

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS  
MONTGOMERY COUNTY, MARYLAND

- - - - -X  
:  
Petition of Thompson Butz, et al.:  
Applicant :  
: Local Map Amendment G-881  
21901 Ridge Road, Germantown :  
:  
- - - - -X

A hearing in the above-entitled matter was held on  
  
January 14, 2013, commencing at 9:34 a.m. at the Office of  
  
Zoning and Administrative Hearings, 100 Maryland Avenue,  
  
Rita Davidson Memorial Hearing Room, Rockville, Maryland  
  
20850 before:

Martin L. Grossman  
  
Hearing Examiner

Page 2

A P P E A R A N C E S

For the Applicant:

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Adamstown, Maryland 21710

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Miller, Miller & Canby  
200-B Monroe Street  
Rockville, Maryland

Gary Unterberg, Expert, Land Use Planning  
Jennifer Russel, Expert, Master Planning  
Frank G. Bossong, IV, P.E., Expert  
Kathryn Kubit, Elm Street Development

For the Opposition:

Mary Jane Goodrick  
Robert Goldberg, Greater Goshen Civic Association  
Ron Wills, Individual  
William Hancock, Individual

C O N T E N T S

WITNESSES	DIRECT	CROSS	REDIRECT
For the Applicant:			
Thompson Butz	16		
By Mr. Hancock		59	
By Mr. Wills		61	
By Mr. Goldberg		66	

Page 4

P R O C E E D I N G S

1 MR. GROSSMAN: This is a public hearing on the

2 application of Theodore H. Butz, et al., LMA number G-881

3 for a local map amendment to the zoning ordinance requesting

4 reclassification of 54.349 acres of land from the RE-2 zone

5 to the PRC zone, that's planned retirement community zone.

6 The property is owned by the applicants and is

7 known as parcel P-429 on Maryland tax map FV-122. It's also

8 known as the Butz property or the water tank farm property

9 located at 21901 Ridge Road in Germantown, Maryland.

10 Applicants are proposing up to 140 age-restricted single-

11 family homes and a community center.

12 My name is Martin Grossman. I'm the hearing

13 examiner, which means I will take evidence in this case and

14 write a report and recommendation to the Council sitting as

15 District Council. And the Council will make the final

16 decision in the case. Will the parties identify themselves

17 for the record, please.

18 MR. KLINE: Good morning. For the record, my name

19 is Jody Kline, attorney with the law firm of Miller, Miller,

20 and Canby, with offices at 200-B Monroe Street, here in

21 Rockville. We will be calling today, Mr. Grossman, five

22 witnesses. I would be glad to give you those names, but

23 they are the same as the resumes that have been submitted as

24 Exhibit number 55.

Page 3

For the Applicant (cont.):

DIRECT	CROSS	REDIRECT
Gary Unterberg	68	183
By Mr. Hancock		162
By Ms. Goodrick		167
By Mr. Wills		175
Jennifer Russel	197	
By Ms. Goodrick		240
Kathryn Kubit	251	273
By Ms. Goodrick		255
By Mr. Hancock		258
By Mr. Wills		266

For the Opposition:

Ron Wills	274	--
William Hancock	286	294

E X H I B I T S

Exhibit No.	Marked/Received
1-59 Pre-marked	
60 5/18/12 Letter of D. Flanagan	35
61 American University Article	44
62 1/8/13 Approved Water Quality Plan	83
63 1/8/13 Approved Forest Conservation Plan	84
64 Amended Surrounding Area	103
65 Aerial of Amended Surrounding Area	103
66 Recreation Guidelines	125
67 Clarksburg Master Plan, Excerpts	205
68 7/12 Current Development Pipeline	222
69 Affidavit of Posting	299
70 Deed	299
71 Council Resolution 14-393	299
72 CD of Current Hearing Exhibits	299

Page 5

1 My estimate is that, I'm not quite sure about the

2 cross-examination side of it, but I anticipate we will

3 probably completed mid to late afternoon today. I know you

4 have another date set for the 18th. I'm hoping we don't

5 need it, but we'll have to see.

6 MR. GROSSMAN: We'll keep that hope in mind.

7 MR. KLINE: Yes, sir.

8 MR. GROSSMAN: And also, I see there are a number

9 of people in the audience, beyond those that are your

10 witnesses. So I ask, are there people in the audience who

11 wish to be heard today? Raise your hands please? All

12 right. Let's start with the gentleman in the back row. You

13 are, sir?

14 MR. WILLS: My name is Ron Wills, and I'm a

15 resident of Brink Meadows, which abuts the property.

16 MR. GROSSMAN: Okay. And do you want to be heard

17 in support, in opposition, or neutrally or just commentary?

18 MR. WILLS: Opposition.

19 MR. GROSSMAN: Okay. All right. Sir.

20 MR. HANCOCK: William Hancock. I live in the

21 subdivision, Brink Meadows, adjoining the Butz property; and

22 I want to be heard in opposition.

23 MR. GROSSMAN: All right. Mr. Hancock, you said

24 you wanted to be heard in opposition, did you say?

25 MR. HANCOCK: Yes, sir.

<p style="text-align: right;">Page 6</p> <p>1 MR. GROSSMAN: Okay. Yes, sir.</p> <p>2 MR. GOLDBERG: My name is Robert Goldberg. I'm an</p> <p>3 officer of the Greater Goshen Civic Association. Our</p> <p>4 Association is tangent to the proposed development, and I'd</p> <p>5 like to speak in opposition to the proposed development.</p> <p>6 MR. GROSSMAN: Yes. I saw your letter, and I saw</p> <p>7 Mr. Hancock's letter, and also one additional letter which</p> <p>8 indicated that either Ron or Sandy Wills would testify. So</p> <p>9 I saw all of those letters in the file. Okay. We have</p> <p>10 enough chairs here, so gentlemen, why don't you come forward</p> <p>11 and have a seat at counsel table.</p> <p>12 MR. WILLS: Yes. May I ask a question?</p> <p>13 MR. GROSSMAN: Yes, sir.</p> <p>14 MR. WILLS: How does the schedule shape up for</p> <p>15 today? I do have other things that people have to do.</p> <p>16 MR. GROSSMAN: Okay. What we can do, with Mr.</p> <p>17 Kline's consent, is take your testimony out of order if you</p> <p>18 wish. Would that be all right, Mr. Kline?</p> <p>19 MR. KLINE: I hadn't had a chance to think about</p> <p>20 it. I guess, since I haven't heard much in the past, I</p> <p>21 guess I'd like to hear what they have to say. Let me just</p> <p>22 hear the explanation first.</p> <p>23 MR. GROSSMAN: He said --</p> <p>24 MR. KLINE: If he has not a compelling reason, I</p> <p>25 probably would like them to probably hear some of our</p>	<p style="text-align: right;">Page 8</p> <p>1 MR. HANCOCK: That's fine.</p> <p>2 MR. GROSSMAN: Okay.</p> <p>3 MR. WILLS: I'll try. I mean, I've got a job to</p> <p>4 do, but I'll be here as long as I need to be.</p> <p>5 MR. GROSSMAN: All right. Okay. And I take it</p> <p>6 that you gentlemen are testifying yourselves. You're not</p> <p>7 calling any additional witnesses. Is that correct? You</p> <p>8 have to answer yes or no because --</p> <p>9 MR. HANCOCK: No.</p> <p>10 MR. WILLS: No.</p> <p>11 MR. GROSSMAN: The court reporter can only take it</p> <p>12 down when you orally express it. Okay. Let me explain a</p> <p>13 little bit about the nature of these proceedings. We are</p> <p>14 formal in the sense that it proceeds pretty much the way a</p> <p>15 courtroom proceeds, that is, all witnesses are sworn in.</p> <p>16 They are subject to cross-examination.</p> <p>17 When Mr. Kline calls a witness, as you will see,</p> <p>18 you will be given the opportunity to ask cross-examination</p> <p>19 questions, which have to be within the general scope of the</p> <p>20 direct, but you will be given the opportunity to cross-</p> <p>21 examine.</p> <p>22 The parties are entitled to make opening and</p> <p>23 closing statements. Very often in the case of, in this kind</p> <p>24 of situation, the opening statements amount to, very similar</p> <p>25 to the testimony of the individual witnesses in opposition.</p>
<p style="text-align: right;">Page 7</p> <p>1 application.</p> <p>2 MR. GROSSMAN: Okay. I mean, the advantage to,</p> <p>3 obviously, usually the procedure is that the applicant goes</p> <p>4 first, makes an opening statement if they wish, and then</p> <p>5 presents their witnesses prior to the opposition presenting</p> <p>6 their case. We usually make allowances for people who have</p> <p>7 other scheduled things, so is that the issue you have?</p> <p>8 MR. WILLS: Well, it's a question of time. If the</p> <p>9 presentation by Mr. Kline will take one or two hours, that's</p> <p>10 okay with me. If it's going to take four or six hours, that</p> <p>11 a big problem.</p> <p>12 MR. GROSSMAN: All right. Well, usually you can</p> <p>13 take estimates of attorneys and double them. That's the</p> <p>14 usual rule of thumb.</p> <p>15 MR. KLINE: I would estimate that we will not</p> <p>16 complete our presentation until mid-afternoon.</p> <p>17 MR. GROSSMAN: All right. Why don't we do this.</p> <p>18 Why don't we start out with the applicant's case, and then</p> <p>19 we'll, after our morning break, let's say in a couple of</p> <p>20 hours, give you an opportunity. Would that work out for</p> <p>21 you?</p> <p>22 MR. WILLS: That would be fine.</p> <p>23 MR. GROSSMAN: How about you other gentlemen? Do</p> <p>24 you have time problems? I couldn't hear you. You have to</p> <p>25 speak up so the court reporter can --</p>	<p style="text-align: right;">Page 9</p> <p>1 So you can make your own assessment of that.</p> <p>2 We are a little bit less formal than a courtroom</p> <p>3 in that we do allow certain types of evidence, certain types</p> <p>4 of hearsay, if it's otherwise reliable and probative,</p> <p>5 according to the usual administrative hearing rules. We do</p> <p>6 have a court reporter who takes everything down. There will</p> <p>7 be a transcript of the proceedings, which you can consult.</p> <p>8 All right. No other evidence will be considered</p> <p>9 by the Council other than the evidence that is developed</p> <p>10 here, although at the conclusion of the case, within 10 days</p> <p>11 after you receive, or I shouldn't say after you receive, but</p> <p>12 within 10 days after I issue my report, you have the</p> <p>13 opportunity to request oral argument before the Council,</p> <p>14 either side, or any aggrieved party can request oral</p> <p>15 argument before the Council, and the Council can either</p> <p>16 grant or not grant that request.</p> <p>17 Usually after we complete our report, we send out</p> <p>18 a notice letter to the participating parties, and that has a</p> <p>19 link on it by which you can see the entire report that I</p> <p>20 submit to the Council. Okay.</p> <p>21 I should mention one other thing. Nobody is</p> <p>22 permitted to directly contact Council members regarding a</p> <p>23 pending zoning application, because it's considered a quasi-</p> <p>24 judicial proceeding. Anything you have to say has to come</p> <p>25 through the record as produced here, or through oral</p>

<p style="text-align: right;">Page 10</p> <p>1 argument on the evidence. All right. A couple of  2 preliminary matters. If there are any additional plans or  3 reports, Mr. Kline, I'd like electronic copies, of course,  4 of anything that's updated that you haven't submitted  5 already.  6 I noticed that technical staff referred to the  7 owners as Theodore H. Butz, et al., and Windridge Farm, LLC.  8 What is Windridge Farm, LLC? They're not listed, I don't  9 think, on the application as an owner.  10 MR. KLINE: I will ask our first witness to answer  11 that question for you. I'm not sure why that's in there,  12 because they don't, they would be an operating entity, but  13 we'll answer that question.  14 MR. GROSSMAN: Okay. But they're not an owner or  15 an applicant here, is that correct?  16 MR. KLINE: I'll have Mr. Butz verify that for me  17 for the record.  18 MR. GROSSMAN: All right. All right. Is there,  19 the other question in that regard is, is there any evidence  20 of ownership in the record of this case so far? Have you  21 filed a copy of the deed here? I haven't seen that. Or  22 some ownership evidence?  23 MR. KLINE: I have not.  24 MR. GROSSMAN: Okay.  25 MR. KLINE: I would not normally do that. I gave</p>	<p style="text-align: right;">Page 12</p> <p>1 lack of on-site recreational facility, as an addition; and  2 inadequate screening. I think that covers the general run  3 of all of the points raised by the opposition.  4 Okay. And also, by the same token, I would ask  5 that opposition witnesses address, when this is up to you, I  6 would like to see somebody addressing the points raised in  7 the Planning Board letter. Have you seen a copy of the  8 Planning Board letter? Not the technical staff report, but  9 after the Planning Board met, they produced a letter that's  10 always part of the record.  11 MR. GOLDBERG: No, we haven't.  12 MR. HANCOCK: No, we haven't.  13 MR. GROSSMAN: You haven't seen that. Okay. Let  14 me have copies made for you, and I'm going to recess. It's  15 only two pages, so it will take you just a few minutes to  16 read. I'll have copies made for you, and then you can read  17 that so you can address the points that they raised. Okay.  18 It's nothing new, they just addressed their position on what  19 technical staff said. But you should have an opportunity to  20 see that.  21 All right. Why don't we take a five-minute break  22 here, and I'll have copies made of the technical staff  23 letter, I mean of the Planning Board letter for you three  24 gentlemen, and then we can proceed after that. We'll come  25 back at five to 11:00.</p>
<p style="text-align: right;">Page 11</p> <p>1 you the affidavits of the disclosure or the campaign  2 contributions of all the owner entities. If you need a  3 deed, we can get you that.  4 MR. GROSSMAN: Okay. Yes, we would like a copy of  5 the deed for the record. Okay. I would ask that you please  6 have your witnesses address the issues raised both by the  7 opposition and by technical staff in this case. My reading  8 of the -- I realize you responded to technical staff in a  9 letter to the Planning Board, but I think it's better to  10 have direct evidence, sworn evidence regarding that.  11 MR. KLINE: We agree.  12 MR. GROSSMAN: Okay. As I read the opposition  13 submissions, the issues raised, not consistent with the  14 recommendation of the master plan; potential noise, dust,  15 loss of pastoral scenery; potential breeding of mosquitoes  16 and other pests; potential increased traffic along Brink  17 Road which will exacerbate traffic problems on the roadway;  18 potential for light pollution.  19 There was also a mention in the Greater Goshen  20 Civic Association's letter of effect on property values, and  21 it mentioned specifically of the added density issue. There  22 were concerns raised in the Clarksburg Civic Association  23 letter about, concerns about access to Route 27, and  24 compatibility with the Ag reserve, the way they phrased it.  25 And in the letter from Mr. Hancock, it indicates</p>	<p style="text-align: right;">Page 13</p> <p>1 (Whereupon, at 9:47 a.m., a brief recess was  2 taken.)  3 MR. GROSSMAN: All right. Mr. Wills, Mr. Hancock,  4 Mr. Goldberg, you've had an opportunity to read over the  5 Planning Board letter that's Exhibit --  6 MR. HANCOCK: Yes.  7 MR. GROSSMAN: -- 54.  8 MR. WILLS: Yes.  9 MR. GOLDBERG: Yes.  10 MR. GROSSMAN: Okay. You're not required to  11 address it, the points raised by the Planning Board, but it  12 would be helpful if you wish to. All right. Any other  13 preliminary matters, Mr. Kline?  14 MR. KLINE: Mr. Grossman, I did pick up this  15 morning and affidavit of posting from your office. We had  16 filed one previously as Exhibit No. 22 when we posted the  17 signs. I just need to verify, well, I need to have it  18 signed in front of a notary verifying that the signs remain  19 posted on the property.  20 MR. GROSSMAN: Okay.  21 MR. KLINE: And I'll have that done over the lunch  22 hour at my office, where it can be notarized.  23 MR. GROSSMAN: All right.  24 MR. KLINE: And I will submit it to you this  25 afternoon. If you would like to make it an exhibit now, I</p>

<p style="text-align: right;">Page 14</p> <p>1 know I'll be bringing it back.  2 MR. GROSSMAN: Well, let's wait until it's  3 notarized.  4 MR. KLINE: That will be fine. Sure.  5 MR. GROSSMAN: And what about, that's an affidavit  6 that applicants are required to file to indicate that they  7 have had the area posted as required by the zoning ordinance  8 for the required period of time. What about the affidavit  9 of mailing?  10 MR. KLINE: That was submitted as Exhibit No. 22  11 at the --  12 MR. GROSSMAN: Okay.  13 MR. KLINE: -- time of the mailing and the filing  14 of the application in 2009.  15 MR. GROSSMAN: Okay. That's an affidavit which  16 indicates that the appropriate informational letters have  17 been sent out to the adjoining and confronting land owners.  18 We also send out notice ourselves of the hearing, and we  19 publish notice of these proceedings in two newspapers.  20 Okay. Any other preliminary matters?  21 MR. KLINE: No, sir.  22 MR. GROSSMAN: Any of you gentlemen on the  23 opposition have any preliminary matters you wish to raise  24 before we proceed to Mr. Kline's opening statement?  25 MR. HANCOCK: No.</p>	<p style="text-align: right;">Page 16</p> <p>1 All right, Mr. Butz, would you raise your right hand,  2 please?  3 (Witness sworn.)  4 MR. GROSSMAN: All right. You may proceed, Mr.  5 Kline.  6 DIRECT EXAMINATION  7 BY MR. KLINE:  8 Q Mr. Butz, let's start by answering the hearing  9 examiner's question about it. What is Windridge Farm  10 relative to the ownership entity of the property and the  11 applicants in this zoning case?  12 A The ownership of the property is a tenant in  13 common ownership. The four owners are, myself, Thompson  14 Butz, Theodore Butz, Robert Butz, and Jeremy Butz. We own  15 the property in equal share.  16 MR. GROSSMAN: The others are the et al. portion  17 of the name?  18 THE WITNESS: Yes. They're the et al.'s.  19 Somebody has got to stay out there and run the farm.  20 Windridge Farm, LLC, is basically our operating company.  21 It's the name we use for all our Ag operations, which are  22 scattered about Montgomery and Frederick Counties.  23 MR. GROSSMAN: All right. But I take it that  24 Windridge Farm, LLC, is not an applicant here and is not an  25 owner?</p>
<p style="text-align: right;">Page 15</p> <p>1 MR. GOLDBERG: No.  2 MR. WILLS: No.  3 MR. GROSSMAN: Mr. Kline, do you have an opening  4 statement?  5 MR. KLINE: As you surmised, I will waive it  6 simple because the case has got a lot of material in it, and  7 we're going to be here a long time, and everybody will have  8 a chance to hear it.  9 MR. GROSSMAN: All right.  10 MR. KLINE: So I think there is no advantage of me  11 having a statement again.  12 MR. GROSSMAN: All right. Any members of the  13 opposition wish to make an opening statement as  14 distinguished from just giving your testimony?  15 MR. HANCOCK: No.  16 MR. GROSSMAN: All right. I have three no's.  17 Okay, Mr. Kline, would you proceed with your first witness,  18 please?  19 MR. KLINE: I'd like to call our first witness,  20 Mr. Tom Butz.  21 MR. GROSSMAN: Okay. Mr. Butz.  22 MR. KLINE: Mr. Grossman, as you noticed, we have  23 not submitted a resume for Mr. Butz. He is not being called  24 as an expert witness.  25 MR. GROSSMAN: Right. He is the property owner.</p>	<p style="text-align: right;">Page 17</p> <p>1 THE WITNESS: Correct.  2 MR. GROSSMAN: Okay. All right. It was just, the  3 reason I raised the question was, I saw it in the technical  4 staff report. The first, the front page of it says,  5 "Applicant, Theodore H. Butz, et al./Windridge Farm, LLC."  6 THE WITNESS: I see.  7 MR. GROSSMAN: That's incorrect. Okay.  8 THE WITNESS: On the deed it would be the four of  9 us. How is that?  10 MR. GROSSMAN: Okay. Very good. All right.  11 BY MR. KLINE:  12 Q Well, maybe I should have started with this and  13 asked you your name and address, and leading up to your sort  14 of affiliation with the applicant and your familiarity with  15 the property?  16 A Well, the name is Thompson Butz, Tom. Address,  17 P.O. Box 149, Adamstown, Maryland 21710. And one of the  18 owners. As far as Mr. Kline's question about our history  19 with the property, we've owned the property since the  20 1970's. We're second generation Montgomery County farmers,  21 and had it in continuous agricultural operations since we  22 purchased it, or since it was purchased.  23 As far as some of the history, as you can imagine,  24 a lot has changed in the 40 years since we've held this  25 property. When we were initially farming the property,</p>

<p style="text-align: right;">Page 18</p> <p>1 everything in the area was Ag. And this is clearly not the  2 case now. The area is dominated by thousands of rooftops,  3 traffic, retail, and other specs that are the hallmarks of a  4 growing and evolving area. We're pretty much become the  5 last man standing, traditional row crop farming in the area.  6 and the area's growth has made traditional commodity farming  7 operations no longer viable.</p> <p>8 This is further challenged by the imminent  9 intrusions of the roads. Route 27 is being widened to six  10 lanes, with 100 percent of the land being taken from our  11 farm. A-305 is a four-lane arterial road that will bisect  12 the farm.</p> <p>13 Although people like farms, they kind of evoke an  14 emotional harkening to simpler times, and working with the  15 land. The reality is, the practical aspects of farming are  16 very challenging. Farming is a business, not necessarily  17 there for pastoral viewing pleasure. We have to make money,  18 and it has to be viable. And frankly, it no longer is.</p> <p>19 Moving agricultural equipment at 18 to 20 miles an  20 hour from Clarksburg to Frederick has become increasingly  21 challenging with the traffic. I can tell you that people  22 like to look at the farm, but when we're holding up traffic  23 throughout the day, trying to do our business, we're not  24 spoken of in very flattering terms.</p> <p>25 MR. GROSSMAN: Yes, I don't want to stop you from</p>	<p style="text-align: right;">Page 20</p> <p>1 THE WITNESS: Okay.</p> <p>2 MR. GROSSMAN: -- as far as I can interpret the  3 zoning ordinance.</p> <p>4 THE WITNESS: Absolutely.</p> <p>5 MR. GROSSMAN: Okay.</p> <p>6 THE WITNESS: With regard to that, one of the  7 items that was brought up in your short list prior was the  8 Ag reserve. This property is not zoned agriculture. It is  9 a residential zone. It is not abutting any agricultural  10 property. The property across the street is, has the two  11 large water towers, is the WSSC property, and is a cemetery.  12 So with regard to that, I just wanted to bring that point  13 out.</p> <p>14 MR. KLINE: Let me just --</p> <p>15 MR. GROSSMAN: When you say my short list, do you  16 mean my listing of the opposition concerns?</p> <p>17 THE WITNESS: Yes, sir. Yes, sir.</p> <p>18 MR. GROSSMAN: Okay.</p> <p>19 BY MR. KLINE:</p> <p>20 Q Mr. Butz, we put up your Exhibit No. 7, which is  21 the zoning vicinity map in the record of the case. The  22 subject property is highlighted in yellow, and what I'm  23 going to do is, I'm just going to go ahead and -- okay.  24 Mr. Grossman, apparently we have submitted a second time  25 because it's 34(f) as well as the original number 7. So</p>
<p style="text-align: right;">Page 19</p> <p>1 saying what you want to say, but you have to realize that  2 your business concerns, per se, are not an issue before me.</p> <p>3 THE WITNESS: I understand.</p> <p>4 MR. GROSSMAN: The questions before me are  5 strictly the land use questions that revolve around County  6 policy as set forth in the zoning ordinance.</p> <p>7 THE WITNESS: Absolutely.</p> <p>8 MR. GROSSMAN: And the master plan. That's what  9 guides me, not whether or not you have financial  10 difficulties in farming.</p> <p>11 THE WITNESS: I understand that.</p> <p>12 MR. GROSSMAN: So I'd like you to address yourself  13 to that.</p> <p>14 THE WITNESS: But faced with opposition, that we  15 are somehow diminishing pastoral views, when for us, to  16 maintain those pastoral views is no longer viable or cost-  17 effective, I think addresses some of the issues of  18 opposition that we are being faced with.</p> <p>19 MR. GROSSMAN: Well, except that the question of  20 the view shed is an issue, is a kind of master plan and  21 planning issue. So, but financial viability is not an area  22 that I am empowered to consider in my review.</p> <p>23 THE WITNESS: Understood.</p> <p>24 MR. GROSSMAN: Okay. So it's not really a  25 response to questions about pastoral view --</p>	<p style="text-align: right;">Page 21</p> <p>1 take your pick.</p> <p>2 MR. GROSSMAN: I'll let you take your pick. How  3 is that?</p> <p>4 MR. KLINE: Well, we'll use the most current one.</p> <p>5 MR. GROSSMAN: So 34(f)?</p> <p>6 BY MR. KLINE:</p> <p>7 Q What I would to do is --</p> <p>8 MR. GROSSMAN: Okay.</p> <p>9 BY MR. KLINE:</p> <p>10 Q -- looking at Exhibit 34(f), can you highlight  11 again for me the features you just described, and I will  12 point them out on here?</p> <p>13 A Well, on the subject property, the opposition  14 mentioned Ag reserve. The RTD land across the street has  15 been sold to the Catholic church and is now going to be used  16 as a cemetery.</p> <p>17 MR. GROSSMAN: All right. So this is on this map?</p> <p>18 THE WITNESS: Yes, sir.</p> <p>19 MR. GROSSMAN: The property labeled zoning  20 vicinity map. And there's property labeled RDT to the east  21 of you? I take it that north is on the top of the map?</p> <p>22 THE WITNESS: Yes, sir.</p> <p>23 MR. GROSSMAN: And the area of the subject site is  24 indicated in yellow, is that correct, sir?</p> <p>25 THE WITNESS: Yes.</p>

