68:1,6, 21;69:15,16;76:3,4,5, 20,24;213:8;242:16,17, 19,20;245:10,12,13; 249:14 Crew (1) 189:7 criteria (4) 115:4;154:10,11; 249:7 critical (10) 90:7;93:8,13;97:19; 109:3;111:25;125:14, 16;160:1;171:12 critically (3) 65:8;98:21;99:14
---	--	--	---	---

<p>cross (7) 70:11;123:5;138:1,3; 201:16;231:11;239:3</p> <p>cross- (4) 16:23;90:15;163:22; 216:23</p> <p>cross-examination (13) 8:21,22;9:21;10:2; 11:1;24:21;54:19;67:6; 82:2;128:22;138:16; 160:7;219:16</p> <p>cross-examinations (1) 91:15</p> <p>cross-examine (4) 130:11;138:17; 183:5;258:8</p> <p>crossroads (1) 62:20</p> <p>Crowe (1) 124:5</p> <p>crucial (1) 252:22</p> <p>crux (1) 92:7</p> <p>cue (1) 126:6</p> <p>cumulative (1) 88:15</p> <p>current (14) 77:20;84:9,10;88:11; 97:15;106:20;107:1; 173:22;186:16;208:5, 7;240:11,15;260:25</p> <p>currently (18) 58:17;77:14;97:18; 98:13;103:2;119:10; 178:13;188:14;192:10; 240:8;243:5,25;244:3, 6;245:14;249:4,22; 268:23</p> <p>customers (4) 92:25;172:10; 185:23;188:12</p> <p>cut (10) 36:3;220:1;228:16; 247:13;248:21;249:3, 16,21,23;274:16</p> <p>cut-off (1) 276:6</p> <p>cutting (1) 140:5</p> <p>CVS (1) 232:5</p>	<p>56:22,24;58:25;59:1, 20;60:10</p> <p>Darby (1) 189:3</p> <p>dark (1) 269:22</p> <p>dashed (1) 228:20</p> <p>data (8) 94:13;113:5,7,8,12; 114:13,13;146:5</p> <p>date (14) 7:6,10,11,18;28:19, 23,24;29:11;45:5; 130:17;237:4;242:8; 275:13;276:6</p> <p>dates (6) 7:6,19;28:15,15; 29:13;47:24</p> <p>Dave (3) 185:4;196:2;245:1</p> <p>David (2) 198:5;260:7</p> <p>Davidson (1) 58:25</p> <p>day (14) 8:12;20:19;37:18; 82:18;104:12;111:6; 112:21;117:23;130:15; 174:3,12;185:22; 193:1;274:2</p> <p>Daycare (2) 12:24;232:21</p> <p>days (9) 29:16;90:8;94:9; 102:7;122:14;125:17; 136:1;145:9;275:18</p> <p>DC (5) 104:16;123:8;125:3; 140:2,12</p> <p>dead (1) 175:11</p> <p>dead-ends (1) 211:10</p> <p>deal (3) 18:5;146:4;185:18</p> <p>dealing (6) 47:8;61:3;98:1; 101:10;161:9;252:15</p> <p>dealings (2) 18:12;57:7</p> <p>dealt (1) 83:7</p> <p>death (1) 98:18</p> <p>decent (1) 116:14</p> <p>decide (1) 41:12</p> <p>decided (2) 116:3;277:12</p> <p>decides (1) 38:7</p>	<p>decision (3) 10:7;38:12;143:15</p> <p>decision-making (2) 116:9,11</p> <p>decking (1) 13:21</p> <p>declining (2) 38:16;140:25</p> <p>decreased (1) 140:20</p> <p>dedicated (4) 87:25;238:18,20; 241:14</p> <p>dedications (1) 238:16</p> <p>Defer (1) 9:16</p> <p>deference (1) 10:8</p> <p>deferred (2) 247:14;249:17</p> <p>deficient (1) 252:14</p> <p>define (3) 113:13;160:15;170:8</p> <p>defined (1) 180:20</p> <p>definitely (1) 167:9</p> <p>definition (1) 226:4</p> <p>definitions (1) 104:7</p> <p>definitive (1) 109:18</p> <p>degree (3) 142:6;192:5;271:22</p> <p>delay (1) 9:19</p> <p>deli (5) 134:22;135:14; 185:23;186:17;265:10</p> <p>Delicatessen (1) 135:4</p> <p>deliver (2) 63:18;66:4</p> <p>delivered (2) 18:23;19:12</p> <p>demand (22) 96:15;98:4;99:20; 100:4;107:16;108:19; 114:6;115:13,18; 135:9,18;140:3;141:1; 155:9,21,24;156:2,23; 157:2;160:8;176:8; 179:17</p> <p>demonstrated (1) 89:22</p> <p>denied (5) 16:7;17:20;65:24; 168:15;174:18</p> <p>density (12) 64:15;163:4;251:4,</p>	<p>11,14;259:2,6,7,25; 260:3;272:9,10</p> <p>dentist (2) 95:1;232:12</p> <p>department (1) 176:9</p> <p>depending (1) 144:19</p> <p>depends (2) 43:12;71:7</p> <p>depressing (1) 117:23</p> <p>depression (1) 246:12</p> <p>depth (1) 106:23</p> <p>describe (6) 12:19;47:16;126:9, 12;210:22;235:19</p> <p>described (5) 75:11;81:9;132:9; 145:10;197:23</p> <p>describes (1) 158:14</p> <p>describing (3) 158:7;164:11;220:16</p> <p>description (1) 176:14</p> <p>deserted (1) 173:23</p> <p>deserve (1) 65:2</p> <p>deserves (5) 53:25;67:1;258:6,7; 267:7</p> <p>design (4) 65:6;68:24;162:18; 213:9</p> <p>designate (1) 192:6</p> <p>designated (1) 253:4</p> <p>designates (1) 174:15</p> <p>designation (2) 162:4;209:22</p> <p>designed (3) 14:21;81:3;224:16</p> <p>designer (2) 95:11,19</p> <p>desirable (1) 64:6</p> <p>desire (1) 113:22</p> <p>desired (2) 236:12,13</p> <p>desolate (1) 15:17</p> <p>desperately (1) 96:13</p> <p>Despite (1) 169:3</p> <p>destination (2)</p>	<p>152:3;231:6</p> <p>detached (2) 224:23;237:1</p> <p>detail (4) 17:5;128:3;130:23; 163:8</p> <p>details (6) 48:3;63:11;137:14; 145:13;150:10;181:19</p> <p>determine (5) 31:18;68:5;120:5; 154:19;214:16</p> <p>determines (1) 67:12</p> <p>determining (2) 82:22;146:6</p> <p>detract (4) 91:18;178:22,22; 179:3</p> <p>detraction (2) 18:21,25</p> <p>detriment (2) 177:19;178:4</p> <p>detrimental (3) 159:20;166:21; 182:21</p> <p>develop (6) 21:16;66:4;170:17; 178:17;206:17;272:1</p> <p>developed (22) 57:24;71:15;80:4; 83:12,12;85:25;86:1; 118:12;123:16;124:5; 148:2;154:17;157:18; 178:19;179:1,4,11; 196:19;200:12;207:5; 219:6;236:15</p> <p>developer (18) 17:8,14;22:9;30:17; 35:24;36:13;45:15; 50:4;66:10;91:3;99:1; 100:11;124:5,19; 153:17;154:8;193:2; 197:17</p> <p>developers (17) 31:21;32:23;33:9,14; 34:9;36:4,14;38:25; 39:23;49:25;50:5;53:7; 63:17,17;66:4;125:17; 206:12</p> <p>developing (3) 26:7;112:23;152:15</p> <p>development (176) 5:5;13:1;14:11;16:7, 11,17,17;17:21;18:5, 15,23;19:12;20:14; 21:14,20;23:1,3;24:10; 25:3;26:2,4,5;27:2,18, 20;28:1;29:2,4;30:6; 31:3,15,20;32:5;34:25; 35:19;36:23;42:20; 55:16;56:5;57:7,19; 59:17;63:24;64:1;67:1,</p>
D				
<p>D'' (1) 260:15</p> <p>damage (4) 65:4,5;69:12;172:19</p> <p>damaging (1) 109:10</p> <p>Dana (6)</p>				

<p>13;68:5,21;69:11,15, 24;70:14,24;75:21; 76:16;79:5,12;80:3; 81:1;83:6,8;87:13,15, 16;90:20;91:19;98:20; 100:8,13;101:20; 108:6,8,8,15,18,18; 111:7,15;112:13; 117:15,17;122:3,5,7, 19,22;123:2,25;125:6, 13,16;135:20;147:5, 19;154:4,8,22;157:12; 158:24;162:2;165:9, 10;168:15,17;169:8, 18;170:16;171:5,9; 172:3,15,17,21;173:14, 17,20;174:17,19; 177:7;180:11,15,16; 182:24;183:22;184:8, 9;185:2,3,5;187:14; 189:17,20;192:10; 193:8;195:1,9,22; 197:21,22;198:1; 203:14;204:10;205:9; 209:24;210:1;222:23, 24;223:2,21;224:15, 21;227:1;230:10; 233:12;235:12;236:9; 242:23;245:20;246:4, 20,21;247:13;249:14, 16;254:24;259:6; 260:3;265:23;266:3,6, 9,12;269:13;270:2; 271:6,9</p> <p>Developments (3) 82:23;157:6;207:12</p> <p>Diagram (2) 262:14,21</p> <p>dibs (1) 107:7</p> <p>die (1) 135:19</p> <p>difference (3) 104:4;106:21;250:21</p> <p>different (38) 5:23;6:7;11:22;59:2; 64:9;78:21;81:5;89:15, 22;93:2,25;95:10; 98:11;103:23;104:7, 19;105:17;110:10,10; 114:12;120:23;144:6, 15;152:2;154:3;164:7, 13,18;175:4;178:6; 212:14;227:18;234:7; 237:11,12;244:18; 257:19;272:15</p> <p>differently (4) 81:6;113:3;186:9; 214:11</p> <p>difficult (8) 104:11;107:5;109:1; 113:18;114:7,20; 135:16;139:11</p>	<p>dig (1) 122:14</p> <p>dining (1) 72:2</p> <p>direct (10) 64:19;89:25;123:5; 138:3;142:3;147:1; 163:10,11;198:18; 222:3</p> <p>Directing (1) 209:18</p> <p>direction (1) 247:3</p> <p>directions (1) 210:24</p> <p>directly (6) 12:1;13:7;28:4; 125:22;169:9;211:7</p> <p>disadvantages (1) 116:17</p> <p>disagree (1) 35:5</p> <p>disagreement (2) 35:2,3</p> <p>disallowed (1) 35:18</p> <p>disappointed (1) 63:16</p> <p>disaster (1) 64:19</p> <p>discuss (3) 169:15;244:4;271:1</p> <p>discussed (3) 233:7;235:5;238:1</p> <p>discusses (1) 173:6</p> <p>discussing (1) 173:8</p> <p>discussion (17) 31:23;82:9;101:7; 112:24;126:7;127:22; 130:24;138:9;169:16; 199:4;206:13;217:11, 16;225:19,25;255:21; 258:25</p> <p>discussions (5) 32:22;37:9;67:9; 205:12,15</p> <p>displays (1) 174:8</p> <p>disprove (1) 214:12</p> <p>dissimilar (1) 244:2</p> <p>distance (2) 116:19;171:23</p> <p>distinctions (1) 114:12</p> <p>distinguish (2) 6:6;160:23</p> <p>distinguishable (1) 129:5</p> <p>distraction (1)</p>	<p>66:23</p> <p>District (106) 5:5;12:6;14:19;15:4, 8,16;16:1,6;17:11,17; 18:11;20:22,23;21:4; 23:10;30:19;39:8,25, 25;40:15,25;41:25; 42:6;72:14;164:6,25; 165:8;168:12,14,23; 169:5,12;170:3,12,13, 15;171:3,22;172:2,14, 25;173:22,25;174:2,4, 11,16;175:18;178:24, 25;180:8;184:12,14,14, 22,23;185:13,16,19,21; 186:12;187:4,11,15; 188:7,8;189:10,14,17, 20,23;190:1,8,14; 191:3,5;192:16;194:5, 7,23;195:7,11;196:18; 200:18,23;201:11,12; 204:14;205:19;206:18; 207:1,11;209:23; 210:6,10;212:4,5,17; 243:19,24;244:23; 245:7,9;248:20; 251:16;266:5</p> <p>district** (1) 210:5</p> <p>districts (1) 223:13</p> <p>divide (1) 245:8</p> <p>divided (1) 234:5</p> <p>doctor (1) 89:18</p> <p>doctor's (3) 89:15;95:1;232:12</p> <p>document (3) 6:10;199:13,25</p> <p>documents (1) 203:21</p> <p>dogs (2) 20:17;38:20</p> <p>dollars (2) 92:23;93:15</p> <p>dominant (2) 266:7;271:4</p> <p>done (26) 14:16;17:14;18:18; 21:4;53:24;56:13;59:2; 69:13;92:8;99:25; 100:9;105:8;109:4; 122:23;125:2;147:18; 155:9,12;163:22; 164:3;172:19;184:6; 268:17;269:12;273:9; 279:4</p> <p>door (2) 38:5;268:10</p> <p>dotted (1) 16:15</p>	<p>double-duty (1) 230:22</p> <p>doubt (3) 84:2;88:3;111:18</p> <p>dower (1) 112:24</p> <p>down (43) 15:15,22,22;26:6; 27:14;43:1,5,9;44:6, 13;64:11;67:8;70:11; 75:20;76:11;93:21; 94:18;105:2;112:3,19; 114:17;122:5;126:18, 22;130:17;143:22; 159:3;162:24;172:6; 190:18,20;191:7; 216:8;219:18;221:12; 228:23,24;234:8,21; 241:6;246:13;263:18; 277:1</p> <p>downtown (4) 92:10;114:5;124:7; 136:9</p> <p>downtowning (1) 17:16</p> <p>dozen (1) 59:3</p> <p>DPA (11) 164:6;165:4;166:11, 13,18;171:1;208:1,10, 23;222:24;223:16</p> <p>draft (2) 245:15;248:12</p> <p>drain (1) 249:13</p> <p>drains (1) 245:10</p> <p>dramatically (3) 64:5;78:19;140:7</p> <p>draw (9) 73:17;83:6;98:5; 132:10,13,14;172:1,2; 177:16</p> <p>drawing (5) 92:25;126:22;127:6, 10;150:3</p> <p>drawings (1) 235:16</p> <p>drawn (3) 179:20;188:6,15</p> <p>drink (1) 22:17</p> <p>Drive (13) 51:17;76:4,9;144:12; 176:8;189:25;205:21; 218:11;239:20,23,24; 240:3,5</p> <p>drivers (1) 114:6</p> <p>driving (4) 19:8;57:14;77:3,4</p> <p>dropped (2) 50:2;140:6</p>	<p>dropping** (1) 141:1</p> <p>droughts (1) 65:12</p> <p>drugstore (1) 94:22</p> <p>drycleaner (2) 70:10;75:25</p> <p>due (3) 10:8;125:7;169:6</p> <p>during (12) 84:5;105:3;136:22, 24;160:6;167:8;174:2, 13;198:17;200:11; 216:23;243:14</p> <p>dynamite (2) 31:5,8</p> <p>dysfunctional (1) 63:12</p>
E				
			<p>eager (2) 109:4;154:8</p> <p>earlier (9) 97:21;146:1,3; 156:11,24;172:7; 230:23;235:15;250:1</p> <p>earliest (1) 123:17</p> <p>early (4) 124:17;168:25; 169:1;242:6</p> <p>easier (3) 99:13;106:23;123:2</p> <p>easily (1) 239:1</p> <p>east (45) 13:7;18:19;19:2,9; 23:13;41:4;42:14,19; 45:24;54:25;57:14; 67:11;69:25;72:14; 75:16;107:20;115:22; 124:7;129:14;147:2; 170:13;178:25;191:17, 18;196:24,25;197:1,1; 201:12;209:22;222:18; 228:11,21;230:6; 233:9,25;234:19; 235:10,13;238:15; 239:10,16;240:2; 245:8;249:14</p> <p>eastern (5) 234:15;239:9,15; 244:12;263:6</p> <p>east-west (3) 229:1;231:12;233:11</p> <p>easy (3) 10:9,20;83:19</p> <p>eat (6) 100:1;144:19; 150:20;151:22,24; 152:4</p>	

<p>eating (3) 64:6;152:12;165:5</p> <p>economic (4) 89:12;99:19;111:15; 119:25</p> <p>economically (2) 81:5;172:18</p> <p>economics (1) 200:17</p> <p>edge (2) 233:22;237:17</p> <p>educated (1) 86:25</p> <p>education (1) 101:3</p> <p>effect (5) 91:6,24;92:15; 147:24;166:21</p> <p>effectively (2) 168:18;204:10</p> <p>efficient (1) 204:6</p> <p>effort (1) 152:1</p> <p>eg (1) 190:10</p> <p>eight (1) 14:3</p> <p>either (18) 29:13,23;38:11; 41:23;83:7;137:7; 166:9;167:11;181:7; 220:8,16;226:4; 233:10;234:10;240:10; 243:15;266:12;271:8</p> <p>elaborate (4) 91:10,25;122:15; 159:17</p> <p>elaborated (1) 143:4</p> <p>element (6) 101:5,9,12,15; 108:20;249:2</p> <p>Elementary (7) 59:8;63:6;170:8; 229:3;230:6;232:23; 235:8</p> <p>elements (3) 102:11;125:16; 158:20</p> <p>elephant (1) 182:3</p> <p>elicit (1) 255:25</p> <p>eliminate (1) 154:15</p> <p>eliminates (1) 154:14</p> <p>Ellen (6) 56:22,25;58:25;59:1, 21;60:17</p> <p>Elm (14) 14:23;17:4,21,22;</p>	<p>18:5,12;42:20;170:12, 19;180:6;185:4; 197:25;198:4;244:25</p> <p>else (17) 7:4,14;16:10;29:23; 35:9;64:25;66:1;99:7; 109:8;143:14;144:12; 147:13;153:22;157:25; 275:6;276:1;279:25</p> <p>elsewhere (5) 90:2;116:15;118:8,8; 143:8</p> <p>e-mail (4) 11:16;51:5;62:5; 217:21</p> <p>emphasis (2) 145:23;232:8</p> <p>emphasized (1) 141:19</p> <p>emphasizes (2) 169:23;173:9</p> <p>employed (1) 31:19</p> <p>employee (3) 140:11,21;141:21</p> <p>employees (8) 89:6,8;113:25; 116:22;117:2,13; 144:22;145:11</p> <p>employers (1) 90:1</p> <p>employment (57) 86:15,17;88:20,22, 22,23,24;89:2,16; 104:2;107:12;122:2; 123:25;140:4;142:20; 143:10,20;173:3,7,8, 10,11;222:15,17,18,25; 223:1,8,11,17,20,20; 224:14,16;225:4,5,10, 15;227:9,11,14; 231:25;232:9,9,11,14, 18;233:20;234:2; 237:16;244:2,7; 260:12;263:8,23; 266:8;271:4</p> <p>encourage (7) 100:25;101:2; 141:21;176:3;190:7; 195:16;237:24</p> <p>encouraged (3) 190:13;222:19; 236:17</p> <p>encourages (2) 173:9;189:20</p> <p>encouraging (2) 142:20;254:22</p> <p>end (18) 5:13;8:12;56:6,11; 57:25;87:11;94:9; 98:24;119:20;130:15; 147:21;158:10;160:1, 19;164:7;192:25;</p>	<p>240:18;275:10</p> <p>ended (1) 145:12</p> <p>engineer (1) 157:20</p> <p>engineering (3) 157:21,21;246:15</p> <p>England (7) 30:6;31:3,20;34:25; 35:19;36:23;63:24</p> <p>enhance (1) 223:18</p> <p>enhanced (1) 260:11</p> <p>enjoy (3) 104:11;145:23;174:5</p> <p>enough (16) 6:6;37:24;45:19; 66:2;97:22;117:14; 135:18,24;147:6; 153:10,10;181:19; 184:5,5;220:5;273:20</p> <p>ensure (2) 210:4;260:9</p> <p>entered (1) 189:4</p> <p>entertainment (1) 223:4</p> <p>entire (4) 63:13;169:24; 171:14,18</p> <p>entirely (1) 112:12</p> <p>entitled (1) 51:9</p> <p>entrance (2) 231:25;233:18</p> <p>entrances (1) 233:17</p> <p>envelope (1) 65:5</p> <p>environment (4) 90:10,11;242:2; 260:11</p> <p>environmental (8) 52:24;65:6;68:24; 241:24;242:1,14,17; 245:22</p> <p>environmentally (1) 68:22</p> <p>envision (2) 257:22,22</p> <p>envisioned (6) 108:16;192:10,11; 226:22;239:8;250:5</p> <p>envisions (1) 174:10</p> <p>EPA (1) 122:2</p> <p>errands (2) 71:2,18</p> <p>ESD (1) 68:24</p>	<p>especially (7) 98:4;100:14;116:22; 136:9;204:6;219:25; 277:4</p> <p>essence (1) 248:15</p> <p>essential (1) 108:6</p> <p>essentially (4) 72:24;86:6;91:6; 205:25</p> <p>establish (6) 83:3;171:1;222:25; 265:24;266:7;271:4</p> <p>established (2) 247:15;249:18</p> <p>establishment (2) 92:10;171:2</p> <p>establishments (1) 187:3</p> <p>estate (6) 36:2;95:1;113:12; 115:8;184:2,3</p> <p>estimate (3) 119:20;246:6,16</p> <p>et (5) 26:22;38:9;170:8; 230:19;265:11</p> <p>ethnicities (1) 93:25</p> <p>evaluation (1) 152:17</p> <p>even (42) 18:4;24:12;26:3; 49:9,12;64:22,25; 73:10;76:1;83:24;94:9; 95:21;97:3;98:25; 107:4;108:8;111:19; 113:13;116:3;117:4; 118:5,6;119:4,6,11,12, 21;125:3,12,16;133:9; 140:11;142:4;144:11, 15;146:20;159:3; 167:13;188:20;199:10; 203:20;207:6</p> <p>event (1) 174:3</p> <p>events (1) 47:13</p> <p>eventually (1) 64:8</p> <p>everybody (10) 17:18;18:3;26:22; 33:7,10,13;48:3;49:25; 128:8;139:12</p> <p>everybody's (1) 279:15</p> <p>everyday (1) 174:12</p> <p>every-day (1) 64:25</p> <p>everyone (5) 7:14;35:9;138:14;</p>	<p>147:17;258:12</p> <p>evidence (11) 183:21;191:12; 197:13;199:14;200:6, 9;203:25;216:6; 256:14;257:14;277:10</p> <p>evolved (1) 260:24</p> <p>exacerbating (1) 172:19</p> <p>exact (4) 27:10;107:22; 110:23;145:4</p> <p>exactly (15) 15:14;16:3;19:10; 60:14;74:6;79:3;86:3; 101:13;110:13,14; 119:5,13;164:23; 178:5;263:15</p> <p>examination (6) 16:24;46:8;90:16; 163:23;207:22;216:24</p> <p>Examiner (40) 5:8;6:1;8:2;17:3; 22:25;48:9;54:24;69:3; 73:8,9;75:11;127:8; 138:18;152:16;153:23; 163:7;167:8,22;168:7, 11;190:18;192:12; 193:6;198:13;203:2; 204:1,3,9;208:1; 210:14,23;216:17; 252:5;255:6;256:13; 257:6;258:22;266:20; 274:8,9</p> <p>Examiner's (4) 152:22;184:6; 191:20;247:2</p> <p>example (7) 94:2;124:2,3,17; 128:11;135:11;174:1</p> <p>examples (7) 122:18;123:7,8,17; 145:2;146:9,16</p> <p>exceed (6) 236:25;259:7,24; 263:16;266:10;271:7</p> <p>exceeded (1) 237:5</p> <p>exception (3) 41:14;93:23;265:20</p> <p>excessive (1) 103:5</p> <p>exclusively (1) 103:25</p> <p>excruciating (2) 63:11;64:10</p> <p>Excuse (8) 7:22;73:15;76:13; 142:9;185:24;190:16; 202:3;276:23</p> <p>excused (4) 50:13;81:19;167:23;</p>
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216:15 exhaustively (1) 194:21 exhibit (41) 6:11,13,17,21,25; 12:12,13,29:5;46:13; 54:6;62:12;70:19,25; 73:5;101:6;105:21; 126:19;127:9,11,23,25; 128:3,4;129:2,10,11; 132:24;198:25;199:2; 243:20;256:11;262:4, 8,10,11,13,14,18,22; 263:1;269:17 exhibits (4) 5:17,20;127:15; 128:9 exist (1) 141:5 existing (12) 85:1,4,6,19;87:9; 124:20;151:16;190:7; 236:15;244:8;254:24; 271:22 exists (2) 39:16;135:21 exit (2) 42:8,9 expanded (1) 170:3 expansion (1) 99:12 expect (8) 71:15;93:20;146:20, 22;164:14,22;166:14; 167:5 expected (4) 18:22;19:12;53:11; 275:9 expecting (1) 62:24 expenditures (1) 87:6 expense (1) 63:19 experience (6) 77:6;174:12,12; 184:1;246:5,9 expert (12) 55:21,23;58:14; 112:11;130:10,18; 202:23;207:8;256:1; 257:9;258:5;275:9 experts (1) 257:10 explain (17) 10:22;20:6;32:18; 33:19;43:13;56:24; 142:23;169:20;247:18; 250:2;252:24;253:12; 255:18;257:5;261:7, 20;263:2 explained (2)	145:17;253:16 explaining (1) 43:25 explanation (1) 255:21 explicit (1) 255:19 Explicitly (1) 171:8 express (4) 49:9;168:20;173:21; 255:7 expressed (2) 23:1;152:16 expressly (2) 62:23;173:15 extensive (1) 132:2 extent (6) 92:22;97:8;102:1; 124:4;205:12;236:11 extra (1) 230:3 extremely (3) 21:24;66:9;139:4 <p style="text-align: center;">F</p> fabric (1) 237:15 face (4) 230:2,3;231:23; 234:24 facilities (2) 152:12;176:2 facility (2) 115:22;165:5 fact (21) 53:6;77:21;79:5; 84:3,4;94:13;103:17; 125:7;143:21;144:24; 146:21;154:17;164:23; 172:7;173:5;194:18; 199:10;203:23;208:19; 238:17;268:6 factor (5) 116:19,20;117:20; 176:21;177:16 factors (2) 166:21;176:24 facts (4) 25:20;53:16;197:11, 12 factual (1) 255:25 failing (2) 40:14;63:17 fair (9) 32:25;33:13;37:24; 113:19;116:2;131:17; 184:5,5;188:25 Fairfax (1) 143:18	fairly (2) 66:18;129:5 fairness (2) 66:14;190:25 faltering (2) 15:4;39:9 familiar (9) 23:2;79:24;101:12; 128:17;131:7;181:18; 188:5;196:9;201:5 family (3) 8:8;168:13;207:6 far (27) 43:5,12;47:22;94:15; 97:16;110:15;115:24; 116:12,23;117:10; 125:13;136:3;139:7; 146:25;147:20;160:18; 166:8;175:4;193:21; 194:20;231:2;242:3; 251:1;255:24;256:21; 274:10,18 Farm (1) 70:8 farmers (3) 38:21,23,24 Farmer's (29) 12:5,7;14:25;15:2; 17:23,24;18:7;20:4,11, 15,21;21:3;30:13,23; 35:18,20,25;36:1,24; 37:2,6,11;38:2,15,22; 39:7;42:1;49:5;257:6 farther (3) 113:21,21;114:8 fashion (12) 71:23,25;95:12; 122:1,4;136:7,18; 140:16;144:16;226:12, 16,23 fashionable (1) 72:5 fashions (1) 95:19 faster (2) 88:13;154:5 Father (2) 129:7;147:16 fault (4) 45:13;100:10,11; 112:17 favor (1) 99:11 favorably (1) 273:3 feasible (1) 125:23 features (3) 68:25;151:10;242:14 Federal (2) 140:5,9 feel (11) 11:3;16:9;18:20;	52:1,16,18,21;53:23; 117:12;154:24;273:18 feeling (2) 6:15;167:4 feelings (1) 49:9 feet (61) 14:13,13;27:18; 78:10,22;80:14;81:4; 85:7,20,24;87:12,12, 19,21,22;101:18; 102:20;110:2;117:24; 120:6;135:21;137:9; 165:22;173:1,3; 181:11,17,20;195:13; 196:22,23;203:16; 209:11;215:3;223:8; 225:4,9,21,24;226:9; 227:5,9;229:6,25; 232:19;244:13,17; 247:15;249:18;253:13; 254:11,23;261:2; 263:21;264:2;269:16, 24;270:15;272:21; 273:7,8 fence (1) 233:16 festive (1) 174:7 few (17) 10:22;24:23;50:3; 64:11;65:11;92:7;94:8; 105:8;115:24;139:15; 146:9;157:6;169:5; 189:21;199:19;246:2; 259:1 field (2) 17:24;47:1 fifth (1) 194:4 figure (16) 134:1;179:7;191:25; 192:24;209:24;210:10, 11,15,17,23,25;211:24; 212:8,9;249:15;257:15 figured (1) 130:16 figuring (1) 181:12 file (2) 28:12;29:6 files (1) 31:6 fill (3) 78:19;79:1;107:10 final (3) 205:1;216:3;246:18 finally (5) 42:24;63:19;68:20; 109:4;246:15 financing (1) 192:5 find (26)	5:10,15;28:14;29:13, 19;30:1,3;31:12;32:4; 96:9;99:3;103:6,11,14; 121:12;123:9;132:3,5; 134:16;136:6,7,7; 190:20;257:9;259:23; 260:4 finding (1) 26:6 findings (1) 247:7 fine (24) 5:12;7:13;9:12,13; 12:13;27:25;52:8; 54:12;55:25;92:4;96:3, 12;106:5;111:21; 121:23;128:18;152:23; 199:18;200:21;214:19; 217:2;265:5;274:16; 276:5 finish (11) 7:7,8,17;8:21;10:24; 131:3;138:1;167:12, 13;193:25;255:20 finished (3) 74:18;138:16;222:5 finishing (2) 167:13;205:19 fire (1) 176:9 firm (5) 30:25;35:22;36:6; 123:6;157:21 firms (1) 49:24 firm's (1) 126:17 first (45) 10:8,15;11:24;13:18; 18:1;26:19,20;29:21, 24;32:1;38:5;54:10; 58:23;70:2;98:17; 107:7;113:5;115:11; 119:12;121:3;122:8; 126:12,23;139:1,25; 169:10;179:14;182:17; 185:18;194:9;200:22; 201:23;220:24;221:1, 3;228:12;240:13; 247:5;249:12;255:13; 261:6,8,9;265:24; 272:23 fiscal (6) 83:9;86:6,13;87:5; 184:7;243:9 fiscalality (1) 120:1 fiscally (1) 83:21 fit (4) 105:10;115:6; 136:14;137:23 fitness (1)
--	--	--	--	---