<p style="text-align: right;">Page 22</p> <p>1 MR. GROSSMAN: Okay. So you're in the RE-2 zone</p> <p>2 presently, and that's that yellow area that's demarcated on</p> <p>3 the plan. And to the east of you directly is the RDT zone.</p> <p>4 And that's what Mr. Kline is pointing to. That's the church</p> <p>5 land that you're talking about?</p> <p>6 BY MR. KLINE:</p> <p>7 Q Partly. Do you have a second feature you can</p> <p>8 point to?</p> <p>9 A Right. The RDT land, yes, sir, is the church land</p> <p>10 which is being used as a cemetery, as a Catholic. Then</p> <p>11 there are four, the part where Jody is pointing right now,</p> <p>12 Mr. Kline, that is WSSC property, and where the two large</p> <p>13 water tanks are.</p> <p>14 MR. GROSSMAN: Okay. So immediately to the east</p> <p>15 of you on the southern end of your property is the WSSC</p> <p>16 property.</p> <p>17 THE WITNESS: Correct.</p> <p>18 MR. GROSSMAN: And then immediately north of that</p> <p>19 and still to the east of your property, is the church land</p> <p>20 which then extends around to the east of the WSSC property,</p> <p>21 is that correct?</p> <p>22 THE WITNESS: Correct.</p> <p>23 MR. GROSSMAN: All right. The reason I explain it</p> <p>24 this way is that the record should show exactly what we're</p> <p>25 talking about. If you just point to it, the record won't</p>	<p style="text-align: right;">Page 24</p> <p>1 and policies, and the work you've done to identify what</p> <p>2 those plans and goals are for this planning area?</p> <p>3 A Okay. Let me take this out of order. We were</p> <p>4 contact by Elm Street about 11 or so years ago saying that</p> <p>5 they were going to put A-305 through the property.</p> <p>6 Q What is Elm Street, for the record?</p> <p>7 A Elm Street Development is the developer who is</p> <p>8 responsible for the construction and widening of Route 27,</p> <p>9 and the construction of A-305, and is the lead developer in</p> <p>10 Clarksburg Village.</p> <p>11 Q Can we just kind of orient everybody. This is</p> <p>12 Exhibit number 44(l) titled, Clarksburg Community Parks.</p> <p>13 Mr. Unterberg is going to identify your property, first of</p> <p>14 all, and then you were alluding to Clarksburg Village and A-</p> <p>15 305. Can you tell him or you go ahead and testify and --</p> <p>16 A Clarksburg Village is northwest of the property,</p> <p>17 as Mr. Unterberg is highlighting. A-305 is a four-lane</p> <p>18 divided arterial road, which will bisect the property and</p> <p>19 connect to Route 27, which is being widened to six lanes</p> <p>20 from I-270 to the intersection of A-305 and Route 27. After</p> <p>21 that intersection, it starts to narrow down as Route 27</p> <p>22 heads north.</p> <p>23 MR. GROSSMAN: All right. Now, is Clarksburg</p> <p>24 Village on that map? It's a little hard for me to read, but</p> <p>25 what about the community immediately to the north of you?</p>
<p style="text-align: right;">Page 23</p> <p>1 indicate it. So that's why I explain it that way.</p> <p>2 THE WITNESS: Absolutely.</p> <p>3 MR. KLINE: And Mr. Grossman, the zoning maps</p> <p>4 don't show it, but the cemetery exists by special exception</p> <p>5 granted by the County Council.</p> <p>6 MR. GROSSMAN: Okay. When was that?</p> <p>7 MR. KLINE: I can get you the date on that. I'd</p> <p>8 say for the last 10 years, though.</p> <p>9 THE WITNESS: Uh-huh.</p> <p>10 MR. GROSSMAN: Okay. You have a special exception</p> <p>11 number printed on there?</p> <p>12 MR. KLINE: I don't, but I can get it for you.</p> <p>13 MR. GROSSMAN: Often, it's printed right on the --</p> <p>14 MR. KLINE: Well, yes, that was back when the</p> <p>15 zoning maps were more updated. There is a hearing examiner</p> <p>16 number on here, but I don't believe that's what that is.</p> <p>17 MR. GROSSMAN: Okay.</p> <p>18 MR. KLINE: I'll get that case for you.</p> <p>19 MR. GROSSMAN: All right. Thank you.</p> <p>20 BY MR. KLINE:</p> <p>21 Q I'm sorry, Mr. Butz. We took you away for a bit.</p> <p>22 A I was done with that section.</p> <p>23 Q Well, maybe let me lead you to what I think, to</p> <p>24 where Mr. Grossman was talking a moment ago about, how is it</p> <p>25 that this proposal starts to begin to address County plans</p>	<p style="text-align: right;">Page 25</p> <p>1 Is that, what is that designated?</p> <p>2 THE WITNESS: That's where, where Mr. Unterberg</p> <p>3 is, right there?</p> <p>4 MR. GROSSMAN: No, right north of there, right</p> <p>5 north of that?</p> <p>6 THE WITNESS: That's part of Clarksburg Village.</p> <p>7 MR. GROSSMAN: All right. So that's all part of</p> <p>8 Clarksburg Village?</p> <p>9 THE WITNESS: Yes, sir.</p> <p>10 MR. GROSSMAN: And so it's to the north and the</p> <p>11 northwest of your property?</p> <p>12 THE WITNESS: Correct.</p> <p>13 MR. GROSSMAN: All right.</p> <p>14 BY MR. KLINE:</p> <p>15 Q So going back to when I interrupted you, you were</p> <p>16 saying, Mr. Flanagan, of Elm Street, who is the developer of</p> <p>17 Clarksburg Village, contacted you?</p> <p>18 A Correct. And reminded me that per the master plan</p> <p>19 that A-305 was going to be constructed and bisect the</p> <p>20 property. This started us down a plan --</p> <p>21 MR. GROSSMAN: When you say, the property, it was</p> <p>22 going to bisect which property?</p> <p>23 THE WITNESS: The Butz property.</p> <p>24 MR. GROSSMAN: Okay.</p> <p>25 THE WITNESS: Our farm.</p>

<p style="text-align: right;">Page 26</p> <p>1 MR. GROSSMAN: Okay.</p> <p>2 THE WITNESS: Leaving a --</p> <p>3 MR. KLINE: This is the alignment of the road</p> <p>4 going through the property.</p> <p>5 MR. GROSSMAN: All right.</p> <p>6 MR. KLINE: Looking at 34(f), it's showing up even</p> <p>7 better here, it sort of separates the property.</p> <p>8 MR. GROSSMAN: All right. So it's going to divide</p> <p>9 your property and the northern third of your property is</p> <p>10 going to be divided by A-305. Is that what you are saying?</p> <p>11 THE WITNESS: Yes.</p> <p>12 MR. GROSSMAN: Okay. If I understood that</p> <p>13 correctly, Mr. Kline? Is that the road --</p> <p>14 MR. KLINE: Yes, sir.</p> <p>15 MR. GROSSMAN: Okay.</p> <p>16 MR. KLINE: I think the only hesitation was to</p> <p>17 quantify the amount of land to the north and the land to the</p> <p>18 south.</p> <p>19 MR. GROSSMAN: Oh, I was just, there were three</p> <p>20 horizontal lines on that map. I just took the portion to</p> <p>21 the north of that as being the top third, the northern</p> <p>22 third. That's all. It's not exactly a third. I agree with</p> <p>23 that.</p> <p>24 MR. KLINE: Exactly.</p> <p>25 MR. GROSSMAN: Okay.</p>	<p style="text-align: right;">Page 28</p> <p>1 to say it, but as a lay opinion on the subject.</p> <p>2 MR. KLINE: I'd be glad to let Mr. Butz give you</p> <p>3 some of his bona fides as a sustainable user of land, but I</p> <p>4 don't think that's what you're looking for.</p> <p>5 MR. GROSSMAN: Right. You're not qualifying him</p> <p>6 and offering him as an expert.</p> <p>7 MR. KLINE: No, sir. Right.</p> <p>8 MR. GROSSMAN: I just wanted to note that.</p> <p>9 THE WITNESS: We started looking for a more</p> <p>10 appropriate land use options. And we, at that point we were</p> <p>11 meeting with experts, engineers, attorneys and the like, and</p> <p>12 were introduced to the planned retirement community zone.</p> <p>13 And given the background of the aging baby boomer</p> <p>14 population, and the need in the County, this zone started to</p> <p>15 make a lot of sense to us. I had a parent that qualified to</p> <p>16 live in the community. And it was something that truly was</p> <p>17 in dire need in the County.</p> <p>18 As far as, I'm just going to jump to, you were</p> <p>19 asking for more information about how it works within the</p> <p>20 master plan and things.</p> <p>21 MR. GROSSMAN: Well, I'm not telling what area --</p> <p>22 Mr. Kline will --</p> <p>23 THE WITNESS: Well, that was the --</p> <p>24 MR. GROSSMAN: -- perhaps ask you questions that</p> <p>25 will direct how you approach it. What I said to you before</p>
<p style="text-align: right;">Page 27</p> <p>1 THE WITNESS: After being contacted by Mr.</p> <p>2 Flanagan, we started to look at the existing zone, master</p> <p>3 plan, land use, appropriateness, policies, smart growth,</p> <p>4 things like that. And with a six-lane arterial road</p> <p>5 connecting a four-lane arterial road a mile from, less than</p> <p>6 a mile from Milestone Shopping Center, we have major retail</p> <p>7 activities.</p> <p>8 And a mile from I-270, where you have tremendous</p> <p>9 transportation infrastructure, two-acre single-family well</p> <p>10 and septic construction does not make sense. It simply is</p> <p>11 not smart growth. It did not impress me as something that</p> <p>12 is appropriate there when considering the significant</p> <p>13 infrastructure available and proximity to amenities.</p> <p>14 MR. GROSSMAN: Well, let me interrupt you for a</p> <p>15 second.</p> <p>16 THE WITNESS: Yes, sir.</p> <p>17 MR. GROSSMAN: You haven't qualified this witness</p> <p>18 as an expert.</p> <p>19 THE WITNESS: No.</p> <p>20 MR. GROSSMAN: Well, I'm addressing this to Mr.</p> <p>21 Kline.</p> <p>22 THE WITNESS: I'm sorry.</p> <p>23 MR. KLINE: We have not offered him as an expert.</p> <p>24 MR. GROSSMAN: All right. But now he is</p> <p>25 essentially offering an opinion on that. So I'll allow him</p>	<p style="text-align: right;">Page 29</p> <p>1 was that your financial --</p> <p>2 THE WITNESS: Right.</p> <p>3 MR. GROSSMAN: -- issues are something I can't</p> <p>4 consider. That's not a piece of evidence that I am entitled</p> <p>5 to consider in evaluating this application. That's what I</p> <p>6 said before.</p> <p>7 THE WITNESS: Absolutely. We believe that the</p> <p>8 planned retirement community is a great fit for this</p> <p>9 property for a lot of reasons. First off, the master plan</p> <p>10 on page nine specifically highlights the need to quote,</p> <p>11 "Encourage and maintain a wide choice of housing types and</p> <p>12 neighborhoods for people of all incomes, ages, lifestyles,</p> <p>13 and physical capabilities at appropriate densities and</p> <p>14 locations."</p> <p>15 MR. GROSSMAN: I'm sorry, what are you reading</p> <p>16 from now?</p> <p>17 THE WITNESS: That is from page nine of the master</p> <p>18 plan. That said, the Clarksburg master plan has no PRC's in</p> <p>19 it. The reason it has no PRC's in it is because when the</p> <p>20 plan was adopted, it couldn't. The PRC zone was limited to</p> <p>21 properties of 750 acres or greater.</p> <p>22 It wasn't until 2007 that the Council voted to</p> <p>23 change the language of the master plan. And Ms. Russel will</p> <p>24 go into much more detail as an expert on master plan issues.</p> <p>25 But this is one of the many things we take into</p>



<p style="text-align: right;">Page 30</p> <p>1 consideration as the property owner as we were looking at 2 alternative land use.</p> <p>3 Further, this is supported by the May 2011, the 4 housing element and general plan was adopted. On page eight 5 it specifically identifies seniors as a greatest need 6 category for housing in Montgomery County. It goes on to 7 say that we need to, quote, "Look inward rather than outward 8 to accommodate the housing needs." The property sits 9 between two housing districts with tremendous infrastructure 10 around it, which I consider very much inward. But that is 11 just my opinion.</p> <p>12 The housing element and general plan also states 13 that higher densities and smaller units are preferable. As 14 we were zoned two-acre residential, that's pretty much the 15 recipe for McMansions. And in our opinion, the last thing 16 this County needed was more McMansion unaffordable housing.</p> <p>17 Virtually all the documents, the housing general 18 plan and the master plan highlight the need for affordable 19 housing to meet the needs of the County residents at every 20 stage. 2.15 of the objectives of the housing element and 21 general plan --</p> <p>22 BY MR. KLINE:</p> <p>23 Q Can I interrupt for a second?</p> <p>24 A Sure.</p> <p>25 MR. KLINE: Mr. Grossman, there is an exhibit in</p>	<p style="text-align: right;">Page 32</p> <p>1 MR. GROSSMAN: Yes, we want to make sure that --</p> <p>2 MR. KLINE: But the land use report that you just 3 had in your hand is 34(a). This technical appendix is 4 34(b).</p> <p>5 MR. GROSSMAN: Okay.</p> <p>6 THE WITNESS: Of this housing element and general 7 plan, reading directly from the objective to diverse housing 8 and neighborhood section, page 15, item 2.15 of this 9 objective is, "To promote full inclusion of all ages, stages 10 of life, and physical abilities by encouraging design and 11 construction that incorporate visit-ability and livability 12 features in new construction and major renovations."</p> <p>13 This type of theme is very common in pretty much 14 all the new housing efforts we read coming from the County. 15 I have yet to see a document come out of the County that 16 said, we need more McMansions, because we don't.</p> <p>17 The concept of visit-ability and livability are 18 also very much applicable and prominent in, say in 19 retirement communities. Livability is first and foremost. 20 And one of the things that we have a unique opportunity to 21 create is to create lifestyle for a small portion of the 22 County's population for which there hasn't been a product 23 build since the 1960's, which was Leisure World.</p> <p>24 MR. GROSSMAN: You used a term a product build, 25 what does that mean?</p>
<p style="text-align: right;">Page 31</p> <p>1 the record titled 34(b) which is described as the technical 2 appendix --</p> <p>3 MR. GROSSMAN: Yes.</p> <p>4 MR. KLINE: -- for G-881. And there is an entire 5 section in there titled, SR, or SR with a lot of attachments 6 that Mr. Butz has and will be referring to. And it is all 7 the paperwork that he is referring to the document. It's 8 actually the bigger of the two volumes. You've got the land 9 use report, and it's the larger one.</p> <p>10 And the SR section dealing with senior housing 11 issues is maybe two thirds of the way, or maybe 50 percent 12 of the way through the bundle. So I just want to say, in 13 the record are the housing element issues, and the other 14 reports that he is going to be alluding to.</p> <p>15 MR. GROSSMAN: Let's make sure I have what you're 16 talking about.</p> <p>17 MR. KLINE: It's so big it would be hard to miss 18 it.</p> <p>19 MR. GROSSMAN: It's apparently so big that it 20 didn't wander in here.</p> <p>21 MR. KLINE: It's 34(b) and I can give you my copy.</p> <p>22 MR. GROSSMAN: I don't --</p> <p>23 MR. KLINE: Here is the page. We'll make sure 24 that when you go to look at it, unless you want it right 25 now, when you go to look at it, you'll have a copy.</p>	<p style="text-align: right;">Page 33</p> <p>1 THE WITNESS: Planned retirement community housing 2 are very specific houses. They are first floor living. The 3 amenity package within the community is probably larger than 4 most other neighborhoods. For example --</p> <p>5 MR. GROSSMAN: Well, what does the term, product 6 build, mean?</p> <p>7 THE WITNESS: The product that is built for that 8 age group.</p> <p>9 MR. GROSSMAN: I see.</p> <p>10 THE WITNESS: For example, a single-family home 11 for a family with kids would typically have a number of 12 bedrooms and other amenities to accommodate that type of 13 housing. For the planned retirement community, which is 14 age-restricted, and typically has the downsizing empty- 15 nester, you wouldn't have all the extra bedrooms and things 16 like that. You would try to eliminate steps and have all 17 your living on one level.</p> <p>18 So it's a product that is specifically designed 19 for the 50 and older, 55 and older, which ever category of 20 resident. And it's also going back to some of the goals 21 within the master plan and other documents, is to create 22 communities with a diversity of housing types and styles to 23 meet the residents at every lifestyle stage.</p> <p>24 There are no single-family age-restricted 25 communities that are part of Clarksburg Village. That is</p>

<p style="text-align: right;">Page 34</p> <p>1 why when we have within this document, there is a letter  2 from Elm Street Development welcoming us as another housing  3 type within Clarksburg Village.  4 MR. GROSSMAN: You said there is a letter. Where  5 is that letter? Are you talking about the letter that was  6 sent by --  7 THE WITNESS: It's a letter of support.  8 MR. GROSSMAN: -- by Elm Street?  9 THE WITNESS: Yes, sir.  10 MR. GROSSMAN: I know I saw it in the file. Let's  11 just make sure, we're talking about it, by exhibit number.  12 MR. KLINE: We'll find the page, and for the  13 benefit of these gentlemen who don't have a copy, I'll give  14 you a copy of that as well, Mr. Grossman.  15 MR. GROSSMAN: Let me take a look at the file  16 here.  17 MR. KLINE: While we find it, to give you a proper  18 page reference, and Exhibit 34(b), I'll offer this letter  19 dated May 18th, 2012, from Mr. Flanagan of Elm Street  20 Village, into evidence.  21 MR. GROSSMAN: All right. Well, let's mark it as a  22 new exhibit because I can't recall where I saw it before.  23 All right. So this will be Exhibit No. 60. And that's May  24 18, 2012, letter of David Flanagan.  25 (Exhibit No. 60 was marked</p>	<p style="text-align: right;">Page 36</p> <p>1 hearsay. He's written his letter in support, so I'll take  2 the letter for what that's worth. I think it's not a good  3 idea, even though we do allow a limited amount of hearsay  4 here, to have a witness say what another witness likes,  5 beyond what they've submitted.  6 THE WITNESS: Well, as a practical matter, what we  7 have done in our agreement, and the details of which we have  8 not completely ironed out because we didn't have the zoning,  9 was that the Butz' option, our community will be annexed  10 into Clarksburg Village. So it will not just be a satellite  11 community. It will be part of the Greater Clarksburg  12 Village.  13 And I think that is important in that it allows  14 that presence of being part of a greater community, allows  15 the residents of this community access to the amenities of  16 Clarksburg Village, the trails and other aspects in  17 Clarksburg Village, and adds a new housing style for  18 Clarksburg Village.  19 MR. GROSSMAN: When you say annexed, are you using  20 that as a term of art here? Are we talking about a formal  21 annexation,  22 Mr. Kline? Or what are we talking about here? You said  23 it's going to be annexed to Clarksburg Village. What does  24 that mean?  25 MR. KLINE: The option exists for Clarksburg</p>
<p style="text-align: right;">Page 35</p> <p>1 for identification.)  2 MR. KLINE: And Mr. Grossman, it's found in  3 Exhibit 32(b) --  4 MR. GROSSMAN: Okay.  5 MR. KLINE: -- as what's called CV-1, which is  6 about a tenth of a way into the technical appendix.  7 MR. GROSSMAN: On behalf of Elm Street Development  8 in support of the rezoning. Okay. That's Exhibit No. 60.  9 All right. You may proceed.  10 THE WITNESS: Yes, sir.  11 BY MR. KLINE:  12 Q And I'm not sure where you were going next, but  13 why don't we talk, just for a second, about what this letter  14 does in terms of the future integration of the two  15 communities?  16 A Sure. As part of, I've been working closely with  17 David Flanagan at Elm Street to accommodate the widening of  18 Route 27 and A-305 going through the property, just to make  19 sure that we're on the same page, and he gets the land he  20 needs, and we can work together.  21 As part of that, we started thinking, he really  22 likes the idea of a planned retirement community, and what  23 it adds to the overall Clarksburg Village as another housing  24 type.  25 MR. GROSSMAN: Well, I'm going to, I mean, that's</p>	<p style="text-align: right;">Page 37</p> <p>1 Village to expand the scope of its area so that its HOA  2 documents, as they exist today or as they may be amended, to  3 incorporate this community completely or selectively,  4 depending on the services of each one from the other one.  5 MR. GROSSMAN: Okay. So it becomes subject to the  6 whatever homeowners association runs Clarksburg Village? Is  7 that what we're talking about?  8 MR. KLINE: Probably some kind of a joint  9 operation, yes, because it's not going to be a perfect fit.  10 So the details have not been ironed out. If I can kind of  11 read this sentence, we would like to incorporate, which is,  12 I believe that means annex, the future Butz farm housing  13 into the Clarksburg Village Homeowners Association and have  14 addressed that possibility within our HOA documents.  15 MR. GROSSMAN: Okay. So you're reading directly  16 from Exhibit No. 60.  17 MR. KLINE: The first sentence, third paragraph of  18 Exhibit No. 60.  19 MR. GROSSMAN: Right. Okay. And would that  20 affect, one of the required findings by the Council in  21 reviewing a case such as this where there were development  22 plans required, is that there's a demonstration of perpetual  23 maintenance of the property. Is part of your evidence here  24 going to deal with Clarksburg Village providing that  25 perpetual maintenance? How is that --</p>

<p style="text-align: right;">Page 38</p> <p>1 MR. KLINE: We, in the record is a set of</p> <p>2 homeowners association documents that we submitted at the</p> <p>3 time of the rezoning application, that I would have been</p> <p>4 able to testify would adequately protect the public areas</p> <p>5 and have an assessment scheme adequate to protect that.</p> <p>6 Obviously, Clarksburg Village already exists, and</p> <p>7 has those documents. So whether we work with theirs, ours,</p> <p>8 or a combination of both, I'm confident that you would</p> <p>9 protect the interest that those HOA documents are supposed</p> <p>10 to protect.</p> <p>11 MR. GROSSMAN: All right. Well, are you planning</p> <p>12 to have a witness to indicate that there will be perpetual</p> <p>13 maintenance of this property?</p> <p>14 MR. KLINE: As the person who prepared those</p> <p>15 documents, I would be the person to do that, and because</p> <p>16 they are the documents I've used in other PD zoning cases</p> <p>17 before, and I tailored them for this application.</p> <p>18 MR. GROSSMAN: Well, it's I don't want to say</p> <p>19 improper, but it's unusual to have an attorney testify in</p> <p>20 his own case. So perhaps you could have Mr. Butz testify as</p> <p>21 to what the intention is regarding perpetual maintenance of</p> <p>22 the property, or one of your other witnesses, based on</p> <p>23 whatever documents you have filed.</p> <p>24 We often have an affidavit submitted to establish</p> <p>25 and to meet that criterion, which is not clearly worded in</p>	<p style="text-align: right;">Page 40</p> <p>1 MR. KLINE: Thank you.</p> <p>2 MR. GROSSMAN: And what's just, I don't recall if</p> <p>3 you said it in your long question, your long leading</p> <p>4 question, whether or not, what the exhibit number was that</p> <p>5 you were referencing?</p> <p>6 MR. KLINE: Bear with me. It's Exhibit No. 13.</p> <p>7 Articles of incorporation, bylaws, and 13(c) is the actual</p> <p>8 declaration of covenants, conditions and restrictions for</p> <p>9 what in those days we called the Orchard Run Homeowners</p> <p>10 Association.</p> <p>11 MR. GROSSMAN: Okay. All right.</p> <p>12 BY MR. KLINE:</p> <p>13 Q I think I interrupted you a while back. Maybe you</p> <p>14 ought to go back to where you were</p> <p>15 A Where was I? Oh, I was discussing the community,</p> <p>16 why it's appropriate in accordance with the needs --</p> <p>17 MR. GROSSMAN: Right.</p> <p>18 THE WITNESS: -- and guidelines and guidances that</p> <p>19 we have seen coming from the County. And we were discussing</p> <p>20 the planned retirement community, and how it's unique style</p> <p>21 of housing is in need and lacking. In our application book,</p> <p>22 we have a document that is called, "The beyond 50.05 report</p> <p>23 on livable communities."</p> <p>24 MR. GROSSMAN: What are you reading from now?</p> <p>25 MR. KLINE: It would be in Exhibit 34(b). It's</p>
<p style="text-align: right;">Page 39</p> <p>1 the code. But I take it their intent is that there be a</p> <p>2 showing of the intention, perpetual maintenance of the</p> <p>3 common areas.</p> <p>4 MR. KLINE: I was actually going to get the actual</p> <p>5 language.</p> <p>6 BY MR. KLINE:</p> <p>7 Q Mr. Butz, at the time you instructed my office to</p> <p>8 assemble the documents for the zoning application, was it</p> <p>9 your intention to include documents showing the ownership</p> <p>10 and method of assuring perpetual maintenance of any areas</p> <p>11 intended to be used for recreational or other common or</p> <p>12 quasi-public purposes? And is it your understanding that</p> <p>13 those were accomplished and are part of the record? And</p> <p>14 that if implemented, the documents would basically achieve</p> <p>15 that goal?</p> <p>16 A Yes.</p> <p>17 MR. KLINE: That's a little bit too much of a</p> <p>18 leading question.</p> <p>19 MR. GROSSMAN: It's a very leading question.</p> <p>20 Nobody objected, however.</p> <p>21 MR. KLINE: Well, that's probably because it was</p> <p>22 so long I lost them. The documents that are in the record</p> <p>23 from Mr. Butz were intended to satisfy the requirements of</p> <p>24 59D-1.6(d)(e), I'm sorry.</p> <p>25 MR. GROSSMAN: Right.</p>	<p style="text-align: right;">Page 41</p> <p>1 item SR-7, which is a publication of the AARP, titled,</p> <p>2 "Beyond 50.5, a report to the nation on livable communities,</p> <p>3 creating environments for successful aging."</p> <p>4 MR. GROSSMAN: Okay.</p> <p>5 THE WITNESS: In this document, the graph on page</p> <p>6 49 indicates that 71 percent of the 50-plus population live</p> <p>7 in single-family detached homes. This is further supported</p> <p>8 by a 2005 Park and Planning undertook the 55-plus housing</p> <p>9 preference survey.</p> <p>10 MR. GROSSMAN: Is that survey in the record also?</p> <p>11 What's that? Is that in 34(b) also?</p> <p>12 THE WITNESS: No. I'm sorry.</p> <p>13 MR. KLINE: It's SR-5 in 34(b).</p> <p>14 MR. GROSSMAN: And that's our Park and Planning</p> <p>15 Department?</p> <p>16 THE WITNESS: Yes, sir.</p> <p>17 MR. GROSSMAN: Okay.</p> <p>18 THE WITNESS: As seen on page three, the graph, as</p> <p>19 seen on page three in the graph, overwhelmingly the</p> <p>20 preference is for, that they did a study within their survey</p> <p>21 group, of what type of house they wanted. And</p> <p>22 overwhelmingly, the preference was for single-family</p> <p>23 housing.</p> <p>24 MR. GROSSMAN: Who's the they? Who is the</p> <p>25 antecedent of the they?</p>