<p>94:25 fits (3) 81:10;105:5;247:22 five (9) 65:25;87:10;88:15; 114:17;115:5;124:9; 208:12;246:16;274:1 fix (2) 40:11;41:8 fjord (3,8) 76:3,8,20 flak (1) 117:2 Flanagan (9) 91:2;185:4;196:3; 197:4,16;198:5,12; 199:9;245:1 flat (2) 237:12,14 fledgling (1) 63:8 flexibility (1) 236:17 flexible (3) 128:15;252:12; 270:20 floating (2) 104:7;272:1 floor (9) 86:23;121:19; 183:20;250:16;266:11; 271:7;274:5;275:4; 280:18 florist (3) 135:15,24,25 flourish (1) 54:1 flow (2) 9:25;15:10 flowers (2) 135:22,23 focal (16) 20:9;169:11,19; 170:9;171:4;172:20; 177:25;178:3,6,11,22; 230:11;235:4,5,15,24 focus (8) 23:9;66:23;92:18; 150:1;169:24;171:14, 18;220:4 folder (1) 16:13 folks (2) 134:9;175:16 follow (5) 32:9;176:6,7;210:24; 258:13 follow- (1) 175:20 followed (1) 123:20 following (9) 92:8;93:20;102:3;</p>	<p>162:3,22;208:15; 215:5;261:21;262:2 follows (1) 249:12 follow-up (6) 16:23,24;29:18;46:4; 91:13;174:22 food (19) 22:17;39:2;104:12; 110:1,7;124:9;129:12; 131:10;132:2,5;133:1; 144:9,11;150:7,8; 152:1;230:16;232:3,6 foot (3) 107:1;123:21;272:4 footage (8) 78:21;84:17;96:24; 101:10;103:4;165:10; 178:20;225:17 forbid (1) 7:23 forecast (3) 118:11;119:5;120:23 forecasting (1) 119:4 foreground (1) 231:17 foresee (1) 93:5 foreseeable (1) 173:23 forest (2) 242:9,12 forget (3) 156:19;159:3;196:14 forgotten (1) 124:4 form (8) 23:1;24:9;143:11,23, 25;144:14;145:15; 146:6 formalities (1) 10:23 formally (2) 60:22;150:15 former (1) 102:7 formerly (1) 147:4 formulated (2) 48:11;219:20 forth (3) 168:21;224:18; 230:25 forward (25) 10:17;45:17;50:20; 67:1;69:11;75:2,18; 149:20;167:19;172:16; 175:12;179:7,14; 180:23;240:9;248:23, 23;249:4;257:19; 263:12,17,17,20,23,24 found (8)</p>	<p>29:21,24;49:10; 134:23;138:14,14; 164:19;277:20 fountain (2) 144:18;145:12 fountains (4) 122:25;144:25; 149:1,22 four (8) 38:25;80:16;86:8; 88:18;94:13;194:4; 237:22;243:11 fragile (1) 65:8 frame (4) 33:8;94:19;120:10; 179:16 framework (2) 81:9,10 FRANKLIN (27) 10:18,21;11:9,9,12, 18,20,23,24;12:15,17, 21;13:2,4,8,11,14,17, 24;14:2;16:21,25;17:2; 24:23;46:10;50:11,12 frankly (4) 41:23;68:25;192:1; 256:5 Frederick (8) 13:20;90:4;116:12; 143:19;183:12,23; 211:1;218:7 free (2) 259:19;274:17 freestanding (2) 135:11;230:15 Friday (1) 13:22 friends (2) 35:16;70:9 fringes (1) 172:4 front (5) 66:3;129:13;230:3; 233:19;234:23 fronts (2) 229:7;230:4 frustrating (1) 267:25 full (7) 7:3;63:4;84:7;95:5; 124:16;135:1;178:17 full- (2) 93:8;102:11 full-service (2) 102:10;109:15 full-size (6) 93:10;97:17;102:19; 109:17;110:18;112:9 fully (3) 141:6;179:14;183:3 Fulmer (1) 241:10</p>	<p>fun (1) 144:7 function (2) 20:8;170:1 fundamentally (1) 168:21 furniture (1) 230:25 further (17) 21:6;43:10;46:2; 61:14;72:8;76:18; 81:13;114:19;137:16; 155:22;167:2;169:25; 178:15;234:3,8,20; 245:12 future (11) 28:23;52:12;83:24; 87:13;139:18;140:17; 142:24;173:23;239:13; 240:14;241:16</p>	<p>123:25 generation (1) 150:16 generically (1) 197:10 generous (1) 120:9 gentleman (5) 24:5;72:16;157:14; 190:22;256:14 gentlemen (1) 60:21 geography (2) 69:19;70:3 germane (1) 256:13 Germantown (12) 15:23;90:3;98:5; 101:25;103:16;113:15; 114:10,14;118:9; 135:12;141:6;240:15 gesture (1) 112:8 gets (7) 14:17;18:11;19:9; 47:24;85:12;107:12; 113:7 Giant (2) 102:8,16 gift (1) 94:21 girls (1) 37:22 given (9) 103:15;111:20; 119:7;123:23;140:19; 143:16;171:8;182:25; 253:15 gives (2) 51:25;225:14 giving (3) 47:19;193:15;276:24 glad (1) 138:14 goal (1) 7:7 goals (1) 236:18 God (1) 22:22 goes (22) 27:13;32:10,16; 69:11;74:6;75:1,18; 91:22;104:18;137:22; 142:12;175:12;179:7, 14;206:7;211:7; 228:15;233:25;239:24; 240:3;252:9;274:19 good (34) 7:16;10:18,19;20:25; 21:10,11;35:6;49:8; 54:21,22;61:19,20; 68:23;69:19;87:1;</p>
--	---	---	---	--

G

gains (1)
 66:21
Gaithersburg (7)
 90:3;113:15;114:11,
 14;118:9;139:3;141:7
Gardner (2)
 169:2;174:7
gas (3)
 187:6;218:13;227:6
gateway (1)
 231:24
gathering (1)
 18:2
gave (3)
 54:9;146:16;275:15
general (24)
 81:9,10;93:22,24;
 101:12;104:8;105:9;
 113:18;114:19,23;
 117:21;122:20;136:1;
 141:10;143:15;156:25;
 157:8;158:12;222:13;
 232:3;242:4;244:21;
 251:10;266:1
generality (1)
 58:18
generalization (1)
 114:24
generalizations (1)
 115:2
generally (12)
 74:5;83:19;94:2;
 96:6;97:3;100:5;
 102:22;131:8;136:10,
 14;159:10;230:12
generate (1)
 88:24
generates (2)
 88:21,22
generating (1)

<p>96:12,13;107:3; 111:11;130:16;138:20; 139:8;140:1,12; 147:20;168:10;172:4; 174:5;183:7;187:24; 192:4,7,8;220:24</p> <p>Goods (1) 230:25</p> <p>gorgeous (1) 23:6</p> <p>Gosnell (10) 12:24,25;26:22; 27:20,21;28:3;31:13; 165:25;227:4;232:10</p> <p>Gosnell's (1) 233:21</p> <p>government (3) 116:10;140:5,9</p> <p>government-type (1) 116:3</p> <p>Governor (1) 240:11</p> <p>Granite (1) 218:1</p> <p>great (9) 34:4;53:24;66:3,6; 82:17;146:4;163:8; 246:11,11</p> <p>greater (5) 84:20;101:18; 132:22,25;210:1</p> <p>green (13) 126:19;127:11,23; 129:4;229:7;230:4,5; 231:22,23;233:10,22; 234:1;235:9</p> <p>greens (1) 126:24</p> <p>Greenway (20) 229:6,9,14,16,22,25; 230:2,3;233:14,19,24; 234:10,13,23,24;235:6, 9,10,22;236:1</p> <p>Greenways (1) 233:9</p> <p>Greg (1) 31:13</p> <p>grew (1) 24:16</p> <p>grid (1) 238:15</p> <p>groceries (3) 112:4;218:17;219:24</p> <p>grocery (59) 18:16,18,20;19:5; 45:16,18,21;46:1;70:8; 71:19,21,21;75:25; 77:22;78:17;102:10, 12;108:1,11,16,19; 109:14,15;110:15; 111:8;131:13,23; 132:11;136:6,7;159:9, 23,24;162:25;163:12;</p>	<p>166:18;173:16,18; 178:18;179:22,24,25; 180:4;190:12;194:17, 19,20,22;195:1; 197:19;208:7,10; 209:1;214:2,2;220:1; 225:22;232:2;249:23</p> <p>gross (5) 101:10,17;266:10; 270:8;271:7</p> <p>ground (1) 183:20</p> <p>Group (12) 30:6;31:3,20;33:5; 34:21;35:9;36:23;38:2; 47:21;59:25;60:20; 151:11</p> <p>groups (1) 206:12</p> <p>Grove (3) 240:12,13,14</p> <p>grown (1) 140:13</p> <p>growth (3) 120:6;140:1,11</p> <p>guess (30) 19:8;32:3;43:10; 48:10;82:21;84:9; 91:12;97:2;103:11,14; 118:13;133:16;139:7; 163:14;174:25;179:21; 183:16;190:20;191:23, 23;196:17;201:11; 211:19;214:18;249:6; 254:21;255:9;257:12; 272:1;275:7</p> <p>guidance (1) 131:1</p> <p>guidelines (3) 162:22;242:14; 251:15</p> <p>gun (2) 86:22;277:14</p> <p>guys (3) 9:20;34:19;43:12</p>	<p>hand (7) 11:5;28:10;51:12; 61:22;100:23;168:2; 217:12</p> <p>Handbook (1) 82:22</p> <p>handful (1) 37:22</p> <p>handle (2) 8:10;24:7</p> <p>hands (2) 50:19;279:15</p> <p>hang (1) 144:8</p> <p>happen (28) 7:8;15:14;39:21; 42:25;43:1;44:6;57:10; 58:11;69:12;93:10,17; 98:21;106:19;111:16, 18;139:12,18;148:4; 158:22;159:22;160:19; 161:10;176:4;179:5; 193:7,8,9,11</p> <p>happened (6) 16:3;69:10,25; 111:22;144:5;239:20</p> <p>happening (5) 26:23;33:12;42:13; 53:11;158:25</p> <p>happens (10) 47:25,25;48:1,1; 69:10;70:5;71:11; 172:12;189:23,25</p> <p>happily (1) 275:20</p> <p>happy (7) 36:18;53:14;86:17; 91:10;92:1;117:13; 159:17</p> <p>hard (11) 6:7,11,12,16;28:16; 29:14;73:13;104:14; 124:7;244:4;256:9</p> <p>harm (2) 188:10,11</p> <p>HARRIS (280) 5:8,13,20;6:17,19; 7:5,20,22;8:1,18,19,25; 9:8,13,16,23;10:12; 24:2,19,20,22;25:8,15, 17;29:5,8,20;32:11,12, 14;34:11,12;36:21; 41:5,10,13,20,21; 44:11;45:4,8,10,14; 48:8,14,18,19,20; 49:18,20,22;50:9,11, 24;54:9,11,12;55:12; 61:13,14,18;67:3,4; 74:17,21;79:7,11,15; 81:14,15,20;90:18,24; 91:6,8;121:22;127:15; 128:13,17;129:17,22, 24;130:11;133:19,23;</p>	<p>134:5,8;137:24,25; 138:3,5;141:9,25; 148:22;149:3,6,8,15; 152:18;153:2,4,6,9; 156:4;163:7,18;167:1, 2,12,16,20,21;175:8; 183:4,6;184:17,20,22, 25;185:25;186:2,6,8, 10;189:1,2;190:24; 193:24;194:2;196:5,8, 12,13;197:15,23;198:9, 10,11,23,25;199:1,5, 16,18;200:1,3,5;202:3, 6,8,10,12,15,18,22; 203:7,16;204:9,13,16, 19,22,25;205:8,11; 206:2,14;207:17,25; 208:12;209:14,19; 213:16,25;214:19,22; 215:2,7,11,14;216:2, 19;217:5;219:12,13; 221:9,18,20,22;222:7, 10;223:23;227:7; 233:1;235:2,18;236:3; 238:5;240:22;248:4,8, 14;249:23,25;250:25; 251:18;252:20;253:1, 4,10,12,22;254:6,10, 13,15;257:5;258:11,16, 18,19;259:3,13,16,18, 20,21;260:18,21,22; 261:10,12,16,18,20,25; 262:1,8,12,25;264:11, 14;265:5,6;267:9,25; 268:13,20;269:20; 270:22,23;271:14,16; 272:6,13,15,25;273:5, 14,16,22,25;274:17; 275:7,23,25;276:4,18; 277:19,25;278:3,6,10, 15;279:16,18,20,22,24; 280:12</p> <p>Harris's (4) 6:10;220:8;278:21; 280:10</p> <p>hatched (1) 269:22</p> <p>hate (3) 114:22;129:17;155:1</p> <p>head (4) 169:11,19;177:21; 182:11</p> <p>Healthcare (2) 5:3;27:21</p> <p>hear (11) 15:3;31:2;35:12; 90:21;130:22;181:4; 191:12;203:15;239:11; 255:22;274:20</p> <p>heard (23) 40:19;64:9;109:21, 22;110:17;117:25; 142:4;165:19;175:7,</p>	<p>23;176:14,22;183:4; 187:13;190:14;191:14, 14;194:21;198:17; 255:13;256:14;261:7; 275:8</p> <p>hearing (52) 5:3;7:6,6,11;8:5; 10:5,6;11:15,22;17:3; 29:4,7,9,16;48:9;50:3; 51:10;64:12;65:13; 69:3;90:19;91:16,19; 139:2;152:16;158:19; 167:10;168:10;175:1; 184:6;191:19;198:13; 199:19;203:2;208:1; 210:14;214:6,7; 223:10;224:3;236:10; 243:14;245:24;246:25; 247:2;253:17;258:22; 275:2,3;277:15; 280:18;281:2</p> <p>hearings (1) 16:13</p> <p>heart (3) 14:19;23:12;168:18</p> <p>heat (2) 138:8;270:24</p> <p>heaven (1) 7:23</p> <p>heavily (1) 163:12</p> <p>heavy (1) 192:5</p> <p>held (3) 7:23;59:10;242:2</p> <p>help (15) 6:16;20:25;21:1; 34:5;53:5;54:23; 101:15;104:2;109:7,8; 143:12;158:23;170:8; 258:23;262:9</p> <p>helped (1) 63:8</p> <p>helpful (7) 9:17;91:11;105:21; 106:18;124:2;169:20; 279:9</p> <p>helping (3) 123:24;124:16,24</p> <p>helps (1) 262:4</p> <p>here's (3) 83:16;159:25;256:12</p> <p>hey (2) 30:18;31:8</p> <p>Hi (1) 138:21</p> <p>High (15) 63:7;76:11;89:3; 114:16;141:22;143:8, 10,12,19;173:10,12; 221:2;233:16;242:3; 244:11</p>
--	---	---	---	---

<p>high-density (1) 245:21</p> <p>high-end (2) 23:6;103:2</p> <p>higher (3) 84:20;163:3;251:11</p> <p>highest (1) 115:9</p> <p>highlight (1) 222:16</p> <p>highly (6) 57:15,16;172:16; 236:16;252:21;257:9</p> <p>high-quality (1) 66:5</p> <p>High's (2) 109:20,24</p> <p>high-tech (5) 64:8;89:11,24;90:1; 104:2</p> <p>high-technology (1) 142:21</p> <p>highway (19) 125:5;148:15;152:5, 9;169:20;171:2,24; 172:3,21;175:16; 176:8;177:4,12; 179:17;181:9;182:18, 22;188:6,15</p> <p>hijacked (1) 90:15</p> <p>hiker/biker (1) 241:4</p> <p>Hill (2) 63:6;231:18</p> <p>hindsight (1) 192:4</p> <p>hired (1) 49:25</p> <p>historic (96) 12:6;14:19;15:4,8, 16;16:1,6;17:11,17; 18:11;20:22,23;21:4; 23:10;30:19;39:8,24, 25;40:15,24;41:25; 42:6;63:1;70:17;72:14; 168:12,14,22;169:5,12; 170:1,3,12,13,14; 171:3,21;172:14,24; 173:22,25;174:2,4,11, 15;175:17;178:25; 184:12,14,22;185:13, 19,21;186:12;187:4,11, 15;188:7,8;189:10,14, 16,20,23;190:1,8,14; 191:3,5,10;192:15; 194:5,7,23;195:7,11, 18,23;196:18;200:18, 23;201:11,12;204:14; 205:19;206:18;207:1, 11;209:23;210:5,6,10; 212:3,5,16;245:9</p> <p>historical (1)</p>	<p>174:8</p> <p>historically (3) 120:7;132:4;168:11</p> <p>history (3) 174:4;256:2,6</p> <p>HM (1) 270:21</p> <p>HN (1) 265:20</p> <p>HOFFMANN (30) 61:19,21;62:1,1,2,6, 8,13,16,18;67:8,19; 68:14,17;72:7,12,21, 23;73:19,21,24;74:2,6, 12,14,16;78:14,16; 79:8;81:17</p> <p>H-O-F-F-M-A-N-N (1) 62:2</p> <p>Hoffmann's (1) 172:7</p> <p>hogging (1) 7:18</p> <p>hold (4) 7:23;59:3;66:19; 121:18</p> <p>holding (2) 59:11;159:13</p> <p>home (12) 13:25;21:21;22:22; 23:2,18;25:22;31:6; 42:12;71:2;126:20; 211:17;230:25</p> <p>home-based (1) 31:7</p> <p>homeowner (1) 52:10</p> <p>homeowners (1) 59:25</p> <p>homes (10) 13:15;17:14;22:19; 24:11;27:9,11,11,12, 13;108:21</p> <p>homework (1) 49:2</p> <p>honest (3) 55:18;100:6;139:11</p> <p>honestly (8) 84:23;90:4;96:11; 104:10;107:24;123:12; 135:5;136:21</p> <p>Honor (1) 210:20</p> <p>hook (1) 36:15</p> <p>hope (3) 20:19;64:8;158:8</p> <p>hopefully (5) 20:24;109:8;138:23; 139:15;140:15</p> <p>hoping (2) 7:16;62:24</p> <p>horizon (1) 139:10</p>	<p>horrible (1) 15:5</p> <p>hospital (11) 19:15;24:12;78:17, 18,20;79:1;80:4,22; 81:11;123:20,21</p> <p>hotel (11) 28:3;78:16;124:10; 181:21;223:3;227:10, 13,14;270:10,12,14</p> <p>hour (3) 137:19;138:6;167:7</p> <p>hours (1) 31:10</p> <p>house (28) 11:25;12:1,9,18; 13:20;14:8,16;15:11; 16:9,17;19:5;22:15; 23:9;24:25;26:5,9,13, 24;27:3,4;30:1;46:1, 25;47:2;50:2,3;169:2; 174:7</p> <p>housing (7) 107:12;170:6,14; 181:21;236:20;237:24; 245:21</p> <p>hub (1) 232:14</p> <p>huge (5) 52:19;81:11;89:17; 103:15;130:23</p> <p>Hugo (1) 189:7</p> <p>Hulley's (1) 170:19</p> <p>hundred (2) 119:21;196:22</p> <p>Hurley (1) 129:7</p> <p>hurt (3) 69:16;187:14,17</p> <p>husband (6) 14:7;22:16;23:18; 28:14;49:10;62:21</p> <p>HVAC (1) 275:5</p> <p>Hyattstown (1) 248:13</p> <p>hypothesizing (1) 88:7</p> <p>hypothetical (10) 118:3,22;130:10,12; 186:7;197:10,11,12,14, 15</p> <p>hypothetically (2) 120:14;130:19</p>	<p>13;67:11;69:20;71:1; 112:23;113:13;114:8; 115:22;129:7;141:22; 142:21;161:25;173:10; 178:3;201:11,12,18; 222:18;228:11;244:11; 249:14</p> <p>I-3 (12) 236:15;263:6,24; 264:1,1,14,21,22; 265:7;266:17;267:10; 273:10</p> <p>Ibi (1) 36:16</p> <p>idea (11) 18:3;31:10;58:11; 73:9;111:11,22;112:2, 3;192:4,7,8</p> <p>identification (4) 7:1;128:1,5;262:19</p> <p>identified (2) 166:9;257:2</p> <p>identify (9) 157:13;165:1; 166:11,14;191:15; 240:23;241:25;247:3; 270:25</p> <p>identifying (1) 223:1</p> <p>ie (1) 249:14</p> <p>ignore (1) 66:22</p> <p>illustrate (1) 262:5</p> <p>illustrated (1) 211:23</p> <p>illustrative (1) 212:10</p> <p>image (1) 100:12</p> <p>imagine (2) 58:13;82:25</p> <p>immersing (1) 63:10</p> <p>impact (36) 52:24;55:6,11;84:4, 7,12;86:13;87:5;88:8, 8,15;90:19;91:1,2; 92:9,24;97:11,13; 107:17;120:17;133:6; 146:22;172:9;175:10; 183:22;184:7,8; 187:19;188:23;193:3; 197:5;198:15;199:21; 200:7;216:10;243:9</p> <p>impacts (4) 53:5;82:23;185:18; 243:11</p> <p>impeachment (2) 32:10,17</p> <p>implement (3) 243:8;263:12;271:21</p>	<p>implementation (1) 176:21</p> <p>importance (1) 223:20</p> <p>important (23) 35:12;64:11;65:8,9, 13;90:8;92:2,6;97:16; 104:14;108:5;111:16; 112:8;116:20;117:20; 136:21;143:1;160:6,6, 9,23;166:23;254:19</p> <p>importantly (1) 89:20</p> <p>impose (1) 105:22</p> <p>impossible (3) 114:9;119:5;171:4</p> <p>improve (2) 64:5;139:14</p> <p>improvement (1) 125:8</p> <p>improvements (5) 53:9,10;125:5;129:8; 241:18</p> <p>IMX (1) 263:7</p> <p>inadequate (1) 252:14</p> <p>inapplicable (1) 254:3</p> <p>Inc (2) 5:3,4</p> <p>include (9) 18:15;53:15;95:22; 170:4;223:16;225:22; 232:1,21;264:9</p> <p>included (6) 132:17;145:3,9; 214:9;251:25;274:11</p> <p>includes (11) 113:15;160:16; 169:12;170:12;224:23; 227:5,9;236:23; 244:24,24;249:13</p> <p>including (19) 53:9,20;64:7;85:14, 15;113:14;143:4,14; 169:1;171:3;173:7; 178:25;181:24;188:5; 205:18;206:11;208:1; 224:14;265:21</p> <p>incomplete (1) 231:1</p> <p>incorporates (1) 222:22</p> <p>incorporating (2) 40:2;209:25</p> <p>increase (5) 78:3,24;80:25;173:5; 226:8</p> <p>increased (1) 80:8</p> <p>increases (1)</p>
		I		
		<p>I- (2) 53:4;161:19</p> <p>I-270 (25) 19:9,9;20:14;53:4,</p>		