<p style="text-align: right;">Page 42</p> <p>1 THE WITNESS: They are the people who comprised</p> <p>2 the survey group. The respondents.</p> <p>3 MR. KLINE: May I just interject?</p> <p>4 MR. GROSSMAN: Yes.</p> <p>5 MR. KLINE: Basically, the language says, County</p> <p>6 residents of 55 years of age or older --</p> <p>7 MR. GROSSMAN: Okay.</p> <p>8 MR. KLINE: -- who plan to move from existing</p> <p>9 residence. A number of approximately 71,600 residents were</p> <p>10 poled to come up with that.</p> <p>11 MR. GROSSMAN: Okay. So in that survey group of</p> <p>12 the 55 and older, you said what percentage preferred single-</p> <p>13 family residence?</p> <p>14 THE WITNESS: In this one it's 34 percent want to</p> <p>15 buy single-family homes in that survey.</p> <p>16 MR. GROSSMAN: Okay.</p> <p>17 THE WITNESS: But if, you can also add to that</p> <p>18 another five percent that have a desire to rent a single-</p> <p>19 family home, showing that of this group of people, their</p> <p>20 preference is overwhelming between both of these studies,</p> <p>21 for single-family housing, not condo or apartments.</p> <p>22 MR. GROSSMAN: Well, how is it overwhelming if</p> <p>23 it's 34 percent and five percent?</p> <p>24 THE WITNESS: Because it's the largest of --</p> <p>25 MR. GROSSMAN: It's the largest plurality of it?</p>	<p style="text-align: right;">Page 44</p> <p>1 MR. KLINE: I don't see it in our SR section.</p> <p>2 MR. GROSSMAN: Well, let's mark it as an exhibit</p> <p>3 so we all have access to it.</p> <p>4 THE WITNESS: Okay.</p> <p>5 MR. KLINE: All right. This is a publication of --</p> <p>6 THE WITNESS: American University.</p> <p>7 MR. KLINE: -- American University titled,</p> <p>8 "Montgomery County's aging population is growing rapidly,"</p> <p>9 dated June 2nd, 2011.</p> <p>10 MR. GROSSMAN: All right.</p> <p>11 MR. KLINE: I would ask that this be made an</p> <p>12 exhibit in the record.</p> <p>13 MR. GROSSMAN: This will be Exhibit 61. And it</p> <p>14 appears to be a printout from a website, is that correct?</p> <p>15 (Exhibit No. 61 was marked</p> <p>16 for identification.)</p> <p>17 THE WITNESS: Correct.</p> <p>18 MR. GROSSMAN: All right. All right. Printed out</p> <p>19 on January 13, 2013. I'm not sure what the date of it is.</p> <p>20 MR. KLINE: It's right up here on the top. I saw</p> <p>21 it.</p> <p>22 MR. GROSSMAN: Yes, June 2, 2011. Website</p> <p>23 printout. So I'm not sure. Is this printout just, this is</p> <p>24 quoting Rollin Stanley, the former director of the County's</p> <p>25 Planning Department.</p>
<p style="text-align: right;">Page 43</p> <p>1 It's the plurality of it?</p> <p>2 THE WITNESS: Yes. To buy a condo is 19 percent.</p> <p>3 Don't know is 13. Private home/apartment with services, so</p> <p>4 it's still again a private home but with some additional</p> <p>5 services is another 11 percent. Rent an apartment at seven</p> <p>6 percent. Buy in to life care facility with entrance fee was</p> <p>7 six. Rent a single-family home was five. Move to senior</p> <p>8 subsidized housing was four. And move to a group home was</p> <p>9 one point five.</p> <p>10 MR. GROSSMAN: Okay.</p> <p>11 THE WITNESS: Looking at the type of housing that</p> <p>12 is desired by the people that make up this demographic,</p> <p>13 single-family housing is a preference, with this active</p> <p>14 adult community.</p> <p>15 MR. GROSSMAN: Okay. According to this survey.</p> <p>16 THE WITNESS: According to these two surveys. The</p> <p>17 other aspect that was important to consider in looking for</p> <p>18 need in this is the fact that the demographic of Montgomery</p> <p>19 County has changed in the 20 years since the master plan was</p> <p>20 adopted.</p> <p>21 In the 2010, this is not in there. I will give it</p> <p>22 to you if that's appropriate. In 2010, the new census</p> <p>23 status --</p> <p>24 MR. GROSSMAN: If you're reading from something</p> <p>25 that's not in the record?</p>	<p style="text-align: right;">Page 45</p> <p>1 MR. KLINE: Right.</p> <p>2 MR. GROSSMAN: So that's what it's being</p> <p>3 introduced for is a quote from Mr. Stanley?</p> <p>4 THE WITNESS: Yes, sir.</p> <p>5 MR. GROSSMAN: Okay.</p> <p>6 MR. JACKSON: And the quote is that, "We expect</p> <p>7 85,000 new seniors in the next 20 years. That's a 73</p> <p>8 percent increase."</p> <p>9 MR. GROSSMAN: I mean, it's a little bit</p> <p>10 problematic because it doesn't say where this is quoted</p> <p>11 from. I mean, it says it's Mr. Stanley, but it doesn't say</p> <p>12 where he said that. I mean, this is another one of those</p> <p>13 hearsay issues, because it is, hearsay is a statement</p> <p>14 outside of the hearing room offered to prove the truth of</p> <p>15 what's asserted in the statement.</p> <p>16 And so this is a statement by Rollin Stanley,</p> <p>17 director of the County -- former director. It just says</p> <p>18 director, and at the time he was, but of the County's</p> <p>19 Planning Department saying, "We expect about 85,000 new</p> <p>20 seniors in the next 20 years. That's a 75 percent</p> <p>21 increase."</p> <p>22 And the problem is that Mr. Stanley is not</p> <p>23 available here to be cross-examined on the accuracy of that</p> <p>24 statement. And so that's the problem with this kind of</p> <p>25 survey. So I mention that because you have a right to</p>

<p style="text-align: right;">Page 46</p> <p>1 object to that if you wish to, gentlemen. I'm inclined to</p> <p>2 admit it for what it's worth. And that is, it has that</p> <p>3 questionable value, because it's very difficult when the</p> <p>4 witness is not here to be cross-examined.</p> <p>5 Will any of your witnesses be able to testify on</p> <p>6 this issue, that is, the expected growth of the senior</p> <p>7 population in the County?</p> <p>8 MR. KLINE: My follow-up question to that is to</p> <p>9 ask Mr. Butz if what is labeled SR-2, Montgomery County</p> <p>10 snapshots, County districts by the numbers, which is a</p> <p>11 substantial publication by Park and Planning, whether that</p> <p>12 same information or some numbers doesn't exist somewhere in</p> <p>13 our Exhibit 34(b) already.</p> <p>14 MR. GROSSMAN: I'm also a little bit more</p> <p>15 uncomfortable, because this is the first time, and these</p> <p>16 gentlemen haven't seen it. I'm going to show it to you in a</p> <p>17 second.</p> <p>18 MR. KLINE: Yes. I'll hand it to you.</p> <p>19 MR. GROSSMAN: Yes, sir. And once again, identify</p> <p>20 yourself for the record.</p> <p>21 MR. HANCOCK: William Hancock.</p> <p>22 MR. GROSSMAN: Okay, Mr. Hancock.</p> <p>23 MR. HANCOCK: Does it, does anything in that</p> <p>24 article or that statement, Jody, say what percentage of</p> <p>25 those 85 people, the 85 percent, are going to remain in</p>	<p style="text-align: right;">Page 48</p> <p>1 THE WITNESS: "Retirement plans, where to retire.</p> <p>2 When asked where they will be living in the next 10 years,</p> <p>3 approximately 58 percent, more than 98,400 residents, think</p> <p>4 that they will live in their current residence. Of those</p> <p>5 who plan to move, the next, within the next 10 years, over</p> <p>6 11 percent, or about 19,400 residents plan to move to</p> <p>7 another residence within Montgomery County. Neither half of</p> <p>8 those who plan to move outside the County, plan to move to</p> <p>9 another state within the South Atlantic region."</p> <p>10 MR. GROSSMAN: All right. That's actually an</p> <p>11 aside in terms of --</p> <p>12 THE WITNESS: Basically, it's saying that there is</p> <p>13 a significant portion, in this case, almost 20,000</p> <p>14 residents, that plan to move from an existing residence to</p> <p>15 another residence within Montgomery County. If I may</p> <p>16 continue, "Many of the 19,000" --</p> <p>17 MR. GROSSMAN: Why don't you, hold on, before you</p> <p>18 continue. Let's deal with Exhibit No. 61, first, because</p> <p>19 that's what's really before me right now.</p> <p>20 THE WITNESS: Yes, sir.</p> <p>21 MR. GROSSMAN: Gentlemen, have you had an</p> <p>22 opportunity to look at the document?</p> <p>23 MR. HANCOCK: Uh-huh.</p> <p>24 MR. GROSSMAN: You have to answer yes or no so</p> <p>25 that the --</p>
<p style="text-align: right;">Page 47</p> <p>1 Montgomery County once they are retired? I know we're going</p> <p>2 to have a big increase in growth, but --</p> <p>3 MR. KLINE: Let me just say, if you want to ask</p> <p>4 Mr. Butz, he's got an answer on that.</p> <p>5 THE WITNESS: Actually, if --</p> <p>6 MR. GROSSMAN: Well, let me, let's reserve that</p> <p>7 kind of question, I think, for cross-examination. I think</p> <p>8 that makes sense. But I'm going to let you look at this.</p> <p>9 That's Exhibit No. 61. And then the opposition witnesses</p> <p>10 have an opportunity to look at it before we go further.</p> <p>11 And I'll call it, website printout of Rollin</p> <p>12 Stanley quote re growth, re expected growth of senior</p> <p>13 population in the County.</p> <p>14 THE WITNESS: Sir, if I may?</p> <p>15 MR. GROSSMAN: Yes.</p> <p>16 THE WITNESS: I'll start to address Mr. Hancock's</p> <p>17 question. Referring back to the 55-plus housing preference</p> <p>18 survey conducted by the Park and Planning, page one,</p> <p>19 "Retirement plans, where to retire. When asked where they</p> <p>20 will be living in the next 10 years" --</p> <p>21 MR. GROSSMAN: Hold on. Once second. One second.</p> <p>22 Where are you reading from again, sir?</p> <p>23 THE WITNESS: I'm reading from the 55-plus housing</p> <p>24 preference survey conducted by Park and Planning, page one.</p> <p>25 MR. GROSSMAN: Okay. All right.</p>	<p style="text-align: right;">Page 49</p> <p>1 MR. HANCOCK: Yes.</p> <p>2 MR. GROSSMAN: Okay. And do you have any concerns</p> <p>3 about the authenticity of that document, that is, that it</p> <p>4 accurately reflects a statement by Mr. Stanley?</p> <p>5 MR. HANCOCK: No.</p> <p>6 MR. GROSSMAN: Okay. All right. Given that, I'm</p> <p>7 going to allow Exhibit No. 61 to be admitted. I'm always a</p> <p>8 little bit concerned about, obviously, hearsay statements</p> <p>9 about what somebody else thinks. On the other hand, part of</p> <p>10 that issue is ameliorated by the fact that something is in</p> <p>11 the record and filed, giving people an opportunity to look</p> <p>12 at it. This document was seen for the first time at this</p> <p>13 hearing, which makes me a little bit more leery about it.</p> <p>14 Yes, sir.</p> <p>15 (Exhibit No. 61 was admitted</p> <p>16 into evidence.)</p> <p>17 MR. WILLS: Mr. Grossman, there's no question this</p> <p>18 is Rollin Stanley's statement. However, there's no basis</p> <p>19 given by Mr. Stanley in the article for his statement.</p> <p>20 MR. GROSSMAN: It appears not in the website</p> <p>21 printout, that's true. So I would give it the kind of</p> <p>22 weight it deserves under those circumstances. All right.</p> <p>23 If you wouldn't mind returning that to me, because now it's</p> <p>24 officially an exhibit here.</p> <p>25 MR. KLINE: Yes.</p>

<p style="text-align: right;">Page 50</p> <p>1 THE WITNESS: To further address the issue of the  2 question about where the aging or the retirees, whatever you  3 want to call them, are moving, the 55 and older housing  4 preference survey says, "Many of the 19,400 people age 55 or  5 older who plan to move from a current residence to another  6 residence in Montgomery County, are looking at Bethesda,  7 Silver Spring, and the I-270 corridor. The younger seniors  8 55 to 64, expressed a preference for the I-270 corridor."  9 MR. GROSSMAN: All right. That was an additional  10 quote from SR-5 in Exhibit 34(b).  11 MR. KLINE: Yes, sir. That's correct.  12 THE WITNESS: Yes, sir.  13 MR. GROSSMAN: Okay.  14 THE WITNESS: So, what I take this to mean is,  15 there is a demand for this type of housing within the I-270  16 corridor.  17 MR. GROSSMAN: Okay.  18 THE WITNESS: Those are my remarks on that.  19 (Discussion off the record.)  20 THE WITNESS: Okay. To continue. These are all  21 things we looked at as a property owner, the fact that there  22 is substantial statistical data to support a need in this  23 area for a planned retirement community, whether it be a  24 preference survey, whether it be age and demographics,  25 whether it be change in County demographics.</p>	<p style="text-align: right;">Page 52</p> <p>1 that subject, Mr. Grossman.  2 MR. GROSSMAN: Okay.  3 THE WITNESS: There again, when we evaluated the  4 infrastructure around this property, not only the vehicular  5 infrastructure of a six lane road and a four lane road, its  6 proximity to areas like Milestone, within the three-mile  7 radius is the Germantown Town Center.  8 When we evaluated other amenities, for example,  9 that water and sewer are available at the site, we have  10 worked with WSSC to come up with a connection plan for the  11 site, that we have water and sewer, the roads, the  12 amenities. When we look at the need and consider it in  13 context with creating lifestyle, which, we've been around  14 this County our whole lives, and it's important for us to  15 have a legacy on properties that we have.  16 When we look at the opportunity to create  17 lifestyle for the active adult, and for them to be able to  18 take advantage of the amenities of Clarksburg Village, the  19 amenities within Milestone, the amenities within Germantown  20 Town Center, there is everything from performing art centers  21 to libraries, medical, I think three or four grocery stores,  22 book stores. Milestone is a short walk or bike ride from  23 the property. Right across the street from this property is  24 a recreational park.  25 BY MR. KLINE:</p>
<p style="text-align: right;">Page 51</p> <p>1 There's also issues of, in our opinion, what  2 constitutes smart land use. Two-acre residential million  3 dollar homes on a six lane arterial road, on a property  4 that's bisected by a four lane arterial road did not impress  5 us as smart land use, and started us down the road for --  6 but other things have changed other than --  7 MR. GROSSMAN: Started us down the road?  8 THE WITNESS: Of looking at alternate land uses.  9 Other things have changed, not only with regard to  10 statistical data that have made us have to gravitate towards  11 another use of the property. Most recently, at the end of  12 2012, I don't have the exact date, the County Council voted  13 on the sustainable growth and agricultural preservation act.  14 The sustainable growth and agricultural  15 preservation act places our property in a tier two category.  16 In a tier two category, septic use is prohibited. So when  17 we look at the underlying zone, we can no longer develop  18 under that zone at all. It is two-acre well and septic.  19 The property is now recommended for water and sewer  20 connection.  21 MR. GROSSMAN: It's now recommended by whom?  22 THE WITNESS: By the sustainable growth and  23 agricultural preservation act.  24 MR. GROSSMAN: Okay.  25 MR. KLINE: There will be further testimony on</p>	<p style="text-align: right;">Page 53</p> <p>1 Q Before you leave that, let's maybe kind of put  2 this into geographical context. This Exhibit 34(l), an  3 aerial photograph of the subject property identified as  4 number 6 in the center. Let me just pick up some of the,  5 you mentioned Milestone. You mean the shopping center to  6 the south?  7 A Correct.  8 Q All right. Just tell us what's there?  9 A Milestone has the Suburban Fitness Center, which  10 is basically a gym, but it also is where you can go get  11 therapeutic services. The new Wegmans is going to be at  12 Milestone. There's a Home Depot, a Border's, a Wal-Mart, a  13 Best Buy, another shopping center. I think there's at least  14 three or four, maybe more, restaurants, AT&amp;T store. I mean,  15 there is all kinds of stuff.  16 MR. GROSSMAN: What's the distance from your  17 property to Milestone?  18 MR. KLINE: Basically, the loops on here are  19 shown.  20 THE WITNESS: That's a one-mile loop, I believe.  21 (Discussion off the record.)  22 MR. KLINE: We're saying this shows a half mile  23 from the subject property.  24 MR. GROSSMAN: Okay.  25 BY MR. KLINE:</p>

<p style="text-align: right;">Page 54</p> <p>1 Q And when I interrupted you, I think you were</p> <p>2 talking about a park --</p> <p>3 A Oh yes.</p> <p>4 Q -- south of the property?</p> <p>5 A Right across the street is the Ridge Road</p> <p>6 Recreational Park.</p> <p>7 Q Which on 34(l) is identified as number 7, Mr.</p> <p>8 Grossman.</p> <p>9 A Which is much more than a passive park. There are</p> <p>10 activity opportunities there, from tennis to ball fields to</p> <p>11 dog walks. It's a great amenity for these residents.</p> <p>12 MR. GROSSMAN: Can you point to that park on the</p> <p>13 map?</p> <p>14 MR. KLINE: Yes. It's labeled number 7,</p> <p>15 immediately south of Brink Road, which is immediately south</p> <p>16 of the subject property.</p> <p>17 MR. GROSSMAN: Okay. South, southwest of the</p> <p>18 property.</p> <p>19 MR. KLINE: Right. Ridge Road Recreational Park.</p> <p>20 MR. GROSSMAN: Okay. All right.</p> <p>21 THE WITNESS: So we took all that into</p> <p>22 consideration. The incredible amenities around the property</p> <p>23 and infrastructure and the need. And that is what's been</p> <p>24 very much a driving force in the planned retirement</p> <p>25 community zone.</p>	<p style="text-align: right;">Page 56</p> <p>1 towards, and I'm pretty close to qualifying. And I think it</p> <p>2 really, we have, there have been a number of letters sent in</p> <p>3 support of this, and most notably, some are from realtors.</p> <p>4 And the realtors are, very much want this type of a product,</p> <p>5 because they are forced now to sell empty nesting downsizing</p> <p>6 couples a house that they don't want, for them to stay in</p> <p>7 the County, because most parents want to live near their</p> <p>8 kids to be near their grandkids. And there is simply a lack</p> <p>9 of product in this County.</p> <p>10 And as we all well know, the County's master plan</p> <p>11 is largely developed. It is largely built out. And</p> <p>12 project, opportunities like this simply don't exist in the</p> <p>13 County, where you have this level of amenity, and this level</p> <p>14 of infrastructure adjacent to an open 54-acre parcel of</p> <p>15 land.</p> <p>16 MR. GROSSMAN: Okay.</p> <p>17 BY MR. KLINE:</p> <p>18 Q Mr. Butz, remembering the hearing examiner's</p> <p>19 comment at the beginning, let's try and address some of the</p> <p>20 objections that were raised by other folks. Mr. Hancock was</p> <p>21 quoted by Mr. Grossman as saying, he was concerned about the</p> <p>22 lack of recreational facilities on the property.</p> <p>23 Understanding Mr. Unterberg is going to go into</p> <p>24 greater detail about that, but in your discussions with Elm</p> <p>25 Street in terms of cooperation in the future, what kind of</p>
<p style="text-align: right;">Page 55</p> <p>1 We believe that it really is in the public</p> <p>2 interest to provide a housing type to this under-served</p> <p>3 segment of the Montgomery County population, that have</p> <p>4 expressed a desire for this type of product, and to live in</p> <p>5 this area, and what to stay in Montgomery County, but have</p> <p>6 not been accommodated.</p> <p>7 And that is really what has been, started this</p> <p>8 process 10 years ago when we filed initial documents, and</p> <p>9 had kept us going ever since is, the need is there. And it</p> <p>10 is smart growth. It is smart to put right size housing,</p> <p>11 more affordable housing. The clients asked for smaller</p> <p>12 right fit housing in areas where they are appropriate. And</p> <p>13 we believe it is very appropriate here. Any other</p> <p>14 questions?</p> <p>15 MR. GROSSMAN: Do you have any additional</p> <p>16 questions?</p> <p>17 BY MR. KLINE:</p> <p>18 Q Let me sort of ask you a wrap up question, and</p> <p>19 that is, all this section SR-1 through 8 in Exhibit 34(b)</p> <p>20 which addresses senior housing issues, is your effort to</p> <p>21 demonstrate that this proposal satisfies other County plans</p> <p>22 and policies for this kind of housing, well, to provide</p> <p>23 housing for all, basically a full life cycle community?</p> <p>24 A Absolutely. And I believe it really is important</p> <p>25 within the County. This is a community I would gravitate</p>	<p style="text-align: right;">Page 57</p> <p>1 programming opportunities were discussed for the community</p> <p>2 center that would provide recreational activities in this</p> <p>3 community itself?</p> <p>4 MR. GROSSMAN: This is the planned community</p> <p>5 center for the subject site?</p> <p>6 MR. KLINE: Yes, sir.</p> <p>7 THE WITNESS: We do have a planned community</p> <p>8 center for the subject site. Their, first off, and I won't</p> <p>9 have the exact page number, because it's a very long</p> <p>10 document. Within the --</p> <p>11 MR. GROSSMAN: You don't have to reference that.</p> <p>12 THE WITNESS: No, was just looking for the title</p> <p>13 of it. It was the AARP beyond 50.05 document.</p> <p>14 MR. GROSSMAN: This is the SR-7 document?</p> <p>15 MR. KLINE: That sounds right, sir.</p> <p>16 MR. GROSSMAN: That's the one you were referring</p> <p>17 to before? That was SR-7.</p> <p>18 MR. KLINE: 34(b).</p> <p>19 MR. GROSSMAN: Okay. Well, the question calls for</p> <p>20 you to describe the amenities --</p> <p>21 THE WITNESS: Yes, sir.</p> <p>22 MR. GROSSMAN: -- that are going to be offered at</p> <p>23 the planned community center on site. You don't have to</p> <p>24 look at what AARP said to answer that.</p> <p>25 THE WITNESS: I understand. One of the great</p>