89:23 increasingly (1) 114:7 independent (3) 10:10;95:24;279:2 independently (8) 10:12;51:1;93:21; 94:6,8,21;95:7,25 indicate (2) 24:24;31:22 indicated (4) 31:19;39:8;197:4; 199:9 indicates (1) 173:4 indicating (2) 90:25;198:13 indication (2) 147:24;171:16 indirect (1) 123:5 indirectly (1) 255:4 indiscernible (5) 76:14;114:25; 158:17;219:22;220:3 individual (7) 55:10;60:5,6;72:13; 73:12;91:17,20 individuals (5) 50:18;58:23;81:23; 192:23;221:17 indulge (1) 258:22 indulgence (1) 161:12 industrial (5) 223:3;260:14;266:8, 11;271:5 industries (1) 192:6 industry (5) 93:12,14;139:13; 140:20;160:16 information (15) 37:3,8;48:11,23; 49:3,17;57:5;151:10; 157:22;166:5;193:12; 219:21;220:15;274:10; 277:2 infractions (2) 17:12,13 infrastructure (7) 53:21;125:4,8;182:6; 192:5;241:1;242:8 inherently (1) 115:18 inherited (1) 147:16 initial (1) 255:4 initiative (1) 29:18	input (1) 62:22 inquiring (2) 30:2,3 inquiry (1) 256:8 ins (1) 175:4 inside (2) 144:19;196:19 instance (2) 188:13;237:10 instead (4) 64:24;188:15; 223:15;241:4 institutional (1) 260:13 insurance (1) 89:15 integrates (1) 234:1 integration (1) 210:2 intended (3) 163:17;170:24; 271:21 intent (4) 86:6;103:1;171:16; 207:3 intention (1) 276:12 interchange (6) 129:7;201:18; 228:12;241:16,18; 243:22 inter-connected (1) 238:12 inter-connecting (1) 238:15 inter-connects (1) 241:12 interest (4) 82:17;109:10; 112:23;192:20 interested (6) 20:25;94:11;117:8, 10;193:11;205:17 interesting (3) 66:9;94:1;146:23 interfere (1) 70:16 internal (1) 260:9 international (1) 265:21 interpret (4) 142:16;252:6; 253:25;259:10 interpretation (8) 251:19,23;252:23; 254:17,17;270:4; 271:10;277:3 interpreted (1)	253:23 interpreting (2) 195:21;255:24 interrupt (1) 129:17 intersection (5) 71:4;74:8;211:11; 228:25;230:8 intersects (1) 228:14 interstate (14) 90:7;117:9;129:6; 168:19;170:15,22; 171:6,17,24;172:6,10, 12;175:15;177:4 into (41) 10:23;16:16;41:24; 58:19;64:24;65:11; 88:1;93:3,5;94:2;96:9; 99:4;100:17;108:15; 115:6,12;122:14; 125:18;147:2,14; 151:1;163:7;167:14; 172:1,3;181:16; 189:10,14;191:2,15; 192:25;209:25;211:7, 14;222:14;229:11; 230:11;246:3;247:22; 258:12;275:12 introduce (4) 105:20;130:4;182:4; 195:10 introduced (3) 197:12;248:11,25 introduction (1) 128:11 intuitive (3) 171:23;268:4,10 invalid (1) 281:1 investing (1) 53:8 investment (1) 100:17 inviting (2) 74:20,21 involve (2) 38:13;120:23 involved (3) 33:2;63:7;276:3 involves (1) 38:14 involving (1) 8:8 irregular (1) 257:9 irrelevant (1) 155:14 issue (16) 23:14;28:24;29:10; 83:7;90:19;111:1; 117:22;122:14;147:23; 177:1;182:23;191:24;	192:1,9,23;273:17 issued (1) 199:24 issues (6) 112:19;140:19; 169:15;206:13;241:24; 242:20 items (2) 132:2,5 Izzy (1) 102:8	Kaplan's (2) 176:11,12 Kathy (2) 276:17;280:23 keep (14) 5:24;45:5;64:12; 65:13;84:24;87:2; 110:24;117:13;152:1; 173:21;202:14,20; 232:25;258:17 keeping (2) 17:16;247:2 Kent (1) 60:25 Kettler (1) 157:10 key (9) 92:17;111:1;124:14; 157:9,21;158:20; 159:21;196:2;237:23 kids (3) 20:17;38:20;174:9 kids' (2) 70:9;75:25 kill (1) 15:7 kilter (1) 39:19 kind (36) 9:24;14:18,25;16:11, 14;17:2;20:11;29:14; 39:18;48:9;51:25; 55:18;70:15;76:1; 92:10,17;94:16;101:1, 14;103:22,25;104:24; 112:15,24;113:1; 115:1;117:3;120:9; 124:1;144:21;182:22; 211:9,11;250:14; 263:19;264:12 kindly (1) 11:4 kinds (3) 105:17;136:17; 150:14 Kinney (3) 62:1,2;172:7 KLIN (155) 9:23;10:11;12:12,15, 19;16:22;17:1;21:6; 32:1,7;41:11;46:6,9; 48:16,24;49:1,15,23; 52:4,8;54:7,8,15,16; 67:5,7,18,21;68:9,11, 13,16,19;70:19,22,23; 72:8;81:21;82:6,12,14, 15;86:23;90:17; 100:22,24;101:4; 102:6;105:14,15,22,24; 106:1,4,7;111:2,4; 112:18;115:2;119:23; 121:9,12,21,24;125:24; 126:3,5,11,16;127:3,5,
		J		
				jack (1) 274:12 jail (2) 46:24;47:1 jam (2) 218:21,22 jealous (1) 61:21 jewelry (1) 96:5 job (5) 23:5;73:25;105:8; 139:25;140:11 jobs (4) 64:8;89:19;90:2,13 Joe's (2) 110:3,5 John (1) 160:8 joked (1) 24:12 July (8) 5:13;46:23;170:20; 223:10;224:3;245:18; 246:24,25 jump (6) 122:10;162:12,24; 176:3;222:9;260:16 jumped (1) 63:4 jumping (1) 86:22 jump-starting (1) 179:25 June (4) 15:1;141:13;174:2; 248:11 justification (4) 80:8;122:1;128:10; 176:15 justify (1) 66:5 juxtapose (1) 145:15
		K		
				Kaplan (3) 34:13;176:20;177:5

<p>10,17,20;128:7,17,21, 23,25;129:1,18,19,25; 130:3,6,8,14,20;131:1, 3,5;132:8;133:7,11,13, 16,21;134:1,9,12; 136:5;137:16;138:15; 148:25;149:12,14; 174:24;175:20,22; 177:23;178:15;182:4; 212:21,22,24;213:5; 217:1,2;219:15,17; 250:15;252:3,7,8; 253:9;261:4;266:23; 267:5,8;275:8,11,15, 19,22;276:1,9,12; 277:13,14;278:4,13,16, 22;279:1,7,12,14,17; 280:1,3,5,9,19,21,25</p> <p>Kline's (1) 90:15</p> <p>knew (6) 16:15,16;26:3;154:2; 268:1;273:6</p> <p>knock (1) 39:18</p> <p>knocking (1) 38:5</p> <p>knowledge (8) 157:17;187:22; 198:18;213:21;219:19; 254:20;264:24;269:3</p> <p>known (6) 66:4;227:4;228:16, 25;229:3;241:9</p> <p>knows (2) 205:5;268:7</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>label (3) 211:2;228:10;231:10</p> <p>labeled (6) 126:18;227:21,24; 228:2,3,19</p> <p>lack (2) 63:16;169:6</p> <p>lady (2) 32:2;257:6</p> <p>lag (1) 240:9</p> <p>laid (2) 70:4;181:24</p> <p>Lake (3) 124:18,20,23</p> <p>land (30) 17:21;18:6,9;26:8; 52:22;69:2,4;79:3; 87:13;116:15;118:6,7, 10;119:10,11,14;142:6, 7;154:3,5,7,16,17; 157:13,17;237:23; 252:6;263:2;264:6; 277:16</p>	<p>landscaped (2) 229:17;230:2</p> <p>landscaping (1) 234:22</p> <p>lane (1) 241:15</p> <p>language (2) 141:20;260:4</p> <p>languish (1) 183:1</p> <p>large (11) 27:12,13;96:18,19; 104:8,9,20;125:9; 132:1;235:23,23</p> <p>largely (2) 173:22;201:16</p> <p>larger (11) 84:10;103:4;131:24; 132:10,14;135:23; 170:18;206:4;210:1; 232:2;234:5</p> <p>large-scale (1) 209:23</p> <p>largest (1) 184:3</p> <p>last (25) 5:9;8:5;12:8;14:3; 20:3;28:14;65:9,11; 122:14;125:1;138:4; 144:5;157:6,18;168:1; 205:9;220:25;221:2,3; 222:6,14,21,21;239:11; 276:19</p> <p>late (2) 69:13;148:2</p> <p>Lately (1) 52:12</p> <p>Later (8) 27:5;30:3;63:21; 147:4;159:14;246:2; 259:17;278:8</p> <p>latest (1) 73:3</p> <p>latter (1) 178:4</p> <p>laundry (3) 135:1,2;245:22</p> <p>lawn (7) 229:17;231:20,20, 22,23;234:10,23</p> <p>lawyer (1) 259:10</p> <p>lawyer's (1) 89:15</p> <p>lay (4) 203:23;204:6,7,24</p> <p>layman (2) 202:24;203:22</p> <p>layman's (1) 201:17</p> <p>layout (1) 126:19</p> <p>leadership (1)</p>	<p>63:5</p> <p>leading (7) 24:2,4;46:4;48:15, 21;49:19;162:17</p> <p>learn (2) 174:4;220:12</p> <p>lease (4) 99:7;117:13;140:25; 200:17</p> <p>leases (1) 186:22</p> <p>leasing (1) 140:10</p> <p>least (19) 31:10;38:23;87:8; 91:16,20;122:16; 136:23;137:19;140:15, 16;146:5;158:19; 159:12;182:13;183:14; 192:22;194:16;273:7; 278:23</p> <p>leather (1) 96:4</p> <p>leave (6) 16:3;23:13;145:4; 165:18;172:3;273:21</p> <p>leaving (1) 275:20</p> <p>led (1) 162:3</p> <p>Leesburg (21) 22:5;104:17;116:24; 143:18;146:1,2,23; 147:3,3;148:1,10,12; 150:16;151:10;153:12; 154:2,15;156:3,23; 157:4;218:12</p> <p>leeway (8) 142:15;192:21,22, 25;193:4,21,22,22</p> <p>left (13) 15:20;18:12;23:10; 41:3,4;112:21;118:7; 119:14;126:22;221:24; 222:12;234:9;273:10</p> <p>left-hand (3) 126:24;127:5;129:4</p> <p>leg (2) 241:7,10</p> <p>legal (16) 198:2;214:25;252:4; 255:10,11;256:1; 264:4;268:4;276:19, 25;277:4,9;278:23; 279:1;280:2,6</p> <p>legend (2) 129:3;263:9</p> <p>legislative (2) 256:2,6</p> <p>length (2) 139:18;159:17</p> <p>lens (1) 14:5</p>	<p>less (7) 21:24;108:13; 113:20;118:22;140:10, 10,13</p> <p>letter (10) 31:14;51:23;52:5; 54:6;91:4;169:9; 198:13,21;214:1;221:2</p> <p>letters (7) 16:13;26:20,21; 47:17,19;65:18;220:15</p> <p>letting (4) 26:22;59:17;66:5; 274:18</p> <p>level (1) 10:4</p> <p>levels (1) 89:11</p> <p>libraries (1) 176:9</p> <p>library (2) 5:15;170:7</p> <p>lies (3) 161:19,24,25</p> <p>life (7) 52:11;63:9;64:5; 91:21;158:25;170:2; 219:5</p> <p>lifetimes (1) 179:5</p> <p>light (3) 183:3;223:2;240:10</p> <p>lights (1) 16:10</p> <p>likelihood (4) 96:4;120:25;189:6,9</p> <p>likely (12) 88:3;104:1;107:2; 120:18;125:9;137:3; 140:18;153:25;177:11, 15;190:15;194:11</p> <p>Likewise (1) 241:17</p> <p>limit (4) 9:20;80:21;172:23; 198:20</p> <p>limitation (2) 102:9;213:11</p> <p>limitations (3) 77:24;251:4,14</p> <p>limited (10) 94:5;123:11,12; 189:17;195:16,22; 247:11,25;248:25; 265:9</p> <p>limits (3) 148:13;203:14; 208:14</p> <p>line (12) 16:15;29:14;73:17; 102:4;115:8;206:9,25; 215:5;228:20;245:10; 252:24;254:7</p>	<p>links (3) 230:5;233:10;238:16</p> <p>list (8) 94:19;105:18;106:8; 132:19;136:16;230:23; 231:1;245:22</p> <p>listed (1) 132:19</p> <p>listen (5) 15:2,2;20:17;37:23; 277:10</p> <p>listings (1) 124:12</p> <p>lists (1) 105:16</p> <p>literally (6) 15:7;21:13;229:15, 16,25;230:3</p> <p>literature (4) 25:20;48:7;50:2,2</p> <p>little (44) 9:1,6;10:1;11:25; 13:9;17:4,17;23:17; 24:11;43:24;47:16; 48:3;59:8;70:7,20; 97:3;102:23;113:7; 114:17;117:11;120:4, 7;122:9,15;126:11,14; 142:15;167:5;187:6; 206:1;225:18;228:17, 18;229:10;233:8; 234:21;235:21;241:15; 245:8;246:13;247:19; 248:18;250:3;252:8</p> <p>Livable (2) 38:8;59:24</p> <p>live (12) 11:10;13:19;51:16; 69:19;70:3,10;74:7; 75:9;104:15;183:7,9; 217:25</p> <p>lived (2) 52:10;62:19</p> <p>lively (1) 174:1</p> <p>lives (1) 219:7</p> <p>living (1) 96:12</p> <p>LLC (1) 198:3</p> <p>LMAD (1) 5:6</p> <p>local (9) 64:21;132:14;229:4; 235:8;261:14,22; 268:7,8;273:1</p> <p>locally (1) 64:4</p> <p>Locate (4) 162:25;166:5,6; 210:14</p> <p>located (15)</p>
---	---	--	--	--

<p>12:6;73:5;75:1; 165:1,25;168:23; 170:25;172:6;201:9; 210:24;212:16;223:12; 226:22;227:15;263:10</p> <p>location (22) 17:24;64:18;89:25; 90:6;115:8,8,8;116:21; 147:20;152:7,8;157:7; 169:4;197:21,22; 227:15;257:25;263:14, 19,21;266:1;269:24</p> <p>locations (9) 71:4,24;115:12; 116:8;123:18;154:25; 192:7;237:11;238:25</p> <p>locust (1) 177:2</p> <p>logic (1) 115:13</p> <p>logical (3) 42:1,5;78:22</p> <p>long (23) 7:24;14:8;18:9;43:3; 44:5,12,14,15;64:16; 65:21;66:2;75:3;81:5; 83:23;106:14;118:10; 137:18;140:16;167:5; 195:17;197:18;246:6; 268:24</p> <p>longer (9) 75:19;78:18;80:4,23; 81:12;91:22;107:11; 119:21;152:2</p> <p>longest (1) 45:25</p> <p>long-winded (1) 100:21</p> <p>look (20) 14:5;27:2;38:6; 65:15;69:1;88:14; 93:11;115:4;124:12; 129:11;147:2;169:16; 183:19;198:21;203:8; 204:2;209:20;212:1; 226:5;232:5</p> <p>looked (8) 24:15;29:25;58:19; 94:13;147:14;216:3; 242:2;256:23</p> <p>looking (10) 14:7,9;19:19;33:24; 57:22;73:5;105:19; 144:22;210:23;212:8</p> <p>looks (3) 72:5;140:17;237:12</p> <p>loops (2) 238:25;239:9</p> <p>Los (3) 124:6,7;146:17</p> <p>lose (1) 21:3</p> <p>losing (3)</p>	<p>15:24;16:10;45:5</p> <p>loss (3) 18:20;81:11;94:24</p> <p>lost (2) 251:22;270:24</p> <p>lot (65) 14:24;15:2,18,18; 30:3;31:18;33:22;34:7; 35:11;37:20;42:7; 43:10;47:24,25;49:2,3, 4,13,24;55:19;68:24; 73:13;78:20;87:13; 89:8;90:1;92:8;93:24; 94:23;100:2;103:24; 104:14;107:7,8; 108:14;112:4;113:22; 116:25;117:2,9; 119:19;123:24;124:14; 126:22;129:12,18; 132:4;136:10;137:5; 139:8;140:10,10,13; 143:14;144:2,7,16; 154:23;174:13;195:19; 200:18;206:12;225:19, 24;243:14</p> <p>lots (3) 20:7;89:15;189:22</p> <p>loud (1) 190:5</p> <p>Loudoun (4) 116:24;143:18; 147:15,21</p> <p>low (2) 114:17;233:22</p> <p>lower (3) 84:20;117:12;126:22</p> <p>lucky (2) 96:1;134:20</p> <p>luggage (1) 96:4</p> <p>lunch (7) 105:3;114:1,2;126:4; 136:23,24;137:22</p> <p>luncheon (1) 167:8</p>	<p>magnifying (1) 14:5</p> <p>mailed (1) 50:2</p> <p>mailing (1) 28:9</p> <p>mailings (1) 220:15</p> <p>main (12) 23:9;97:8,10;113:8; 154:24;157:19;206:25; 212:14;227:16;229:12; 235:23;237:7</p> <p>mainly (1) 39:2</p> <p>maintains (1) 268:1</p> <p>maintenance (1) 89:9</p> <p>major (15) 90:19;98:5;99:2; 100:14,17;106:20; 107:16;124:5;140:6; 148:15;152:5,9; 168:13;175:15;231:12</p> <p>majority (1) 238:19</p> <p>makes (5) 78:24;93:25;122:9; 246:1;254:2</p> <p>making (16) 6:11;17:17;50:1; 103:22;107:4;109:9; 112:20;136:22;143:5; 144:3,17;147:13; 171:2;174:13;220:12; 272:2</p> <p>mall (31) 13:9;19:14;31:21; 39:14;41:14,22;57:9; 58:1,21,21;64:1,3,17, 21;110:20;171:24; 218:5,7,8,10,12,17,22, 24;219:6,25;220:2; 226:16;230:13;235:25; 244:7</p> <p>manager (1) 37:17</p> <p>managers (1) 89:9</p> <p>mandatory (1) 10:3</p> <p>many (21) 14:14,20;53:10,19; 63:25;64:9;82:5;98:2; 104:16;106:8,12; 137:23;141:5;143:7; 172:16;174:3;181:19; 192:3,3;206:11,11</p> <p>map (19) 12:10;73:6,9,10; 74:3,11;100:5;158:10; 261:13,14,21,22;</p>	<p>262:16;263:10;268:7, 8;272:22,25;273:1</p> <p>mark (1) 127:15</p> <p>marked (7) 7:1;127:25;128:4; 129:12;190:4;211:7; 262:18</p> <p>Market (55) 12:5,7;14:25;15:2; 17:23,25;18:7;20:4,11, 15,21;21:3;30:13,23; 35:18,20;36:1,2,25; 37:2,6,11,17,17;38:3, 10,15,22;39:7;42:1; 49:5;92:13;98:1,3,16, 22;109:22;110:9,19; 119:8;123:14;125:20; 132:10;139:3;146:10; 154:14,23;155:3,15,15, 16,20;157:1;184:7; 257:6</p> <p>Maryland (11) 11:12;51:17;168:23; 169:4;183:9,12;211:1; 228:9;233:14;241:5; 245:11</p> <p>massive (1) 175:15</p> <p>Master (238) 5:9;6:7,12,20,23; 14:21;15:8;18:18;20:8; 23:21;24:1;40:2;56:13, 17,19;58:6,16;61:3,6,8; 62:22,24;63:13;65:21; 67:10,25;68:21;73:22; 74:3;77:6,11,14,17,25; 78:8;79:6,12,19,24; 80:12,20;81:3,7,7; 83:1;91:18;96:20; 107:25;108:14;111:11, 21;112:11;120:3; 128:14;137:8;141:9, 13,24;142:1,5,16; 158:13,15,19;159:8; 161:14;163:8,17,25; 164:4;168:20,21,24; 169:10,10,14,17,19,21, 22;170:21,24;171:7,9, 16;172:22,25;173:4,6, 9,15,16,20,24;174:10, 14,20;175:24;178:8,9, 13;180:19,21;181:7,10, 24;182:24;184:15,23; 185:16;189:18,19; 190:2;192:2,2,3,11; 193:4;194:4,20; 201:20;203:10,21,25; 204:2;205:3;208:5,8, 13;209:6,8,11,15,18; 213:8,18;215:4,17; 219:2;221:25;222:13, 20;223:25;224:11,12,</p>	<p>13,14,15;226:1,4,7; 232:19;233:3;235:3; 236:5,7,12,18,21; 237:1,21;238:9,22; 239:7;240:24;241:19, 21;242:1,23;243:13; 244:1,5,9,20,22;245:3, 5,16;246:7,18,22; 247:9,12;248:12,15,22, 24;250:5,25;251:15,20, 25;252:23;253:1,14,22, 24;254:1,11,18,21; 255:19,22,24;256:7; 257:8,15,18,21;258:1; 259:8,25;260:24; 261:1,6,14,21;262:2, 20;263:3,4,15,24; 265:8,12,15;266:13; 268:3,23,25;270:9,9, 19;271:10,24;272:3,10, 23</p> <p>master's (1) 142:5</p> <p>material (1) 63:20</p> <p>materialize (1) 63:21</p> <p>materials (1) 47:6</p> <p>math (1) 26:17</p> <p>matter (3) 92:8;120:13;271:22</p> <p>matters (1) 5:7</p> <p>maximize (2) 63:18;233:6</p> <p>maximum (6) 65:5;178:20;179:2; 204:17;237:5;259:2</p> <p>may (33) 6:3;9:20;19:13; 23:15;32:21;50:13; 69:16;81:18;90:21; 92:23;98:24;99:4; 107:10;110:21;111:9; 115:14,23;159:14; 160:13;163:16,18; 175:3;179:22;191:4; 199:10;201:16;203:3; 216:15,19;271:23; 278:22;279:3;280:25</p> <p>Maybe (30) 32:9;34:1;69:18; 70:20;71:25;84:15; 94:12;95:25;100:2; 108:8;110:13;113:1; 118:18;132:1,13; 152:21;159:2;167:7; 180:2;182:4;192:3,4; 193:1;196:22;206:23; 213:6;214:10;215:17; 218:20;268:16</p>
--	---	---	---	---