<p style="text-align: right;">Page 58</p> <p>1 advantages that we have at the site is the integration of</p> <p>2 trail systems, within our site, Clarksburg Village, we have</p> <p>3 sidewalks to the park, sidewalks to Milestone.</p> <p>4 Within this document it indicated on page 62 that</p> <p>5 having walking and biking trails is the number one</p> <p>6 preferable activity option of people within this age</p> <p>7 demographic. So we are well-integrated with our trail and</p> <p>8 biking system. And that is very important.</p> <p>9 Secondly, we do have a community center. And the</p> <p>10 community center is a resident directed center, and it can</p> <p>11 be used for a myriad of operations. For example, I have a</p> <p>12 friend who is a financial planner. He would welcome the</p> <p>13 opportunity to set up shop there and do coaching sessions.</p> <p>14 It can be used for everything from activity classes to</p> <p>15 educational to cooking to, or just to plain getting together</p> <p>16 as a community on site.</p> <p>17 And as will be testified to later, under, we, for</p> <p>18 this age demographic, we provide, there's a point system. I</p> <p>19 don't know where the point system came from.</p> <p>20 BY MR. KLINE:</p> <p>21 Q Go ahead. You're --</p> <p>22 A There's a point system that will be highlighted</p> <p>23 later. And basically, for this age demographic, you have to</p> <p>24 have a certain number of recreational points. We</p> <p>25 significantly exceed the required recreational points on</p>	<p style="text-align: right;">Page 60</p> <p>1 MR. HANCOCK: Can I comment on that?</p> <p>2 MR. GROSSMAN: You can't comment, but you can ask</p> <p>3 questions about it. If he can't answer it, he's answered,</p> <p>4 he doesn't know. There will be other witnesses, apparently,</p> <p>5 that will testify.</p> <p>6 THE WITNESS: You can cross-examine them on the</p> <p>7 exact square footage.</p> <p>8 MR. HANCOCK: My understanding was, it has 400</p> <p>9 square feet.</p> <p>10 MR. KLINE: Objection.</p> <p>11 MR. GROSSMAN: You can't, you really can't --</p> <p>12 you'll have an opportunity to testify when they are, at the</p> <p>13 appropriate time, either when they are completed or earlier,</p> <p>14 depending on circumstances. But right now is your</p> <p>15 opportunity to ask questions related to his direct</p> <p>16 examination.</p> <p>17 MR. HANCOCK: Okay. One of the statements that</p> <p>18 Mr. Butz made was that there was bike paths and sidewalks</p> <p>19 leading to this off-site recreational facilities.</p> <p>20 MR. GROSSMAN: Right.</p> <p>21 BY MR. HANCOCK:</p> <p>22 Q How do we get across the four and six-lane high</p> <p>23 ways? Do you have a tunnel planned or an overpass or what?</p> <p>24 MR. GROSSMAN: All right. Mr. Butz?</p> <p>25 THE WITNESS: There are crosswalks on those roads</p>
<p style="text-align: right;">Page 59</p> <p>1 site. When you add to this the recreational park directly</p> <p>2 across the street, it is very significant.</p> <p>3 MR. GROSSMAN: Is there going to be a restaurant</p> <p>4 in this community center?</p> <p>5 THE WITNESS: No, sir. The community center is</p> <p>6 basically, you can think of it more like flex space.</p> <p>7 MR. GROSSMAN: Okay. All right. Mr. Kline.</p> <p>8 BY MR. KLINE:</p> <p>9 Q Mr. Butz, I don't have any more questions for you.</p> <p>10 Is there anything I failed to ask you that you want to</p> <p>11 comment on?</p> <p>12 A I don't believe so.</p> <p>13 MR. KLINE: Okay. Then I have no further</p> <p>14 questions of Mr. Butz.</p> <p>15 MR. GROSSMAN: All right. Cross-examination. Mr.</p> <p>16 Hancock, do you have any questions of Mr. Butz?</p> <p>17 MR. HANCOCK: Just a couple.</p> <p>18 CROSS-EXAMINATION</p> <p>19 BY MR. HANCOCK:</p> <p>20 Q What's the size of the community center, Mr. Butz?</p> <p>21 (Discussion off the record.)</p> <p>22 MR. GROSSMAN: No, you can't ask for help from the</p> <p>23 audience.</p> <p>24 THE WITNESS: I don't know the exact square</p> <p>25 footage of it. It will be highlighted in another --</p>	<p style="text-align: right;">Page 61</p> <p>1 existing.</p> <p>2 BY MR. HANCOCK:</p> <p>3 Q So we're going to have crosswalks for kids on</p> <p>4 these four and six lane highways?</p> <p>5 A Well, it's an age-restricted community, age 50 and</p> <p>6 older.</p> <p>7 Q That doesn't mean anything. I guarantee --</p> <p>8 MR. GROSSMAN: Well, no, you can't argue with him</p> <p>9 about it. You can only ask him, you can ask him a question,</p> <p>10 and he answered the question. You asked him, how are you</p> <p>11 going to get across these roads, and he answered,</p> <p>12 crosswalks.</p> <p>13 MR. HANCOCK: I think that's all I have.</p> <p>14 MR. GROSSMAN: All right. Mr. Wills.</p> <p>15 CROSS-EXAMINATION</p> <p>16 BY MR. WILLS:</p> <p>17 Q This A-305, M-83, this is the Mid-County Highway?</p> <p>18 Is that what --</p> <p>19 A Yes.</p> <p>20 Q Okay. And it will have four lanes going through</p> <p>21 this property?</p> <p>22 A Correct.</p> <p>23 Q And what will, you know, for a highway the speed</p> <p>24 limit is 45-50 miles an hour with --</p> <p>25 A I do not know what the planned speed limit is for</p>



<p style="text-align: right;">Page 62</p> <p>1 this road.</p> <p>2 Q But it's two, it's four-lane highway. It's</p> <p>3 called, Mid-County Highway, so it's going to be a relatively</p> <p>4 fast speed limit through the middle of the property?</p> <p>5 A I have no idea what the speed limit is on this</p> <p>6 road.</p> <p>7 Q Okay. You had talked about, I just want to</p> <p>8 follow-up on what Mr. Hancock had said about access to</p> <p>9 trails and green space at Clarksburg Village. These trails</p> <p>10 will lead from this community to the village, or do I drive</p> <p>11 to the village to get the amenities?</p> <p>12 A There's an integrated sidewalk.</p> <p>13 Q And in your testimony, you talked about detached</p> <p>14 homes that 34 percent of 55 and older preferred detached</p> <p>15 homes. Was that the number I wrote down when you were</p> <p>16 talking about it. Did I get that number correct?</p> <p>17 A The 55 and older housing preference, sir, has a</p> <p>18 number within the graph in that survey, has, indicates a</p> <p>19 preference of what the people in that demographic, and that</p> <p>20 survey group, what their preference was for housing.</p> <p>21 Q And was that 34 percent?</p> <p>22 MR. GROSSMAN: 34 percent, according to what the</p> <p>23 witness indicated before. 34 percent indicated they</p> <p>24 preferred to own single-family home. Five percent indicated</p> <p>25 that they would prefer to rent a single-family home. And</p>	<p style="text-align: right;">Page 64</p> <p>1 A I believe there will be an exhibit presented that</p> <p>2 shows the integrated bike and pedestrian movement in and</p> <p>3 around the community. But the other amenity item is the on-</p> <p>4 site community center, which will be a citizen directed</p> <p>5 community center as to activities and other events.</p> <p>6 Q Okay. And then you were using this park, which is</p> <p>7 on, gosh, the south, southern portion --</p> <p>8 MR. GROSSMAN: Southwest.</p> <p>9 BY MR. WILLS:</p> <p>10 Q -- southwest portion. Will there be any overpass</p> <p>11 over Brink Road to get to this park, anything different than</p> <p>12 was currently now in place on Brink Road?</p> <p>13 A More than likely there will be a crosswalk,</p> <p>14 actually, to the park.</p> <p>15 Q But you don't know?</p> <p>16 A I don't know what the future of Brink Road is.</p> <p>17 Brink Road is currently, at that point, a single lane</p> <p>18 unmarked road.</p> <p>19 Q Right.</p> <p>20 A It's master planned to be different.</p> <p>21 MR. GROSSMAN: Well, I guess, part of the question</p> <p>22 would be, is there anything in your proposed plan which</p> <p>23 would call for ways of getting over Brink Road?</p> <p>24 THE WITNESS: No.</p> <p>25 MR. WILLS: Okay.</p>
<p style="text-align: right;">Page 63</p> <p>1 then there were other percentages for other --</p> <p>2 MR. WILLS: And I think this was used as</p> <p>3 justification for having these additional single-family</p> <p>4 homes. I happen to be in that age group, unfortunately, and</p> <p>5 I guess I could say I prefer a single-family home.</p> <p>6 MR. GROSSMAN: Well, you can't really testify now,</p> <p>7 but you can make a list of all your --</p> <p>8 MR. WILLS: Got you. Got you.</p> <p>9 MR. GROSSMAN: -- ideas that you want to present,</p> <p>10 and you will be given the opportunity to testify.</p> <p>11 MR. WILLS: But it was 34 percent.</p> <p>12 MR. GROSSMAN: Right.</p> <p>13 MR. WILLS: Okay.</p> <p>14 MR. GROSSMAN: Of that survey group.</p> <p>15 MR. WILLS: Just give me one minute.</p> <p>16 MR. GROSSMAN: Sure. Take your time.</p> <p>17 BY MR. WILLS:</p> <p>18 Q You had made a statement that there's no product</p> <p>19 like this built since the 1960's.</p> <p>20 A There's been no planned retirement community</p> <p>21 approved since the 1960's, and that was Leisure World.</p> <p>22 Q And that was Leisure World. And again, if you</p> <p>23 could just, you had talked about the amenity package for</p> <p>24 this property. Could you just real quickly give me the list</p> <p>25 of amenities that this property possesses?</p>	<p style="text-align: right;">Page 65</p> <p>1 MR. HANCOCK: That would also include the Snowden</p> <p>2 Parkway?</p> <p>3 MR. GROSSMAN: Well, hold on. Hold on one second.</p> <p>4 Let's finish with Mr. Wills.</p> <p>5 MR. WILLS: I've concluded my questions.</p> <p>6 MR. GROSSMAN: Okay. Before we get to you, Mr.</p> <p>7 Goldberg, did you have, Mr. Hancock, did you have another</p> <p>8 question?</p> <p>9 MR. HANCOCK: The question about Brink Road</p> <p>10 actually applies to Snowden Road, both ways, because the</p> <p>11 pool is supposed to be north.</p> <p>12 MR. KLINE: We probably need to let the hearing</p> <p>13 examiner catch up with what is Snowden Parkway.</p> <p>14 MR. HANCOCK: I'm sorry, Jody, I didn't hear you.</p> <p>15 MR. KLINE: Okay. When you're referencing Snowden</p> <p>16 Parkway --</p> <p>17 MR. HANCOCK: Yes.</p> <p>18 MR. KLINE: -- and it's the first time it's come</p> <p>19 up. And Mr. Grossman doesn't know what that is or where it</p> <p>20 is.</p> <p>21 MR. HANCOCK: Okay.</p> <p>22 MR. KLINE: So do you want to describe it and I'll</p> <p>23 show him where it is on here?</p> <p>24 MR. HANCOCK: Well, my understanding was that the</p> <p>25 pool to serve this area was over, located up in the R-200</p>

<p style="text-align: right;">Page 66</p> <p>1 area, north of the property, and you had to go off-site to</p> <p>2 use the pool. And I'm wondering how we're going to cross</p> <p>3 the road that Elm Street is going to put in.</p> <p>4 MR. GROSSMAN: Is there going to be another</p> <p>5 witness on that subject --</p> <p>6 MR. KLINE: Yes.</p> <p>7 MR. GROSSMAN: -- of road crossings, sir?</p> <p>8 MR. KLINE: Yes.</p> <p>9 MR. HANCOCK: Okay.</p> <p>10 MR. GROSSMAN: Perhaps we'll wait for that, and</p> <p>11 that may be able to clarify it. Okay. Mr. Goldberg, your</p> <p>12 turn to cross-examination.</p> <p>13 MR. GOLDBERG: I have just a couple of quick</p> <p>14 questions for you.</p> <p>15 CROSS-EXAMINATION</p> <p>16 BY MR. GOLDBERG:</p> <p>17 Q What guarantees are in place to keep this a PRC</p> <p>18 community, and so the houses could not be sold later as</p> <p>19 regular houses?</p> <p>20 A Well, the zone is a PRC zone. The deeds for these</p> <p>21 houses are restricted. Very much the same way that Leisure</p> <p>22 World has managed to maintain an age-restricted community</p> <p>23 for decades, the same underlying methodology is incorporated</p> <p>24 within the zone itself. And the restriction is on the deed.</p> <p>25 Q And what kind of buffer is there between your</p>	<p style="text-align: right;">Page 68</p> <p>1 MR. GROSSMAN: Sure. Why not?</p> <p>2 MR. KLINE: Sure.</p> <p>3 MR. GROSSMAN: Unless anybody, if anybody needs me</p> <p>4 to take a break, any of the participants, I will do so now.</p> <p>5 Or the court reporter, I will do so now. But if not, we'll</p> <p>6 get another witness in.</p> <p>7 MR. KLINE: We'll call our next witness, Mr. Gary</p> <p>8 Unterberg.</p> <p>9 MR. GROSSMAN: Okay.</p> <p>10 (Discussion off the record.)</p> <p>11 MR. GROSSMAN: All right. Mr. Unterberg, would you</p> <p>12 raise your right hand, please?</p> <p>13 (Witness sworn.)</p> <p>14 MR. GROSSMAN: All right. You may proceed.</p> <p>15 DIRECT EXAMINATION</p> <p>16 BY MR. KLINE:</p> <p>17 Q Mr. Unterberg, would you please state and spell</p> <p>18 your name, and give us your business address?</p> <p>19 A Gary Unterberg. It's spelled U-N-T-E-R-B-E-R-G,</p> <p>20 with Rodgers Consulting, 19847 Century Boulevard, Suite 200,</p> <p>21 Germantown, Maryland 20874.</p> <p>22 MR. GROSSMAN: I'm glad you spelled it because I</p> <p>23 had it as Underberg. So it's U-N-T-E-R-B-E-R-G?</p> <p>24 THE WITNESS: There's a T in there, yes.</p> <p>25 MR. GROSSMAN: Okay. Thank you.</p>
<p style="text-align: right;">Page 67</p> <p>1 proposed development and the homes on Brink Meadow Court?</p> <p>2 MR. KLINE: I object to the question. It goes</p> <p>3 beyond the scope of his examination, and will be addressed</p> <p>4 by other witnesses.</p> <p>5 MR. GROSSMAN: Is Mr. Butz going to be remaining</p> <p>6 here this afternoon?</p> <p>7 THE WITNESS: Yes.</p> <p>8 MR. GROSSMAN: All right.</p> <p>9 MR. KLINE: He wouldn't miss it.</p> <p>10 MR. GROSSMAN: If it's not addressed by other</p> <p>11 witnesses, then we could recall him to ask that question.</p> <p>12 MR. KLINE: Yes. Sure.</p> <p>13 MR. GROSSMAN: Does that satisfy you for that, for</p> <p>14 the time being, Mr. Goldberg? You have to answer yes or no.</p> <p>15 MR. GOLDBERG: Yes. Yes.</p> <p>16 MR. GROSSMAN: All right. Then we'll sustain the</p> <p>17 objection for the time being. Any other questions?</p> <p>18 MR. GOLDBERG: No.</p> <p>19 MR. GROSSMAN: Any redirect as a result of those</p> <p>20 questions?</p> <p>21 MR. KLINE: No, sir.</p> <p>22 MR. GROSSMAN: All right. Thank you, Mr. Butz.</p> <p>23 MR. BUTZ: Thank you, sir.</p> <p>24 MR. GROSSMAN: Your next witness?</p> <p>25 MR. KLINE: Go ahead and keep going?</p>	<p style="text-align: right;">Page 69</p> <p>1 MR. KLINE: Mr. Grossman, I have submitted</p> <p>2 Mr. Unterberg's resume is Exhibit 55(a). You will note on</p> <p>3 there that he has previously qualified as an expert in land</p> <p>4 use planning, and I am offering him as an expert. Since I</p> <p>5 didn't bring resumes, I am glad to go through a little voir</p> <p>6 dire, if the gentlemen have any questions about his</p> <p>7 qualifications. But I don't know if he's, have you</p> <p>8 qualified before Mr. Grossman?</p> <p>9 THE WITNESS: I have not.</p> <p>10 MR. GROSSMAN: I don't believe so. You said you</p> <p>11 didn't bring a resume.</p> <p>12 MR. KLINE: I just didn't.</p> <p>13 MR. GROSSMAN: You have a statement of</p> <p>14 qualifications in here, 55(a). Is that what you're talking</p> <p>15 about? You didn't --</p> <p>16 MR. KLINE: His resume is in there.</p> <p>17 MR. GROSSMAN: Right. Okay. You mean you didn't</p> <p>18 bring copies of it.</p> <p>19 MR. KLINE: I didn't bring copies for these</p> <p>20 gentlemen, right.</p> <p>21 MR. GROSSMAN: Okay. Right. I think, yes, I</p> <p>22 think in view of that, and gentlemen, we can let you also</p> <p>23 take a look at his resume from the file. I'm sure that Mr.</p> <p>24 Kline is going to be offering this witness as an expert in</p> <p>25 land planning, so there is his resume.</p>

<p style="text-align: right;">Page 70</p> <p>1 And what we do when an expert is offered as a  2 witness, we have an opportunity for him to be questioned on  3 his qualifications by the parties. And that's called a voir  4 dire. And that process of questioning occurs prior to him  5 being accepted as an expert in the field. And so we look to  6 his qualifications or any objections anybody might have to  7 his qualifications before he's accepted as an expert.  8 One of the issues that comes up is whether or not  9 he's been previously certified as an expert in any case at  10 all, and especially any cases in Montgomery County. So  11 while you are looking at the resume there, we'll let Mr.  12 Kline proceed to question the witness regarding his  13 qualifications.  14 BY MR. KLINE:  15 Q Well, and why don't we kind of do it in reverse  16 order. Can you advise the folks that are here, Mr.  17 Grossman, when you have qualified as an expert in land use  18 planning, and the nature of the cases, whether they were  19 contested cases or not?  20 A Yes. Most recently, the City of Gaithersburg. I  21 have been qualified in Montgomery County. The relevant  22 Clarksburg case is back in 2002, case 806, G-806. Ms.  23 Carrier was the hearing examiner. And I qualified or  24 testified for Cabin Branch for the MXPD zoning, and under  25 land planning, site planning, and landscape architecture.</p>	<p style="text-align: right;">Page 72</p> <p>1 MR. GROSSMAN: All right. Mr. Kline, would you  2 mind returning the exhibit to me?  3 MR. KLINE: I would like to so offer Mr. Unterberg  4 as an expert in land use planning, based on his academic  5 credentials, his time and experience, and his previous  6 qualifications.  7 MR. GROSSMAN: All right. Do any members of the  8 opposition wish to question the witness regarding his  9 qualifications?  10 MR. HANCOCK: No.  11 MR. WILLS: No.  12 MR. GOLDBERG: No.  13 MR. GROSSMAN: All right. Based on this witness'  14 qualifications indicated in his resume, Exhibit 55(a), and  15 as he's testified to here now, and based on his prior  16 acceptance as an expert before this body in land use  17 planning, I accept him as an expert as such.  18 MR. KLINE: Thank you.  19 BY MR. KLINE:  20 Q I think this works better, since you've got a raft  21 of boards over there, for you to select the boards and just  22 let you kind of walk through the presentation in the order  23 you think works best.  24 A With that, I will move over to the boards. And  25 I'm going to start with 34(l) which we've previously been</p>
<p style="text-align: right;">Page 71</p> <p>1 MR. GROSSMAN: Ms. Carrier, who was the --  2 THE WITNESS: Was the hearing examiner.  3 MR. GROSSMAN: -- director of the Office of Zoning  4 and Administrative Hearings, and the hearing examiner, and  5 is now the chair of the Planning Board. And she accepted  6 you as an expert in land planning?  7 THE WITNESS: Yes.  8 MR. GROSSMAN: Okay. Any other testimony?  9 BY MR. KLINE:  10 Q Just real quickly, without getting into all your  11 academic credentials, for how long have you been doing what  12 it is you're going to be talking about today?  13 A Well, come this fall, I graduated the University  14 of Illinois 1983, so this May will be 30 years. And in  15 Montgomery County specifically, the last 25 years. And  16 prior to testifying with Cabin Branch in Clarksburg, I've  17 testified on a number of cases, including Montgomery Village  18 and a number of the town sector development plan amendments  19 that --  20 MR. GROSSMAN: Testified as an expert?  21 THE WITNESS: As an expert, yes. I've also  22 testified more recently, about 2004-2005, City of  23 Gaithersburg, a wide range of projects from the Crown  24 property zoning and annexation, the Watkins Mill Town Center  25 zoning; also Kentlands and Lakelands zoning.</p>	<p style="text-align: right;">Page 73</p> <p>1 discussing, and talk a little about Clarksburg, Germantown,  2 the big picture in the area. I will then go to an exhibit  3 showing you the Brink Road neighborhood, and then will third  4 go specifically to the site.  5 On this 34(l), Clarksburg Community Park open  6 space green link exhibit, the subject site is roughly 54  7 acres located east of Route 27 and north of Brink Road.  8 BY MR. KLINE:  9 Q You said east of Route 27?  10 A Sorry, west of 27, east of the subject site. The  11 subject site is west of 27. Thank you. With that said, to  12 the south, Route 27 continues, intersections with Frederick  13 Road or Route 355, which also is this way. 27 also  14 continues on to 270 at the bottom of the page.  15 MR. GROSSMAN: It continues on south, southwest,  16 right?  17 THE WITNESS: Southwest, yes. The area to the  18 south of Brink Road is Germantown, the Germantown master  19 plan planning area. The properties are generally  20 residential, southwest and to the south. The zoning ranges,  21 but it's predominant R-200 TDR and the densities range from  22 five to seven units per acre.  23 Approximately a half mile from the Brink Road  24 boundary to the south is the Milestone Shopping Center. So  25 from Brink Road to the corner of Milestone is a half acre,</p>

<p style="text-align: right;">Page 74</p> <p>1 or a half mile.</p> <p>2 BY MR. KLINE:</p> <p>3 Q And before you leave that, Mr. Unterberg, because</p> <p>4 I missed it earlier, in the upper right-hand corner of</p> <p>5 Exhibit 34(l), you actually have a code showing that each of</p> <p>6 these parable of circles are --</p> <p>7 A The bulls eye. There are two blue. The first one</p> <p>8 is a five-minute walk, which is one-quarter mile, and that's</p> <p>9 measured from the center of the site. So everything in this</p> <p>10 first circle is one-quarter mile, a five-minute walk. The</p> <p>11 second is a 10-minute walk, which is a half mile. And</p> <p>12 that's this second blue circle. So from the center, that's</p> <p>13 a half mile, 10-minute walk.</p> <p>14 MR. GROSSMAN: When you say that --</p> <p>15 BY MR. KLINE:</p> <p>16 Q To the southern boundary --</p> <p>17 A From the center --</p> <p>18 Q -- to the second circle.</p> <p>19 A -- to the southern boundary and/or the second</p> <p>20 circle is a 10-minute walk. The third circle, which is now</p> <p>21 in an orange color, is a five-minute bike ride, which is</p> <p>22 deemed to be three-quarters of a mile. So again, from the</p> <p>23 center of the property to the third circle, in this case I'm</p> <p>24 pointing south, is a five-minute bike ride. And then the</p> <p>25 last circle, which is the largest one, is a 10-minute bike</p>	<p style="text-align: right;">Page 76</p> <p>1 MR. GROSSMAN: All right.</p> <p>2 THE WITNESS: And in this case, 9 is Seneca</p> <p>3 Crossing Park, and 7 is Ridge Road Park.</p> <p>4 MR. GROSSMAN: All right.</p> <p>5 THE WITNESS: What I'd like to go to is Exhibit</p> <p>6 34(q) which is the land use report.</p> <p>7 BY MR. KLINE:</p> <p>8 Q Which is entitled what?</p> <p>9 A This is entitled the Brink Road transition area</p> <p>10 exhibit. In the master plan, the subject site, which again</p> <p>11 is west of 27, north of Brink Road, is in Brink Road</p> <p>12 transition area neighborhood.</p> <p>13 The legend, we show the Brink Road neighborhood</p> <p>14 boundary is in blue, which to the south is primarily Brink</p> <p>15 Road, where it, Brink Road joins 355. It continues over</p> <p>16 along the Germantown greenway to the west, and then it comes</p> <p>17 north. And then also travels a stream valley buffer to the</p> <p>18 north.</p> <p>19 And this boundary is from the master plan, the</p> <p>20 Clarksburg master plan. It then comes down 27. And then it</p> <p>21 comes along the future M-83, which is the eastern boundary</p> <p>22 around the cemetery as previously mentioned.</p> <p>23 Also on this we're showing the southern property</p> <p>24 line to the subject site. It is the contiguous property to</p> <p>25 the Germantown planning area, which is in the green dots,</p>
<p style="text-align: right;">Page 75</p> <p>1 ride, and that's one and a half miles. And that's the</p> <p>2 largest circle on this exhibit.</p> <p>3 MR. GROSSMAN: Okay.</p> <p>4 THE WITNESS: In particular, we have five to seven</p> <p>5 units per acre density to the south, in Germantown. Also</p> <p>6 part of the Germantown master plan is the Germantown</p> <p>7 greenway which constitutes Seneca Crossing Park, which is</p> <p>8 black circle number 9. Also Ridge Road Regional Park, a</p> <p>9 recreational park, which is black circle number 7. And a</p> <p>10 stream valley which continues west which separates</p> <p>11 Germantown from Clarksburg.</p> <p>12 MR. GROSSMAN: Now, I see on the right, there</p> <p>13 seems to be a legend on the right hand side of the exhibit.</p> <p>14 Those numbers, those places you indicated, are they</p> <p>15 indicated next to the numbers?</p> <p>16 THE WITNESS: Yes, yes. And I will be revisiting</p> <p>17 this exhibit, talking about Clarksburg Village and the</p> <p>18 recreation and how the Clarksburg Village and the subject</p> <p>19 site are integrated.</p> <p>20 MR. GROSSMAN: Okay. You have some things in</p> <p>21 black circles underneath. Are those the places you just</p> <p>22 identified?</p> <p>23 THE WITNESS: Yes. The yellow circles are areas</p> <p>24 in Clarksburg Village. The black circles are primarily</p> <p>25 County facilities, either parks or schools.</p>	<p style="text-align: right;">Page 77</p> <p>1 which again, the Germantown greenway, which includes Ridge</p> <p>2 Road regional park, and is adjacent to the southern</p> <p>3 boundary.</p> <p>4 Also the orange dots are the Clarksburg master</p> <p>5 plan boundary area. And you can see that the Brink Road</p> <p>6 neighborhood southern boundary, the Clarksburg southern</p> <p>7 boundary, and in this case, the Germantown master plan</p> <p>8 northern boundary are all in the same line. Graphically</p> <p>9 they are split apart.</p> <p>10 One thing you'll hear further testimony on from</p> <p>11 Ms. Russel later on is, this denotes the neighborhood. On</p> <p>12 page 40 of the master plan, there is a density allocation or</p> <p>13 cap of 1,000 units.</p> <p>14 MR. GROSSMAN: You said this describes the</p> <p>15 neighborhood. What's the antecedent for this? What's the</p> <p>16 this that describes the neighborhood?</p> <p>17 THE WITNESS: Well, the blue boundary is from the</p> <p>18 master plan. And page 40 notes that the Brink Road</p> <p>19 neighborhood --</p> <p>20 MR. GROSSMAN: Okay.</p> <p>21 THE WITNESS: -- has a maximum of 1,000 units.</p> <p>22 MR. GROSSMAN: Okay. You're not talking about, I</p> <p>23 thought you were referring to the defined surrounding area</p> <p>24 for the subject site.</p> <p>25 THE WITNESS: No.</p>