<p>Meadows (6) 126:18,20;127:24; 128:9;131:7;132:18</p> <p>meal (1) 174:5</p> <p>mean (60) 12:25;23:8;26:14,15; 27:20;32:12;38:21; 40:7;46:15;48:1;58:1; 71:7;76:12;78:23; 79:17;94:18;97:1; 100:6;102:15;105:6, 22;106:4;108:23; 109:17,20;112:18; 113:5;114:22;118:3,9, 11;119:2;121:17; 133:18;135:5,6; 143:13,18;146:15; 154:25;163:25;179:9, 16;182:16;184:16; 186:7;189:22;191:11, 22;192:1;206:23; 229:13;256:18;257:13; 265:2;266:19,23; 274:16;277:12;280:17</p> <p>meandering (1) 230:1</p> <p>means (5) 11:2;32:19,20; 190:19;196:4</p> <p>meant (5) 85:11;122:16;139:7; 173:5;270:20</p> <p>meanwhile (1) 34:3</p> <p>median (2) 234:5;240:5</p> <p>medical (2) 223:3;232:12</p> <p>meet (5) 69:9;154:10,11; 244:21;245:2</p> <p>meeting (6) 34:13,14,23;35:1; 206:4;220:13</p> <p>meetings (13) 59:2,3,4,7,11,11,13, 15,15,21;60:15,22; 220:5</p> <p>meets (1) 192:2</p> <p>Melane (1) 62:1</p> <p>M-E-L-A-N-E (1) 62:2</p> <p>member (1) 8:8</p> <p>members (3) 9:5;35:14;123:6</p> <p>memo (1) 246:25</p> <p>memorized (1) 63:13</p>	<p>memory (1) 46:10</p> <p>mention (6) 16:9;57:10;65:18; 98:9;117:25;198:17</p> <p>mentioned (25) 17:3;28:9;31:18; 58:23;113:8;118:19; 120:8;126:21;128:10; 131:10;145:25;146:2; 157:22;185:14;226:13; 230:12,23;232:10; 233:9;236:23;242:4; 244:10;245:1;250:1,4</p> <p>mentioning (1) 228:3</p> <p>met (3) 60:21;206:3,10</p> <p>method (6) 251:5,10,16;263:13, 22;269:14</p> <p>Metropolitan (2) 240:13,14</p> <p>microphone (1) 226:20</p> <p>microphones (1) 12:16</p> <p>mid- (1) 231:20</p> <p>Middle (9) 63:6;116:5;141:16, 17,18;162:14;163:2; 234:5;237:3</p> <p>midst (1) 138:15</p> <p>might (36) 9:5;36:17;41:25; 42:1;66:12,15;69:16; 92:15;94:6,7,19,20,20, 21,22;95:24;98:18; 99:3;100:15;103:21; 109:25;110:2;117:10; 118:22,23;124:24; 134:21;135:6;136:12; 139:19,20;144:11; 187:5;188:11;252:16; 266:23</p> <p>migrate (2) 53:5;57:12</p> <p>mile (30) 15:15;52:22,24;55:6, 17;65:3,4,6,14,18; 66:13;67:10,22;68:1,6, 21;69:15,16;76:3; 171:25;183:14;213:8; 242:16,17,19,20; 245:10,12,13;249:14</p> <p>Miles (19) 60:25;69:7;180:11; 185:15;200:24;201:8; 205:2,6;212:25;213:7; 215:18,20,25;218:11; 243:18,23;244:24;</p>	<p>245:12;268:21</p> <p>Milestone (1) 101:25</p> <p>milk (1) 232:5</p> <p>millennials (1) 117:5</p> <p>million (9) 53:8;78:10,22;81:4; 85:24;87:22;100:17; 173:3;223:8</p> <p>Mills (1) 125:3</p> <p>mind (9) 45:25;91:14;102:4; 105:18;193:1;202:20; 258:17;259:13,13</p> <p>mine (3) 51:11;222:1;272:7</p> <p>minimal (1) 135:8</p> <p>minimized (1) 64:21</p> <p>minimum (4) 48:21;87:20;89:18; 237:5</p> <p>minus (2) 229:17,25</p> <p>minute (13) 47:12;73:23;82:10; 93:1;94:4;115:11; 139:22;151:14;155:18; 157:22;203:5;208:17; 255:2</p> <p>minutes (9) 21:25;92:7;167:7; 208:12;217:8;274:1,4, 8,21</p> <p>mirrors (1) 47:22</p> <p>mis- (1) 154:20</p> <p>misconstruing (1) 153:7</p> <p>misery (1) 65:1</p> <p>misguided (1) 66:17</p> <p>misleading (1) 32:6</p> <p>miss (1) 34:19</p> <p>missed (1) 34:14</p> <p>missing (3) 123:9;179:8,21</p> <p>mission (1) 33:23</p> <p>mistaken (3) 123:10;152:22; 160:13</p> <p>misunderstand (1) 261:9</p>	<p>mitigation (1) 53:16</p> <p>mix (22) 78:16;94:3;95:4,10, 11;97:4;104:22,23; 107:1;144:15;170:6, 24;181:21;223:16,17; 224:14,17,23;225:1; 226:1,1;236:17</p> <p>mixed (20) 64:2,2;162:4;209:24; 230:9,14;231:8,25; 232:7,15,15;234:2; 235:11,25;237:15; 239:2;245:20;265:22; 266:9;271:5</p> <p>mixes (1) 224:19</p> <p>mixture (1) 236:25</p> <p>modern (11) 103:23;105:5; 122:23;143:11,22,25; 144:14;145:3,15; 146:6;150:12</p> <p>modest (2) 155:22,23</p> <p>modified (2) 159:14;205:25</p> <p>mom (1) 24:12</p> <p>moment (11) 7:3;78:13;103:11; 148:1,6;178:19; 184:12;193:1,2; 237:20;270:22</p> <p>Mom's (1) 110:4</p> <p>Monday (10) 13:22;84:3;87:25; 90:25;91:11,15;92:3; 113:8;122:16;125:12</p> <p>money (6) 20:24;38:13,14; 89:12;155:5,5</p> <p>Montgomery (8) 38:22;47:1;65:10; 113:19;116:7;223:12; 246:5;267:16</p> <p>month (3) 37:13;39:3,4</p> <p>monuments (1) 233:18</p> <p>moon (1) 174:9</p> <p>more (107) 17:5;20:14,23;24:3; 35:24;36:18;40:1; 41:19,20;44:16;47:4; 53:18;54:3;57:5;65:18, 25;70:20;83:3;84:3,5, 5,11,12;86:5,10,10; 87:19;88:3,6,7,8,8,9;</p>	<p>90:12;92:25;97:3,14; 98:12;99:19;102:19, 22,23;104:1,18,21,21; 107:4;112:14;113:21; 114:6,7,20;117:4,4,22; 118:23;119:9,15; 120:1,18,25;122:9,15; 123:19,21;124:21,24; 125:4,17;128:17; 131:25;132:5;133:5,6; 134:22;136:17;137:19, 23;143:19;144:2,16; 147:18;150:13,13; 153:25;157:5;163:20; 166:4;169:7;175:4; 188:19;200:19;203:20; 226:13;227:17;237:17; 252:8,11;253:14; 254:5;259:1;260:18, 19;261:24;270:1; 271:22;280:18</p> <p>Moreover (1) 171:20</p> <p>morning (18) 9:3;10:18,19;21:10, 11;22:14;49:11;54:21, 22;61:19,20;144:23; 159:4;189:8;191:15; 275:4,8;280:18</p> <p>most (35) 57:15;64:11;75:24; 85:24,25;97:16; 102:13,15,17;104:15, 16;107:2;123:12; 125:9,13;131:24,25; 132:5;134:23;136:21; 137:3;140:17;151:4; 157:2;158:15;166:22; 168:24;172:17;188:5; 196:5;197:3;232:20; 234:12;242:13;249:14</p> <p>motioning (1) 250:7</p> <p>motivation (1) 108:24</p> <p>motor (1) 151:2</p> <p>mound (1) 80:23</p> <p>Mountain (2) 124:18;146:16</p> <p>mouth (1) 198:22</p> <p>move (8) 86:17;108:24; 147:18;149:20;168:18; 250:15;257:19;266:19</p> <p>moved (3) 16:15;20:21;62:23</p> <p>moves (1) 160:9</p> <p>moving (3) 169:19;240:8;241:24</p>
--	---	--	---	---

<p>Mrs (1) 52:6</p> <p>much (74) 8:6;9:19;16:14;18:8; 21:5,18;23:7;24:17; 33:22,23;50:4;61:15; 63:10;65:23;67:2; 74:15,23;80:16;81:21; 83:21;84:2,11,12;86:3, 8,10;87:15,19;88:9,12, 19;90:12;92:2,21; 97:25;98:10;103:23; 104:1,21;105:5; 106:22,22;107:3; 111:7;119:5,6;120:10, 13;122:20;124:11; 131:8,24;132:5,13; 134:25;135:6;139:22; 150:12,13;151:3,25; 163:20;164:3;165:9; 170:17;179:17;189:22; 193:12;206:8;221:6, 11;258:7;270:5;275:23</p> <p>multi- (1) 207:5</p> <p>multi-family (2) 224:24;236:25</p> <p>multiple (4) 25:2;30:21;37:6; 185:3</p> <p>multiply (1) 64:19</p> <p>multi-story (1) 129:13</p> <p>multi-use (2) 90:10;260:14</p> <p>music (2) 20:17;37:19</p> <p>must (5) 35:22;259:7,24; 266:2,4</p> <p>MXD (1) 266:25</p> <p>MXPD (69) 83:13;173:4,6; 203:11;214:23;226:2, 7;228:21;232:23; 236:4,7,8,11,14,16,16, 19,24;244:2,14,15; 245:3;250:2,21; 252:11,16;253:15; 254:7,22;259:22,23; 260:4,5,25;261:16,22; 263:18,22;265:13,15, 17;266:15,18,24; 267:14,17,17,18;268:3, 6,21;269:2,11;270:1,6, 7,10,13,16,19,25; 271:11,20;272:3,13; 273:4,6,10;277:17</p> <p>myself (5) 11:25;30:2;36:10; 167:15;191:1</p>	<p style="text-align: center;">N</p> <p>nail (1) 94:25</p> <p>name (19) 11:7,9;17:4;31:5; 36:20;51:14;60:23; 61:24;72:12;189:7; 217:24,25;218:8,11; 219:18;220:25;221:1, 3,3</p> <p>named (1) 72:17</p> <p>names (3) 26:3;31:18;58:24</p> <p>narrowed (1) 114:3</p> <p>native (1) 234:7</p> <p>natural (1) 110:1</p> <p>nature (4) 22:12;63:1,1;197:9</p> <p>near (6) 107:15;113:23; 115:15;117:5;155:4; 202:3</p> <p>nearby (5) 103:5;137:1;144:11; 157:12;169:6</p> <p>nearly (1) 107:17</p> <p>necessarily (5) 105:2;137:11; 163:16;165:23;272:20</p> <p>necessary (2) 76:4;182:7</p> <p>need (45) 19:2,21;36:17;38:22; 45:18;57:15;62:15; 65:5,9;66:7;69:4;72:6; 75:24;82:10;95:5; 106:1;107:14;119:13; 126:14,16;130:18; 154:9,10;176:10; 181:15;202:8;204:23; 206:8;207:4;215:21; 218:4,5,11;219:3; 220:21;244:21;254:1; 259:1;263:12,23; 265:17;268:6;269:22, 23,23</p> <p>needed (4) 65:23,25;98:21; 99:14</p> <p>needs (8) 20:19;65:7;66:23; 78:21;96:14;200:19; 245:2;246:1</p> <p>negative (6) 66:10;91:1;92:24; 97:11;197:5;216:10</p>	<p>neighborhood (74) 19:11;80:15;93:11, 14,16;94:14;106:11,11, 16;107:20,21;137:2,9, 9;160:1,5,8,11,14,15, 18,22,24,24;161:2,5,5, 7,8;162:4,9,18,21; 163:16;165:22;170:13, 18;173:15,17;180:4; 222:15,23;224:10; 225:22;226:3,4,11,19, 21,24;228:23;229:8; 230:16,21,25;231:3,4; 232:1,8,9,13;235:4; 237:23;239:8;244:19, 19,22,25;248:19,21; 249:3,15,23;269:15</p> <p>neighborhood-oriented (2) 18:22;19:21</p> <p>neighborhoods (3) 53:6;247:14;249:17</p> <p>neighborhood-serving (1) 137:12</p> <p>neighboring (1) 184:9</p> <p>neighbors (2) 63:25;231:23</p> <p>nervous (1) 99:4</p> <p>net (3) 84:19,19;87:5</p> <p>network (1) 15:18</p> <p>networking (1) 34:4</p> <p>nevertheless (1) 100:12</p> <p>new (37) 12:23;15:9,13;30:5; 31:3,20;34:25;35:19; 36:23;40:15,16;53:4; 63:2,23;82:23;92:13; 98:8;101:6;105:7; 124:20;186:24,24; 194:22;195:6,10,16,17, 22;228:16;247:13; 248:21;249:3,16,21,23; 262:10,11</p> <p>Newland (7) 14:22;17:4,8,19,22; 18:13;49:9</p> <p>news (2) 47:13;214:3</p> <p>next (8) 7:11;13:17;38:5; 88:17;95:21;136:15; 148:10;246:3</p> <p>nice (11) 10:8;23:4;41:2;57:8, 23;63:3;64:6;104:11, 21;105:8;150:16</p> <p>nicely (1) 57:24</p>	<p>night (1) 28:14</p> <p>nightmares (1) 64:13</p> <p>NIH (1) 114:5</p> <p>nine (1) 14:3</p> <p>Nobody (3) 57:20;142:15;166:8</p> <p>nod (1) 177:21</p> <p>nomenclature (1) 163:15</p> <p>non- (1) 79:19</p> <p>non-chain (2) 93:24;95:7</p> <p>none (5) 31:18;65:4;82:1; 96:5;242:20</p> <p>non-expert (1) 257:8</p> <p>non-residential (3) 27:18,19;260:10</p> <p>normal (2) 132:3,11</p> <p>north (24) 57:14;70:12;114:8; 117:10;187:6,8; 196:18;201:15;211:3, 4,14;226:25,25;227:3; 228:15;231:20;234:10, 19;235:13;239:5; 241:14;245:12;263:7, 19</p> <p>north/south (2) 238:14,14</p> <p>northeast (5) 123:16;201:17; 234:17,18;243:21</p> <p>Northern (5) 90:4,6;230:13; 235:20,21</p> <p>northwest (1) 74:5</p> <p>Nos (1) 6:25</p> <p>note (3) 54:23;173:13;274:15</p> <p>noted (7) 8:15;208:4;209:3; 223:9;246:24;278:2,21</p> <p>notes (12) 5:16,18;6:6;137:20; 140:23;147:12;148:7; 158:7;203:10;216:3,8, 12</p> <p>notice (7) 5:24;14:11;29:7,9, 22;105:16;247:25</p> <p>notices (4) 11:21;47:7;48:5;</p>	<p>51:10</p> <p>notwithstanding (2) 80:2,20</p> <p>nowhere (1) 116:5</p> <p>number (34) 27:10,12,13;64:13; 65:3,20;84:19,20; 107:3;118:2,17; 119:16;121:2;159:11; 165:19;168:25;185:8; 187:10;189:21;203:24; 205:17;207:11;213:20; 228:3;230:18,19; 232:13;237:11;240:25; 241:2;248:5;255:12; 262:22;263:21</p> <p>numbers (5) 107:22;117:22,23; 137:14;224:18</p> <p>numeric (4) 77:24;80:21;257:25; 263:14</p> <p>numerical (2) 251:4,14</p> <p>numerous (1) 193:5</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>oath (4) 10:24;82:7;120:24; 221:23</p> <p>object (3) 133:21;190:22;255:5</p> <p>objected (2) 48:8;156:14</p> <p>objecting (3) 190:16;256:9;268:2</p> <p>objection (51) 6:9;8:17,24,25;24:2; 31:25;32:1;48:14,19, 20,49;18;50:19;55:12; 79:7,11;128:13; 133:19;134:4;141:25; 148:22;152:18;156:10; 188:22;197:7;198:23; 199:13,23;203:17,18, 19;204:5;206:5; 208:11;214:25;217:1; 252:2,8;255:4,8,10; 258:4;264:4,13; 266:19;267:20;274:16; 277:19;278:2,10,21; 279:19</p> <p>Objective (6) 141:25;142:19,25; 236:12,13;271:20</p> <p>objectives (4) 141:24,24;142:2; 159:21</p> <p>obligation (2) 8:8;32:8</p>
---	--	--	--	---

<p>Observation (7) 205:21;239:20,23, 24;240:3,5;276:24</p> <p>obtained (1) 237:4</p> <p>obvious (3) 66:18;155:1,2</p> <p>obviously (7) 58:14;83:20,24; 106:19;116:12;143:14; 178:9</p> <p>occasion (2) 122:14;123:4</p> <p>occasional (1) 93:23</p> <p>occur (11) 19:13;24:10;67:11, 12;83:16;98:22; 108:15;131:11;176:17, 21;177:16</p> <p>occurred (4) 46:16;83:15;124:25; 125:9</p> <p>occurs (2) 89:12;176:5</p> <p>o'clock (2) 129:6;258:15</p> <p>October (1) 15:1</p> <p>odd (1) 65:17</p> <p>off (34) 16:12,14;31:15;36:3; 39:19;50:2;64:20; 73:10;82:9;126:7; 127:22;130:24;138:9; 152:5,9;159:13; 172:10;175:24;199:4; 208:13;217:11,16; 222:12;239:24;243:20, 20;258:25;274:3,17, 21;275:6;276:16; 280:19,23</p> <p>offer (6) 6:11;116:21;202:23; 257:7,10;277:10</p> <p>offered (4) 109:6;128:13,14; 145:6</p> <p>office (179) 29:8;47:1;64:2,7; 78:17;83:6,8,12,21,21; 84:2,3,5,17;85:10,24; 86:2,4;87:12,21,23; 88:4,5,6,8,13,21;89:2, 24;90:1,8,10;99:22; 104:2;105:1,11;111:7, 10;112:22;113:3,11,18, 23;114:4,7,21;115:3,4, 13,15,18,19;116:8,13, 15,19;117:8,17;118:7, 10,12,24;119:6,8,10, 11,13,14,15;120:18;</p>	<p>121:1;122:4,8,19,21; 123:2,14,22;124:1,2,9, 12,12,20,21,22,24; 125:6,13,16,17,18; 128:12;132:23;134:13, 15,16,18,24;135:7,10, 12,18,20;136:8,12,18, 20;137:5;139:3;140:3, 6,10,13,20;141:5,6; 142:13,24;143:6,13,16; 144:21,21;145:11,11; 146:7,10,20,23,24,25; 147:20,21,25;151:17; 152:6,6,7;153:15,16, 23;154:2,4,5,7,9,14,16, 21,23,25;155:3,9,21, 25;156:3,22;157:1,2,5, 9,18;163:4;170:7; 207:6;222:22;223:2,3, 15;227:11;232:11,12, 12,12;246:25;264:10; 265:10;275:12</p> <p>officer (1) 125:20</p> <p>offices (4) 95:1;116:12;140:13; 190:10</p> <p>official (2) 5:24;247:24</p> <p>off-ramp (1) 53:4</p> <p>often (3) 69:10;134:20;147:22</p> <p>Old (11) 13:13,14;15:9;27:14; 76:12;115:23;146:21, 21;228:11;241:6,7</p> <p>Older (2) 82:23;150:16</p> <p>oldest (1) 168:24</p> <p>omit (1) 171:17</p> <p>Once (11) 14:16;37:13;39:3,4; 77:4;93:19;115:20; 116:20;117:20;124:8; 245:25</p> <p>one (148) 5:10,18;8:4;9:18; 19:1;20:11,19;21:8; 22:14;29:2;30:14; 33:15;35:24;38:4,5; 49:4;50:4;58:10;59:8, 14;60:14;61:2;64:13; 66:8;73:23;78:12,23; 80:6,7;83:7;92:19,24; 94:6,7;95:24,25;97:8, 21,24;98:12;99:2; 101:23;102:5;104:18; 105:7;111:24;113:13; 115:14,14,24;117:6; 119:19;121:4;123:17;</p>	<p>124:13;126:17;128:9; 130:6;131:15;134:13; 135:13;137:7;141:10, 23;145:14;146:20,23; 147:24;150:14;151:9, 18;153:16;154:13; 157:9,13,19;158:20; 159:13,15,20,20; 161:12;163:15;165:6; 166:4,9;168:24; 177:12;179:6;180:7; 185:5;186:15,16; 188:17,20;193:2; 194:4;205:1;206:3,3; 207:15;212:22;213:17, 18,21,22;216:5,6; 218:15;220:16;222:14; 224:15,19,19;226:3; 227:16;229:1,11; 230:5,11;231:12; 233:5;235:12,15,16; 243:9,16;245:19; 247:6;248:8,20,20; 254:1;255:12;257:22, 22;258:11,14;261:24; 263:3;265:24,25; 268:7;270:22;275:7; 277:12;278:11;280:18</p> <p>one-on-one (1) 206:12</p> <p>ones (7) 22:10,20;104:19; 107:11;112:1;195:18; 228:2</p> <p>ongoing (1) 243:5</p> <p>online (1) 72:7</p> <p>only (41) 5:14;13:21;20:16,21; 30:17;36:2;39:2,23; 60:21;64:3,18;76:2; 83:22;84:22;87:16; 90:25;98:12;107:1; 115:12,17;120:6; 125:21;135:22;147:5; 153:15;162:1;169:3,4, 4;181:10;188:14,17; 189:21,21,21;218:5; 231:2;252:15;253:23; 257:1;272:9</p> <p>onsite (1) 271:8</p> <p>onto (3) 53:4;117:8;236:2</p> <p>open (7) 24:4;175:16;195:20; 231:22;233:6,7;274:22</p> <p>opened (5) 46:24;123:16,20,22; 124:19</p> <p>opening (3) 53:12;230:7;281:1</p>	<p>opens (2) 218:24;235:14</p> <p>operate (1) 31:24</p> <p>operation (3) 19:22;135:1,8</p> <p>operational (1) 47:23</p> <p>opinion (19) 32:16;55:6;143:9; 145:14;152:15;246:21; 254:25;255:7;256:15, 18,19,21;257:3,10,13; 258:5,6;266:16;270:5</p> <p>opinions (2) 32:21;257:8</p> <p>opportunities (1) 223:2</p> <p>opportunity (7) 54:1,4;62:19;66:6,7; 90:13;210:2</p> <p>oppose (1) 25:2</p> <p>opposed (3) 57:16;123:19;199:9</p> <p>opposing (1) 7:9</p> <p>opposite (2) 184:3;272:7</p> <p>opposition (5) 9:3,10;10:13;90:22; 189:4</p> <p>optician (1) 94:25</p> <p>optimum (2) 108:6,8</p> <p>option (4) 81:12;236:16; 266:16,17</p> <p>optional (6) 251:5,16;257:20; 263:13,22;269:14</p> <p>options (4) 213:17,20;250:5; 253:24</p> <p>orally (1) 210:22</p> <p>orange (2) 228:20;237:17</p> <p>order (9) 91:13;132:1;200:19; 263:11;265:16,17,23; 266:7;271:4</p> <p>orderly (1) 243:9</p> <p>ordinance (8) 215:8,12,15;226:5; 251:24;252:5;264:16; 277:20</p> <p>organization (2) 59:25;146:12</p> <p>organizations (1) 265:22</p>	<p>organized (1) 126:11</p> <p>orientation (3) 129:2,19;150:14</p> <p>oriented (1) 150:13</p> <p>origin (1) 261:4</p> <p>original (5) 18:23;62:21;80:9; 81:6;84:13</p> <p>originally (5) 17:24;80:14;81:3; 109:5;161:3</p> <p>others (4) 105:9;143:7;145:5,9</p> <p>otherwise (4) 31:22;124:25; 194:25;273:8</p> <p>ours (1) 157:10</p> <p>ourselves (1) 63:11</p> <p>out (90) 7:2,4,17;10:7,15; 14:2;17:19,20;22:16, 17;25:9;26:6;28:15; 29:19,21,24;30:1,4; 31:12;32:4;33:5,7,9,9, 17;34:10;37:20;47:2,3, 8;48:10;49:10;50:13; 59:21;66:19;70:4,24; 71:9;76:1,18;82:19; 91:13,21;99:11; 101:15;111:8;113:16, 21,22;114:19;115:24; 116:5,23;117:8;118:6; 123:9;124:3,8;130:17; 134:1,15;136:3;138:7; 144:8;157:1,3;172:2; 178:8;179:7,15; 181:12,23,24;189:23; 190:5,20;191:25; 192:24;203:22;204:2; 216:18;221:24;235:6; 237:8;239:21;243:10; 256:6,12;269:22;278:7</p> <p>outdoor (6) 122:24;144:25; 150:13,18;151:5;234:6</p> <p>outer (1) 123:18</p> <p>out-graded (1) 200:13</p> <p>outlet (141) 19:14;21:17,20;22:1, 3,5,9,12;23:10;29:21; 31:21,24;39:14;41:14, 22;43:6;52:20,23;53:2, 7,12,15;54:2,25;55:1,5, 5;58:1,1;64:1,17,21; 83:5;84:4,7,10;88:2, 16;93:3;94:3,3,15;</p>
---	---	---	---	--

<p>95:9;97:7,11,13; 101:11;103:2,23; 104:13,16;105:5,11; 115:17;119:12;122:6, 7,18,23,24;123:13,17, 23;124:9,13,19,23; 125:1,9,10,12,23; 136:18;143:9,11,20,23, 25;144:6,14;145:3,15; 146:6,10,12;147:5,6,9; 150:12,24,25;151:3,16, 17,25;152:17;153:24; 154:6,18;155:13; 160:10;164:19,22,24; 165:1,24;166:7; 171:20,24;172:11; 176:5,22;181:4,16; 183:14;184:1,8;189:9; 190:15;191:5,16,17; 194:12,15,18;197:5; 198:14;199:12;209:8; 213:11;216:5;226:16, 23;230:13,17,20,21; 231:4;235:25;243:15; 244:7</p> <p>outlets (33) 13:5,7;14:15;15:12; 22:8,11,18,19,22;23:4; 29:24;39:18,20,21; 40:25;41:1,2;42:8,9,9, 11;52:18;53:17;75:20, 23;95:10,13;123:15; 124:18;168:16;172:5, 10;191:13</p> <p>outline (1) 238:23</p> <p>outlined (2) 224:2;242:14</p> <p>outlying (1) 115:17</p> <p>outright (1) 174:18</p> <p>outs (1) 175:4</p> <p>outside (13) 15:11;57:22;104:12; 144:19;150:3,20; 165:11,18,24;191:3; 206:4;223:12;232:22</p> <p>outspoken (1) 49:12</p> <p>outweighed (1) 92:25</p> <p>over (44) 15:15,21;17:21; 20:20;22:16;24:15; 26:7;30:1;31:4;32:4; 36:8,15;37:23;41:3; 42:10;43:4;45:23;51:4; 57:7,25;64:12,12,24; 69:11;70:19;75:13; 84:1;89:22,22;99:21; 100:3;105:19;114:17;</p>	<p>119:14;122:21,21,21; 123:1,1;157:5,18; 179:20;241:9;274:12</p> <p>overall (12) 111:14;159:21; 169:21;224:13,24; 236:17;242:8,9,10; 270:8;273:18;277:12</p> <p>overcome (1) 9:25</p> <p>over-generalize (1) 114:22</p> <p>overlap (2) 230:20;231:1</p> <p>overruled (1) 264:7</p> <p>overused (1) 115:10</p> <p>overview (1) 51:25</p> <p>own (10) 116:9,11;169:2,3; 183:11;204:21;244:19, 22,23;245:2</p> <p>owned (12) 93:21;94:6,8,21; 95:7,25;147:13,15; 151:9;157:14;186:21; 197:25</p> <p>owner (17) 12:3;13:20;22:7,8; 99:11;153:17,21; 157:23,24;158:1; 168:11;203:1;269:6, 11,25;270:1;273:9</p> <p>owners (7) 13:19;15:19;33:11; 49:4;61:2;255:1;269:5</p> <p>owners' (1) 280:11</p> <p>ownership (3) 147:23;166:3;198:3</p> <p>owns (3) 13:25;146:12;170:19</p>	<p>242:25;244:10,11; 247:5,12;249:11,15; 262:20;265:14;266:24</p> <p>pages (10) 95:18;224:3,9; 227:18;238:10,10,17, 23;242:14;259:2</p> <p>paid (2) 18:9;144:2</p> <p>paper (1) 29:1</p> <p>paragraph (13) 161:18,21,23;163:1; 201:24;247:3,6; 249:12;258:21,22; 259:4,5;260:7</p> <p>paragraphs (1) 247:1</p> <p>parameters (1) 244:5</p> <p>parcel (7) 63:24;64:18;71:14; 76:2;78:9,13;157:13</p> <p>Pardon (2) 44:9;186:1</p> <p>Park (23) 47:8;126:20;128:12; 223:10,14,15;224:2; 227:12;229:3,4,5,7; 230:1,6;233:10;234:2, 4;235:7,9;241:11; 245:17;248:25;271:11</p> <p>parking (2) 129:14;145:22</p> <p>Parkway (6) 70:8;228:17,19; 234:3,21;241:15</p> <p>parse (1) 124:8</p> <p>part (45) 19:12;21:20;27:21, 21;37:9;57:15;59:24; 61:3;65:21;70:2;77:19; 78:18;80:9;94:10; 117:14;125:7;132:17; 137:2;154:23;170:3; 176:11,13;180:7,16; 184:14;185:10;192:2; 195:8;209:23;210:6; 212:14;222:22;231:4; 241:8,8;244:2,12; 245:8,10;256:16; 263:6,23;266:5; 267:10,14</p> <p>partially (3) 196:19;242:5;243:5</p> <p>particular (13) 113:24;147:23; 160:12;183:21;188:1; 224:13;226:24;235:7; 237:13;241:1;244:4; 248:24;250:20</p> <p>particularly (21)</p>	<p>32:23;81:11;104:25; 137:4;150:2;222:17; 223:18;224:9,19; 226:2,6,15;233:17; 236:13;237:8;238:12, 13,24;241:3;249:21; 250:6</p> <p>particulars (1) 224:3</p> <p>parties (9) 11:2,15;17:3;100:24; 193:11;258:15;277:16, 17;278:16</p> <p>partly (2) 179:13;273:11</p> <p>Partners (4) 30:5;31:19;36:23; 63:23</p> <p>parts (5) 61:6;103:10,14; 185:3;263:7</p> <p>pass (2) 66:6;103:3</p> <p>passing (2) 22:17;126:6</p> <p>past (6) 100:11;104:24; 114:17;140:1;167:14; 229:9</p> <p>path (2) 230:1;234:24</p> <p>paths (1) 17:17</p> <p>pathways (1) 40:23</p> <p>patiently (1) 52:14</p> <p>pattern (2) 141:21;142:20</p> <p>pave (1) 18:1</p> <p>paved (2) 229:19,21</p> <p>paving (1) 229:19</p> <p>pay (7) 34:7;144:16;155:3; 206:22,23,25;207:10</p> <p>paying (1) 14:23</p> <p>Peachtree (2) 62:3;74:9</p> <p>pedestrian (2) 150:14;162:23</p> <p>pedestrians (1) 174:6</p> <p>pedestrian-used (1) 150:25</p> <p>penciled (1) 5:16</p> <p>pending (1) 245:5</p> <p>people (57)</p>	<p>15:3;17:5;18:3; 20:23,24;31:23,23; 32:5;34:7,25;35:10,11; 37:15,19;38:2,19,25; 39:10;41:24;42:7;43:2; 45:24;47:4;49:7;65:14; 66:20;73:14;82:5,19; 89:10;96:12,13;105:3; 109:3,8;135:22;144:7; 152:3;172:1,2;174:3; 176:7,7;177:3;196:5; 197:3;198:17;200:18; 205:17;206:11,11; 218:5,20;219:2;231:5; 239:14;268:2</p> <p>people's (5) 31:18;218:23;219:3, 5,7</p> <p>per (12) 140:11,21;224:14; 227:11;243:13;244:8, 15;263:15,15,24; 265:18;269:23</p> <p>percent (15) 30:19;35:16;93:16; 94:13;214:24;223:7; 226:8;236:25;237:2; 244:15,16;266:10; 270:7;271:3,7</p> <p>percentage (2) 195:19;236:24</p> <p>perception (1) 113:6</p> <p>perfectly (1) 203:9</p> <p>perhaps (3) 32:20;100:12;278:7</p> <p>perimeter (1) 234:12</p> <p>period (9) 84:1,6;85:23;86:1,9; 87:11;88:6;246:11; 276:6</p> <p>periods (1) 140:1</p> <p>permanent (2) 140:21,22</p> <p>permit (1) 195:1</p> <p>permitted (13) 169:14;171:5; 172:15,22;173:20; 264:21;265:2,5,7,19, 19,22;270:21</p> <p>person (7) 9:23;10:16;13:18; 73:12;109:18;157:20; 203:23</p> <p>personal (1) 94:23</p> <p>personally (5) 18:25;19:19;23:8; 61:8;158:3</p>
	<p style="text-align: center;">P</p> <p>pace (1) 154:6</p> <p>pad (2) 129:16;132:16</p> <p>page (52) 5:19;28:17,17,18,20; 29:10;95:19;96:2; 121:25;126:23;141:12, 14,17;161:14;162:12, 15;173:16;190:3; 194:3;201:23;202:2,3, 4;203:9;209:18,21,24; 210:10,10;222:2,5,5, 15;232:25;233:5; 236:6;237:1,20,22; 238:12;241:21,23;</p>			

<p>perspective (9) 98:3,17,22;109:22; 112:7;113:4,6;115:13; 243:17</p> <p>persuaded (2) 277:9,11</p> <p>pertained (1) 160:14</p> <p>Peterson (39) 29:23;30:11,14,21; 32:23;33:8;34:21; 35:20;37:7,9,12;39:19, 21;41:23;43:5,10,20; 44:13;47:21;55:1; 57:17;58:21;59:15; 60:2,20;69:7;170:16; 180:12,15;185:14; 201:8;204:10;205:2, 13;206:11,15,16; 212:25;216:6</p> <p>pharmacy (2) 232:4,4</p> <p>Phase (3) 52:16;56:19;240:13</p> <p>phone (3) 50:1,1;279:11</p> <p>phones (1) 31:7</p> <p>phonetic (1) 56:23</p> <p>phrase (9) 84:15;112:25;122:5; 131:9;175:23;177:25; 213:6;239:12;261:5</p> <p>physical (1) 233:10</p> <p>physically (1) 98:14</p> <p>pick (5) 12:16;135:1;222:4, 12;268:5</p> <p>pick- (1) 135:1</p> <p>picture (2) 239:7,21</p> <p>piece (2) 9:18;18:9</p> <p>pieces (1) 258:12</p> <p>pile (1) 47:6</p> <p>pink/red (1) 13:12</p> <p>pitch (1) 237:18</p> <p>pizza (1) 137:6</p> <p>place (36) 18:3;20:16,21;24:13; 38:19;43:15,18,19; 49:7;56:9;59:16;100:6, 8;103:22;104:21; 105:4;113:13;114:1;</p>	<p>117:4;134:22;136:22, 22;137:6;143:5;144:2, 17,18;145:22;174:13, 15;211:13,20;222:25; 227:17,18;232:21</p> <p>placed (1) 83:13</p> <p>places (12) 64:6;98:2;104:18; 105:3;113:24;120:8; 144:6;145:22;146:10; 150:14;174:1;229:11</p> <p>plan (348) 5:5,9;6:8,13,20,23; 14:12,21;15:8;16:7; 18:15,18,23;19:12; 20:8;21:14;23:21;24:1; 29:3,4;40:2;47:23; 53:15;56:5,14,17,19; 58:6,16;61:3,6,8;62:22, 25;63:13;64:1;65:21, 23;67:10,12,25;68:21, 22;69:15;70:24;73:22; 74:3;75:21;77:6,11,14, 17,25;78:8;79:6,12,19; 80:12,20;81:1,3,7,7; 83:1,11,17;84:13;87:9; 91:18;96:20;98:11; 101:20;106:16,20; 107:25;108:14,16; 110:21,23;111:11,12, 21;120:3;128:14; 137:8;141:9,13,23,24; 142:1,5,16,19,24; 145:4;158:13,15,19,21; 159:8,11,21;161:14; 163:8,17,25;164:4; 165:9;168:15,18,20,21, 24;169:8,10,11,14,17, 18,19,21,23;170:1,6, 21,24;171:7,9,11,16; 172:15,21,22,25;173:4, 6,9,10,14,15,16,18,20, 20,21,24;174:10,14,17; 175:24;177:7,25; 178:8,10,13;180:19,21; 181:7,10,24;182:25; 184:15,23;185:16; 189:18,19;190:2; 192:2,2,3,11;193:4; 194:4,21;195:1,9; 201:21;203:10,21,25; 204:2;205:3;208:5,8, 13;209:6,8,11,15,19; 210:1;213:8,11,18; 215:4,17;219:2; 221:25;222:13,20,24; 223:21,25;224:11,12, 13,14,15,16,21,25; 226:1,4,7;227:2,2,3,8, 20,21,24;228:2,4; 230:10;231:14,15; 232:19;233:3,19,21;</p>	<p>235:3;236:5,7,9,12,18, 21;237:1,21;238:9,22, 24;239:7;240:15,24, 24;241:1,2,18,20,21; 242:1,8,9,10,12,23,23; 243:8,8,13;244:1,5,5,9, 20,22;245:3,5,16; 246:7,14,14,19,20,21, 22;247:9,12,21;248:12, 15,22,24,24;249:9,19, 20;250:5,25;251:15,20, 25;252:23;253:2,14,23, 24;254:1,11,18,21; 255:19,22,24;256:7; 257:8,15,19,21;258:1; 259:9;260:1,24;261:1, 6,8,14,21;262:2,21; 263:3,4,15,25;265:8, 12,16,22;266:3,9,12, 12,13;268:3,23,25; 270:9,10,14,19;271:8, 9,10,24;272:3,10,23</p> <p>plan" (1) 266:6</p> <p>planned (14) 30:8;64:7;92:20; 103:2;104:1;112:13; 116:15;119:11;154:4; 161:1;183:15;196:16; 239:15;271:6</p> <p>planner (5) 142:5;157:20;252:6; 264:6,17</p> <p>planners (2) 266:14,21</p> <p>Planning (45) 47:9;65:16,16;66:16; 67:9;68:7,18,20;101:7, 16,19;102:24;103:21; 142:6,7,9;167:12; 199:19,20,23;205:16; 209:1;214:1,3,7;220:2; 223:10;224:2;227:12; 238:22;245:17,24,25; 246:4,24;247:7; 248:12;249:1;252:22; 253:13,17;259:7,24; 270:12;271:11</p> <p>plans (15) 17:9;34:20;47:8,17; 53:17;97:15;112:11; 153:18;159:10;228:7; 233:21;242:11,12; 244:3;271:22</p> <p>Plan's (2) 79:24;174:20</p> <p>plate (3) 30:17;39:24;40:8</p> <p>plats (5) 14:4;16:13;24:15; 26:19;48:5</p> <p>play (2) 151:5;171:13</p>	<p>players (2) 17:7;175:4</p> <p>plazas (1) 235:16</p> <p>please (34) 11:7;21:8;41:20; 51:12,14;55:24;61:22, 24;66:22;73:23;80:22; 82:12;141:12,19; 142:23;161:14,23; 162:12,19;168:1,9; 190:6;194:1;195:15; 199:2;207:16;209:21; 217:12,23;220:25; 222:10;257:1;266:22; 270:22</p> <p>pledge (2) 30:18;39:24</p> <p>pledging (3) 40:9,10,11</p> <p>plenty (3) 96:15;118:4;154:7</p> <p>plumber (1) 33:25</p> <p>plus (4) 27:11;129:15; 229:17,25</p> <p>pm (1) 281:2</p> <p>point (41) 9:3;14:2;20:9;21:3; 24:1;56:21;57:17; 58:14;90:20,22;92:2; 100:7;116:1,5;122:18; 125:14;129:17;140:16; 143:1;147:12;166:9; 169:11,19;170:9; 171:4;172:8,20; 177:25;178:3,6,11,23; 191:4;203:24;204:2, 16;215:18;226:13; 235:6,24;261:4</p> <p>pointed (3) 25:9;48:9;71:1</p> <p>pointing (3) 12:20;74:5;221:24</p> <p>point-of (1) 278:13</p> <p>point-of-view (1) 111:13</p> <p>points (5) 64:11;230:11;235:4, 6,15</p> <p>policies (1) 271:22</p> <p>policy (4) 38:1;111:14;222:15; 223:19</p> <p>pool (2) 231:14,16</p> <p>population (2) 111:10;135:23</p> <p>portion (11)</p>	<p>17:21;87:24;140:12; 162:1;165:24;184:23; 194:6;236:24;245:6; 263:14;266:14</p> <p>portions (1) 249:13</p> <p>position (1) 219:20</p> <p>positive (20) 83:21;84:7,11,12; 86:5,9,11;87:16,16,20; 88:8,8,9;91:1;97:13, 15;99:19;100:19; 108:24;166:22</p> <p>possibility (4) 48:10;58:13;174:19; 271:25</p> <p>possible (17) 12:10;55:11;64:18; 69:17;71:22;102:20; 135:3;139:14;146:10; 147:11;153:18,19; 178:9;210:13;216:24; 271:23;275:5</p> <p>Possibly (5) 8:10;66:5;95:24; 112:4;153:16</p> <p>post (1) 170:7</p> <p>postpone (2) 276:8,9</p> <p>potential (10) 68:6;69:15;100:14; 104:25;116:13;146:20; 177:6;179:2;200:22,25</p> <p>potentially (5) 92:23;146:24; 154:17;216:9;236:14</p> <p>Potomac (1) 223:14</p> <p>power (6) 101:24;103:24; 104:3,5,6;105:6</p> <p>PR (4) 30:25;35:22;36:6; 49:24</p> <p>preceded (1) 249:21</p> <p>precise (1) 17:5</p> <p>predict (2) 83:23;139:12</p> <p>predominantly (2) 104:9;154:4</p> <p>prefaced (1) 143:21</p> <p>preferable (1) 267:1</p> <p>preference (1) 10:4</p> <p>pre-hearing (1) 280:7</p> <p>prejudice (1)</p>
---	---	--	---	--

<p>276:12 preliminary (6) 5:6;224:25;246:14; 249:8,19,20 prematurely (1) 48:6 premiere (1) 218:10 premise (8) 79:13;83:5;120:3; 148:5,23;149:7,15,19 Premium (14) 22:11;52:18;53:2,17; 95:10,13;123:15; 168:16;172:5,9;189:9; 218:8;219:24;220:2 prepare (1) 11:4 prepared (4) 65:16;105:16;132:4; 168:7 prescribed (1) 137:8 present (6) 8:14;36:17,24;37:1; 103:5;216:19 presentation (1) 205:16 presentations (1) 220:12 presented (3) 200:9;245:18,18 presenting (1) 35:20 presently (2) 75:12,13 preserve (1) 174:18 preserved (1) 233:8 preserving (1) 63:1 presumably (1) 204:1 pretty (13) 16:14;18:7;33:22,23; 50:4;72:5;76:11;105:8; 133:15;151:3,25; 164:3;254:22 prevent (4) 102:10;179:8,25; 192:9 previous (2) 34:20;186:15 previously (1) 8:7 primarily (3) 227:10;229:4;264:10 primary (1) 232:15 prime (1) 117:6 principle (2)</p>	<p>114:19;169:8 prior (2) 28:5;227:2 priority (3) 115:9;171:8;182:24 pristine (1) 41:2 private (2) 140:9;192:5 probability (1) 8:13 probably (52) 8:12;21:3;29:5;36:8, 9,20;44:16;47:7;54:8; 55:20;69:4;82:16; 83:23;93:22;95:6;96:5; 97:10;99:10,17; 100:24;102:16;106:12; 108:23;109:18;113:19; 115:8,22;117:11; 119:5;122:9;128:17; 134:22,23;135:14; 137:6;140:21;148:4,8; 149:24;153:20;166:22; 175:3;184:2;188:20; 200:18;219:3;220:4; 226:13;231:1;252:9; 267:2;278:23 problem (14) 21:2;23:7,8;28:2,7,8; 167:16,21;168:17; 179:3;254:21;256:16; 257:1;272:1 problems (3) 19:1,15,16 Proceed (8) 82:14;174:20; 245:14;246:6,17; 266:17,17;270:18 proceeded (1) 269:15 proceeding (3) 60:13;174:14;198:18 proceedings (1) 6:13 proceeds (1) 245:3 process (11) 47:18;53:22;62:22; 64:23;66:14;69:14; 109:9;116:10,11; 178:10;280:25 products (1) 218:8 professional (3) 122:22;190:10;223:4 proffer (4) 197:11;253:7;255:5; 256:20 proffering (3) 253:18,19,20 profits (1) 63:18</p>	<p>program (2) 176:16;242:3 prohibit (1) 173:18 prohibition (1) 103:18 project (38) 12:2;24:24;25:5,18, 21;26:25;27:6,8;37:5, 7,8;44:13;48:11;52:1, 21;53:18,23;54:25; 55:9;57:17;60:2;75:1, 6,18;83:12;124:6; 128:10;157:3;178:21; 205:14,14;218:4; 224:25;237:12;242:3, 16;246:6;247:8 projected (1) 253:9 projects (2) 56:11;156:24 promise (1) 64:14 promised (3) 63:16;109:5;172:16 promises (1) 63:18 promising (1) 40:8 proper (3) 197:14;255:6;256:15 Properties (5) 22:8,10;33:16;68:6; 267:16 property (93) 21:12;27:19,22;28:3; 30:6;31:3,20;34:25; 35:19;36:23;38:2; 43:20;44:1;46:15,17, 18,19,22;61:2;67:13; 69:6,8;155:13;168:12; 169:2,3;180:11; 183:11,17,18,23; 185:15,15,20;186:22; 192:15;198:6;200:25; 201:3,6,9;203:1,11; 204:10;205:2,3; 206:17;207:5;210:14, 22,24;211:18;212:16, 25;213:7;215:19,20, 25;227:4;236:4,14, 239:16;240:2,4,16,19; 242:4,7;244:24;245:1, 13;246:16;252:11,20; 253:4,16,25;255:1; 257:16,18;260:24; 263:17;266:14,24; 267:3,10;268:21; 269:5,6,11,25;272:22; 273:9 proportion (1) 263:16 proposal (40)</p>	<p>20:13;21:16;35:15; 42:21;43:6;63:22; 64:17;65:1,4,22;66:3, 11,14,15,17,19,22,24, 25;77:20,20,21;78:5; 81:10;87:18;88:11; 99:8;106:17;107:21; 110:15;144:24;164:6, 25;181:1,3;209:25; 223:6;225:20;237:21; 243:15 proposals (2) 68:24;79:24 propose (2) 41:6;208:10 proposed (46) 7:10;17:19;19:18; 21:14;25:24;42:18,19; 52:14,20;53:18;56:17; 66:15;71:21;75:20; 80:25;83:18;84:25; 86:7;97:14;117:19; 122:2;143:3,12,23; 161:1;162:1;166:17; 170:12;171:5,20; 173:3;181:20;197:22; 205:14;207:25;208:7, 22,23;209:4,22; 222:24;240:10;266:2, 11;271:8;272:9 proposes (4) 77:12,25;172:25; 225:21 proposing (11) 13:5;18:15;30:16; 80:15;170:16;180:7, 12;181:20,22,22; 205:18 proposition (1) 122:6 protect (2) 65:6,9 protected (1) 168:11 protection (3) 242:5,7;243:11 proud (1) 14:20 prove (1) 214:13 proven (3) 122:3,20;123:1 provide (17) 8:11;63:2;64:3; 132:22;152:1;182:6; 206:17;231:3,5;245:3; 248:5;276:19;277:15, 22;278:1,5,8 provided (10) 6:20;97:18;195:11; 231:22;237:18;251:12, 12;253:24;256:11; 264:12</p>	<p>provides (7) 56:14;77:6;90:6; 170:6;203:25;224:13; 230:7 providing (4) 164:7;182:1;205:18; 260:10 provision (3) 150:20;266:4;270:25 provisions (4) 61:7;80:2;251:13; 260:6 public (16) 5:2;29:7,9;76:15; 111:14;140:8,8;170:9; 176:1,2;210:3;223:5; 232:18,20;238:18,19 publication (1) 93:15 publications (1) 82:18 publishers (1) 82:16 pull (1) 57:12 pulled (3) 17:19,20;95:10 pulling (1) 66:19 Pulte (8) 14:8;30:13,15,24; 33:6;34:21;37:12,13 purchased (3) 24:25;25:22;27:4 purchasing (2) 23:18;26:7 pure (1) 266:20 purporting (1) 149:8 purpose (8) 101:11,13;118:4; 120:12;128:14;243:7; 271:20;272:20 purposes (3) 106:5;130:21;142:2 pursue (1) 273:20 pursued (1) 153:17 pushing (1) 65:5 put (27) 5:19;7:23;11:16; 13:5;15:6,9;16:8; 17:24;18:1;40:15;51:5; 62:5,15;70:24;73:21; 100:5;106:4;108:20; 120:4;158:10;165:21; 214:9;267:3;272:21; 274:17,18;280:2 putting (5) 37:18;145:12;</p>
---	---	--	--	---

198:21;230:15;276:23 puzzle (1) 38:18 puzzled (1) 39:13 puzzles (1) 38:17	R&D (1) 89:2 R-200 (3) 201:3;203:11;243:25 rabbit (1) 274:12 radio (1) 94:20 rail (1) 240:10 raise (6) 11:5;51:12;61:22; 168:1;193:21;217:12 raised (4) 17:13;192:18,23; 193:5 ramp (1) 53:4 ramps (1) 64:20 range (8) 89:10,17,17;93:20; 136:20;225:14;226:10; 237:1 ranges (3) 97:3;224:18;237:5 ranking (1) 115:2 rankings (1) 115:5 rapid (3) 240:9,10,12 rarely (2) 135:5,7 rate (3) 114:18;120:2,6 rates (1) 114:16 rather (10) 45:21,23;57:8;58:3; 63:21;83:4;108:12; 116:24;151:1;166:7 rationale (2) 102:24,25 RE/MAX (1) 39:1 read (48) 47:22;51:23;61:3,6, 8;63:13,14;101:14,23; 141:19;158:15;161:23; 162:19;166:13;168:7; 176:15;190:3;194:6,8, 9;195:14;199:2,3,6,7; 201:7,20;202:7,9,10, 15;203:5,22;205:10, 10;209:14,21;215:16; 219:1;237:22;238:2,4; 247:1;257:22,25; 258:23;260:17;272:2 reading (1) 260:16 reads (2) 101:16;194:15	ready (11) 18:11;53:18;54:3,4; 56:6;65:20;75:3;82:11, 13;127:19;250:17 real (11) 36:2;63:20,20;94:1; 95:1;105:10;113:12; 115:8;144:20;184:2,3 realistic (2) 98:2;120:5 realities (1) 98:1 reality (4) 65:22;110:19;116:6; 130:12 realize (5) 9:19;48:9;55:19; 92:2;110:6 realized (3) 47:11;223:9,21 really (47) 13:24;14:23;17:15; 19:2;20:3;28:16;35:10, 12;37:20;39:10;42:7; 44:17,19,21;57:16; 63:3;65:14,15;67:1; 73:12;90:9;91:13; 94:24;97:6;98:1;100:8; 105:1,3;107:7;110:9; 111:1;117:2;119:25; 124:6;125:23;144:17; 145:21;150:9;165:19; 181:13;187:19;189:22, 23;201:5;232:15; 271:24;275:8 realtor (1) 232:12 re-ask (1) 194:1 reason (24) 7:7;16:19;17:22; 20:22;39:5;48:2;87:22, 23;97:10;101:23; 103:20;109:5,6; 115:14;121:25;123:11; 128:8;158:18;169:22; 189:13;252:13;254:23; 274:12;275:19 reasonable (6) 79:5;116:7,21; 117:16;148:2;154:13 reasonably (2) 83:23;97:22 reasons (14) 14:14;80:6,7;97:9, 12;103:21;117:9; 119:16;136:11;139:19, 25;140:5;166:20;169:8 rebuild (1) 47:3 recall (8) 8:7;36:20;46:17; 55:4;67:8;158:11;	164:8;209:15 receive (2) 29:16;277:2 received (4) 14:4;28:9;47:12,19 receiving (2) 25:19;48:4 recently (4) 104:19;115:17; 123:13;124:19 Recess (5) 50:16;138:10; 217:10;274:23,24 recession (1) 246:11 recognize (4) 104:15;160:10; 209:8,11 recognized (3) 111:24;208:5;209:6 recognizes (1) 171:11 recollect (1) 159:1 recollection (9) 152:21,22;158:18; 159:10;216:12;221:25; 247:11,16;249:10 recommend (2) 265:12;270:10 recommendation (23) 102:25;128:15,15; 214:6;235:3;236:5,11; 237:23;238:11;242:22; 244:14;245:23;246:1; 247:1;251:20,25; 253:13;261:1;265:16, 18;270:17;272:5,8 recommendations (20) 199:24;222:13; 223:24;233:3;237:19, 20;238:6,8,9,22; 241:22;242:1,24,25; 245:15,19;251:1; 253:25;254:2;263:2 recommended (29) 54:2;79:6,12;80:12; 101:20;108:1;181:7, 11;194:21;208:13; 224:17,20;236:7,21; 244:1;252:16;254:11; 266:24;267:17,17; 268:21,23,24,25; 271:25;272:10;273:4, 7,12 recommends (7) 194:7;201:21; 203:11;225:4,9;226:1, 2 reconfirmed (1) 246:23 record (45) 5:11;9:22;11:8;	25:16;33:20;34:24; 46:13;50:17;51:15; 52:5;54:6;61:25;62:15; 82:9;83:10;122:4; 123:11;125:12;126:7, 10,12;127:22;130:24; 131:21;138:9,11,12; 199:4;203:22;217:11, 16,24;249:9;250:13; 256:10,12;258:25; 274:3,6,21,25;275:6; 276:17;280:21,24 recreational (1) 260:12 recross (2) 50:8;167:3 rectangular (1) 211:9 red (4) 5:15,18,25;13:10 redeveloped (1) 178:20 Redgrave (2) 211:13,20 REDIRECT (4) 46:8;190:17;207:19, 22 reduce (2) 66:13;137:12 reduces (1) 65:1 reduction (2) 107:19,19 refer (2) 34:3;197:3 reference (2) 83:3;210:9 referenced (1) 9:24 references (2) 40:20;270:20 Referral (6) 33:3,4,10,21;34:9; 35:1 referrals (2) 33:23;34:5 referred (1) 114:15 reflected (1) 225:20 reflecting (1) 171:8 reflects (1) 225:1 regard (6) 6:10;9:23;112:15; 144:15;159:23;242:3 regarding (1) 57:5 regardless (1) 121:1 region (2) 140:2,12
Q				
quadrant (2) 201:18;243:21 quadrupled (1) 16:8 quadruples (2) 169:13;172:21 quadrupling (1) 173:19 quality (7) 64:5;67:23;134:19; 145:24;242:10,12; 243:11 quantifiable (1) 151:15 quantify (1) 84:14 quantifying (1) 146:5 quantitative (2) 151:19;154:1 quarter (1) 86:4 quasi- (1) 176:1 Queenstown (11) 22:3;104:17;115:16; 145:20;146:1,19; 152:9;154:14,20; 155:19,25 quite (19) 50:3;83:19;84:22; 88:21;90:4;96:10; 104:10;107:23;123:12; 125:6;135:5;136:21; 140:4;144:14,16; 150:16;152:2;153:18; 192:1 quote (16) 56:5,6,10,11;158:11; 159:24,25;160:1,17,19, 19;164:7,8;173:9; 185:1;196:2 quoted (1) 114:13 quotes (5) 140:23;158:6,9; 159:24;166:17 quoting (4) 163:25;164:4; 169:25;175:24				
R				