<p style="text-align: right;">Page 78</p> <p>1 MR. GROSSMAN: Okay.</p> <p>2 MR. KLINE: We'll get to that separately.</p> <p>3 THE WITNESS: This is the neighborhood for the</p> <p>4 master plan.</p> <p>5 MR. GROSSMAN: Okay.</p> <p>6 THE WITNESS: Okay. What we did, we took an</p> <p>7 inventory. The neighborhood is developed, primarily, except</p> <p>8 for the subject site. We included the 140 proposed units</p> <p>9 for the site, and then the existing homes and the</p> <p>10 development of the Brink Road neighborhood; added that up.</p> <p>11 That grand total is 969 units, which is less than the 1,000</p> <p>12 units on page 40 of the master plan.</p> <p>13 MR. GROSSMAN: Okay.</p> <p>14 THE WITNESS: So we were within the master plan</p> <p>15 density for the neighborhood, with the 140 units included.</p> <p>16 I'm going to go through a series of exhibits for the site</p> <p>17 itself. This is Exhibit 34(c), property identification</p> <p>18 class. This shows --</p> <p>19 BY MR. KLINE:</p> <p>20 Q Mr. Unterberg, you've reoriented the exhibit so</p> <p>21 that north is --</p> <p>22 A Correct. I have turned this so north is up.</p> <p>23 MR. GROSSMAN: Because hearing examiners are</p> <p>24 usually challenged in that regard. If you don't have north</p> <p>25 up, we get confused.</p>	<p style="text-align: right;">Page 80</p> <p>1 a ridge line. The property falls from Ridge Road, which is</p> <p>2 the high point or the high line. It falls to the west.</p> <p>3 There are several ridges and several drainage ways that</p> <p>4 traverse through the property.</p> <p>5 In the upper or northern, western corner of the</p> <p>6 property, the only forest on the site is noted. It's</p> <p>7 approximately less than half an acre. Actually, it's 0.48</p> <p>8 acres. I stand corrected. It's less than 0.4 acres. And</p> <p>9 part of that forest, what you'll see is also, that will be</p> <p>10 impacted by A-305, the master plan road that comes through</p> <p>11 the site.</p> <p>12 MR. GROSSMAN: Is the site in a special protection</p> <p>13 area?</p> <p>14 THE WITNESS: The site is in a special protection</p> <p>15 area. You'll hear more testimony on that from Mr. Rood.</p> <p>16 The Planning Board, on December 20th, approved the</p> <p>17 preliminary water quality plan, which is also the stormwater</p> <p>18 management concept. And Mr. Rood and Mr. Bossong will be</p> <p>19 speaking of that.</p> <p>20 MR. GROSSMAN: Okay. Mr. Kline, do we have</p> <p>21 anything from the Planning Board indicating their approval</p> <p>22 of the water quality plan?</p> <p>23 MR. KLINE: Their resolutions have been published.</p> <p>24 They can be made part of the record. Yes, sir.</p> <p>25 MR. GROSSMAN: They should be.</p>
<p style="text-align: right;">Page 79</p> <p>1 THE WITNESS: As you can see, we've turned this</p> <p>2 longitudinally, this whole page, but I will orientate the</p> <p>3 drawings so that north is up, and then they will match the</p> <p>4 other exhibits where north is up.</p> <p>5 This shows that the site is the lower 54 acres,</p> <p>6 metes and bounds, again, Ridge Road or Route 27 is, in this</p> <p>7 case, on the right hand side. The site is west of Ridge</p> <p>8 Road. Brink Road is to the south. You have residential to</p> <p>9 the west and residential to the north.</p> <p>10 There is line work on the southern third of the</p> <p>11 property. There's an existing gas easement that bisects the</p> <p>12 southern portion of the property. And this is the Atlantic</p> <p>13 Seaboard right-of-way, the liber folio, and this is for a</p> <p>14 liquid gas transmission that goes through the County. And</p> <p>15 it crosses this property.</p> <p>16 This is Exhibit 34(d) which is the approved</p> <p>17 natural resource inventory forest stand delineation. The</p> <p>18 property is orientated the same way, with Ridge Road going</p> <p>19 right. The property is to the west of Ridge Road.</p> <p>20 This shows the topography and the existing</p> <p>21 condition. Again, the gas easement at the southern portion.</p> <p>22 The property is open. It's generally rolling. The slopes</p> <p>23 are four to five percent. There are some flat areas, some</p> <p>24 steeper areas.</p> <p>25 In general, Ridge Road is true to its name. It is</p>	<p style="text-align: right;">Page 81</p> <p>1 MR. KLINE: Okay.</p> <p>2 THE WITNESS: I've got a copy. This is Exhibit</p> <p>3 34(e), which is a site aerial photo. A little bit different</p> <p>4 angle, but again, generally the top of the page is north.</p> <p>5 And Ridge Road is north and south.</p> <p>6 MR. GROSSMAN: Maybe you've got it reversed? Is</p> <p>7 that my --</p> <p>8 MR. KLINE: Angled wrong, maybe, but --</p> <p>9 THE WITNESS: It's more like this, compared to the</p> <p>10 previous exhibit. Does that make more sense?</p> <p>11 BY MR. KLINE:</p> <p>12 Q What's the big white disk?</p> <p>13 A This, that won't stay like that. This is the</p> <p>14 adjoining WSSC property on the east. This is the water</p> <p>15 tower, and this is the main water storage tank.</p> <p>16 MR. GROSSMAN: The large white disk is the main</p> <p>17 water storage tank?</p> <p>18 THE WITNESS: Correct. And there are two water</p> <p>19 tanks on the WSSC --</p> <p>20 MR. GROSSMAN: And the smaller one is?</p> <p>21 THE WITNESS: This is an elevated tower.</p> <p>22 MR. GROSSMAN: Elevated tower.</p> <p>23 THE WITNESS: And then this is a larger, it's</p> <p>24 graded up. You can see there is landscaping around it. But</p> <p>25 this is a ground level storage facility.</p>

<p style="text-align: right;">Page 82</p> <p>1 MR. GROSSMAN: I notice that the gas line easement 2 actually shows on the aerial photo. What is the marking on 3 it? Is that actually physically showing, or is that just -- 4 THE WITNESS: This is property line work that we 5 added. 6 MR. GROSSMAN: Okay. 7 THE WITNESS: And you'll see, there are some, for 8 instance, we added the proposed alignment, master plan 9 alignment for M-83 to the north, which is also east of the 10 property, that continues to go east. 11 To the south is the Brink Road. This is a glimpse 12 of part of Ridge Road Regional Park. To the west is the 13 residential neighborhood, Brink Meadows. To the north is 14 another residential neighborhood, Green Ridge Acres. You 15 can see the small, the site itself being farmed. It's an 16 open field. You can see, there is a small portion of forest 17 along the northwest corner. And there is a hedgerow that's 18 along the western property line. 19 MR. GROSSMAN: The hedgerow doesn't count as part 20 of the forest? 21 THE WITNESS: It does not, and Mr. Rood can 22 testify to that, but it does not have the number of trees 23 required to be a forest. 24 MR. GROSSMAN: It doesn't count as part of it, 25 since you already have some, something that meets the</p>	<p style="text-align: right;">Page 84</p> <p>1 THE WITNESS: And to move onto zoning history -- 2 MR. GROSSMAN: Can you hold on a second? All 3 right. So Exhibit No. 62 is the Planning Board resolution 4 of January 8, 2013, approving applicant's water quality 5 plan. Excuse me, Mr. Kline. Do you have a copy of this 6 resolution for the opposition? 7 MR. KLINE: Yes, sir. 8 MR. GROSSMAN: Okay. That will be Exhibit No. 62. 9 And Exhibit No. 63 -- 10 MR. KLINE: They're both attached together. 11 MR. GROSSMAN: Okay -- is the January 8, 2013, 12 resolution of the Planning Board approving applicant's 13 forest conservation plan. 14 (Exhibit No. 63 was marked 15 for identification.) 16 MR. KLINE: Let us know when you are ready, Mr. 17 Grossman. 18 MR. GROSSMAN: All right. We are ready. 19 THE WITNESS: But I was going to say, while we're 20 there, Exhibit 41(c) is a copy of the preliminary forest 21 conservation plan that was approved by the Planning Board. 22 And it primarily shows, and Mr. Rood will be testifying to 23 this later, primarily shows reforestation to the north, to 24 the west, and then also on the corner of Brink Road and 25 Route 27.</p>
<p style="text-align: right;">Page 83</p> <p>1 definition of forest on there that's connected to it? It 2 doesn't count as part of it? 3 THE WITNESS: Correct, but you will see, I will 4 get to, as we walk through the plan, how we propose to save 5 that hedgerow and add to it with additional forest. 6 MR. GROSSMAN: All right. 7 BY MR. KLINE: 8 Q Am I correct in saying that the hedgerow doesn't 9 have enough depth to qualify as forest? Doesn't it have to 10 be 50 feet deep or something? 11 A It's depth. It's number of trees. It's the type 12 of trees. There's a number of factors that determine that. 13 Q Okay. 14 A And that was reviewed, I believe, by Park and 15 Planning. 16 MR. KLINE: Mr. Grossman, I did have copies of 17 water quality plan resolution. 18 MR. GROSSMAN: Okay. 19 MR. KLINE: And the forest conservation plan 20 resolution of January 8, at the Planning Board. I would ask 21 that they be made exhibits in the record. 22 MR. GROSSMAN: All right. So the water quality 23 plan resolution of January 8, 2013, will be Exhibit No. 62. 24 (Exhibit No. 62 was marked 25 for identification.)</p>	<p style="text-align: right;">Page 85</p> <p>1 MR. GROSSMAN: Is it the intent of this 2 reforestation to not only meet the requirements of the 3 forest conservation plan, but also to provide additional 4 screening for the community? 5 THE WITNESS: Yes. Yes. And I will walk through 6 the specific buffers and dimensions -- 7 MR. GROSSMAN: Okay. 8 THE WITNESS: -- as we get to a few boards down 9 the road here. 10 MR. GROSSMAN: All right. Okay. 11 THE WITNESS: Is the zoning history okay? 12 MR. KLINE: It's okay. 13 THE WITNESS: Exhibit 34(f), which is the 14 certified zoning map which was mentioned previously, shows 15 the subject site in yellow. It's currently zoned RE-2. The 16 surrounding zoning to the west is RE-2. To the north there 17 is slim sliver or driveway that is zoned Country Inn, the 18 Yeager property. There's a historic house that sits back 19 here. And this actual driveway will be disconnected once A- 20 305 is brought through the property. And access for this 21 property will be from the new road, Snowden Farm Parkway, or 22 A-305. 23 MR. GROSSMAN: So will that driveway remain, and 24 will it continue to be zoned Country Inn, or will it be 25 reabsorbed into the R-200 zone to the north? How is that --</p>

<p style="text-align: right;">Page 86</p> <p>1 THE WITNESS: It's an actual parcel, so the zoning</p> <p>2 will remain.</p> <p>3 MR. GROSSMAN: Okay.</p> <p>4 THE WITNESS: The status, I believe the intent was</p> <p>5 this portion of the driveway would be removed, as access</p> <p>6 from 27 is going to be cut off.</p> <p>7 MR. GROSSMAN: Okay.</p> <p>8 THE WITNESS: But it is a parcel, and it is a</p> <p>9 zoning designation.</p> <p>10 MR. GROSSMAN: I think the access to 27 being cut</p> <p>11 off was a concern raised by the community. Do you want to</p> <p>12 address that now, while you're talking about access being</p> <p>13 cut off?</p> <p>14 THE WITNESS: To the property itself?</p> <p>15 MR. GROSSMAN: No, for them accessing --</p> <p>16 MR. KLINE: It isn't necessary in this site. It's</p> <p>17 a further northern, north issue. We can address it through</p> <p>18 the traffic engineer, or give you an introduction to the</p> <p>19 subject now, if you would like.</p> <p>20 MR. GROSSMAN: All right. Let's have a little</p> <p>21 intro.</p> <p>22 THE WITNESS: I can do an introduction, and I</p> <p>23 know, Mr. Guckert with the Traffic Group will be here later</p> <p>24 to talk about the specifics. The subject site and Route 27,</p> <p>25 new 305 continues the northern third, continues north up</p>	<p style="text-align: right;">Page 88</p> <p>1 BY MR. KLINE:</p> <p>2 Q Yes, there was a letter, you're familiar with, Mr.</p> <p>3 Unterberg, talking about that point. Can you describe why</p> <p>4 they thought that was a concern, and why we don't believe it</p> <p>5 will be?</p> <p>6 A Well, I believe that was from the Clarksburg Civic</p> <p>7 Association, the letter that's in the file. They mention</p> <p>8 that this access would be cut off, and Morning Star Drive</p> <p>9 would be a cul-de-sac. And based on the current approvals,</p> <p>10 that's the case.</p> <p>11 It's our understanding that Elm Street Development</p> <p>12 has been going, within the last year, primarily last summer</p> <p>13 and last fall of 2012, been going through hearings with the</p> <p>14 County and the abandonment process. And that, right now, is</p> <p>15 being revised to allow a right in, right out access to</p> <p>16 Morning Star Road on the east, and a right in, right out to</p> <p>17 Morning Star on the west.</p> <p>18 MR. GROSSMAN: Of 27?</p> <p>19 THE WITNESS: Of 305.</p> <p>20 MR. GROSSMAN: 305. Now I'm confused, because I</p> <p>21 thought that the letter talked about access to 27. Let me</p> <p>22 see. Yes. It says, "Concerns about access," and it was the</p> <p>23 Clarksburg Civic Association, Exhibit No. 51, "Concerns</p> <p>24 about access to Route 27."</p> <p>25 THE WITNESS: Which, and I'll go into further</p>
<p style="text-align: right;">Page 87</p> <p>1 into Clarksburg Village. This yellow boundary is all of</p> <p>2 Clarksburg Village, which is roughly over 2,700 units, as</p> <p>3 approved.</p> <p>4 The properties to the north, there is an existing</p> <p>5 road, Morning Star Drive, that currently exists and goes</p> <p>6 through. The approvals, the mandatory referral, the master</p> <p>7 plan call for 305 to come through and no access from Morning</p> <p>8 Star Drive to intersect A-305.</p> <p>9 BY MR. KLINE:</p> <p>10 Q And you're saying the master plan recommended</p> <p>11 that?</p> <p>12 A Correct.</p> <p>13 Q Okay.</p> <p>14 A And the subsequent Planning Board approvals.</p> <p>15 Q Okay.</p> <p>16 A And that Morning Star Drive would come end in a</p> <p>17 new cul-de-sac, and on the other side of Morning Star Drive</p> <p>18 would also be a cul-de-sac, so there would be no access.</p> <p>19 And I believe there's an update to that, and from talking</p> <p>20 with the developer, Elm Street Development, that that's in</p> <p>21 progress, and looks like there will be allowed access, right</p> <p>22 in, right now. And Mr. Guckert or Elm Street Development</p> <p>23 can talk to that.</p> <p>24 MR. GROSSMAN: Because I thought that was one of</p> <p>25 the concerns of the community.</p>	<p style="text-align: right;">Page 89</p> <p>1 detail when I have the exhibit up here, but there were, at</p> <p>2 the subject site, there is no access along 27. We have an</p> <p>3 access point north and south for our site, from the new A-</p> <p>4 305. And there is an access point off Brink Road. There is</p> <p>5 no, for the new proposed 140 lots, there is no access off of</p> <p>6 27.</p> <p>7 MR. GROSSMAN: But do you know what the Clarksburg</p> <p>8 Civic Association is referring to as an issue?</p> <p>9 THE WITNESS: That I do not, particularly with</p> <p>10 Route 27.</p> <p>11 MR. GROSSMAN: Let me pull out that exhibit.</p> <p>12 Okay. Traffic -- I'm reading from the second or third</p> <p>13 paragraph of Exhibit No. 51. "Traffic from the subdivision</p> <p>14 would enter Snowden Farm Parkway, a road which is designed</p> <p>15 to connect Clarksburg to Shady Grove Road as M-83. Last</p> <p>16 year there was a hearing to deny access to Route 27 and</p> <p>17 Snowden Farm Parkway to the neighboring houses in Green</p> <p>18 Ridge Acres (between the proposed Orchard Run and Clarksburg</p> <p>19 Village which presently directly access Route 27)."</p> <p>20 "This would mean that these residents would have a</p> <p>21 long detour to get to Damascus, via a left turn onto Route</p> <p>22 355, then Brink Road." And then a bolded sentence. "The</p> <p>23 reason for this proposal was that Snowden Farm Parkway/M-83</p> <p>24 should have limited access."</p> <p>25 And then it says, "We have not yet heard the</p>

<p style="text-align: right;">Page 90</p> <p>1 results of this hearing. We do not think that the Planning 2 Board took this inconsistency into consideration." I'm not 3 sure how this plays into your proposal, but that's what I'm 4 raising, the question I'm raising.</p> <p>5 THE WITNESS: Well, hopefully I can clarify a 6 little bit. Green Ridge Acres is the site to the north. 7 This shows Morning Star Drive. It goes through, and that's 8 the existing condition.</p> <p>9 MR. GROSSMAN: That's east-west, an east-west 10 running road. Okay.</p> <p>11 THE WITNESS: East-west, yes, with access to 27.</p> <p>12 MR. GROSSMAN: Okay.</p> <p>13 THE WITNESS: And I believe in that paragraph when 14 they talk about, between Orchard Run and Clarksburg Village, 15 they are talking about Morning Star Drive and the Green 16 Ridge Acres area.</p> <p>17 MR. KLINE: They specifically mention Green Ridge 18 Acres.</p> <p>19 THE WITNESS: So this is Morning Star Drive, which 20 particularly for one, two, three, four, five, six homes, 21 this road would be cut off and cul-de-sac'd with no access 22 to 305. And these existing home, their only alternative for 23 access would be out to 27.</p> <p>24 MR. GROSSMAN: But my question is, is that part 25 and parcel in any of this proposed application? Or is it a</p>	<p style="text-align: right;">Page 92</p> <p>1 MR. GROSSMAN: Okay. Mr. Kline, do I have any 2 authority whatever to look into that question, or is that 3 something that's not before me at all?</p> <p>4 MR. KLINE: Ultimately, my question to Mr. 5 Unterberg was, has there been any indication that we cannot 6 access A-305, Snowden Farm Parkway, in the review process 7 we've gone through so far.</p> <p>8 MR. GROSSMAN: All right. Is there?</p> <p>9 THE WITNESS: And there has been not, or no 10 indication. And we've shown which, I'll head to the 11 illustrative plan. This is Exhibit 34(g), to the north 12 again, Ridge Road, proposed A-305. We have a proposed 13 access point with a median break on 305. That accesses the 14 site north and south of A-305. And this has been reviewed 15 by Park and Planning and meets the County criteria for a 16 median break and access point.</p> <p>17 MR. GROSSMAN: Well, Mr. Kline, do we know why it 18 is that the Clarksburg Civic Association seems to feel that 19 somehow their access to the north of your site is somehow 20 connected to this application?</p> <p>21 MR. KLINE: Let me just ask someone who may be 22 saying something about that. No. We do not know why that 23 sentence is in there.</p> <p>24 MR. GROSSMAN: They're not here to clarify this. 25 As far as I can tell from the evidence presented to me by</p>
<p style="text-align: right;">Page 91</p> <p>1 separate consideration?</p> <p>2 THE WITNESS: It's a separate consideration and 3 not part of this application.</p> <p>4 MR. KLINE: Right. Let me suggest that the bolded 5 language was, the reason for this proposal was, Snowden Farm 6 Parkway should have limited access, may have been to suggest 7 that we wouldn't be able to get driveways connecting with A- 8 305 within the property.</p> <p>9 And given that it's been through the review 10 process and no transportation planning agency had any 11 objections to it, we don't think that whatever happened in 12 Green Ridge Acres is applicable to restrict access for us to 13 A-305, which we are providing the land for in the first 14 place.</p> <p>15 MR. GROSSMAN: I think I understand that point, 16 but I'm just, let me go back to my point. Are you saying 17 that, you're explaining why you think that language was 18 bolded on the Exhibit 51 letter. But I still want an answer 19 to, in my mind, the central question is, does this objection 20 that is raised in the letter that I just read, have any 21 bearing on the application that's before me? Or is that a 22 separate issue completely?</p> <p>23 THE WITNESS: In my opinion, it's a separate 24 issue. It's off-site and it's property to the north of the 25 application.</p>	<p style="text-align: right;">Page 93</p> <p>1 Mr. Unterberg, this is a completely different application 2 with a completely different set of issues, not part of this 3 application. So unless I hear something to the contrary, 4 that's not going to be part of what I will look at. All 5 right. You may proceed, Mr. Unterberg. Or perhaps it is a 6 time for us to take a little break here. So let's break 7 until, for another five minutes or so until 10 to 12:00.</p> <p>8 MR. KLINE: Yes, sir. Thank you. 9 (Whereupon, at 11:44 a.m., a brief recess was 10 taken.)</p> <p>11 MR. GROSSMAN: All right, gentlemen, let's resume.</p> <p>12 MR. KLINE: Before we begin, Mr. Goldberg had a 13 request.</p> <p>14 MR. GROSSMAN: Yes. Mr. Goldberg.</p> <p>15 MR. GOLDBERG: Mr. Grossman, I have some things I 16 have to do this afternoon --</p> <p>17 MR. GROSSMAN: Okay.</p> <p>18 MR. GOLDBERG: -- whether I like it or not. And 19 I'd like to excuse myself. But Mary Jane Goodrick, who is a 20 member of the board of directors of the Greater Goshen Civic 21 Association, would like to take my place.</p> <p>22 MR. GROSSMAN: That would be fine. The question I 23 have is whether you have anything you want to say before you 24 have to leave? And if you do, then I would swear you in and 25 let you say it.</p>