<p>regional (5) 19:14;132:13; 171:17,24;181:4 regular (2) 53:13;64:25 regulated (1) 55:11 regulations (2) 55:15,20 rehash (2) 66:1,1 Rehoboth (2) 144:5;145:21 reinforce (2) 202:4;203:24 reinforcing (1) 171:13 REIT (1) 112:22 reiterates (1) 247:7 relate (3) 5:17;237:15;263:3 related (2) 102:1,2 relates (5) 5:22,23;250:25; 253:14;260:25 relating (1) 63:11 relationship (4) 195:19,20;210:4; 261:20 relationships (2) 59:18,20 relative (4) 116:18,18;131:22; 158:19 relatively (8) 87:24;103:15; 116:23;117:10;146:15; 170:18;186:24;201:14 relax (2) 38:20;144:8 Relay (1) 63:9 releases (1) 47:13 relevance (5) 32:8;79:18;82:22; 83:4;267:22 relevant (7) 121:5,25;128:19; 151:12;252:22;253:21, 22 relief (1) 70:7 relies (1) 192:4 relocated (1) 227:1 reluctant (2) 125:17,18</p>	<p>remain (1) 169:1 remainder (1) 233:20 remains (1) 79:15 remember (14) 28:10;39:10;46:24; 59:10;92:17;105:14; 107:22;113:1;132:19; 150:22;151:7,21; 268:12;276:25 remembered (2) 25:13;91:23 remind (1) 274:13 reminding (1) 190:17 removed (1) 99:10 renovation (1) 190:7 rent (1) 117:12 renter (1) 13:19 renting (1) 47:1 rents (1) 114:16 repeat (3) 23:16;156:17;268:12 repeatedly (2) 63:15,17 rephrase (6) 67:16;79:17,18; 131:18;134:15;176:15 rephrasing (1) 134:5 report (9) 65:15;199:24; 223:10;224:2,7; 225:21;226:16;246:23, 23 reports (1) 47:14 represent (6) 20:11;55:10;72:13, 16;102:8;192:13 representation (1) 206:18 representative (6) 33:5,17;37:11,12; 198:6;216:23 representatives (2) 60:15;205:13 represented (3) 81:23;217:15,17 representing (3) 30:24;73:4,13 represents (1) 60:19 reputation (1)</p>	<p>100:7 request (2) 6:11;168:14 requesting (1) 226:6 require (3) 265:15;272:16; 277:21 required (5) 69:9;87:6;173:15; 232:18;277:20 requirements (9) 233:6;243:10; 244:20,21,23;245:2,22; 250:20,22 requires (5) 251:20,24;259:23; 270:17;272:8 requiring (1) 195:23 research (1) 223:2 reserve (3) 108:11;111:8,10 reservoir (1) 65:11 reside (1) 21:13 residence (4) 73:5,9,11;75:1 residences (1) 53:25 resident (2) 13:25;48:1 residential (23) 43:21;108:15,18; 162:2;163:4;173:7; 190:9;196:19;201:4; 207:6,7;210:3;224:20, 21;229:8;232:17; 233:25;234:1;243:25; 244:7;251:11;260:9,11 residents (8) 14:24;17:13;20:16; 42:25;49:4,6;52:13; 107:13 resolution (5) 46:14;247:25;248:5, 10;249:11 resolved (1) 140:15 respect (7) 53:24;184:7;185:19; 235:4;246:18;269:12; 270:5 respectfully (4) 54:1;120:12;121:5; 255:3 respond (1) 274:19 responding (1) 192:12 reputation (4)</p>	<p>7:15;50:21;81:25; 126:13 rest (8) 85:9;184:12;191:2, 10,11;193:11;196:1; 201:24 restaurant (4) 100:3;186:25; 188:14,18 restaurants (35) 34:1;93:21,24;94:1; 95:8;96:5,6,8,12,15; 100:1;104:22,23,24; 106:24;117:7;122:25; 135:11;136:23;143:4; 144:19,25;145:24; 149:25;150:2;160:12; 190:11;194:16;195:3, 4;208:2;209:3;230:15, 17,22 Reston (2) 105:7;157:3 restriction (2) 103:12;109:7 result (7) 69:15;78:4;154:17, 18;249:3;257:15; 272:21 results (2) 83:19;88:9 retail (270) 13:2;14:6,12;15:13; 16:8;18:16;19:17,21; 20:14;24:11;27:20; 28:3;29:22;40:24; 42:16,17,18,19;43:8, 14;45:16,18,22;58:13; 63:23;64:2;65:23; 71:23;75:7;77:25;78:4, 17,24;80:8,12,25;83:4, 5;84:11,17;85:7,20,25; 86:8;87:12,19,20,25; 88:5,9,12,22,24;89:6,8, 10,16,21,23;90:7,11, 14;91:3,18,22,24;92:9, 13,19;93:12;96:19; 97:14;99:12,18,21,23; 101:11,17;103:2,19; 106:16;107:1,20; 108:14;112:5;113:23; 115:6,19;117:6,14,19; 118:6;119:15;120:13, 16,17,18,19,19,20,20, 22;121:1;122:2,20; 123:3,21;125:14,15,19, 19,21,21;128:12; 129:16;132:17;134:19, 24;135:13;136:6,7,17; 137:9,12;142:12; 143:2,4;154:6;157:4, 12;158:10,14;160:8,10, 25;161:6;163:4;165:9, 11,23;166:5,6,17;</p>	<p>169:13;170:5,13,18,25; 171:9,11,17;172:22; 173:1,2,5,11,13,15,19; 175:10,15;176:5,17,21; 177:1;178:17,21; 179:25;180:4,16; 181:11,15,21;184:8; 185:2,4,7;187:3,14; 191:18;195:8;196:2,3, 6,9;197:2,5,6,17,21,22; 198:14,16;199:22; 200:8,13,22,24;209:12, 22,25;210:3,7;213:11; 214:24;215:3;218:16; 219:23,25;222:22; 223:4,7;225:5,10,15, 18,22;226:3,4,6,8,11, 12,12,14,16,17,21,23, 25;227:1,5,15;228:23; 230:13,16,17,21,21; 232:1,8,18;233:20; 244:16,17;245:19; 247:13,15;248:22; 249:16,18;251:1,8,20, 25;253:14;263:10; 264:2,9,12;265:7,9,16; 266:9;269:12,23; 270:1,5;271:6;273:6 retailer (2) 135:19;235:24 retailers (4) 92:19;103:4;158:23; 189:7 retails (1) 218:10 retain (1) 277:19 return (4) 119:25;137:25; 274:2;279:10 returned (1) 279:4 reuse (1) 195:23 reused (1) 78:21 revenue (3) 86:12,15,17 revenues (1) 87:5 reverse (1) 261:6 review (3) 68:7,18;214:15 reviewed (1) 213:10 reviewing (1) 67:25 revise (1) 249:12 revitalization (1) 111:15 rezoned (11)</p>
--	---	---	--	---

<p>44:1;46:19;236:7,8; 244:1,6,14;252:11; 266:15;267:18;269:2 rezoning (7) 46:14;244:8;254:3; 261:7,8;263:18,22 rezonings (1) 261:12 rhythm (1) 195:18 rid (1) 249:1 ride (1) 174:8 right (166) 5:23;6:14,14;7:2,4; 8:9,20;10:16;11:5,22; 12:18,21;13:2,8,17; 14:1;15:22,22;16:14; 20:20;21:13;25:16; 26:1;34:16;40:13,18, 21;45:6;46:12;50:22; 51:12,20;54:25;56:6; 57:13;60:7;61:16,22; 68:2,4,5,7,10,18;69:8, 8,22;71:10;72:3,3,5; 74:7,8;75:21;76:21; 80:5,13;82:6,13;84:8, 21;86:23;87:3,4;90:6; 98:7,15;101:14; 108:11;118:16,24,25; 121:13,14;127:14; 130:11;131:13;132:22; 134:10;135:15;136:13; 137:15,17;138:2; 145:7;146:8,13,17; 148:4,11,15,16,17,19, 19;150:6;151:6; 152:10,13;157:14; 158:8;168:2;172:11; 175:19,19;182:10; 185:9,12;186:8; 188:13;189:22;191:21; 193:14,16;195:13; 196:8,9,17;200:12; 204:6,24;208:5;209:4; 210:7;211:6,10; 212:13,21;216:1; 217:12;218:8,11; 219:3,10,25;220:3; 228:13,24;229:10; 231:10;232:4;237:25; 241:9;245:6;248:3; 251:2,6,9;255:6,14; 256:19;258:9;261:17; 267:5;269:6;272:5,12, 17;273:2;274:20; 275:5;277:11,13; 278:19,20;279:21 right-hand (1) 129:9 risk (2) 20:12;66:13</p>	<p>RMX (42) 231:14;233:13; 236:15,24;250:2,6,20, 24;251:3,12,20,21,24; 252:1,17,21;254:7,8, 13,14,24;257:15,16,20, 24;258:20;263:5,11,13, 14,20;264:21;266:17, 25;267:12,14;269:14; 270:2;272:3,7,22; 273:8 RMXTDR (1) 228:22 Road (57) 11:10;12:1,22,23; 13:13,14,18,15;12; 26:6;27:14;40:15,16; 43:2,5,9;44:6,13;62:3; 64:22,22;71:7,8;74:7; 76:5,6,6,7;183:12,23; 185:8;190:18,21; 191:8;196:14,15; 211:1,2,14;218:1; 228:10,11,16;233:10; 234:1,5,11,12,23; 235:7;238:16;240:13, 14;241:6,7,10;247:13; 249:16 roads (7) 76:15,23,25;228:3; 238:18,19,19 roadway (5) 237:19;238:8,9,11, 12 roadways (2) 181:25;238:13 ROBBIN (1) 216:22 Robbins (5) 138:12;191:19; 171:5,6,8 ROBESON (585) 5:2,12,14,22;6:2,4, 14,18,22;7:2,5,13,16, 21,25;8:3,9,17,20;9:7, 9,14,17;10:5,14,19,22; 11:7,11,14,19,21; 12:11,13,25;13:3,6,10, 12,16,23;14:1;16:20, 22;21:7;24:6,19;25:6, 9,12,14;28:17,20,22, 24;29:1,7,10;32:10,13, 15,20;33:1,16,19;34:6, 11;36:9,11;40:3,5,7,10, 13,17,19,22;41:15,18; 44:10,23;45:1,5,9,12; 46:3;48:13,15,17,19, 22,25;49:14,19;50:6,8, 10,12,17,22,25;51:3,5, 7,9,12,14,18,20,24; 52:2,7;54:5,11,13,15, 17;56:24;57:3;59:5,9, 12;60:4,7;61:13,16,20,</p>	<p>22,24;62:4,7,11,14,17; 67:3,5,16,20;68:9,12; 70:21;72:5,9,20,22,24; 73:18,20,23,25;74:4, 10,13,17,20;77:1; 78:12,15;79:10,14,16; 81:14,16,18,22;82:1,4, 6,10,13;85:2,4,8,11,14, 18,21;86:12,14,19,21; 87:3,7;88:23;89:1,5; 90:15,18;91:5,7,9,12; 92:4;93:5;95:13,16; 96:16,18,22,25;97:5; 98:7,15;99:16;100:20, 22;102:5,7,14,18,24; 103:9;104:4;105:13, 20,25;106:3,6;109:13, 20;110:3,11,13;111:2; 112:17;118:24;119:1; 121:8,10,14,16,18,22; 126:1,4,8,25;127:4,7,9, 12,18,21,23;128:2,6, 19,22,24;129:21,23; 130:2,5,7,9,16,22,25; 131:2,4,16,18,21; 132:7;133:4,7,12,14, 17,20;134:2,7,11; 136:4;137:17,21; 138:2,4,6,11;142:8,10, 14;149:2,5,10,13,17, 20;152:19,25;153:3,5, 8,10;156:7,9,16,19; 163:14,20,24;164:2,5; 167:1,3,18,23,25; 168:4;174:22,25; 175:9,19;178:16; 179:6,10,19,21;180:5, 9,14,19,22,25;181:3,6, 10;182:2,10,14;184:18, 21;186:3;188:25; 190:19;191:7,10,23; 192:14,17,21;193:14, 17,20,25;196:4,7,11; 197:8,20,25;198:5,8, 10,19,24;199:15,17,25; 200:2,4;202:2,5,9,11, 14,17,20,23,25;203:3, 15,18;204:4,12,15,18, 20,23;205:10,21,24; 206:7;207:19,21; 208:11,17;210:17,19; 211:5,9,12,17,21; 212:21,23;213:3,15,21, 24;214:17,21;215:10, 16;216:1,15,18,20,25; 217:3,7,12,14,17,20, 23;218:2,14,19,25; 219:4,8,10,12,15; 221:7,10,16,19,21,23; 222:2;224:6,11;225:7, 11,13,16;226:14,18; 227:13,21,25;228:5,8; 229:13,19,23;234:15,</p>	<p>17,19;235:17,19; 237:25;238:2,4; 239:11,18,20;240:1,6, 17,20;247:10,18,21,24; 248:3,6,9;249:6,24; 250:7,11,13,17,23; 251:2,6,9;252:7,19,24; 253:3,7,18;254:4,9,12, 14,16;255:2,9,14,16, 23;256:16,24;257:4,12, 21;258:3,14,17;259:12, 15,17,19;260:17,20; 261:11,15,17,19,23; 262:6,10,13,16,23; 264:6,15,18,20,24; 265:1,4;267:4,6,20,22, 24;268:11,18;269:19; 271:13,15,17;272:12, 14,17;273:2,12,15,17, 23;274:1,7,15,25; 275:14,16,21;276:7,10, 14,16,21;277:6,8,18, 22;278:1,4,7,11,18,20, 25;279:6,8,13,16,18, 21,23,25;280:4,6,10, 13,17,20,23 Robins (10) 25:9;221:11,14; 250:7,12;276:2,3,5; 277:24;280:15 Rochester (1) 112:3 Rock (2) 123:15;223:14 Rockville (1) 113:15 Rocky (1) 63:6 role (2) 17:6;171:13 roles (1) 63:5 roof (4) 183:19;237:12,14,18 room (18) 7:19;39:6;47:4; 82:19;98:12,14,14,14; 133:9;138:12,14; 182:3;188:17,19; 274:5,22;275:1;280:18 rooms (2) 190:11;234:6 roughly (4) 78:10;201:19; 212:13;245:7 Round (1) 123:15 roundabout (9) 228:13,14,16,18; 231:9,9,24;234:11; 235:16 roundabouts (1) 234:22</p>	<p>route (16) 38:11;53:6,10;75:13; 148:17;155:22;168:23; 169:4;228:9;233:14; 241:5,13,14,16,17; 245:7 rule (1) 156:10 ruled (1) 258:4 rules (2) 38:9;279:9 rulings (1) 268:14 run (4) 10:5;15:1;74:7; 103:16 run-down (1) 187:11 running (1) 37:17 rural (3) 62:20;63:1;123:19 rushed (1) 82:19</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>sake (2) 87:10;112:8 salary (2) 89:10,17 sales (3) 92:14;93:16;94:13 salon (1) 94:25 Salt (3) 124:18,20,23 same (37) 33:8;36:5;54:9;84:4, 23;86:18;91:6;92:21, 23;94:16;97:4;106:18; 107:17;116:23;119:13; 123:20;181:8,8,9,23; 182:18,19,22;190:18; 191:1,17;203:17; 208:16;210:23;215:5; 216:9,11;218:22; 227:13;252:3;267:24; 269:9 Sandra (1) 51:16 sandwiched (1) 189:24 sandwiches (1) 134:23 Sandy (2) 183:9,10 sat (1) 137:19 satisfy (1) 142:24 Save (5)</p>
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<p>204:12,13,13; 218:13,13 saw (8) 24:15;91:5;132:24; 159:20;185:22,23,25; 203:8 saying (43) 44:5,23;57:22;58:6, 8,10;67:15;84:22; 91:23;99:3;100:15; 103:6;118:4,21;119:4, 8;120:24;122:7; 123:10;131:6;133:9; 140:22;143:22;154:24; 156:16;165:14;180:15, 22;181:13,15;182:2,5, 7;183:3;187:13,15; 216:13;268:2;272:6, 23;273:18,19;277:8 scale (3) 67:13;95:5;195:18 scattered (1) 172:4 scenarios (2) 207:12;213:9 scheduled (4) 8:8;167:10;245:24; 274:4 scheme (1) 86:24 school (13) 24:14;59:8;63:7,7; 75:25;170:5,8;229:3,7; 230:6;232:23;235:8; 241:11 schools (4) 24:11;63:6;70:9; 89:16 scope (2) 142:3;163:9 scouts (1) 63:8 scribblings (1) 159:2 sculptures (1) 234:6 seat (2) 74:21;177:14 seating (3) 122:24;144:25; 150:18 Second (27) 7:5;28:17;29:10; 70:2;126:21;130:7; 133:7;152:23;156:9; 161:12,18,19;166:4; 169:13;195:14;197:8; 200:23;204:20;207:15; 222:21;227:15;228:14, 18,23;252:10;255:2; 280:23 secondary (1) 232:15</p>	<p>secondly (1) 113:6 seconds (1) 82:12 section (4) 112:25;162:9; 251:13;258:21 sectional (5) 261:13,21;262:16; 272:22,25 sections (1) 113:2 sector (3) 140:9;259:8,25 Seeing (2) 82:1;124:1 seek (3) 270:5,7;273:9 seeks (1) 171:9 seem (7) 39:23;41:22;42:1,5, 5;100:15;124:15 seems (7) 39:15;112:12;120:9; 147:22;175:2,5;255:3 sees (1) 104:18 segment (1) 110:7 segments (1) 78:24 selection (1) 132:2 self-contained (2) 42:10;150:24 sell (1) 112:22 seller (1) 82:25 sells (2) 218:7,11 send (3) 43:24;47:8;52:6 sends (1) 37:12 Seneca (14) 126:18,20;127:24; 128:9;131:7;132:18; 228:17,19;229:10; 233:8;234:21;235:20, 21;241:15 senior (2) 24:14;225:2 seniors (1) 232:17 sense (12) 54:9;63:3;78:24; 83:11;150:25;154:1, 11;163:8;182:17; 219:22,24;256:3 sensitive (1) 68:22</p>	<p>sent (7) 16:12;28:13,15; 31:13;33:17;37:11; 62:14 sentence (4) 131:3;162:17,18; 163:2 separate (6) 87:2;113:16;177:1; 180:13;184:11;188:24 September (21) 5:6;7:10,23;46:16, 20,21;167:10,14,15; 245:24;275:3,18; 277:5;278:9,12,15,18; 280:10,14,15,17 septic (3) 15:4;40:12,14 sequence (1) 261:5 series (6) 138:22;207:24; 233:9;234:6;238:25; 239:5 serious (1) 9:21 serve (7) 134:17;160:11; 207:1;218:5;219:3; 230:20;231:3 serves (1) 113:8 service (9) 102:12;132:23; 134:15,19;162:23; 205:18;206:17;219:25; 239:14 services (16) 18:22;19:11,20; 24:14;63:3;89:14; 94:24;115:6;120:4; 136:17;163:4;223:4; 226:11;231:3,5;232:13 serving (9) 20:8;106:16;107:20; 137:2,10;160:8,24; 161:5;165:23 session (1) 101:16 set (7) 82:20;146:21; 168:21;178:2;233:15; 245:2;248:19 sets (3) 39:20;164:21,21 setting (4) 72:25;104:11;144:4; 150:14 settings (1) 125:18 seven (2) 242:11;246:17 several (8)</p>	<p>31:12;63:14;85:23; 87:22;98:16;112:1; 154:10;196:22 severely (2) 172:23;189:17 sewer (13) 53:21;182:1;205:18; 206:17,25;207:5,8,10; 243:3,3,4,6,12 shack (1) 94:20 Shady (1) 240:12 shall (1) 259:18 share (3) 33:7;34:10;62:19 sharing (1) 35:6 shawl (1) 61:21 sheet (7) 11:14,16;51:3;62:5; 217:21;239:25;251:22 shifting (2) 169:11;172:20 Shoe (2) 96:2,3 shoes (1) 94:14 shop (9) 72:7;94:19,21; 107:15;122:11;144:10; 185:22;230:24;265:11 shop/grocery (1) 77:18 shoppers (1) 152:1 shopping (8) 92:9,23;93:15;99:11, 25;110:7;144:7;196:15 shops (3) 53:3;192:6;230:24 short (2) 209:14;258:22 short-term (1) 139:4 shot (2) 116:14;117:16 show (11) 5:24;12:9;28:12; 33:6;34:24;37:15;74:3; 128:14;169:18;231:8; 240:15 showed (1) 86:10 showing (4) 22:18;46:13;86:2; 190:2 shown (13) 74:10;129:8;132:24; 210:10;227:1;232:19; 235:15;259:7,25;</p>	<p>266:2,12;269:17;271:8 shows (2) 258:1;263:5 side (69) 12:22;13:16,17,19; 14:18,18;15:6;18:19; 19:2,9;20:14;23:12,13; 30:16;37:14,16;39:18, 21;41:4;42:10,13,14, 19;45:24;54:25;58:9; 65:7;67:11;69:20,25; 70:4;72:14;75:9,16,19; 76:15;77:22,25;78:4; 97:24;111:20;115:22; 126:24;127:6;129:4; 144:16;162:1;170:17; 177:7,12;178:3,25; 179:1;191:16,17,18; 222:18,19;229:2,22; 234:10,15;235:7,12,13, 13;239:9,15;243:21 sides (3) 35:13;181:9;234:19 sidewalk (2) 234:25;241:5 sidewalks (1) 229:25 sign (4) 51:3;62:4;99:6; 217:20 signed (6) 11:16;16:12,14,15; 31:15;93:19 significant (5) 120:25;143:6;162:2; 168:25;171:13 significantly (1) 66:21 sign-in (3) 11:14,16;62:5 sign-up (2) 51:3;217:20 silent (1) 270:11 similar (4) 88:21;104:20; 144:16;232:11 Similarly (1) 159:23 Simon (22) 22:8,10;30:6;31:3, 20;32:3;33:16;34:25; 35:19;36:23;38:1; 57:24;63:23;123:16; 145:9;146:12;147:4; 151:11,11;164:23; 184:3;191:16 simple (3) 32:22;84:25;117:11 simply (3) 91:23;173:24;204:16 Singer-Bart (1) 30:24</p>
---	---	---	--	---

<p>single (4) 58:19;101:17;116:2; 277:11</p> <p>single-family (9) 27:11,12,13;43:21; 201:4;207:6;224:23, 24;237:2</p> <p>sit (4) 37:23;93:21;104:11; 256:9</p> <p>sit-down (2) 188:14,17</p> <p>site (47) 41:23;53:20;64:2; 65:6;66:1;68:24;85:17; 87:24;88:4;104:2,3; 143:7;147:2,2,6,13; 153:15,15;162:3; 174:8;227:3,8;228:7; 229:4,9,11;231:15; 233:18,21;241:1,2; 242:8,11;243:4,6,19, 23;244:12,15,18; 245:19;246:14;250:2; 262:3;266:2,11;270:14</p> <p>sited (1) 263:14</p> <p>sites (3) 132:16;143:17; 243:17</p> <p>sitting (3) 31:7;226:20;274:12</p> <p>situation (4) 93:2;140:15;141:4; 154:3</p> <p>situations (1) 105:17</p> <p>six (2) 12:8;81:8</p> <p>size (6) 93:9;95:5;195:18; 212:3,5;225:23</p> <p>skeptical (1) 69:14</p> <p>skepticism (1) 176:4</p> <p>sketch (3) 126:14;212:10;258:1</p> <p>skimmer (6) 231:11,16,19;234:8, 9;239:4</p> <p>skip (1) 260:16</p> <p>skipped (1) 257:2</p> <p>sky (1) 16:10</p> <p>slip (1) 167:13</p> <p>slopes (1) 69:1</p> <p>slowed (1) 246:13</p>	<p>small (15) 37:21;62:23;72:13; 87:24;123:19;168:11; 170:18;180:7;189:21; 190:11,12;194:16,16, 19;195:3</p> <p>smaller (1) 258:12</p> <p>SMGM (1) 270:14</p> <p>SMTM (1) 227:4</p> <p>Smudgy (1) 126:15</p> <p>Snowden (1) 70:8</p> <p>so-called (2) 103:24;104:9</p> <p>Sofillas (1) 36:16</p> <p>sold (1) 17:20</p> <p>solution (1) 41:11</p> <p>somebody (11) 13:21;16:2;33:25; 34:3;73:21;115:3; 147:13,15;155:2; 268:7;276:1</p> <p>somebody's (1) 268:5</p> <p>somehow (3) 66:17;187:14;204:11</p> <p>someone (7) 29:23;36:15;48:12; 168:13;172:12;186:21; 214:11</p> <p>someplace (2) 36:4;144:12</p> <p>Sometimes (9) 11:15;34:20;97:2; 100:1,2;102:23; 111:14;159:2,3</p> <p>somewhat (5) 92:6;122:17;147:17; 150:8;212:1</p> <p>somewhere (3) 29:23;99:7;246:16</p> <p>son (1) 77:4</p> <p>soon (7) 10:24;43:1;66:12; 133:15;139:9,10;279:4</p> <p>sooner (2) 63:21;88:19</p> <p>sorry (42) 10:13;21:22;25:7,8; 34:15;36:13;40:5;44:8; 47:21;49:10;68:13; 69:5;74:21;76:14; 77:10;78:12,14;85:2, 12;86:21;99:6;100:21; 127:1,12;128:12;</p>	<p>137:10;163:11;164:9; 194:8;195:9;201:25; 202:1;207:13;208:23; 212:9;225:13;239:11; 250:18;251:22;253:20; 260:18;261:8</p> <p>sort (34) 9:14;46:10;57:7,12; 73:19;84:6;86:18; 95:10;100:7,12; 101:24;103:13;104:12; 105:4;109:25;112:20; 115:21;122:24;123:18, 24;128:16;132:3; 134:21;136:24;137:7; 147:17;154:6;157:11; 161:2;176:2;186:17; 189:24;200:13;279:1</p> <p>sorting (3) 101:1;175:1;182:11</p> <p>sorts (1) 93:22</p> <p>sought (3) 269:11,25;270:1</p> <p>sound (2) 20:3;148:2</p> <p>sounds (6) 37:3;41:5;119:3; 148:4;150:6;255:6</p> <p>source (4) 107:16;140:6;158:9; 219:19</p> <p>sources (1) 49:16</p> <p>south (17) 57:14;70:12;71:10; 124:20;132:24;185:13; 211:3,19;228:11,15; 231:20;234:3,10; 239:3;240:4,20;241:14</p> <p>southeast (2) 129:15;211:20</p> <p>southern (6) 231:7,12,12;232:14; 235:13;240:9</p> <p>sp (1) 56:23</p> <p>space (31) 14:12;16:8;19:17; 64:7;78:10,19,20,23; 79:1;80:23;81:4; 107:10;111:8;124:13; 126:19;127:11,23; 140:10,11,20;141:1,5, 6;155:25;156:3; 186:22;200:17;230:5; 231:22;233:6,7</p> <p>space" (1) 195:20</p> <p>spaces (1) 231:22</p> <p>speak (8) 9:2;12:16;30:10;</p>	<p>33:9,13,16;214:19; 238:17</p> <p>speaking (5) 69:6;134:8;201:14; 212:13;227:17</p> <p>speaks (4) 199:14,25;238:12; 251:4</p> <p>spec (1) 124:22</p> <p>special (5) 242:5,7;243:10; 248:13;265:20</p> <p>specialize (1) 92:16</p> <p>specialty (11) 165:11,20;226:6,12, 14,17,23;230:13,17,21; 235:24</p> <p>specific (28) 49:16;79:9;81:7; 115:23;118:11;165:1, 4;166:2,5,6,8;175:24; 192:6,7;222:2;223:22, 24;230:19;233:2; 251:4;254:5;257:24; 258:1;263:21;265:15, 17;270:17;272:8</p> <p>Specifically (17) 52:17;63:17;84:14; 87:15;96:23;101:21; 140:4;159:8;161:9; 164:10;173:16;194:18; 224:22;258:21;260:6; 263:10;272:10</p> <p>specifics (1) 222:14</p> <p>specify (1) 165:4</p> <p>speculate (3) 101:21,22;133:2</p> <p>speculation (1) 266:20</p> <p>spell (2) 51:18;220:24</p> <p>spelled (2) 178:8;221:1</p> <p>spend (4) 20:23,24;92:2; 104:15</p> <p>spending (1) 98:6</p> <p>spent (2) 63:10;89:13</p> <p>sphere (1) 116:7</p> <p>spike (1) 82:17</p> <p>spirit (1) 169:9</p> <p>split (4) 262:3,6,14,16</p> <p>split-zoned (2)</p>	<p>250:2;252:20</p> <p>spoke (2) 35:2;167:9</p> <p>spoken (7) 31:2;60:19,22,25; 98:23;223:7;233:24</p> <p>sponsor (2) 35:25;38:2</p> <p>sponsors (2) 30:14,15</p> <p>sponsorship (2) 38:13,14</p> <p>sponsorships (1) 38:16</p> <p>sports (1) 63:8</p> <p>sportswear (1) 95:19</p> <p>spot (1) 165:21</p> <p>Spring (4) 183:9,10;223:14; 227:19</p> <p>spur (1) 171:9</p> <p>square (74) 14:13,13;27:18; 78:10,21,22;80:14; 81:4;84:16;85:7,20,24; 87:12,12,19,21,22; 96:23;101:10,18; 102:20;103:3;107:1; 110:2;117:24;120:6; 122:25;123:21;135:21; 137:9;144:18;145:12; 165:10,22;173:1,3; 178:20;181:11,17,20; 195:13;196:14;203:16; 209:11;211:9,14; 215:3;223:8;225:4,9, 17,21,24;226:9;227:5, 9;232:19;244:13,16; 247:14;249:18;253:13; 254:11,23;261:1; 263:21;264:2;269:15, 24;270:15;272:4,21; 273:7,8</p> <p>Staff (13) 65:16;223:10;224:2, 6,7;225:21;226:15; 245:17,17,23;246:23, 23;271:12</p> <p>stage (16) 65:21;66:14,14,15; 166:10;205:2,4,7,9; 243:1;245:7,9,9,14; 249:12;257:2</p> <p>staging (7) 108:20;242:22,25; 243:7,13;247:12; 248:18</p> <p>stand (1) 53:16</p>
---	--	--	---	---

<p>standalone (1) 115:22</p> <p>standard (2) 255:19;265:18</p> <p>standards (2) 69:10;256:7</p> <p>standing (1) 168:17</p> <p>stands (1) 202:12</p> <p>staples (1) 232:6</p> <p>start (5) 45:12;112:20;131:6; 176:3;226:25</p> <p>started (13) 24:16;25:19;26:6,19, 20;30:2;45:8,9,10,11; 112:16;252:10;256:6</p> <p>starting (2) 202:1;211:2</p> <p>starts (1) 202:4</p> <p>state (12) 11:7;51:14;58:20; 61:24;139:2;154:21; 173:1,23;217:23; 240:11;254:6;261:24</p> <p>stated (3) 55:8;102:25;160:18</p> <p>statement (14) 48:21;49:20;56:1; 112:20;119:3;122:1; 128:11;143:21;160:20; 168:6;170:20;174:21; 176:16;280:7</p> <p>states (4) 91:18;169:25; 171:10;222:22</p> <p>station (5) 187:6;227:6;239:15; 240:16,18</p> <p>stations (1) 223:13</p> <p>status (4) 47:14,17,20;260:25</p> <p>stay (3) 75:19;124:16;152:2</p> <p>steeple (1) 17:15</p> <p>step (3) 39:23;40:8;258:11</p> <p>stepped (1) 30:17</p> <p>steps (1) 246:2</p> <p>steroids (2) 131:14,19</p> <p>Steve (1) 25:15</p> <p>stick (1) 86:21</p> <p>still (35)</p>	<p>7:7;8:20;18:6,7; 31:17;55:10;64:15; 69:15;75:24;76:1,7; 82:7;104:23;106:16; 107:9,14,16;108:11; 111:10;118:6,7; 119:12,14;123:11; 125:13;128:19;133:25; 161:5;221:23;223:8; 246:2;264:19;274:6, 22;278:4</p> <p>stimulate (2) 122:4,7</p> <p>stimulus (1) 122:10</p> <p>stock (1) 112:22</p> <p>stone (2) 233:16,22</p> <p>stop (9) 73:20,23;78:12; 204:20;215:16,16,16; 258:3;273:23</p> <p>stopped (1) 43:17</p> <p>stopping (1) 240:16</p> <p>stops (6) 66:19;74:14;239:1,2, 6,8</p> <p>store (84) 18:16,19,20;19:5; 45:16,21;46:1;49:4; 70:8;71:19,21,21; 75:25;77:18,22;78:17; 94:7,8,21,25;96:1,2,3; 101:17;102:10,12; 108:1,11,16,19;109:14, 24,25;110:1,7,16,20; 111:9;129:12,14; 131:10,13;132:11; 133:1;151:1,1;159:9, 23,24;162:25;165:1, 11;166:5,6,18;173:17, 18;178:18;179:22,24, 25;180:4;185:23; 186:12,19,21;187:17, 21;188:1,5;189:3; 194:20,22;195:1; 197:19;208:7;209:1; 216:11;225:23;227:6; 232:2,3,4;249:23</p> <p>stores (56) 89:9;92:21;93:3,20; 94:6,16;95:4,11,18,23; 96:8;97:4,7;101:24; 103:13,25;104:9,20; 106:19,23,24;107:3,8, 9,15;110:8;131:23; 133:5;136:6,7;137:4; 144:3,15;145:22; 163:12;164:7,13,18,19, 21,22,24;166:8,12,14;</p>	<p>175:17;176:1,18; 190:10,12;191:2,14,18; 194:17,19;216:9</p> <p>straight (1) 17:3</p> <p>stream (9) 30:14;65:10;76:8; 170:17;229:9;230:7; 233:8;235:14;236:2</p> <p>streamline (1) 17:11</p> <p>streams (1) 69:2</p> <p>streamside (1) 180:11</p> <p>street (47) 12:2,23;14:4,16,23; 15:12,22;16:9,17;17:4, 21,23;18:5,12;21:13; 22:15;23:9;24:13;26:2, 4;27:3;28:4;29:25; 30:1,12;32:3;42:20; 46:1;105:2;170:12,19; 174:6;180:6;185:5; 195:20;197:25;198:4; 211:7,10;228:25; 229:18,20,21,24; 231:11;239:4;245:1</p> <p>streets (1) 227:16</p> <p>Streetscape (7) 30:5;31:19;34:25; 35:19;36:22;57:24; 63:23</p> <p>stretch (1) 136:3</p> <p>strike (2) 151:14;266:19</p> <p>Stringtown (1) 185:7</p> <p>strip (10) 13:9;57:9,19;58:2,7; 129:15;132:16;144:4; 145:21;151:4</p> <p>strive (1) 7:25</p> <p>strong (6) 53:16;63:22;91:17; 169:24;210:2;273:20</p> <p>stronger (1) 273:3</p> <p>strongly (3) 88:1;117:13,18</p> <p>structure (1) 129:14</p> <p>structures (1) 195:23</p> <p>struggled (1) 169:6</p> <p>struggling (1) 38:16</p> <p>stuck (2) 76:24;113:25</p>	<p>studied (1) 166:2</p> <p>studies (4) 111:15,15;184:7,7</p> <p>studio (1) 94:24</p> <p>study (12) 14:6;151:15;154:19; 155:3,9,17,24;156:2, 22;169:24;248:13; 252:13</p> <p>stuff (1) 176:10</p> <p>style (1) 146:22</p> <p>sub-item (2) 265:23;266:7</p> <p>subject (4) 11:1;142:14;248:11; 278:10</p> <p>submission (1) 280:11</p> <p>submit (2) 5:10;268:8</p> <p>submitted (4) 47:8;198:13;244:4; 266:3</p> <p>submitting (1) 280:3</p> <p>subscribe (1) 82:20</p> <p>subsequent (2) 228:6;241:2</p> <p>subsequently (1) 269:25</p> <p>substantially (2) 84:10;99:13</p> <p>substitute (1) 84:16</p> <p>subtract (1) 119:11</p> <p>suburban (2) 123:19;136:9</p> <p>Subway (1) 93:23</p> <p>success (1) 190:1</p> <p>successful (8) 83:1;95:2;110:25; 111:17;157:5;159:22; 174:1;200:20</p> <p>suck (1) 91:21</p> <p>suddenly (1) 122:10</p> <p>sufficient (2) 143:13;144:3</p> <p>suggest (1) 10:1</p> <p>suggests (2) 111:11;266:25</p> <p>suit (1) 115:23</p>	<p>suitable (1) 260:10</p> <p>summarize (1) 253:19</p> <p>summary (1) 246:20</p> <p>Sunday (1) 15:1</p> <p>supermarket (55) 93:9,10,13,17,18,19; 95:3,6;97:17,20,23; 98:6,9,13,17,20,23,23, 25;99:1,3,4,6,9,14,25; 102:1;106:21,24; 107:2,6,14,18;110:18, 25,25;111:19,20,23,25; 112:5,10;132:4; 133:10;159:4,6,19; 160:16,19;161:4,4,10; 216:11;225:23;232:2</p> <p>supermarkets (9) 98:10;102:19;110:6; 131:12,25;132:6; 159:12,16;163:12</p> <p>supplant (1) 171:18</p> <p>supplies (1) 65:10</p> <p>support (22) 9:5;10:12;16:6; 41:13,25;42:15,23,24; 43:2;54:10;58:4;63:22, 25;80:3;111:10; 125:20;134:24;135:7, 24;145:7;199:12;265:9</p> <p>supported (6) 14:20;35:15;55:5; 56:4;107:12;198:20</p> <p>supportive (3) 141:21;142:21; 173:10</p> <p>supports (3) 172:8;198:14;199:10</p> <p>suppose (3) 102:20;104:7;131:15</p> <p>supposed (8) 16:1,2,2;17:25;18:2; 69:12;178:1;193:8</p> <p>Sure (42) 11:20;17:8;23:17; 25:16;34:14;36:20; 46:6;60:11,14;67:14, 18;71:16;88:1;97:24; 110:20;127:5,20; 128:25;133:8,19; 134:10;136:25;139:6; 147:12;150:19;152:14; 165:13,18;185:10; 188:19;190:5;207:13; 212:1;254:17;271:18; 272:18,19;273:19; 275:5,15,23;276:5</p> <p>surprised (2)</p>
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147:17;150:23 surrounding (4) 12:4;52:25;155:13; 200:19 survey (1) 123:5 survive (3) 20:13;99:5;188:20 Susan (1) 30:24 suspect (3) 136:1,11;139:20 sustain (1) 200:4 swear (1) 10:24 sweating (1) 37:17 sworn (5) 11:6;51:13;61:23; 168:3;217:13 synergize (1) 124:24 system (7) 233:7,10;234:2,24, 25,25;238:13 systems (3) 15:5;40:12,14	239:22;243:18;247:4; 250:24;280:1 talks (8) 20:9;222:16,17; 244:11,12;263:7,14; 271:3 tall (1) 17:15 taller (1) 17:15 tapped (1) 65:11 Tatiana (1) 11:9 taupe (2) 129:9;132:24 taupes (1) 126:24 tea (1) 190:10 Team (9) 33:3,4,10,21,24; 34:9;35:19;37:5;66:4 tech (3) 143:12,19;244:11 technical (7) 6:20,23;224:6,7; 225:20;245:17;246:23 technicalities (1) 64:10 technically (3) 185:10,12;279:8 technology (8) 89:3;90:9;141:22; 143:8,10;173:11,12; 223:18 Teeter (1) 249:23 telling (5) 29:17;38:15;47:17; 84:19;279:3 tells (1) 29:3 template (1) 177:5 Ten (27) 52:22,24;55:6,17; 65:3,4,6,14,18;66:13; 67:9,22;68:1,6,20; 69:14,16;76:3;213:8; 242:16,17,19,20; 245:10,11,13;249:13 tenant (6) 72:1;100:14;101:10; 116:9;189:3;230:19 tenants (15) 100:14;105:17; 113:6,23;114:4,7,9,12; 125:18;132:23,25; 134:17;140:8;144:21; 145:11 tend (3) 94:23;104:11;107:11	tendency (2) 57:11;114:4 Ten-mile (1) 65:13 tents (4) 22:15;29:25;32:3; 37:18 term (4) 93:12;109:15; 115:10;129:15 termed (1) 226:17 terminates (3) 228:15;229:2,5 terminating (1) 231:16 terminus (1) 231:18 terms (23) 10:12;18:22;20:12; 55:20,23;71:11;86:12, 14,15;89:1,5;96:19; 99:20;100:6;105:10; 150:3;158:12;168:20; 173:7,21;195:18; 201:17;271:10 test (2) 46:11;153:20 testified (14) 23:17;32:2;55:24; 111:6;140:24;146:3; 158:7;159:4;172:8; 200:7;204:9;206:15; 208:20;230:12 testifies (1) 214:11 testify (14) 8:11;9:5;49:11; 50:18;81:24;130:13; 142:4;190:23;196:7; 253:5;258:5,8;264:21; 268:9 testifying (13) 10:1;50:25;60:4; 72:24;120:24;129:18, 20;145:4;153:4,23; 167:16;186:5;216:16 testimony (63) 8:22;10:23;11:1,2; 21:12;39:11,22;54:23; 55:4;56:2;62:9;74:25; 75:2,12;79:4;80:3,9,20, 21,24;89:25;91:14,23; 112:21;123:5;130:9; 133:9;139:1;142:3,12, 23;143:2;144:23; 145:6;146:1,4;147:1; 152:23;153:9;156:11; 158:11;159:24;160:2, 14;163:10,11,13; 164:8;166:15;172:7; 175:9;176:11,12,13; 178:5,16,18;182:20;	183:2;191:15;200:11; 209:15;224:5 Texas (2) 123:16;146:17 thaw (1) 138:6 theme (1) 60:1 therefore (10) 69:24;74:25;75:6; 88:5,7;133:10;168:19; 182:10;242:20;249:21 thereof (1) 233:11 thick (1) 16:13 third (11) 62:24;99:18;140:8; 162:24;198:3,15; 200:21,24,25;209:20; 231:7 thoroughfare (1) 70:5 thoroughfares (1) 64:21 though (7) 27:5;49:12;73:10; 101:21;119:4;144:15; 179:22 thought (18) 47:6;54:8;66:8; 74:17,21;112:21; 120:2;125:2;149:14; 152:25;250:9;252:14; 256:4,5;261:7;266:22; 276:23;277:1 thoughts (2) 222:23;243:23 thousand (4) 87:19;97:2;177:14; 196:22 thousand-seat (1) 177:6 threat (4) 99:9,13;111:20; 112:9 threaten (1) 159:5 three (36) 13:15;22:7;33:9; 34:9;35:13,13;38:23, 25;45:3,4;65:20,21,24; 69:2;75:7;86:8;88:17; 103:14;120:7;139:16; 144:5;146:12;151:16; 152:17;159:12,16; 188:21;194:4;226:24; 233:16;237:7;243:10; 246:12;248:19;269:18, 19 three-quarters (1) 95:19 thrive (1)	21:1 throughout (1) 31:12 throw (1) 55:13 thus (4) 170:24;171:2; 172:23;274:10 tie (1) 230:7 ties (1) 17:22 tight (1) 220:4 tightrope (1) 134:9 times (10) 30:22;31:12;37:6; 42:7;63:14;80:16;86:8; 119:16;177:25;193:5 timing (5) 124:8;179:13; 182:23,23;249:2 tip (1) 235:21 title (1) 7:3 titled (1) 127:11 today (26) 7:7,8;8:11;16:19; 25:25;39:15,16;43:8; 53:11;62:19;97:22; 118:19;120:3;135:21; 142:4;167:11,12,13,13; 172:8;185:21;225:19; 230:23;252:20;254:7; 275:10 together (8) 13:18;15:10,10; 17:12;33:22;179:1; 225:13;236:1 told (7) 53:1;57:19;82:17,18; 138:13;206:15;277:1 Toll (1) 237:9 tomorrow (1) 275:22 tonight (1) 258:15 tons (1) 37:18 took (5) 23:20;29:18;63:5; 137:20;252:10 top (4) 183:19;202:3; 237:22;241:6 topic (1) 257:10 total (2) 88:9;96:19
T				
table (2) 134:4;255:8 take-out (1) 93:22 talk (16) 31:14;32:5,9;33:5; 37:15;49:5,7;174:13; 185:1;190:14;224:9; 225:18;226:3;243:14; 250:6,20 talked (30) 5:8;7:5,8;10:11; 14:24;30:9,11,21;31:1; 37:4,6;49:3,4;80:7; 105:18;119:16;134:14; 137:4;142:1;157:19; 158:3;159:16;164:21; 176:20;177:6;189:8; 200:23,25;206:10; 257:25 talking (45) 10:25;37:18,25;47:6, 7;48:12;49:17;56:22; 60:12;69:7;70:25;71:3, 19;87:4;89:1,2,5; 108:25;111:6,13; 118:18;120:10;125:14; 135:21,23;137:10,11; 158:22;160:3;161:8, 24;162:20;179:16; 185:2,19;194:5,18; 208:13;215:4;222:12;	239:22;243:18;247:4; 250:24;280:1 talks (8) 20:9;222:16,17; 244:11,12;263:7,14; 271:3 tall (1) 17:15 taller (1) 17:15 tapped (1) 65:11 Tatiana (1) 11:9 taupe (2) 129:9;132:24 taupes (1) 126:24 tea (1) 190:10 Team (9) 33:3,4,10,21,24; 34:9;35:19;37:5;66:4 tech (3) 143:12,19;244:11 technical (7) 6:20,23;224:6,7; 225:20;245:17;246:23 technicalities (1) 64:10 technically (3) 185:10,12;279:8 technology (8) 89:3;90:9;141:22; 143:8,10;173:11,12; 223:18 Teeter (1) 249:23 telling (5) 29:17;38:15;47:17; 84:19;279:3 tells (1) 29:3 template (1) 177:5 Ten (27) 52:22,24;55:6,17; 65:3,4,6,14,18;66:13; 67:9,22;68:1,6,20; 69:14,16;76:3;213:8; 242:16,17,19,20; 245:10,11,13;249:13 tenant (6) 72:1;100:14;101:10; 116:9;189:3;230:19 tenants (15) 100:14;105:17; 113:6,23;114:4,7,9,12; 125:18;132:23,25; 134:17;140:8;144:21; 145:11 tend (3) 94:23;104:11;107:11	tendency (2) 57:11;114:4 Ten-mile (1) 65:13 tents (4) 22:15;29:25;32:3; 37:18 term (4) 93:12;109:15; 115:10;129:15 termed (1) 226:17 terminates (3) 228:15;229:2,5 terminating (1) 231:16 terminus (1) 231:18 terms (23) 10:12;18:22;20:12; 55:20,23;71:11;86:12, 14,15;89:1,5;96:19; 99:20;100:6;105:10; 150:3;158:12;168:20; 173:7,21;195:18; 201:17;271:10 test (2) 46:11;153:20 testified (14) 23:17;32:2;55:24; 111:6;140:24;146:3; 158:7;159:4;172:8; 200:7;204:9;206:15; 208:20;230:12 testifies (1) 214:11 testify (14) 8:11;9:5;49:11; 50:18;81:24;130:13; 142:4;190:23;196:7; 253:5;258:5,8;264:21; 268:9 testifying (13) 10:1;50:25;60:4; 72:24;120:24;129:18, 20;145:4;153:4,23; 167:16;186:5;216:16 testimony (63) 8:22;10:23;11:1,2; 21:12;39:11,22;54:23; 55:4;56:2;62:9;74:25; 75:2,12;79:4;80:3,9,20, 21,24;89:25;91:14,23; 112:21;123:5;130:9; 133:9;139:1;142:3,12, 23;143:2;144:23; 145:6;146:1,4;147:1; 152:23;153:9;156:11; 158:11;159:24;160:2, 14;163:10,11,13; 164:8;166:15;172:7; 175:9;176:11,12,13; 178:5,16,18;182:20;	183:2;191:15;200:11; 209:15;224:5 Texas (2) 123:16;146:17 thaw (1) 138:6 theme (1) 60:1 therefore (10) 69:24;74:25;75:6; 88:5,7;133:10;168:19; 182:10;242:20;249:21 thereof (1) 233:11 thick (1) 16:13 third (11) 62:24;99:18;140:8; 162:24;198:3,15; 200:21,24,25;209:20; 231:7 thoroughfare (1) 70:5 thoroughfares (1) 64:21 though (7) 27:5;49:12;73:10; 101:21;119:4;144:15; 179:22 thought (18) 47:6;54:8;66:8; 74:17,21;112:21; 120:2;125:2;149:14; 152:25;250:9;252:14; 256:4,5;261:7;266:22; 276:23;277:1 thoughts (2) 222:23;243:23 thousand (4) 87:19;97:2;177:14; 196:22 thousand-seat (1) 177:6 threat (4) 99:9,13;111:20; 112:9 threaten (1) 159:5 three (36) 13:15;22:7;33:9; 34:9;35:13,13;38:23, 25;45:3,4;65:20,21,24; 69:2;75:7;86:8;88:17; 103:14;120:7;139:16; 144:5;146:12;151:16; 152:17;159:12,16; 188:21;194:4;226:24; 233:16;237:7;243:10; 246:12;248:19;269:18, 19 three-quarters (1) 95:19 thrive (1)	21:1 throughout (1) 31:12 throw (1) 55:13 thus (4) 170:24;171:2; 172:23;274:10 tie (1) 230:7 ties (1) 17:22 tight (1) 220:4 tightrope (1) 134:9 times (10) 30:22;31:12;37:6; 42:7;63:14;80:16;86:8; 119:16;177:25;193:5 timing (5) 124:8;179:13; 182:23,23;249:2 tip (1) 235:21 title (1) 7:3 titled (1) 127:11 today (26) 7:7,8;8:11;16:19; 25:25;39:15,16;43:8; 53:11;62:19;97:22; 118:19;120:3;135:21; 142:4;167:11,12,13,13; 172:8;185:21;225:19; 230:23;252:20;254:7; 275:10 together (8) 13:18;15:10,10; 17:12;33:22;179:1; 225:13;236:1 told (7) 53:1;57:19;82:17,18; 138:13;206:15;277:1 Toll (1) 237:9 tomorrow (1) 275:22 tonight (1) 258:15 tons (1) 37:18 took (5) 23:20;29:18;63:5; 137:20;252:10 top (4) 183:19;202:3; 237:22;241:6 topic (1) 257:10 total (2) 88:9;96:19