<p style="text-align: right;">Page 94</p> <p>1 MR. GOLDBERG: Not right now.</p> <p>2 MR. GROSSMAN: Okay.</p> <p>3 MR. GOLDBERG: I had written out what I wanted to</p> <p>4 say, and that will be presented by Mary Jane Goodrick later.</p> <p>5 MR. GROSSMAN: Okay.</p> <p>6 MR. GOLDBERG: And by my colleagues.</p> <p>7 MR. GROSSMAN: All right.</p> <p>8 MR. GOLDBERG: Thank you very much.</p> <p>9 MR. GROSSMAN: Thank you very much for</p> <p>10 participating. I appreciate your --</p> <p>11 MR. GOLDBERG: Thank you.</p> <p>12 MR. GROSSMAN: -- taking your time to come down</p> <p>13 here.</p> <p>14 MR. GOLDBERG: May Mary Jane take my seat?</p> <p>15 MR. GROSSMAN: Absolutely. You warmed it up for</p> <p>16 her, right?</p> <p>17 (Discussion off the record.)</p> <p>18 MR. GROSSMAN: All right, ma'am. If you would be</p> <p>19 so kind as to state your full name?</p> <p>20 MS. GOODRICK: Mary Jane Goodrick.</p> <p>21 MR. GROSSMAN: Okay. And that's spelled G-O-O-D-</p> <p>22 R-I-C-H, or --</p> <p>23 MS. GOODRICK: K.</p> <p>24 MR. GROSSMAN: R-I-K, all right. R-I-K or R-I-C-</p> <p>25 K?</p>	<p style="text-align: right;">Page 96</p> <p>1 photo of the same area. This is, and this was also written</p> <p>2 up in the land use report, which is part of Exhibit 34, and</p> <p>3 that's 34(a). And it shows the subject site with the</p> <p>4 proposed housing, Ridge Road. It also shows the proposed A-</p> <p>5 305, that goes to the north and to the west. Proposed M-83</p> <p>6 that goes to the east.</p> <p>7 And then it shows the surrounding areas,</p> <p>8 Clarksburg Village to the north, the residential to the</p> <p>9 north and the west in yellow. It shows the park to the</p> <p>10 south, south of Brink Road, which is Ridge Road Park, also</p> <p>11 Seneca Crossing Park, and then the water tower of the WSSC</p> <p>12 property is a darker gray to the east. And the cemetery is</p> <p>13 in a lighter gray to the east also.</p> <p>14 MR. GROSSMAN: And, well first of all, I can't</p> <p>15 recall, did technical staff agree to that definition of the</p> <p>16 surrounding area?</p> <p>17 MR. KLINE: Mr. Grossman, I believe that the staff</p> <p>18 report is silent on identifying a surrounding area.</p> <p>19 MR. GROSSMAN: Which is unusual.</p> <p>20 MR. KLINE: We submitted as part of our prehearing</p> <p>21 statement and everything, and nobody ever said yes or no or</p> <p>22 good or bad. So we just had our direction.</p> <p>23 MR. GROSSMAN: And so you said that was 34(o)?</p> <p>24 THE WITNESS: Yes.</p> <p>25 MR. GROSSMAN: And so that's your concept of the</p>
<p style="text-align: right;">Page 95</p> <p>1 MS. GOODRICK: R-I-C-K.</p> <p>2 MR. GROSSMAN: Okay. And you're appearing on</p> <p>3 behalf of the Greater Goshen Civic Association?</p> <p>4 MS. GOODRICK: Yes.</p> <p>5 MR. GROSSMAN: Okay. All right. Were you here</p> <p>6 earlier? Did you understand the ground rules here?</p> <p>7 MS. GOODRICK: Yes, I do.</p> <p>8 MR. GROSSMAN: Okay. And you will be permitted to</p> <p>9 cross-examine the witnesses for the application or your</p> <p>10 fellow opponents, and you will be permitted to give a</p> <p>11 statement on behalf, or testify on behalf of yourself and on</p> <p>12 behalf of the Greater Goshen Civic Association. Okay.</p> <p>13 MS. GOODRICK: Okay.</p> <p>14 MR. GROSSMAN: All right. Shall we proceed then?</p> <p>15 BY MR. KLINE:</p> <p>16 Q Mr. Unterberg, why don't I just let you just</p> <p>17 resume your testimony wherever we left off?</p> <p>18 A I think we left off with Exhibit 34(f), which is</p> <p>19 the certified zoning map, and walk through the surrounding</p> <p>20 and existing zoning. What I'd like to do, before we go to</p> <p>21 the site, which the question was raised about the site and</p> <p>22 surrounding area for the zoning.</p> <p>23 MR. GROSSMAN: Yes.</p> <p>24 THE WITNESS: This is 34(o), which is the land use</p> <p>25 report. There is also another version, which is an aerial</p>	<p style="text-align: right;">Page 97</p> <p>1 appropriate surrounding area?</p> <p>2 THE WITNESS: Correct. And there is also an</p> <p>3 Exhibit 34N, which is an aerial photograph which also has</p> <p>4 that same surrounding boundary on it.</p> <p>5 MR. GROSSMAN: Let me explain to the audience here</p> <p>6 why we have a surrounding area. In order to, in these kinds</p> <p>7 of cases, where there is an effort made to rezone a</p> <p>8 property, the area that is most likely to be affected, or</p> <p>9 will be most affected by the rezoning is generally</p> <p>10 denominated as the surrounding area, in order that the</p> <p>11 Council can better assess which properties will be most</p> <p>12 affected by the zone, by the rezoning.</p> <p>13 It's somewhat of an artificial construct, but</p> <p>14 that's the idea. In special exceptions they call it the</p> <p>15 general neighborhood. In rezoning cases they call it the</p> <p>16 surrounding area.</p> <p>17 And I notice in this particular definition that</p> <p>18 the area to the northeast does not appear to be included in</p> <p>19 your surrounding area. Why is that?</p> <p>20 THE WITNESS: You're speaking of this area?</p> <p>21 MR. GROSSMAN: Yes.</p> <p>22 THE WITNESS: That actually is outside of the</p> <p>23 Clarksburg planning area. The Clarksburg boundary comes</p> <p>24 down Ridge Road, and then comes down along the future M-83.</p> <p>25 MR. GROSSMAN: Yes.</p>

<p style="text-align: right;">Page 98</p> <p>1 THE WITNESS: So we mirrored the Clarksburg 2 planning boundary area. The area to the east is primarily 3 RDT for the rural density transfer zone which is shown on 4 the certified zoning map. 5 MR. GROSSMAN: Why not include it? I mean, it's 6 part of a confronting property directly across the highway 7 from your site? That's why I'm surprised that you would not 8 have at least that portion included in the surrounding area. 9 THE WITNESS: And I'll go to the aerial. Again, 10 the northern portion of site along Ridge Road, speaking of 11 this, there are a few houses, four to be exact, along Ridge 12 Road. 13 MR. GROSSMAN: Right. 14 THE WITNESS: And then the rest is, well, you get 15 up into this area is Butler's Orchard, and get into 16 agricultural uses. 17 MR. GROSSMAN: Well, what's the justification for, 18 especially if there are four houses along Ridge Road 19 confronting your property, what would be the reason not on 20 include them as part of the surrounding area? 21 THE WITNESS: This, again, we set the surrounding 22 area for the Clarksburg master plan, with that boundary. 23 MR. GROSSMAN: Okay. But wouldn't the logic, 24 aside from that logic, wouldn't it logically, the way 25 surrounding area in land planning is generally, what it's</p>	<p style="text-align: right;">Page 100</p> <p>1 this development? 2 THE WITNESS: Well, again, this was, this mirrors 3 the Clarksburg master plan area. I agree with including 4 these homes that are contiguous or adjacent to, across the 5 street from the subject property. I will let Wes Guckert, 6 who is going to speak to the traffic, discuss the impact of 7 traffic to the north on 27. 8 MR. GROSSMAN: Well, I'm asking you from a land 9 planning standpoint. As a land planner, wouldn't you 10 consider that to be a significantly affected area, and that 11 should be included? At least up to, I see some breakdowns 12 on it looks like property lines, I guess. 13 THE WITNESS: Yes. There are four lots here. 14 There's a break. There's a couple of lots. 15 MR. GROSSMAN: Right. And to the east of that, 16 there's another break, a north-south break. What is that 17 break there? Not that one, just that one, yes. 18 THE WITNESS: This actually, these are some 19 driveways, I believe, which on the aerial, you can see how 20 there's a series of driveways. 21 MR. GROSSMAN: Okay. 22 THE WITNESS: And this is all farm field, 23 agricultural. And this house also is part of that 24 agricultural use. I would agree that these homes that front 25 and about the subject site should be included. But the</p>
<p style="text-align: right;">Page 99</p> <p>1 generally taken to mean is those areas that are going to be 2 most affected. Is that not correct? 3 THE WITNESS: Yes. You could include these 4 residential units in that area. 5 MR. GROSSMAN: Well, I'm going to move past could. 6 Shouldn't you include those, that area immediately to the 7 east of your property, and perhaps going back a little 8 further than just those four houses, in the surrounding 9 area? 10 THE WITNESS: I'll agree with that. And then as 11 you'll see, in later testimony, how we worked with the 12 setbacks and the compatibility. I'll include those in my 13 testimony. 14 MR. GROSSMAN: All right. But can you put the 15 other map back up -- oh, because it's too hard for you to 16 see the boundary. My only, my question is, it's clear to me 17 that those homes should be included. But it seems to me 18 that you would have to go further back than that. 19 Is there any reason not to go, other than the 20 logic you've enunciated as far as the boundary, what would 21 be the reason for not going a little bit further to the east 22 to include that RDT zoned portion, which is directly across? 23 And maybe, if you're going to produce an amount of traffic 24 that's going to run up Ridge Road to the north, wouldn't the 25 property owners to the east of Ridge Road be affected by</p>	<p style="text-align: right;">Page 101</p> <p>1 agricultural use, I would not agree with, primarily because 2 the Clarksburg master plan has identified Ridge Road north 3 of M-83 as a planning boundary, and everything west is in 4 Clarksburg. Everything east is not. 5 MR. GROSSMAN: I understand that distinction, but 6 to me, from the standpoint of what surrounding area is 7 supposed to mean, the planning boundary is not as 8 significant as the impacts of what you're about to do on 9 surrounding property. 10 So I'd ask you to address, you can assume that I'm 11 going to want to define the surrounding area as broader to 12 the east than you have it. And assume that it's going to, 13 if you would put up 34(o) again for me, please, because I 14 can see it better. That the surrounding area would extent 15 at least to that driveway, that's right. And then north- 16 south and immediately there. 17 So it would include at least the effects on those 18 properties to the northeast of the site. And I would go all 19 the way up to the northern extent. I see there are some, it 20 looks like homes up there in the far northern extent. Are 21 there homes on that, east of Brink Road, of Ridge Road, 22 rather? 23 THE WITNESS: Yes. You can see the homes in this 24 neighborhood. 25 MR. GROSSMAN: All right. And wouldn't they also</p>

<p style="text-align: right;">Page 102</p> <p>1 be impacted, because we're talking about traffic impacts?</p> <p>2 THE WITNESS: With your assumption on the other</p> <p>3 side of the road you would come to the north, and then come</p> <p>4 down.</p> <p>5 MR. GROSSMAN: That's correct. All right. Yes.</p> <p>6 So you can assume that those homes, and everything as far</p> <p>7 east as they extend, and then coming south, on a direct line</p> <p>8 south from that, would be included in the surrounding area</p> <p>9 definition that I think would be appropriate. And yes,</p> <p>10 perhaps you could mark it right on your version. And we're</p> <p>11 going to call that another -- right, another green line.</p> <p>12 THE WITNESS: And something --</p> <p>13 MR. GROSSMAN: Right. We'll call it amended</p> <p>14 surrounding area, and make that a new exhibit.</p> <p>15 MR. HANCOCK: Mr. Grossman, I don't know if it's</p> <p>16 appropriate, but the area that you're talking about right</p> <p>17 now, all of those individual homes have signed the petition</p> <p>18 in opposition to this, they feel they are included.</p> <p>19 MR. GROSSMAN: Okay. I wasn't aware of that, but</p> <p>20 I think that that is another reason why it makes sense to</p> <p>21 have them in the surrounding area. All right.</p> <p>22 MR. KLINE: Mr. Unterberg, can you put up (o)</p> <p>23 again, or whatever is the one on the bottom.</p> <p>24 MR. GROSSMAN: Before you do that, let's mark</p> <p>25 that. Would you mark that as Exhibit 64, and make sure that</p>	<p style="text-align: right;">Page 104</p> <p>1 Q So was one of your rationale for, it wouldn't be</p> <p>2 influenced was that it's not only in agricultural use, but</p> <p>3 it's dedicated, it's in the hands or control of a family</p> <p>4 that's not likely to be changing it? It's not RDT waiting</p> <p>5 to be redeveloped?</p> <p>6 A Well, that whole theory that everything west of,</p> <p>7 or east of, to the right hand side of 27, that's zoned RDT</p> <p>8 and will not be changing.</p> <p>9 Q Will not be changing --</p> <p>10 A And particularly the farming was the assumption.</p> <p>11 Q Can you tell us what the Butler family owns? Can</p> <p>12 you --</p> <p>13 MR. GROSSMAN: Well, wait a minute. Mr. Kline, I</p> <p>14 don't know that that's relevant. I mean, I don't think you</p> <p>15 make these land use decisions based on who owns the</p> <p>16 property, because that's subject to change. It's based on</p> <p>17 the fact that physically it's confronting the subject site,</p> <p>18 and adjacent to the main roadway access to the subject site.</p> <p>19 So to me, that's the issue, not who owns the property.</p> <p>20 MR. KLINE: Well, the point I was trying to make</p> <p>21 is, that the likelihood that it will be redeveloped to have</p> <p>22 residential structures on it, which seems to have a</p> <p>23 legitimate concern, is less for the Butler family, which has</p> <p>24 an ongoing financial enterprise that's agriculturally</p> <p>25 oriented, and isn't likely to change; and therefore they</p>
<p style="text-align: right;">Page 103</p> <p>1 exhibit stays with us. And we'll call that amended</p> <p>2 surrounding area exhibit. Okay. So now, when you testify</p> <p>3 about the surrounding area, please include that area in it.</p> <p>4 (Exhibit No. 64 was marked</p> <p>5 for identification.)</p> <p>6 THE WITNESS: Okay.</p> <p>7 MR. GROSSMAN: Okay.</p> <p>8 THE WITNESS: Should we amend this exhibit also?</p> <p>9 MR. KLINE: Probably.</p> <p>10 THE WITNESS: Or is this clear?</p> <p>11 MR. GROSSMAN: It might be helpful for clarity</p> <p>12 purposes if that's the other one. So this will be Exhibit</p> <p>13 65. It's an aerial of amended surrounding area exhibit,</p> <p>14 aerial photo. Okay. Thank you, sir.</p> <p>15 (Exhibit No. 65 was marked</p> <p>16 for identification.)</p> <p>17 BY MR. KLINE:</p> <p>18 Q Mr. Unterberg, before you put that down, you were</p> <p>19 alluding -- well, the land north of M-83 that isn't fronting</p> <p>20 on 27, it looks like it's substantially dedicated to farming</p> <p>21 activities?</p> <p>22 A Yes.</p> <p>23 Q And I think I heard you say that some of that was</p> <p>24 controlled by the Butler family.</p> <p>25 A Right.</p>	<p style="text-align: right;">Page 105</p> <p>1 would be less influenced or affected by the redevelopment.</p> <p>2 We can work with the neighborhood.</p> <p>3 MR. GROSSMAN: Let's, all right. We don't have to</p> <p>4 debate it.</p> <p>5 MR. KLINE: Okay. Enough said.</p> <p>6 BY MR. KLINE:</p> <p>7 Q Go ahead, Mr. Unterberg.</p> <p>8 A Well, that summarizes what we've established and</p> <p>9 amended as the surrounding area. I will speak while we go</p> <p>10 through the PRC zone requirements, and setbacks and</p> <p>11 compatibility standards, I will use this area within the</p> <p>12 perimeter.</p> <p>13 MR. GROSSMAN: Thank you. I think the record</p> <p>14 should reflect that my administrative staff was able to fix</p> <p>15 my laser pointer, so --</p> <p>16 MR. KLINE: I just saw something over here. I was</p> <p>17 wondered what happened.</p> <p>18 MR. GROSSMAN: It was not functioning before, so</p> <p>19 now I'm particularly dangerous.</p> <p>20 MR. KLINE: As long as you don't use it to make a</p> <p>21 point.</p> <p>22 MR. GROSSMAN: Our former people's counsel here</p> <p>23 used to have one that was so bright that I couldn't even</p> <p>24 look at the reflection. I have more, a more controlled one.</p> <p>25 (Discussion off the record.)</p>

<p style="text-align: right;">Page 106</p> <p>1 THE WITNESS: Okay. Now that we've reshuffled  2 exhibits, let's talk about the site of the proposal, and  3 what we are showing and go from there. This first Exhibit  4 is 34(g), which is the illustrative concept plan, which is a  5 color rendering of the development in the proposal. The  6 second proposed, or the second Exhibit if 41(b), which is  7 the amended development plan, land use element for G-881.  8 MR. GROSSMAN: And is that the final version of  9 the development plan, 41(b)?  10 MR. KLINE: Yes, sir. Yes, sir.  11 MR. GROSSMAN: Okay.  12 MR. KLINE: And I might add, at the conclusion of  13 the hearing today, we will give you a disk that has all of  14 the plans that yes, you already have, but that we're showing  15 you today. So you'll have another version of it, except for  16 the one we've just amended, which is the zoning  17 neighborhood.  18 MR. GROSSMAN: Okay.  19 THE WITNESS: We'll start with 34(g). And one of  20 the things we looked at when we were laying this out, Mr.  21 Butz talked to it specifically, that there's a need for  22 single-family restricted, age-restricted housing. So the  23 proposal is for 140 single-family lots.  24 We took specific care in looking at the edges and  25 the relationship to the Germantown greenway to the south,</p>	<p style="text-align: right;">Page 108</p> <p>1 They have to be in compliance.  2 BY MR. KLINE:  3 Q Mr. Unterberg, let me digress for a second. I  4 sense that Mr. Hancock is skeptical that there won't be any  5 kids living here. And I think I heard the question asked  6 earlier, how to do we enforce this age-restricted housing?  7 If I mischaracterized you, I apologize. But what is the  8 enforcement mechanism to ensure that only people over 50  9 years old live here?  10 MR. HANCOCK: There is none.  11 MR. KLINE: Well, he gets to answer it first, then  12 you can cross-examine.  13 THE WITNESS: I'm going to go to the zone, which  14 speaks to that. The property will be zoned PRC, planned  15 retirement community. Aged residents and residential  16 densities, a planned retirement community of less than 750  17 acres must be restricted to permanent residents 50 years of  18 age or over.  19 MR. GROSSMAN: Would you read the section you're  20 reading from?  21 THE WITNESS: This is 57C-7.44.  22 MR. GROSSMAN: All right. So that's in the zoning  23 ordinance. He's asking, I guess, how will that be enforced.  24 Do your homeowner association rules specify that?  25 THE WITNESS: There can be. I don't think there</p>
<p style="text-align: right;">Page 107</p> <p>1 south of Brink Road. We took some time adding roughly a  2 little over two acres to the corner, which is going to be  3 reforested, that complements Ridge Road; a part to the  4 south, also establishing a green edge, and a transition  5 along Ridge Road to the north.  6 You'll see the proposed A-305 that cuts through  7 the site. Then we also took a look at the edges and  8 setbacks along the north and the west to the residential  9 properties.  10 MR. GROSSMAN: I take it that all of this  11 additional greenery is something that will be looked at  12 again at site plan review?  13 THE WITNESS: We do. We did add a binding  14 element, which is binding element number three, that the  15 impervious area is to be up to 28 percent, based on net  16 acreage of 49.4 acres. So there is, with the water quality  17 plan approval, and with the binding element that was  18 proposed with Park and Planning, we are capping our  19 impervious area.  20 MR. GROSSMAN: Okay.  21 THE WITNESS: Which subsequently, all these  22 details are subject to site plan review, and will get  23 massaged a little bit. But they need to be in substantial  24 compliance with the submitted plan.  25 MR. GROSSMAN: Right. More than substantial.</p>	<p style="text-align: right;">Page 109</p> <p>1 is specific enforcement yet, but that's something we can  2 definitely add. Through the zoning ordinance and the County  3 itself, it will be enforced if someone is not complying or  4 younger than the age specified.  5 MR. GROSSMAN: I'm not sure exactly how that  6 mechanism works, because I know, I mean, with special  7 exceptions you have every year, theoretically, at least the  8 Department of Permitting Services goes out and does an  9 inspection to make sure the special exception is in  10 compliance with the conditions that have been approved.  11 I think once you've rezoned the property, if you  12 don't have it specifically in your bylaws of the homeowners  13 association or something, I'm not sure how it ends up being  14 enforced by the County. What about that?  15 THE WITNESS: I could see us adding that to the  16 HOA document to enforce it.  17 MR. GROSSMAN: I mean, perhaps they're -- I don't  18 recall what your binding elements, how many binding elements  19 do you have on your, textual binding elements do you have on  20 your development plan?  21 THE WITNESS: Textual, we have four, and then the  22 charts related to the, regarding the densities.  23 MR. GROSSMAN: And what are those binding  24 elements?  25 THE WITNESS: The first one is, development plan</p>

<p style="text-align: right;">Page 110</p> <p>1 depicts the overall concept of the orderly and staged  2 development of the Courts. And it goes on, two, densities  3 use and mix of housing types as specified in the appropriate  4 tables, A and B, tables A and B. And it goes on. And three  5 is, impervious area to be up to 28 percent, based on that  6 acreage of 49.4 acres.  7 MR. GROSSMAN: And you said there was a fourth  8 one?  9 THE WITNESS: The fourth is the two tables.  10 MR. GROSSMAN: Okay. So if it's not on there  11 already, do you think it's advisable or inadvisable, Mr.  12 Kline, to have a binding element that specifies that housing  13 will be restricted to --  14 MR. KLINE: It's a zoning ordinance requirement.  15 I don't have any problem with doing that, as long as the  16 ordinance doesn't change, and we would have to amend the  17 development plan. That would be kind of silly. So I would  18 say maybe language, we just bind it to whatever is the  19 applicable language of the zoning ordinance.  20 MR. GROSSMAN: And that the, that the, whatever,  21 the homeowners association or governing body's rules would  22 limit it.  23 MR. KLINE: Yes.  24 MR. GROSSMAN: So phrase it in that way so that  25 when somebody applies to live there, and/or after they are</p>	<p style="text-align: right;">Page 112</p> <p>1 MR. GROSSMAN: Let me swear you in, since we are,  2 in effect, getting evidence here. So would you raise your  3 right hand, please?  4 MR. HANCOCK: I'm sorry.  5 MR. GROSSMAN: Would you raise your right hand,  6 please?  7 (Witness sworn.)  8 MR. GROSSMAN: All right. Do you adopt what you  9 have now already said as testimony under oath?  10 MR. HANCOCK: I'm sorry, sir, I can't hear you.  11 MR. GROSSMAN: Do you adopt what you have already  12 just stated as part of your testimony under oath?  13 MR. HANCOCK: Yes.  14 MR. GROSSMAN: Okay. All right. So now you're  15 saying that it's not, as a practical matter, it's not  16 enforceable. And you were about to give me an example of  17 where this has happened before?  18 MR. HANCOCK: I can't, I'm sorry, I'm 79 years  19 old, and I can't remember the name of the subdivision. It  20 was up north. They didn't take, they weren't able to do it.  21 I can probably look it up. And they ended up converting the  22 houses from the age restriction to no restrictions at all.  23 MR. GROSSMAN: Well, there is a -- I mean, the  24 zone language has a restriction in it. Now, I'm not sure  25 how it's worked, for example, in Leisure World, where I</p>
<p style="text-align: right;">Page 111</p> <p>1 living there, it's enforceable by the homeowners association  2 as opposed to some more general -- I think that might solve  3 the problem Mr. Hancock is referencing. Is that, do you  4 think so, Mr. Hancock?  5 MR. HANCOCK: No, I don't.  6 MR. GROSSMAN: Why not, sir?  7 MR. HANCOCK: I've been a real estate broker in  8 Montgomery County for 45 years, and a builder for about 40.  9 And a homeowners association is not going to enforce,  10 they're not going to put a regulation in or enforce it  11 saying, you can't have children.  12 And besides that, the regulations for Montgomery  13 County are that only one person has to be 50. You don't  14 have to be 50 to buy in this restricted community. And I  15 don't believe, I mean, I've never seen it where the  16 homeowners association ever has come up with something, you  17 can't have children live with you.  18 It just won't work. The people, what will happen  19 is, is what did happen, and I can't remember the name of the  20 subdivision, they couldn't sell the houses with this  21 limitation on it for age --  22 MR. GROSSMAN: Since we're having this --  23 MR. HANCOCK: -- and they converted them to  24 regular standard units. That's one of the things we're  25 concerned with.</p>	<p style="text-align: right;">Page 113</p> <p>1 guess the same restriction exists.  2 MR. KLINE: Are you looking for the language of  3 the PRC or the definition of elderly?  4 MR. GROSSMAN: I'm looking at the PRC zone  5 definition.  6 MR. KLINE: Yes, C-7.44.  7 MR. GROSSMAN: Yes. You can have, it says here,  8 "A planned retirement community of less than 750 acres, must  9 be restricted to permanent residents, 50 years of age or  10 over, except that as a disabled relative may reside with a  11 permanent reside."  12 MR. HANCOCK: I'm sorry, sir. I didn't hear that  13 last part.  14 MR. GROSSMAN: "Except that a disabled relative  15 may reside with a permanent resident. In addition, residents  16 must be regulated in accordance with the provisions of the  17 fair housing amendments act of 1988, as may be subsequently  18 amended."  19 Now, it does have an exception. If you have a  20 planned retirement community of 750 acres or more, they may  21 include a section which has no age restriction. And maybe  22 that's what happened in your case that you were mentioning.  23 I don't know.  24 MR. HANCOCK: Maybe.  25 MR. GROSSMAN: Yes. I don't know, I mean, I</p>

<p style="text-align: right;">Page 114</p> <p>1 understand the rationale for wanting something that makes it  2 more enforceable. I don't want to create more of a problem  3 by creating a binding element here. What do you think about  4 that, Mr. Kline? I mean, are we going to create a problem  5 here by a binding element that has some restriction that  6 essentially links it to whatever the language is in the  7 zoning ordinance?  8 MR. KLINE: Well, as I said, I just don't want to  9 have to come, if the law changed --  10 MR. GROSSMAN: Right.  11 MR. KLINE: -- to become more liberal for some  12 reason, I don't want to have to come and amend the  13 development plan.  14 MR. GROSSMAN: Right.  15 MR. KLINE: So I would come up with language that  16 tracks whatever the zoning ordinance is. Frankly, before  17 the afternoon is over, I'm going to have somebody call  18 Leisure World and find out how the heck they do it, and  19 basically suggest that as the way of doing it. Because it's  20 certainly the model of the successful venture in that  21 regard.  22 MR. GROSSMAN: The only model, if I understand the  23 earlier testimony, in this County.  24 MR. KLINE: Yes. Yes, it is more than 750 acres,  25 so it does have the unrestricted sections.</p>	<p style="text-align: right;">Page 116</p> <p>1 library, and it basically lost its age-restricted status.  2 MR. GROSSMAN: I see.  3 MR. KLINE: So that, I think, is the model. There  4 your earlier comment was, well, there you at least could  5 call a County inspector under the special exception and they  6 could go site you if you were in violation. But I've always  7 thought the same thing could happen here as well. It's a  8 little bit different when it's a deed ownership. But there  9 is, there is a regulatory mechanism over and above having  10 something in the HOA documents and the binding elements.  11 MR. HANCOCK: That rings a bell.  12 MR. GROSSMAN: Yes, ma'am.  13 MS. GOODRICK: I am familiar, aware of another  14 community that had that happen which is near Prathertown on  15 Wightman Road. And it was originally, I don't know all the  16 details of it, but it was originally zoned to be for senior  17 citizens, and then it changed over in some way. So I think  18 you should understand what the ability is county-wide for  19 that change to be made. The other thing from just --  20 MR. GROSSMAN: Well, something can be rezoned.  21 Nothing here is written in stone in the sense that it can't  22 be rezoned.  23 MR. KLINE: I'm sorry. I am familiar with that.  24 it is an application I handled. It was housing for the  25 elderly, special exception. There were changes in the mix</p>
<p style="text-align: right;">Page 115</p> <p>1 MR. GROSSMAN: Area.  2 MR. KLINE: But I'm looking just for the over 50,  3 the elderly, the age-restricted.  4 MR. GROSSMAN: Yes. I think having something in  5 there that would at least result in the homeowners  6 association rules specifying an age limit would eliminate  7 the problem, largely, or there may be isolated violations,  8 but it wouldn't be --  9 MR. KLINE: If I can add to Mr. Hancock, or  10 supplement Mr. Hancock's comment, I think the example he's  11 talking about is what was called Potomac Mews in the  12 northeast quadrant of Falls Road and River Road, which was  13 originally granted, if you go by, it's just above the  14 Potomac Library. It's basically attached units. And it was  15 approved as housing for the elderly project with a special  16 exception. It was to be eligible only for people 55 years  17 or older.  18 MR. HANCOCK: That may have been it.  19 MR. KLINE: It did not market well. It's an  20 elegant community. Unfortunately, the gentleman who dreamed  21 it up, John Westbrook, made it too nice. It did not market  22 well. It was stagnant for several years. And they  23 eventually struck a deal with the community and rezoned it  24 to the planned development zone, finished it out by building  25 single-family detached units that are adjacent to the</p>	<p style="text-align: right;">Page 117</p> <p>1 of units, but I believe it's still a housing for the elderly  2 special exception.  3 MS. GOODRICK: Well, I think it's not -- well, I  4 don't know. But I think that there were changes made that  5 the community, Prathertown, the community around there  6 didn't like. They were granted that exception for seniors.  7 I think we should look into that to understand what could  8 happen.  9 MR. GROSSMAN: Well, this is the hearing, and you  10 can present whatever evidence you have that's relevant to  11 the issue. I mean, I'm not sure that it gets very far,  12 because if you have a restriction in the zone that says,  13 it's got to be for people of this age and above, 50 years  14 and above, that's what the restriction is that would apply.  15 I mean, you can add on another feature, such as a  16 binding element that says that this age restriction,  17 whatever it is in the zone, must be applied by the  18 homeowners association. I mean, theoretically, that should  19 happen anyway. But you could have something else that adds  20 another tier to it. But I don't think you can go much  21 further than that in terms of at this stage, you're talking  22 about the rezoning stage. Yes, ma'am.  23 MS. GOODRICK: The other thing, just for listening  24 to what you read, it said, permanent residents. So does  25 that include renters?</p>

<p style="text-align: right;">Page 118</p> <p>1 MR. GROSSMAN: Mr. Kline?</p> <p>2 MR. KLINE: I would say permanent residents is</p> <p>3 anybody who is living there has to meet the requirement of</p> <p>4 50 years old. So whether you own or you rent won't make any</p> <p>5 difference. You still have to be over 50.</p> <p>6 MR. GROSSMAN: All right. Well, you can track</p> <p>7 that in whatever you write as a binding element. But that</p> <p>8 was a good question.</p> <p>9 MS. GOODRICK: Thank you. I guess I would like to</p> <p>10 go back to the question before that and that is that, you</p> <p>11 know, we're citizens. You have a staff and you all are</p> <p>12 experts on this. And what I'm afraid will happen is</p> <p>13 something that has happened in other parts of the County,</p> <p>14 which is where you did give this approval for seniors to</p> <p>15 live in these homes, and then it didn't turn out that way.</p> <p>16 And so I would just, I would like to be aware of,</p> <p>17 you know, what can be done? You said you can change the</p> <p>18 zoning. Is that correct?</p> <p>19 MR. GROSSMAN: Well, yes, what I'm saying is,</p> <p>20 people can apply. People who own property can apply to the</p> <p>21 Council, just as these property owners in this application</p> <p>22 are applying to the Council to have the zoning changed. The</p> <p>23 zone here is RE-2, were you saying? And they are seeking to</p> <p>24 change it to the PRC zone.</p> <p>25 And it has to go through this whole process, which</p>	<p style="text-align: right;">Page 120</p> <p>1 evidence they have that might bear on this issue. So I'm</p> <p>2 not exactly sure what you're asking me to do. This would be</p> <p>3 your opportunity to present any evidence you want. I can't</p> <p>4 go out and create evidence. But I give you the opportunity</p> <p>5 to present evidence that you may have.</p> <p>6 But this is actually, we have gone far afield</p> <p>7 here. I'm going to blame Mr. Kline for that, because he</p> <p>8 raised Mr. Hancock's --</p> <p>9 MR. KLINE: Yes. I just said to Mr. Unterberg, I</p> <p>10 wish I hadn't asked the question.</p> <p>11 MR. GROSSMAN: -- concern. But usually this</p> <p>12 portion of the case, that is your concern or whatever</p> <p>13 testimony you wish to offer, is done after the applicant has</p> <p>14 completed his presentation. So why don't we return to that,</p> <p>15 and then you can express any -- first of all, you can cross-</p> <p>16 examine this witness on the scope of his direct, or you can</p> <p>17 present any evidence you wish to present when it is your</p> <p>18 turn to present it.</p> <p>19 But because we've gone rather far outside of Mr.</p> <p>20 Unterberg's presentation. So shall we return to that?</p> <p>21 THE WITNESS: Okay. Since we were talking about</p> <p>22 binding elements, I'll walk through the development plan,</p> <p>23 and the facts and figures of the layout.</p> <p>24 MR. GROSSMAN: These are the textual binding</p> <p>25 elements. This is a development plan case. In a</p>
<p style="text-align: right;">Page 119</p> <p>1 is not an easy process. They have to file an application.</p> <p>2 It has to go to the technical staff of the Maryland National</p> <p>3 Capital Park and Planning Commission to be reviewed. They</p> <p>4 file, usually an extensive report that goes to the Planning</p> <p>5 Board.</p> <p>6 The Planning Board then has meeting, open meeting</p> <p>7 on it, and comes up with a recommendation that goes to the</p> <p>8 hearing examiner. The hearing examiner then conducts a full</p> <p>9 due process hearing and comes up with a report and</p> <p>10 recommendation that goes to the Council. The Council then</p> <p>11 has a session, a public session. So it's an extensive</p> <p>12 process to rezone something. It's not, they can't just snap</p> <p>13 their fingers and have it rezoned.</p> <p>14 MS. GOODRICK: Okay.</p> <p>15 MR. GROSSMAN: And then it's subject to further</p> <p>16 review, once again, on the details by the Planning Board and</p> <p>17 the site plan review.</p> <p>18 MS. GOODRICK: I guess I would like to understand</p> <p>19 that that's what happened in these cases, that they were</p> <p>20 able to make an application to rezone.</p> <p>21 MR. GROSSMAN: Well, I don't know, the specific</p> <p>22 cases you're talking about, I don't know anything about,</p> <p>23 officially, other than what has been stated here, whatever</p> <p>24 is on the record here.</p> <p>25 This is the opportunity for anybody to submit</p>	<p style="text-align: right;">Page 121</p> <p>1 development plan case, everything is binding that's not</p> <p>2 specified as being illustrative. In addition, you can add</p> <p>3 textual binding elements, too, that specify that certain</p> <p>4 things are binding.</p> <p>5 Very often, and I haven't looked for the language</p> <p>6 on this one, but very often it will say on the development</p> <p>7 plan that the precise location of the buildings and whatever</p> <p>8 is illustrative, subject to review at site plan. Is there</p> <p>9 some language to that effect on this?</p> <p>10 THE WITNESS: Yes. Actually working with Park and</p> <p>11 Planning we have development plan notes, binding elements,</p> <p>12 which is reading sideways, is the top part of the notes.</p> <p>13 And then we have a header for non-binding elements, which is</p> <p>14 the rest of the notes. And a number of these deal with the</p> <p>15 actual zone, and the standards in the zone.</p> <p>16 MR. GROSSMAN: Right.</p> <p>17 THE WITNESS: And then we do have, okay, for</p> <p>18 example, property including open space will be subject to</p> <p>19 site plan review, final number of lots and lot areas,</p> <p>20 subject to change in the plan, at site plan and/or record</p> <p>21 plat.</p> <p>22 MR. GROSSMAN: Right. The reason for this</p> <p>23 dichotomy is that the Council has an interest in a rezoning</p> <p>24 with a development plan of specifying some broad outlines to</p> <p>25 make sure that the rezoned property would be within the</p>

<p style="text-align: right;">Page 122</p> <p>1 contours of the intention of the zone, and the master plan.  2 But the details of where individual units are  3 placed, how the screening is developed and so on, is usually  4 left, if the zone is approved, if the rezoning is approved,  5 is left to the Planning Board and its technical staff, at a  6 site plan review, a process in which you can participate,  7 after the rezoning, so that, because the Council can't enter  8 into the minutia of where ever unit is going to be located.  9 This is something that is subject to this post-  10 rezoning review, if the rezoning is approved. And that's  11 done at what they call site plan review. All right. Go  12 ahead Mr. Unterberg.  13 THE WITNESS: Okay. We read the first three  14 binding elements. The fourth are a series of charts. A  15 refers to area A, which is approximately the three-quarters  16 of the southern area of the site that is south of A-305.  17 That is approximately 38.9 acres. We are saying a height up  18 to 35 feet. And then we propose a range of single-family  19 detached which is 100 to 130 units. And then we associate  20 parking with that range, the requirement of two spaces per  21 unit.  22 We also say that required in there is a community  23 center. The community center is located in area A. There's  24 an entrance off of A-305 that proceeds south, and as you  25 come in the entrance, the community center is located in the</p>	<p style="text-align: right;">Page 124</p> <p>1 35 feet by 40 foot, which is 1,400 square feet. And we'll  2 walk through the parking and I'll come back to recreation,  3 where we meet recreation on site. With the development  4 plan, we talk about the track area, and actually these are,  5 in a second, these are the code requirements for the PRC  6 zone.  7 Let me on here segue into the recreation. This is  8 Exhibit 34(k). Walkways and bikeways street section  9 exhibit. This illustrates the public roads. A-305 is a  10 public road. The local roads, which are typical tertiary  11 roads with Montgomery County standard 2001.02, which is a  12 residential street, are all the on-site roads. There is one  13 road to area B, which is to the north, and then there is a  14 series of roads that goes south from the same intersection  15 through area A.  16 MR. GROSSMAN: They are in blue.  17 THE WITNESS: They're in blue. And there are a  18 couple of courts or cul-de-sacs, and the lots are in white  19 with the line work. And then there is another access point  20 to Brink Road, which accesses Brink Road.  21 The lines in orange are, one is the proposed  22 sidewalks and walkways, which is on every road. We are  23 proposing a trail connection at the Brink Road intersection.  24 There is an existing trail that we're proposing to link  25 with, with the Ridge Road Regional Park. And this will be a</p>
<p style="text-align: right;">Page 123</p> <p>1 northern third of area A, along the first road that comes in  2 off of A-305. And I'll get to dimensions and facts and  3 figures about that in a little bit.  4 Area B, which is the part of the site that's north  5 of A-305, is approximately 10 and a half acres, again,  6 limited to a maximum of 35 feet, a range of 25 to 35 units,  7 and the associated parking.  8 We mentioned a net acreage of 49.4 acres, from the  9 approximate total of 54, or rounded up to 50.4. It's  10 approximately five acres. That five acres includes the  11 dedication for A-305, the master plan road. It's a 120-foot  12 right-of-way, four lanes, which provide one access point for  13 a road to go north into h area B, and the same intersection  14 of the road to go south into area A.  15 That dedication also provides for additional  16 dedication for the widening of Route 27, the length of the  17 property, all the way down to Brink Road. So that's  18 approximately five acres.  19 We have a series of nonbinding, and talk about the  20 right-of-way, the public road dedication, the note I just  21 read about, this is subject to further site plan review,  22 preliminary plan review, the next steps that we need to take  23 and the subsequent detail.  24 We do note that the size of the rec center will be  25 determined at site plan. We are showing a building that's</p>	<p style="text-align: right;">Page 125</p> <p>1 crosswalk at this intersection.  2 The dashed line is the dedicated hiker-biker, or  3 the bike trail, which will be built along A-305. There is a  4 signalized intersection proposed at 305 and Ridge Road. And  5 then that bike route will come down with the widening of  6 Ridge Road to Brink Road, and continue south past Brink  7 Road, continue on Ridge Road. This is also a signalized  8 intersection with a crosswalk.  9 MR. GROSSMAN: This being?  10 THE WITNESS: This being Brink Road and Route 27.  11 Mr. Butz eluded to some numbers regarding recreation. And  12 this would be a new exhibit.  13 MR. GROSSMAN: This will be Exhibit 66.  14 (Exhibit No. 66 was marked  15 for identification.)  16 THE WITNESS: Recreation demand in Montgomery  17 County, the Maryland National Capital Park and Planning  18 Commission has a recreation guideline and booklet, manuals.  19 It is a point system. It's based on number of lots. It's  20 also based on the type of lots, single-family, townhouses,  21 and so forth.  22 We have 140 lots proposed, single-family. We are  23 only showing demand for seniors. That says, age-restricted.  24 There is other demand within the guidelines for teens and  25 tots and so forth. We will not have those residents living</p>



<p style="text-align: right;">Page 126</p> <p>1 here.</p> <p>2 A on this chart is the demand. It's 13 points per</p> <p>3 100 units required. And you'll see it's a point system. So</p> <p>4 the demand for 140 lots is 18.2 seniors.</p> <p>5 MR. GROSSMAN: Well, let me -- this is, Exhibit</p> <p>6 No. 66 is recreational facilities calculations for seniors.</p> <p>7 THE WITNESS: So under A our demand is 18.2</p> <p>8 points. And that's what Park and Planning has set for, we</p> <p>9 need to provide recreation amenities to meet or exceed that</p> <p>10 number of points.</p> <p>11 This will be verified at site plan, so it is</p> <p>12 subject to change. But with the proposal that we have, our</p> <p>13 pedestrian system, you get a series of points. With the</p> <p>14 bike path system on 305 and Route 27 you get a couple of</p> <p>15 points. With the natural areas and the forest conservation</p> <p>16 areas being proposed, you get a little bit of credit.</p> <p>17 With our clubhouse, this proposal is for three</p> <p>18 meeting rooms. We have 35 by 40 foot is the dimension,</p> <p>19 which is 1,400 square feet. That provides roughly enough</p> <p>20 room for two small meeting rooms and a large meeting room.</p> <p>21 And then those will be programmed with the HOA.</p> <p>22 We are also providing, which in addition to trails</p> <p>23 and bikeways being one of the larger or the most desired</p> <p>24 recreation for seniors, we're also proposing a community</p> <p>25 garden, which would be, the assumption right now, it would</p>	<p style="text-align: right;">Page 128</p> <p>1 providing on-site 37.31 points. Is that correct?</p> <p>2 THE WITNESS: Correct.</p> <p>3 MR. GROSSMAN: And then off-site there are another</p> <p>4 29 points provided?</p> <p>5 THE WITNESS: Immediately off-site, adjacent, in</p> <p>6 this case, is the Ridge Road Regional Park.</p> <p>7 MR. GROSSMAN: Right.</p> <p>8 THE WITNESS: You get partial credit, up to 35</p> <p>9 percent. And we are providing a trail and pedestrian access</p> <p>10 to that. So that adds more points to the equation. So with</p> <p>11 this proposal, we're at, with the 35 percent credit for the</p> <p>12 park, we're at over 47 points, where the demand is a little</p> <p>13 over 18 points. So we are proposing to meet all recreation</p> <p>14 on-site, and then in a moment, I'll take about the</p> <p>15 relationship to Clarksburg Village.</p> <p>16 MR. GROSSMAN: All right. And where are the</p> <p>17 natural areas that you're referring to in B-1?</p> <p>18 MR. KLINE: Mr. Grossman, while Mr. Unterberg is</p> <p>19 getting that plan out, this is not an analysis we would</p> <p>20 normally present to you as part of the zoning case. It's</p> <p>21 really a site plan analysis. But because the PRC zone does</p> <p>22 talk about recreational facilities, and because it's been</p> <p>23 questioned about whether they are adequate, we felt</p> <p>24 incumbent that we had to present this.</p> <p>25 MR. GROSSMAN: Yes, I think it's a good idea. And</p>
<p style="text-align: right;">Page 127</p> <p>1 be located adjacent to the clubhouse, which is right here,</p> <p>2 number 5 on the illustrative plan.</p> <p>3 MR. GROSSMAN: That's a natural area? Is that</p> <p>4 what that is?</p> <p>5 THE WITNESS: No. The community garden would be a</p> <p>6 vegetable garden. It would be an outside area that would be</p> <p>7 regulated by the HOA where the --</p> <p>8 MR. GROSSMAN: No, but how does it appear on this?</p> <p>9 MR. KLINE: It's at the bottom of that list, B-1.</p> <p>10 MR. GROSSMAN: B-1?</p> <p>11 MR. KLINE: Yes.</p> <p>12 MR. GROSSMAN: I see that. I'm sorry.</p> <p>13 THE WITNESS: It would be pedestrian bike, natural</p> <p>14 area, three meeting rooms, and then community garden.</p> <p>15 MR. GROSSMAN: So if I understand this chart, the</p> <p>16 demand figure of 18.2, that's what the regulations would</p> <p>17 require in terms of number of points --</p> <p>18 THE WITNESS: Correct.</p> <p>19 MR. GROSSMAN: -- for recreational facilities for</p> <p>20 seniors. And the supplied portion is what you're actually</p> <p>21 providing in terms of the recognized number of points for</p> <p>22 that type of recreational facility. Is that correct?</p> <p>23 THE WITNESS: Correct.</p> <p>24 MR. GROSSMAN: And you're, you indicate on this</p> <p>25 chart that the demand side requires 18.2 points, and you are</p>	<p style="text-align: right;">Page 129</p> <p>1 it's actually, I've seen them on development plans before.</p> <p>2 So it's not unusual to have it. But I agree with you, it</p> <p>3 seems to be more of a site plan issue. But so where did you</p> <p>4 say the natural area --</p> <p>5 THE WITNESS: The natural areas are what will be</p> <p>6 reforested.</p> <p>7 MR. GROSSMAN: Okay.</p> <p>8 THE WITNESS: And there are three major areas.</p> <p>9 One to the north, one to the west, and then on to the south,</p> <p>10 the southwest corner, actually the corner of Brink Road.</p> <p>11 MR. GROSSMAN: All right. And what about the bike</p> <p>12 system?</p> <p>13 THE WITNESS: The bike system on-site is dedicated</p> <p>14 bike path off-road along 305. And then that continues south</p> <p>15 on Ridge Road which connects to an existing bike trail that</p> <p>16 further continues to Germantown.</p> <p>17 MR. GROSSMAN: All right.</p> <p>18 THE WITNESS: While we're there, to overlap from</p> <p>19 the site a little bit, that bike trail continues along A-305</p> <p>20 all the way up and through Clarksburg Village.</p> <p>21 MR. GROSSMAN: Okay.</p> <p>22 THE WITNESS: So there is access with that bike</p> <p>23 trail from the site to Clarksburg Village as well.</p> <p>24 MR. GROSSMAN: All right. And what about the</p> <p>25 pedestrian system, that seems to get a lot of points?</p>

<p style="text-align: right;">Page 130</p> <p>1 THE WITNESS: The pedestrian system is the</p> <p>2 sidewalks on-site.</p> <p>3 MR. GROSSMAN: Okay.</p> <p>4 THE WITNESS: And then they connect to the larger</p> <p>5 areas as well. This is a hiker-biker trail, which is the</p> <p>6 bike trail. So that allows biking and walking or</p> <p>7 pedestrians.</p> <p>8 MR. GROSSMAN: By this you mean --</p> <p>9 THE WITNESS: The dashed line on the southern side</p> <p>10 of 305, yes.</p> <p>11 MR. GROSSMAN: Okay. And the red lines, are those</p> <p>12 the pedestrian routes along the internal roadways?</p> <p>13 THE WITNESS: Yes. This would be the sidewalk</p> <p>14 with the internal roads that connect through.</p> <p>15 MR. GROSSMAN: Okay.</p> <p>16 THE WITNESS: There will be a new sidewalk with</p> <p>17 Brink Road with the access point on Brink Road. The</p> <p>18 frontage improvements, including a sidewalk, will be</p> <p>19 required on Brink Road on the property side, the northern</p> <p>20 side. And that will connect to the hiker-biker trail along</p> <p>21 27. Again, for crossings at this intersection, this is a</p> <p>22 controlled for a signal controlled intersection.</p> <p>23 MR. GROSSMAN: Okay. All right. I understand</p> <p>24 now.</p> <p>25 THE WITNESS: So, we believe, particularly, that</p>	<p style="text-align: right;">Page 132</p> <p>1 one, elementary school, which will have ball fields and</p> <p>2 outdoor area. Two, is the existing Clarksburg Village Pool</p> <p>3 and Clubhouse, which is already built. Three, is also a</p> <p>4 future school site within Clarksburg Village, and the</p> <p>5 associated outdoor areas and recreation opportunities.</p> <p>6 Four is a second Clarksburg Village Pool and</p> <p>7 Bathhouse. This has not been constructed, although this</p> <p>8 whole eastern area of Clarksburg is currently under</p> <p>9 construction. So that is being programmed in.</p> <p>10 Five is a Clarksburg Village Green, which is a</p> <p>11 large green or park area. And then six on here is the</p> <p>12 Courts, which is the subject site in relationship to the</p> <p>13 overall Clarksburg Village.</p> <p>14 In addition to that, there is a number of</p> <p>15 existing parks we've already talked about, the Germantown</p> <p>16 Greenway, the Ridge Road Regional Park, and then actually,</p> <p>17 the future Seneca Crossing Park, which is owned by Park and</p> <p>18 Planning, they recently in the last year, they approved an</p> <p>19 active program for that park which includes soccer fields.</p> <p>20 It's not funded yet, but they are planning in the future to</p> <p>21 have athletic fields on the Seneca Crossing Park.</p> <p>22 So overall, that shows the relationship to</p> <p>23 Clarksburg Village, and the opportunity that exists with the</p> <p>24 option of the Courts entering an agreement with the Elm</p> <p>25 Street Development.</p>
<p style="text-align: right;">Page 131</p> <p>1 we can provide more than adequate recreation on site, per</p> <p>2 the County standards, that will be locked in at site plan.</p> <p>3 MR. GROSSMAN: All right.</p> <p>4 THE WITNESS: There was a little bit of</p> <p>5 conversation earlier about the Elm Street Development letter</p> <p>6 that talks about, one word was annexing, one word was</p> <p>7 incorporating. We will have a separate stand-alone HOA for</p> <p>8 this site, for the subject site. That will be overall</p> <p>9 maintenance, items specific to the 140 age-restricted uses.</p> <p>10 If we have a binding element for the age restriction itself,</p> <p>11 things like that could be incorporated into that specific</p> <p>12 HOA document for this site.</p> <p>13 We also do want to look at the opportunity for</p> <p>14 maintenance for seniors, whether it be snow plowing, lawn</p> <p>15 mowing, we mentioned a garden club, that there would be</p> <p>16 overall maintenance responsibilities for that HOA to support</p> <p>17 140 residents.</p> <p>18 With that said, and through the coordination of</p> <p>19 Elm Street Development, developers have the option to join</p> <p>20 the overall larger Clarksburg Village, and then share in the</p> <p>21 use of their recreation amenities, and as mentioned before,</p> <p>22 particularly in yellow, numbers one through six of those</p> <p>23 amenities, or some of the major amenities, conditions of the</p> <p>24 green space, the trail.</p> <p>25 There is a future school site, which is number</p>	<p style="text-align: right;">Page 133</p> <p>1 MR. GROSSMAN: All right. I'll say one thing,</p> <p>2 getting back to the development plan, one thing I did</p> <p>3 overlook is, we do note, there is one table that notes the</p> <p>4 PRC yield. The intent is to do single-family units, single-</p> <p>5 family detached. We did provide, depending on the market,</p> <p>6 that the market would change or be accepting, we provided</p> <p>7 the option to do up to 20 percent, or 28 units as attached</p> <p>8 units. So whether they're duplexes or townhouses, some type</p> <p>9 of a cash unit is planned for the future, if the market so</p> <p>10 warrants. Right now the intent is to do all single-family.</p> <p>11 MR. GROSSMAN: And that's under B?</p> <p>12 THE WITNESS: That would be either, and it's on</p> <p>13 the overall yield summary, which will total 140 units.</p> <p>14 MR. GROSSMAN: And I'm sorry, is that part of the</p> <p>15 binding textual elements, or is that part of your --</p> <p>16 THE WITNESS: It's under the binding. A is a</p> <p>17 separate chart. B is a separate chart. And then there is a</p> <p>18 PRC yield summary which is part of the binding which also</p> <p>19 includes the community center and then the size to be</p> <p>20 determined at preliminary planning.</p> <p>21 MR. GROSSMAN: Okay.</p> <p>22 THE WITNESS: Did I hit everything.</p> <p>23 MR. GROSSMAN: You said that was up to 20 percent?</p> <p>24 THE WITNESS: Yes, or 28 units.</p> <p>25 MR. GROSSMAN: Whichever is more or less?</p>