<p>totally (5) 95:9;154:3;212:1; 271:18;272:15</p> <p>tough (6) 90:5;100:9;134:11, 24;135:13,25</p> <p>touting (1) 124:13</p> <p>towards (3) 8:12;42:9;150:13</p> <p>Town (208) 12:5;15:5,14;17:6, 10,25;20:9,12;27:11; 40:4,19;42:6,15,17; 43:8,13,14;45:15,18, 22;52:14;61:4;70:16, 17;77:12;83:2;85:15; 90:19;91:1,2,3,19,21; 92:20;93:4,6,7,11;95:3, 5,20;96:3,9,18,21; 97:11,15,19;98:19,24; 99:2,14,20;100:3,4,15, 19;103:5,19;105:7,19; 106:9;107:4,6,16,17, 23;108:1,2,6,14;109:2, 2,10;110:24;111:17,24, 25;112:8;123:19; 125:21;132:19;133:10; 136:16;148:10,12; 151:24;158:20,21,21; 159:5,13,22;160:3,21; 161:9;164:14,15; 166:6;169:12,21,22,23; 170:3,9,11,17,22; 171:1,3,6,6,8,9,14,18, 21,23,25;172:1,2,5,13, 17,18,19,24;173:21,25; 174:11,16,19;175:10, 11,17,25;176:2,25; 177:8,17,19;178:1,3, 17,20,24;179:24;180:1, 7,16,17,18,20;181:11, 23;182:7,25;184:12,14, 23;185:1,4,10,16; 189:14;191:3,11; 192:10;193:3,4,9,12; 194:6;195:22;196:1,5, 16;197:2,6,17;199:22; 200:7,12,22,24;204:12, 13;212:10,11,14,17; 218:10,16;219:23,25; 240:20;243:19,23; 244:23,25;245:6; 248:20,23;249:19,20; 263:18;279:7,10</p> <p>townhouses (6) 224:23;237:3,10,11, 13,17</p> <p>towns (1) 237:13</p> <p>town's (1) 174:4</p> <p>track (4)</p>	<p>122:3;123:11; 125:12;270:25</p> <p>trade-off (1) 79:5</p> <p>Trader (2) 110:3,5</p> <p>traditional (1) 237:18</p> <p>traffic (19) 53:5,14,15;64:13,13, 19,20,25;65:1,2;69:18, 23;70:7,16;71:11; 183:22;188:6;218:21, 22</p> <p>trail (2) 234:25;241:4</p> <p>trails (1) 241:3</p> <p>train (1) 174:8</p> <p>Trammell (1) 124:5</p> <p>transcribed (1) 20:1</p> <p>transcript (3) 25:12;214:15;222:3</p> <p>transfer (2) 23:11,13</p> <p>transferred (1) 84:17</p> <p>transit (18) 64:14,15;71:13; 162:23;181:25;223:13; 238:22,24;239:10,14, 15,21,23;240:4,6,9,10, 12</p> <p>transition (1) 237:16</p> <p>transitions (1) 235:24</p> <p>translate (1) 20:2</p> <p>transpired (1) 59:18</p> <p>transportation (7) 53:9;170:25;177:3; 181:25;205:19,22; 238:11</p> <p>trash (1) 252:17</p> <p>trashed (1) 252:21</p> <p>travel (2) 34:1;53:13</p> <p>Traverse (2) 124:18;146:16</p> <p>treat (1) 242:7</p> <p>treated (1) 113:3</p> <p>triangle (1) 13:7</p> <p>tributary (4)</p>	<p>233:12,13;235:1,21</p> <p>Tribute (1) 234:3</p> <p>trick (1) 80:19</p> <p>tried (3) 28:14;57:4;183:19</p> <p>tries (1) 192:6</p> <p>trouble (3) 82:21;140:22;181:12</p> <p>true (9) 24:6;37:10;117:5; 149:17;152:19;160:5, 15;189:16;269:9</p> <p>trunk (1) 206:25</p> <p>try (19) 8:22;10:9,19;20:22; 33:23;79:21;83:14; 87:2;102:4;105:13; 138:7;139:24;147:18; 157:24,25;198:3; 200:16;211:1;279:4</p> <p>Try/town (1) 198:15</p> <p>trying (25) 14:22;29:14;31:17; 37:19;80:18;99:1; 109:7;117:13,17; 120:5;133:23;134:1, 10;175:1;179:6; 191:25;192:24;204:7; 223:16;227:16;254:5; 255:25;268:5,9;271:18</p> <p>turn (6) 129:3;138:17; 172:12;250:8;258:20; 260:5</p> <p>Turning (2) 88:20;210:9</p> <p>turns (4) 124:3;169:10,18; 211:14</p> <p>twice (2) 131:25;132:1</p> <p>two (68) 7:6;21:8;36:2,2,3,3, 4,14;39:20;45:19; 50:19;58:23;62:23; 65:3,24;75:7;76:24; 83:5;84:24;88:17; 95:18;97:8,12;103:10; 106:25;122:14;128:9; 139:16;146:18;164:21; 169:8;173:2;177:11; 188:21;190:3;191:13; 192:22;194:4,16; 196:2;203:24;211:3; 216:5,7;225:13; 227:10;229:24;231:8; 236:14;243:9,16; 246:12,12;247:1;</p>	<p>249:22;250:4,5;253:5, 24;257:19;260:6; 261:12;270:15;273:13; 274:3;278:23,25;279:1</p> <p>two-sentence (1) 161:21</p> <p>two-thirds (1) 235:22</p> <p>type (27) 11:3;18:17;19:18; 23:2;88:23;92:19; 93:12;94:5;99:25; 109:25;125:14,21; 134:22;135:14;146:11; 165:5;173:13,14; 191:17;215:5;216:11; 220:1;232:3;237:6; 256:8;257:14;266:1</p> <p>types (37) 89:14,15,19,22; 90:13;92:18,21;93:3; 96:18;104:20;106:18; 107:8;110:8;113:11; 122:22;123:1,25; 125:15;132:3;137:3; 145:2,8,20;164:7,11, 13,18,19,23;170:6; 174:10;216:9;223:17; 236:20;237:8,10,24</p> <p>typical (4) 93:16;94:14;95:17, 18</p> <p>typically (9) 93:21,25;96:6;132:1; 134:16;140:3,14; 144:18;225:23</p> <p>Tyson's (1) 135:10</p>	<p>120:2,24;201:24; 207:11;221:23;223:8; 236:15;244:8;245:25; 249:4,22;251:10; 257:18;263:21,24; 264:14;265:19;269:14, 15;270:6,7,25;272:11; 277:14</p> <p>underlining (4) 5:15,18,25;6:6</p> <p>underlying (1) 197:12</p> <p>understandings (1) 193:7</p> <p>understands (2) 17:6;128:8</p> <p>understated (1) 64:14</p> <p>understood (6) 56:1;80:21;84:21; 139:1;146:4;261:5</p> <p>undertake (4) 151:15,19;154:19; 155:24</p> <p>undertaken (4) 152:16;155:17; 156:2,22</p> <p>underused (1) 173:23</p> <p>underway (1) 98:13</p> <p>uneasiness (1) 10:1</p> <p>unfortunately (7) 19:24;38:10;41:18; 63:10;119:20;172:14; 275:1</p> <p>unique (1) 100:2</p> <p>unit (3) 237:6,7,9</p> <p>units (12) 224:22,24;225:1,2; 229:7,8;230:2,4; 231:23;234:24;235:8; 236:23</p> <p>unless (5) 31:22;39:5;76:4; 109:7;172:12</p> <p>unlikely (8) 96:3;103:15;171:4,7; 172:13,16;177:13; 179:4</p> <p>unnamed (1) 10:16</p> <p>Unterberg (21) 8:21;10:3;126:16; 137:25;167:4;216:21; 221:21,22,24;250:18; 253:5,16;256:20; 257:13;258:10,20; 263:1;264:20;268:2, 11;274:2</p>
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<p>Unterberg's (1) 165:20 untested (1) 122:6 unusual (2) 66:9;166:9 unwaveringly (1) 63:25 up (77) 8:5,6;12:9,16,16; 14:25;15:23;22:14; 29:25;30:17;32:4; 36:15;37:18;39:24; 40:8;57:25;66:19;73:8; 19;74:2,4,6;76:11; 78:19,20;79:1;93:19; 94:9,13;95:10;102:3; 116:12;118:1,1,11,17; 119:20;124:22;127:2; 129:6,9;135:1,2; 145:12;148:15;151:14; 153:22;155:2;162:17; 172:6,13;175:21; 177:14;178:2;191:22, 22;208:15;211:3; 214:23;215:5;222:4, 12;226:8;229:11; 232:19;235:14;239:24; 240:12,14;241:7,11; 244:13;245:12;248:19; 271:19;273:15,21 updated (1) 242:13 upheld (2) 169:17;173:25 upon (1) 58:15 upper (1) 129:9 upscale (1) 64:3 upstairs (1) 275:8 urban (1) 237:15 urge (1) 66:24 urgent (1) 223:3 use (57) 6:8;18:6;41:25;42:1; 43:21;64:2,2;70:19; 76:23,25;79:3;116:3; 118:1;129:15;136:12; 140:6,13;142:13,24; 143:9;146:7;151:17; 162:4;175:23;177:5; 194:23;195:6,10,11; 204:6;208:7;209:24; 222:25;226:1;230:9, 14;231:8,25;232:7,15, 16;234:2;235:11,25; 237:15,23;239:3;</p>	<p>245:20;262:8;263:2; 265:22;266:9;270:17, 17;271:5;272:9,9 used (11) 18:3;71:8;89:14; 102:7;110:8;112:24; 139:2;154:5;166:15; 177:24;209:19 user (5) 105:1,11;114:21; 115:23;117:8 users (12) 90:8;116:13,19,25; 135:18;136:12,18,21; 140:9,10;143:6,13 uses (74) 83:13;86:5;106:8,10; 129:16;132:18,19,22; 134:13,15,16;163:4,5, 5;164:11;169:7;170:5, 5,7,25;171:1,11; 172:22;173:3,5,7,8,19; 175:25;176:6;178:19; 181:1,3,21,22;190:9, 13,14;194:11,14; 195:23;207:25;208:4; 210:4;222:22;223:5, 11,17;224:14,17,19; 225:4;226:2;227:9; 230:18,20,22;231:2; 232:18,18,20;247:15; 249:18;251:11,11; 260:10;264:21;265:7, 19,20;266:2,10; 270:21;271:6 using (8) 6:9;53:3;71:15,18; 140:10;163:15;263:1; 266:25 usually (4) 71:7;105:6;134:24, 25 usurped (1) 19:13 utility (1) 132:25 utilized (3) 68:25;141:6;271:21</p>	<p>varied (1) 81:6 variety (9) 106:23;170:4;223:9, 11;224:17;236:20; 237:9,18,24 various (7) 67:9;105:17;125:15; 129:16;139:25;143:3; 166:20 vehicle (2) 76:9;151:2 vendors (1) 37:20 vent (1) 49:7 verbally (1) 62:15 versa (1) 45:22 versus (1) 92:20 via (1) 234:1 viability (1) 160:18 viable (2) 143:16;172:18 vibrant (3) 16:2;40:1;174:7 vice (1) 45:22 view (18) 93:1,9;95:3;103:18, 25;104:6;118:7; 119:14;122:22;158:23; 159:19;160:25;161:10; 166:22;231:16,18; 234:13;278:13 views (5) 49:6;62:19;64:9; 235:14;236:1 village (4) 52:15;63:2;157:4; 230:4 violates (1) 168:19 Virginia (3) 17:9;90:5,6 virtually (3) 255:20,20,21 vision (19) 17:9;33:6,7;34:10; 35:7;36:18;37:1,16; 49:6;62:25;83:13; 168:21;169:16;171:7; 173:24;174:20;178:8; 193:2;252:18 visions (2) 35:13;224:15 visitors (1) 15:24 visual (1)</p>	<p>230:7 vital (1) 91:18 vitality (1) 176:25 volunteered (1) 63:5 volunteering (1) 12:7 vote (2) 38:6;199:21 voted (1) 214:7 V-shaped (1) 211:11</p> <p style="text-align: center;">W</p> <p>wage (1) 89:18 wait (15) 47:2;65:24;90:21; 126:25;127:1,7,7; 139:22;202:2;203:18; 225:7;250:23;260:17; 271:13;274:3 waited (4) 52:14;65:20;66:2; 75:3 waiting (3) 43:3;45:25;87:13 Walgreens (1) 232:5 walk (10) 15:11,11,15,15; 21:24;150:25;223:25; 226:21;260:6,23 walkable (1) 52:14 walked (3) 32:4;185:21;238:13 walking (4) 19:4;171:22;174:6; 278:14 wall (1) 233:22 Walmart (3) 98:9;105:2;112:3 Walmarts (1) 103:13 wants (3) 115:3;277:25;278:1 warm (2) 250:10,12 warmer (1) 138:12 warn (1) 258:14 warning (1) 31:9 wash (1) 227:6 Washingtonian (1)</p>	<p>223:14 waste (1) 155:5 water (9) 67:23;242:10,11; 243:3,3,4,6,11,12 watershed (3) 245:7,10;249:14 way (67) 8:10;10:6,15;14:21; 27:14;33:14;34:4; 35:20;37:14;43:1,1,9,9, 9;52:19;55:8;62:24; 63:10;69:12;70:4;76:2, 18;78:20,21;79:18,21, 22;84:15;106:4,4; 112:16;115:19;116:5; 124:4;131:9,18;132:9, 24;138:14;146:12; 147:24;151:3;152:7; 153:20;163:1;165:7; 168:22;178:1,2,1; 198:4;211:23;212:9; 213:6;235:23;239:10, 14,21,24;240:24;241:5, 6,11,21;257:22,22; 261:5;277:12 ways (8) 119:19;223:9; 236:14;238:21;240:23; 241:25;257:19;274:14 weather (2) 144:20;275:23 web (1) 95:14 website (3) 95:11;126:17;164:23 Wednesday (1) 275:3 weekend (1) 144:5 weeks (2) 14:25;199:19 Wegmans (13) 98:4;112:2;126:21; 129:12,14;131:10,13, 22;132:9,10;133:1,6; 159:18 WEI (12) 217:19,22,25,25; 218:4,15,20;219:1,5,9, 11;221:13 W-E-I (1) 221:3 weight (6) 94:24;258:6,7;267:7; 268:15;274:11 well- (1) 105:15 well-designed (1) 58:3 well-developed (1) 57:8</p>
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<p>Wellspring (10) 229:1,1,6,16;230:8; 232:16;233:24;235:6, 22;239:5 weren't (5) 29:13;35:1,4;144:10; 153:1 west (48) 12:21;13:16,17; 14:18;15:6;20:14; 23:12;27:14;42:10,13; 58:9;64:24;69:19;70:3; 75:9,19;76:12,15; 77:22,25;78:4;111:20; 155:22;161:19,25; 170:14;177:7;178:3; 179:1;191:16;196:18, 23;201:12;222:19; 228:10,10,18,21;230:6; 231:13;233:9,25; 235:7;238:16;241:6; 245:11;254:10;263:19 western (6) 162:1;229:2;233:12; 237:17;241:10;263:5 what's (45) 13:25;14:4,10;15:14; 16:3;25:24,24;30:12; 32:8;33:11;35:10;41:4; 52:3;57:5,9;58:11; 69:25;72:18;83:18; 84:25;98:13;104:4; 112:24;122:10;128:8; 139:12,13,17;149:2; 175:5,6,10;176:4,17; 179:10;180:25;181:6; 182:15;191:25;193:3; 203:19;214:5;220:16; 275:12;276:21 whatsoever (1) 35:12 whereas (2) 205:3;237:16 Where's (1) 51:11 Whereupon (1) 281:2 wherever (1) 8:12 whispering (1) 250:14 Whit (2) 72:17;257:6 white (2) 22:15;169:14 whole (17) 41:11;81:6;86:24; 98:8;104:19;108:25; 116:6,13;180:10; 218:6;233:7;236:24; 242:7;243:8,9;280:22, 25 Whose (3)</p>	<p>27:19;100:10;168:13 wide (1) 229:17 widened (1) 53:4 widening (2) 53:9;64:23 wider (1) 223:16 wife (1) 169:2 willing (1) 15:21 Winchester (2) 237:9,13 wind (1) 172:13 window (1) 246:16 wine (2) 94:21;185:23 wire (1) 102:21 wish (3) 9:10;50:18;81:24 within (43) 18:16;29:16;65:23; 68:6;75:7;81:10;85:23; 86:8;90:2;101:10; 116:6,7;117:23,25; 120:10;124:1;136:14; 139:16;148:13;160:10; 162:25;166:1;170:22, 25;172:22,24;185:15; 195:2;196:6;212:16, 17;213:8;230:17; 235:1;237:4;239:2; 244:20;257:20;260:13; 266:8;270:10,12;271:5 without (25) 9:19;41:14;76:16; 79:19;85:25;93:17; 98:25;99:12;106:24; 111:18;119:17;120:13, 16,18,20;121:1;123:3; 125:9;137:7;143:20; 160:19;161:4,10; 263:17,22 witness (198) 9:2,10;10:9,10;11:6; 25:7,11,13;28:19,21, 23,25;29:2,9,12;32:18, 25;33:2,17,21;34:7; 36:10,12;40:4,6,9,11, 14,18,21,23;41:6,7,8, 17;44:25;45:3,7,11; 49:2,21,24;51:13; 61:23;85:3,6,9,12,16, 19,22;86:13,16,20; 87:1,4,8;88:25;89:4,7; 90:23;91:10;92:1,5; 93:7,95;14,17;96:17, 21,23;97:1,6;98:8,16;</p>	<p>99:17;100:21;102:13, 15,19;103:8,10;104:6; 105:23;109:17,21; 110:4,12,17;118:25; 119:2;121:15,17,20,23; 126:6,15;127:1; 130:11,13,18;131:17, 20,24;133:5,18,25; 138:4,16;142:7; 148:23;149:18;156:6, 8;167:24;168:3; 175:13;177:22;178:24; 179:9,12,20;180:2,6, 10,18,20,24;181:2,5,8, 18;182:8,13,16; 197:13;203:4;204:7,9, 21,24;206:15;217:13; 222:1,5,8,11;224:7,12; 225:9,12,14,17;226:15, 19;227:8,14,23;228:1, 6,9;229:15,21,24; 234:16,18,20;235:20; 238:1,3;239:13,19,23; 240:2,8,18,21;247:17, 19,23;248:2,10; 249:11;250:9,19; 251:3,7,10;254:25; 255:7;257:18,24; 259:1;261:24;262:11, 15,20;264:9;275:10 witnesses (9) 9:18;50:23;90:22; 91:17,20;115:15; 130:6;137:23;255:23 woke (2) 22:14;29:25 woman (1) 36:5 women's (2) 94:8;95:22 wonderful (2) 23:5;135:10 wondering (2) 121:3;163:15 word (5) 139:2;146:6;159:25; 199:11;209:19 words (9) 151:1;154:21; 166:15,16;198:22; 216:6;257:3;268:16; 276:25 work (7) 57:1;60:17;105:4; 130:21;136:24;218:23; 243:10 worked (2) 73:12;102:16 workers (3) 99:21,22,24 working (6) 43:22,23;89:13; 144:11;246:10;275:5</p>	<p>works (7) 9:25;60:10,11,18; 124:22;126:5;226:20 world (2) 98:8;184:4 Worldcom (1) 117:1 worlds (1) 62:25 worse (3) 16:4,4;94:2 worship (1) 232:21 worthy (2) 153:12,14 wrap (1) 271:19 write (4) 7:4;159:3;219:18; 277:1 writing (3) 36:1;83:10;280:4 written (3) 91:3;98:11;253:2 wrong (7) 26:21;80:22;172:12; 181:13;185:22;186:4; 272:5 wrote (5) 51:23;122:5;143:22; 214:18;216:8</p>	<p>120:20 Zhu (1) 217:25 zip (2) 11:12;65:4 zone (64) 201:4;214:23;226:2, 7;231:15;236:19; 237:16;244:1,15; 250:6,20,21,24;251:21, 24;252:1,11,13,16,21; 254:7,7,13,24;257:15, 17,24;258:20;259:22, 23;260:4,5;263:11,24; 264:7,10,14,22;265:7, 13,15,23;266:9,25; 267:1,14;268:6;269:4, 7,23;270:1,2,6,7,16,20; 271:1,6,20;272:1,8,13; 273:8,10 zoned (18) 43:16,20;58:13; 191:11,20,21;201:3; 203:11;204:17;236:8; 243:25;244:6,14; 262:3;263:6;267:10; 273:10,11 zones (5) 250:4;251:12;253:5; 265:21;270:21 zoning (63) 23:5;43:14,18,19; 53:20;56:9;66:25; 83:13;155:12;157:19; 173:5,6;181:8,9;201:5; 203:12;215:8,9,11,13, 15,20,22;219:2;226:5; 228:20;236:4,15; 244:13;245:4;246:7, 13;247:2,9;251:23; 252:5;253:15,23,24; 254:2;257:16,20; 260:23,25;261:21,22; 262:7,14,16;263:2,4,5, 24;264:1,16;266:24; 268:3,22;269:12; 271:11,21,23;277:20</p>
Y				
<p>yard (1) 230:3 Yay (1) 54:14 year (12) 15:1;26:6,13;38:5; 46:23,24,25;88:14,14; 119:7;246:3,3 years (52) 12:1,8;14:3,20; 17:18;26:10,18;31:12; 45:3;62:20;63:15; 65:24,25;75:7;83:22; 84:6,22,23;88:10,10, 10,14,15,15,17,18; 104:17;111:8,9; 114:17;115:23;117:1, 25;118:5;119:10,18, 21;120:7;139:15,16; 141:5;148:21;149:9; 151:8;157:6,18; 159:11;179:15;185:8; 246:10,12,17 yoga (1) 94:24</p>	<p style="text-align: center;">1</p>			
Z				
<p>zero (1)</p>	<p>1,886 (3) 27:9;225:1;236:23 1:30 (1) 138:7 10 (14) 12:1;26:9,18;29:16; 82:12;88:10,15; 101:15;111:9;118:5; 167:3;217:8;274:8; 275:17 10.2 (1) 259:1 10.2.2 (1)</p>			

251:4 10.3.4 (1) 259:2 100 (4) 30:19;35:16;97:2; 243:22 105 (2) 237:21,23 106 (2) 5:20,21 106f (1) 5:18 10-minute (1) 217:7 11 (2) 129:6,12 11,039 (1) 224:22 110 (1) 238:23 111 (1) 238:23 112 (2) 238:10,17 12 (2) 81:8;246:10 12:30 (1) 126:2 120 (1) 254:20 120,000 (27) 14:12;80:14,21;85:7, 20;86:11;87:12;107:1; 137:9;165:22;172:25; 195:13;225:21;226:9, 10;253:13;254:11,23; 257:14;261:1;263:21; 264:2;269:24;272:4, 21;273:7,8 121 (25) 53:10;64:22;70:11, 12,15;71:1;74:14; 187:8;201:15,16,18; 227:1,3,19;228:9,12, 24;233:14,21,23; 239:7;241:5,17; 243:21;245:11 126 (2) 238:11,17 12642 (1) 218:1 134 (1) 241:23 135,000 (1) 123:21 14 (2) 81:8;224:3 144 (1) 242:15 148 (1) 242:15 15 (2) 53:8;167:7	150 (1) 100:17 153 (1) 96:20 153,000 (2) 181:11,16 16 (1) 205:21 17 (1) 224:4 17-188 (1) 248:10 185 (1) 242:25 18th (3) 223:10;224:3;246:24 19 (3) 62:20;209:24;210:10 196 (2) 247:12;249:12 1982 (1) 82:22 1990 (1) 124:5 1990's (1) 148:2 1994 (9) 62:22;81:4;107:25; 141:13;190:2;194:3; 246:22;268:25;270:9 19th (1) 168:25	2003 (8) 5:6;26:15,16,18; 46:16,20,21;236:8 2004 (2) 26:20,21 2006 (4) 44:16,19,20;123:17 2009 (1) 123:22 2011 (2) 248:2,11 2013 (4) 26:12,14;44:24,25 2016 (1) 45:1 20841 (1) 11:13 20871 (2) 51:17;62:3 20th (1) 169:1 20-year (5) 84:1;85:23;86:1; 87:11;88:6 215 (2) 242:25;249:15 22 (1) 14:25 22620 (1) 11:10 23330 (1) 183:12 23720 (1) 51:16 23801 (1) 62:2 23rd (7) 275:17,24;276:11; 278:8,12,12;280:7 24th (1) 280:14 25 (1) 118:5 25th (1) 246:25 26th (2) 279:7,10 270 (44) 12:22;14:18,18;15:6, 15;18:19;19:2;23:12; 30:16;39:18;41:4; 42:11,13,14;45:24; 53:5;54:25;64:20,24; 70:4,11,15;71:14;74:6; 75:9;116:6;129:6; 161:20;168:19;170:15, 22;172:6;180:12; 222:17,19,25;223:18; 240:3;241:17,19; 243:21;244:12;263:6,8 275,000 (1) 232:19 28 (2)	222:6;248:11 28th (4) 279:15,16,23;280:6 29th (1) 170:20 2-day (1) 147:1 2-story (1) 231:17	47 (2) 190:3;194:3 470 (2) 244:15,16 470,000 (3) 203:16;204:19; 244:13 484 (2) 14:13;273:15 484,000 (4) 209:11;215:3;223:7; 226:9 4-foot (1) 233:16 4th (22) 7:19;8:6,14;167:10, 14,14;274:4;275:2,3, 10,18;277:5,15;278:9, 12,14,15,18;280:10,15, 16,17 4-wheel (1) 76:9
	2		3	
				5
			4	

271:1 59-D-1 (1) 266:4 5-foot (1) 241:4 5-minute (1) 50:13	8 8 (3) 126:22;223:19; 231:14 8,600 (1) 227:5 806 (1) 5:6 87,500 (2) 227:9;270:15 8-foot (1) 241:3			
<p style="text-align: center;">6</p>	<p style="text-align: center;">9</p>			
6:30 (1) 218:23 60 (4) 6:17,21;65:17; 269:17 60,000 (2) 102:23;225:24 600,000 (1) 120:19 60A (2) 6:22,25 60B (2) 6:23,25 61 (5) 127:23,25;128:3; 129:2;132:24 62 (4) 128:2,4;129:10,11 63 (6) 262:13,18,23;263:1; 269:21,22 635 (2) 170:4,11 64 (2) 161:14;224:9 66 (2) 93:15;262:20 67 (4) 141:12,14;224:9; 237:1 68 (4) 162:12;173:16; 232:25;233:5 69 (2) 238:10,12 6th (1) 7:23	9 (4) 5:6;46:20,21;121:25 9:00 (3) 13:21;218:23,24 9:30 (3) 275:3;280:14,17 90,000 (2) 247:14;249:17 900,000 (1) 135:21 94 (3) 244:9;263:5,24 94,000 (1) 244:16 95 (1) 265:14 97 (1) 266:24 98 (1) 236:6 9th (1) 46:16			
<p style="text-align: center;">7</p>				
7 (1) 148:17 700,000 (2) 119:19;120:19 74,000 (1) 120:6 7-Eleven (1) 109:24 7th (5) 250:15;274:5;275:2, 4;280:18				