<p style="text-align: right;">Page 134</p> <p>1 THE WITNESS: Or in this case, the same.</p> <p>2 MR. GROSSMAN: Yes.</p> <p>3 THE WITNESS: Should we go on to the PRC?</p> <p>4 MR. KLINE: I think so.</p> <p>5 (Discussion off the record.)</p> <p>6 THE WITNESS: Going through the purpose of the</p> <p>7 zone, just reading from 59C-7.41 for the purpose. The</p> <p>8 purpose of the PRC zone is to provide for the establishment</p> <p>9 of a planned retirement community type of development</p> <p>10 accessible to or providing to it with most of the day to day</p> <p>11 recreational, medical, retail, commercial and services</p> <p>12 required by the residents thereof in accordance with the</p> <p>13 comprehensive zone and the plan approved by the Planning</p> <p>14 Board.</p> <p>15 I want to talk about accessible to and what we</p> <p>16 believe is essential to the plan. We just walked through</p> <p>17 with Exhibit 34(I), which is the greenways and the parks</p> <p>18 that were accessible to the site north and south.</p> <p>19 MR. GROSSMAN: right.</p> <p>20 THE WITNESS: In addition to that, there's a</p> <p>21 number amenities, shopping opportunities, support</p> <p>22 opportunities, pharmacies and the like, which are some of</p> <p>23 the, some of what is listed in the PRC zone. Since we are</p> <p>24 less than the 750 acres, it does not have to be on-site. It</p> <p>25 has to be accessible to.</p>	<p style="text-align: right;">Page 136</p> <p>1 announced that Harris Teeter will be building a major</p> <p>2 grocery store as the anchor to this retail center. So</p> <p>3 that's within that mile or so. So as you can see from this</p> <p>4 exhibit, there's a number of facilities that are accessible</p> <p>5 to the residents of the Courts per the PRC zone.</p> <p>6 BY MR. KLINE:</p> <p>7 Q Before you leave that, then, and looking at the</p> <p>8 purpose clause, do you feel that within the areas you</p> <p>9 defined there are adequate medical, retail, commercial and</p> <p>10 similar services to serve the residents of the community?</p> <p>11 A I do.</p> <p>12 Q Thank you.</p> <p>13 A Okay. What I would like to talk about is the</p> <p>14 master plan in conformance with the master a little bit.</p> <p>15 And Ms. Russel will be going into more detail with this, but</p> <p>16 one thing I did mention was the design itself. We looked</p> <p>17 particularly at the relationship to the Germantown Greenway</p> <p>18 and how we can complement that.</p> <p>19 The master plan talks about a gateway to</p> <p>20 Clarksburg as you travel north on Route 27. And what we</p> <p>21 did, specifically, which are a couple of graphics we did</p> <p>22 with planning staff, this in particular is Exhibit 40(b).</p> <p>23 And this shows particularly from, I will turn it to</p> <p>24 orientate it to the site just to the north, with our site as</p> <p>25 the key map here. We particularly did two sections through</p>
<p style="text-align: right;">Page 135</p> <p>1 Within our walking distance and our biking</p> <p>2 distance of the site, and as mentioned in the Planning</p> <p>3 Board's recommendation, within short driving distance, we</p> <p>4 have a number of facilities. We start off to the south. We</p> <p>5 previously mentioned the Milestone Shopping Center. That is</p> <p>6 within approximately, from the edge of the property to the</p> <p>7 edge, that's a half mile.</p> <p>8 You'll see with this, from the center of the</p> <p>9 property, a five minute, 10 minute walk for the two rings.</p> <p>10 And then we get into our five minute and 10 minute bike</p> <p>11 ride, within the bull's eye it is the same there on the</p> <p>12 recreation exhibit.</p> <p>13 Within a mile we have all of the Milestone</p> <p>14 Shopping Center, which includes the Giant Food Store, the</p> <p>15 pharmacy, with the Wal-Mart, Target, Home Depot, banks,</p> <p>16 restaurants, and a variety of services.</p> <p>17 Also, just beyond that on Observation Drive, which</p> <p>18 is number six, is the Shops at Seneca Meadows. And this is</p> <p>19 the Wegmans store and pharmacy that's under construction</p> <p>20 right now. So number six. To the south, in Germantown,</p> <p>21 within that mile or so, we have a number of facilities.</p> <p>22 To the north, in Clarksburg Village, which is also</p> <p>23 approximately a mile from the center of the site, a little</p> <p>24 bit shorter from the northern edge, is the future Clarksburg</p> <p>25 Village Shopping Center or Village Center. This has been</p>	<p style="text-align: right;">Page 137</p> <p>1 this which is the --</p> <p>2 MR. GROSSMAN: Southeastern corner.</p> <p>3 THE WITNESS: Southwestern.</p> <p>4 MR. GROSSMAN: Eastern, no, it's the southeastern.</p> <p>5 THE WITNESS: Of the site, of the site, okay.</p> <p>6 West of our -- true.</p> <p>7 MR. GROSSMAN: Right.</p> <p>8 THE WITNESS: And that is A and B, which we are</p> <p>9 proposing. This is a little over two acres. We're</p> <p>10 proposing that to be reforested. And that green area and</p> <p>11 forest would complement the Germantown Greenway and</p> <p>12 establish a green corner as you enter into Clarksburg.</p> <p>13 We also, which I'll go through in a little bit,</p> <p>14 established a green edge as you come up Ridge Road, and then</p> <p>15 a green perimeter. And particularly, C was to demonstrate</p> <p>16 how the green from this, I'll shift this around, C, which</p> <p>17 was a section through the site which showed Ridge Road, the</p> <p>18 buffer, the greenway, the homes, the internal streets. And</p> <p>19 now we'll get to the western boundary, the additional buffer</p> <p>20 and forestation that is being provided before you get to the</p> <p>21 existing homes.</p> <p>22 MR. GROSSMAN: Mr. Kline, were these sections</p> <p>23 included in the electronic versions you provided?</p> <p>24 MR. KLINE: Yes, sir.</p> <p>25 MR. GROSSMAN: Okay. Good.</p>

<p style="text-align: right;">Page 138</p> <p>1 MR. KLINE: You have the exhibit. I think it's 40 2 something.</p> <p>3 MR. GROSSMAN: All right.</p> <p>4 THE WITNESS: 40(a) is also illustrative. I'll 5 leave this turned sideways with Ridge Road, again, focusing. 6 This was trying to look at a bird's eye perspective, and 7 also a ground perspective of Brink Road and Ridge Road from 8 the corner, particularly with what is approximately two 9 acres of reforestation, reforested to provide that green 10 entryway or gateway to Clarksburg.</p> <p>11 MR. GROSSMAN: Are those trees going to be a 12 combination of evergreen and others?</p> <p>13 THE WITNESS: They can be. I know Mr. Rood will 14 speak more to this a little bit later, but they will be 15 proposed, or actually, they will be incorporated into the 16 phase one conservation, or category one conservation 17 easement. That requires that the tree species be native, so 18 they are more deciduous, native varieties, but there are 19 some evergreen native varieties. We could put hollies.</p> <p>20 MR. GROSSMAN: Yes, I'm not, just something to be 21 taken up at site plan review. It's not really a zoning 22 issue. It's just that it does affect the screening there, 23 effectiveness.</p> <p>24 THE WITNESS: Exactly. And again, that will be, 25 those details will be assigned on that at site plan.</p>	<p style="text-align: right;">Page 140</p> <p>1 Ridge Road, is up a little bit higher than the site. It 2 then drops down, and it drains to the west. The grades in 3 general are four to five percent, relatively flat. We will 4 be working with those grades.</p> <p>5 We also, the site itself is divided up into a 6 couple of sections. We will, to the south, to the southern 7 quarter there is the existing gas line. We need to respect 8 that and not grade over that. We will have road crossings 9 and then we have to match up to the four boundaries with the 10 property north, east, south, and west.</p> <p>11 In the middle, the same thing. We have the gentle 12 slopes, and we will match up to the four sides, that 13 northern side being A-305, and then lengthwise, area B, it's 14 again a smaller area, and it's generally level, but we do 15 have to match up to the four sides to minimize grading.</p> <p>16 MR. GROSSMAN: I mean, you also discussed density 17 a couple of times. And I just wonder, and I don't want to 18 change the order in which you want to present this, but it 19 does seem to me a contrast to what portions technical staff 20 overall and portions of technical staff said about density 21 in the master plan. I'm speaking specifically of the 22 attachment, attachment 8 regarding master plan compliance, 23 to the technical staff report, which is Exhibit 46 and it's 24 also Exhibit 53.</p> <p>25 And they have findings regarding density saying</p>
<p style="text-align: right;">Page 139</p> <p>1 MR. GROSSMAN: Right.</p> <p>2 THE WITNESS: So with our green edges, and as we 3 mentioned before on page 40 of the Brink Road exhibit, that 4 were with, we believe were within the overall 1,000 unit cap 5 on page 40 of the master plan. We also believe on page 75 6 we're talking about the residential density should be two to 7 four units per acre. We're within that.</p> <p>8 They propose the 140 residential units on the 54 9 acres, which is just under 2.6 units per acre. And again, 10 Ms. Russel will be talking about that in more detail. What 11 happened, I did here, Jody, with the maximum coordination 12 and compliance --</p> <p>13 BY MR. KLINE:</p> <p>14 Q Well, I guess I would ask you to comment, since 15 it's always standard in all the land development zones, how 16 you basically organized the layout and minimized the grading 17 to protect where possible existing vegetation?</p> <p>18 A As previously mentioned, the site is, I'm missing 19 99 percent farm, open. There's a small piece of existing 20 forest to the northwest corner, which is north of A-305. A- 21 305 does impact some of that forest. That was accounted for 22 in a Park and Planning approval. I believe it was December 23 of 2010 for the road itself from the water quality plan and 24 forest conservation for A-305.</p> <p>25 With that said, with grading, the existing grades,</p>	<p style="text-align: right;">Page 141</p> <p>1 that this is over the density recommended in the master 2 plan. And so I don't know if you want to address that now, 3 or if you have planned --</p> <p>4 MR. KLINE: We do actually have a separate witness 5 who is going to target that, and very specifically.</p> <p>6 MR. GROSSMAN: Okay. Then all right. I'll let 7 you do it the way you want to do it. Okay.</p> <p>8 MR. HANOVER: May I ask a question, sir?</p> <p>9 MR. GROSSMAN: Yes, sir.</p> <p>10 MR. HANOVER: On two charts back, when you were 11 showing the west view, could you put that up for just a 12 second, please? I have a question about that. The second 13 one, the next one. No, I'm sorry, it was the one that's in 14 your left hand. Yeah. That, the bottom one, as you show 15 the arrows, that purports to be a view from Route 27, is 16 that correct?</p> <p>17 THE WITNESS: Right, that's --</p> <p>18 MR. HANOVER: Okay. Now, the truth of the matter 19 is that that's very misleading, because Route 27 is above 20 that.</p> <p>21 MR. GROSSMAN: No, you can't, you can't -- sir. 22 Mr. Hancock. Hold on. You'll have an opportunity to -- I 23 thought you wanted some clarification about something. But 24 if you want to cross-examine on this point, you certainly 25 can. But you have to save it to cross-examination. Okay.</p>

<p style="text-align: right;">Page 142</p> <p>1 MS. GOODRICK: Excuse me.</p> <p>2 MR. GROSSMAN: Yes, ma'am.</p> <p>3 MS. GOODRICK: If we just have questions about the</p> <p>4 charts and things, we ask that when?</p> <p>5 MR. GROSSMAN: Well, if it's something where you</p> <p>6 didn't understand what you were referencing on that chart,</p> <p>7 that's fine. I want to make it convenient for you to</p> <p>8 understand the proceedings. But if you have questions that</p> <p>9 go to the substance of what has been said, that's really a</p> <p>10 cross-examination question. Okay.</p> <p>11 MS. GOODRICK: Okay. So if I have questions about</p> <p>12 some of the maps --</p> <p>13 MR. GROSSMAN: If you want to know what you are</p> <p>14 looking at on the map, sure, you can raise your hand and</p> <p>15 I'll call on you.</p> <p>16 MS. GOODRICK: Okay. Can we go back to the maps</p> <p>17 that we had before? I mean, since I've seen all of this,</p> <p>18 then I now have some questions that I wouldn't have known</p> <p>19 when I saw the map.</p> <p>20 MR. GROSSMAN: Well, no. If you have questions</p> <p>21 that go to the substance --</p> <p>22 MS. GOODRICK: No, I mean to just what's on the</p> <p>23 map.</p> <p>24 MR. GROSSMAN: All right. Well, all right. Let's</p> <p>25 accommodate you now. What map are you talking about?</p>	<p style="text-align: right;">Page 144</p> <p>1 MS. GOODRICK: Is that right? This is a</p> <p>2 constructed, this is coming all the way through here. And</p> <p>3 is this a part of, you have M-83 over here, close to -- is</p> <p>4 this a part of any of the alternatives or the M-83 for --</p> <p>5 THE WITNESS: Okay, I understand now.</p> <p>6 MS. GOODRICK: Yes. Is this a part of that?</p> <p>7 THE WITNESS: No, it's not.</p> <p>8 MS. GOODRICK: Okay. So what you have here, and</p> <p>9 this is, you said this is 120 feet?</p> <p>10 THE WITNESS: 120-foot right-of-way.</p> <p>11 MS. GOODRICK: Okay. This is 120 feet of traffic</p> <p>12 coming from Clarksburg. So this is a large feeder road,</p> <p>13 will be a large feeder road going through here.</p> <p>14 THE WITNESS: Uh-huh.</p> <p>15 MS. GOODRICK: Okay. So if I understand this</p> <p>16 correctly, you have M-83 over here, and then this is 27, so</p> <p>17 that, and this is Brink, all of the exits and even crossing</p> <p>18 the property, so you have people here and people here trying</p> <p>19 to get to the meeting center, would have to cross the 120</p> <p>20 feet?</p> <p>21 THE WITNESS: Correct.</p> <p>22 MS. GOODRICK: Which is a what, four lane, six</p> <p>23 lane --</p> <p>24 MR. GROSSMAN: Well, ma'am, I think you're really</p> <p>25 going beyond clarification here. You're trying to make a</p>
<p style="text-align: right;">Page 143</p> <p>1 MR. KLINE: We'll be glad to clarify things.</p> <p>2 MR. GROSSMAN: Yes.</p> <p>3 MS. GOODRICK: All right. So on the map that was</p> <p>4 the aerial one that --</p> <p>5 MR. GROSSMAN: With the circles on it?</p> <p>6 MS. GOODRICK: No. It had what looked like</p> <p>7 Snowden Parkway going down from Clarksburg. I'll go down.</p> <p>8 THE WITNESS: This one?</p> <p>9 MS. GOODRICK: No. I'm sorry. It's the one where</p> <p>10 there's a line that goes down into Snowden Parkway. I want</p> <p>11 to see from Clarksburg, can you see it?</p> <p>12 THE WITNESS: We'll find it.</p> <p>13 MS. GOODRICK: Okay. It's the one that would show</p> <p>14 Snowden Parkway all the way down coming through this</p> <p>15 property. So maybe I can just do it this way. Can I stand</p> <p>16 here and talk to you?</p> <p>17 MR. KLINE: Just tell us which one you're looking</p> <p>18 at here.</p> <p>19 MS. GOODRICK: Okay.</p> <p>20 MR. KLINE: Lower right-hand corner.</p> <p>21 MS. GOODRICK: 34(m). So coming from Clarksburg</p> <p>22 on this, coming all the way down, is a large road which is a</p> <p>23 feeder from Clarksburg, correct, of traffic, I'm talking</p> <p>24 about.</p> <p>25 THE WITNESS: Yes.</p>	<p style="text-align: right;">Page 145</p> <p>1 point. We'll let you make your point, any point you want to</p> <p>2 make during your cross-examination, to the extent it's</p> <p>3 cross-examination material, or during your testimony. So in</p> <p>4 fairness, we have to let the applicant put on their case.</p> <p>5 MS. GOODRICK: Right. But I needed to understand</p> <p>6 whether that was a part of M-83 or not.</p> <p>7 MR. GROSSMAN: All right. And I think he --</p> <p>8 MS. GOODRICK: That was originally a part of it,</p> <p>9 and that was going to be it.</p> <p>10 THE WITNESS: The name changes. In the Clarksburg</p> <p>11 master plan it's a four-lane road that is A-305. At Ridge</p> <p>12 Road it changes. It goes to M-83. And all the M-83 studies</p> <p>13 start at 27 or Ridge Road and then continue east and south.</p> <p>14 So the whole M-83 study, et cetera, does not include any of</p> <p>15 this road. This road is approved and --</p> <p>16 MR. GROSSMAN: You say this road does not include?</p> <p>17 THE WITNESS: This road, which is A-305, which is</p> <p>18 everything west of Ridge Road, Route 27.</p> <p>19 MR. GROSSMAN: Okay. All right.</p> <p>20 MR. WILLS: Just a quick one. Is that then, I've</p> <p>21 got so many different road numbers, but is that new road</p> <p>22 that you're talking about that comes off, that I would know</p> <p>23 as Mid-County Highway, that new road, it's essentially, is</p> <p>24 it supposed to carry essentially the same traffic that's</p> <p>25 supposed to be from 27 east? Is it the same style highway,</p>

<p style="text-align: right;">Page 146</p> <p>1 same style road that you see on the east side will be on the 2 west side?</p> <p>3 THE WITNESS: East and west of 27? Is that what 4 you --</p> <p>5 MR. WILLS: Yes.</p> <p>6 THE WITNESS: It's my understanding, yes. And 7 you'll hear testimony from a traffic engineer later today.</p> <p>8 MR. WILLS: Okay.</p> <p>9 MR. GROSSMAN: All right. You may proceed, Mr. 10 Kline.</p> <p>11 BY MR. KLINE:</p> <p>12 Q Mr. Unterberg, where are we now, compliance with 13 the development standards of the zone?</p> <p>14 A I think so.</p> <p>15 MR. GROSSMAN: All right. I'm going to break at 16 1:30 so that people have an opportunity to access the 17 cafeteria before they stop serving any food.</p> <p>18 MR. KLINE: Okay. What does that mean?</p> <p>19 MR. GROSSMAN: It means another 15 minutes.</p> <p>20 MR. KLINE: I doubt that we'll be completed with 21 Mr. Unterberg by that time.</p> <p>22 MR. GROSSMAN: Okay.</p> <p>23 THE WITNESS: Let me go through a couple. These 24 are all from 59C-7 from the PRC zone. The provision for 25 land uses, we're proposing that this be single-family</p>	<p style="text-align: right;">Page 148</p> <p>1 where we're over 200 feet. We at least exceed the 70 feet, 2 or in the 80-foot range. And then to the north we're again 3 70 feet to a building.</p> <p>4 MR. GROSSMAN: Okay.</p> <p>5 THE WITNESS: So we exceed that. To the north, 6 the adjoining zone is Country Inn, which is a little bit 7 unique. That setback is 75 feet. Our lots are at the 75 8 foot, and the units themselves are approximately another 20 9 feet beyond that. So we exceed that setback.</p> <p>10 MR. GROSSMAN: What's the, that's, you said it was 11 R-200 to the north of the Country Inn?</p> <p>12 THE WITNESS: It's R-200.</p> <p>13 MR. GROSSMAN: What's the setback call for in the 14 R-200 zone?</p> <p>15 THE WITNESS: I believe their rear yard is 35 16 feet.</p> <p>17 MR. GROSSMAN: Okay.</p> <p>18 THE WITNESS: Which is --</p> <p>19 MR. GROSSMAN: So you're going to exceed both of 20 those?</p> <p>21 THE WITNESS: Yes. Yes. And the Country Inn, 75 22 foot, is definitely more than the R-200.</p> <p>23 MR. GROSSMAN: All right.</p> <p>24 THE WITNESS: And part of that Country Inn, it 25 turns the corner and continues south. So there is a</p>
<p style="text-align: right;">Page 147</p> <p>1 residential, which is a permitted use.</p> <p>2 There's also a provision, 59C-7.43 that would 3 contain at least 25 acres. We're approximately a little 4 over 54 acres, so we meet that. Committed to 59C-7.47, 5 7.44, committed to residents age 50 or older. We are 6 committed to that, and we discussed a possible binding 7 element, which I have a feeling will be discussed a little 8 bit further.</p> <p>9 And then we get to the compliance and development 10 standards, setbacks. PRC zone says that we have to meet the 11 setbacks of the adjoining zones for less than the 12 development, less than the 750 acres. We show the required 13 setbacks on the development plan.</p> <p>14 For Ridge Road, which is adjacent to the RDT, 15 which would include the homes that we've added to the 16 surrounding area, that requirement is 50 feet. We show, and 17 we have a line on here for the 50 foot from the right-of- 18 way. And it's the new right-of-way that's pushed over to 19 accommodate the road. We exceed that in every case. We 20 have a couple pinch points which show up a little better on 21 the color version.</p> <p>22 BY MR. KLINE:</p> <p>23 Q And that's Exhibit number --</p> <p>24 A That's 34(g). Those are at least 70 feet where 25 the requirement is 50 feet. We get to a spot in the middle</p>	<p style="text-align: right;">Page 149</p> <p>1 property line just south of A-305, along the western border. 2 And that, we continue, that is proposed all to be forest and 3 natural area.</p> <p>4 When we come to the adjoining RE-2 property, we 5 have rear yards adjacent to us. The RE-2 setback, rear yard 6 setback is 35 feet. We have two dimensions. Our closest 7 property corner, which is the southern half of area A is 90 8 feet. The house itself is about another 10-15 feet setback.</p> <p>9 The other closest corner to the road, which is the 10 northern part, just south of 305, to the property line, we 11 have 109-foot setback, and that's to the right-of-way line. 12 We have a 50 foot right-of-way and the houses are setback 13 further than that on the other side.</p> <p>14 In the middle, where we do open up more, this is 15 over to the point, this is over 300 feet in the middle. So 16 we more than exceed the 35 foot rear adequate setback. 17 Also, to the south, which is Brink Road, we have a 40-foot 18 perimeter, which we were looking at a front yard for the 19 zoning zone, and we exceed that, particularly with the large 20 landscape and forested area, creating our gateway corner.</p> <p>21 Building coverage, there is a requirement for over 22 750 acres to design with, and less than 750. Practically 23 speaking, we do have a binding element that we cannot be 24 above 28 percent impervious, which includes building and 25 roads.</p>

<p style="text-align: right;">Page 150</p> <p>1 Green area for under 750, there is a requirement  2 to have 50 percent green area. Again, all these are noted  3 on the development plan itself. We are going to exceed  4 that, again, due to that binding element with the 28 percent  5 impervious, we are going to have at least 72 percent green  6 space, based on that binding element.  7 Roads, all the roads, as I said on the earlier  8 exhibits, are proposed to be public. There is a provision  9 in that 50-foot tertiary road right-of-way, there is a  10 provision that private roads have to at least be 22 foot in  11 width. We do not have any private roads proposed. It's the  12 land we will be dedicating the right-of-ways for the roads  13 A-305, Route 27, and the internal public roads. So that  14 takes us to development standards.  15 BY MR. KLINE:  16 Q It does. What I'd like to do is draw your  17 attention to the standards of 59D-1 for the approval of the  18 development plan, if that's timely to do that.  19 A Okay. Do you want to walk me through that?  20 Q Sure. Section 59D-1.61 is the findings for the  21 approval of a development plan. Does the proposed  22 development plan substantially comply with the use and  23 density indicated in the master plan or sector plan, and/or  24 does not conflict with the general plan?  25 A In my opinion, it does, and you will hear more</p>	<p style="text-align: right;">Page 152</p> <p>1 A Well, the PRC zone does set up setbacks on  2 compatibility based on the adjacent zone. And we exceed  3 those on all four sides of the subject property. And  4 particularly with the western edge requirement with 35 foot,  5 which is the rear yard setback for RE-2, and exceeding that,  6 well, on average, up to three times that 35 foot  7 requirement.  8 Q And one of the questions Mr. Grossman asked at the  9 beginning is, make sure you address the lack of screening  10 that was raised by one of the opponents. I realize Mr. Rood  11 is going to talk a little bit more about the quality of  12 that, but would you just describe what you've done in those  13 areas of buffer and setback from the property lines?  14 A Yes. Mr. Rood will address this, and also Mr.  15 Bossong will address it, that going from south to north  16 along the western property line we have the setback. There  17 also is a stormwater management facility that will be  18 landscaped. Starting north of the gas easement, we cannot  19 plant on the gas easement, that we have a reforestation  20 buffer.  21 That ranges from a minimum, well, from the  22 property line to the closest corner is 90 feet, and that  23 expands as it goes forward. That will be placed in a  24 category one forest conservation easement, and the detailed  25 planting for that will be at site plan.</p>
<p style="text-align: right;">Page 151</p> <p>1 testimony regarding, from Ms. Russel. And the Planning  2 Board also agreed that this is, the density is in  3 substantial compliance.  4 Primarily, again, as previously mentioned, page  5 40, it talks about a maximum of 1,000 units for the  6 neighborhood, the Brink Road neighborhood. And also on page  7 75 it talks about a density of two to four units per acre  8 for the neighborhood. And we comply with both of those.  9 Q Subparagraph B is, the proposed development will  10 comply with the purposes, standards, and regulations of the  11 zone, which you just all testified to.  12 A I believe it does.  13 Q And would provide for the maximum safety,  14 convenience, and amenity of the residents to the  15 development.  16 A I believe it does. And particularly with the  17 roadways and access we exceed Montgomery County standards,  18 and the regulatory standards. And that would be  19 subsequently brought out.  20 Q And the last part of B is, and would be compatible  21 with adjacent development, which is probably of great  22 concern to Mr. Hancock. And going back to your description  23 of setbacks, would you basically highlight again how you  24 feel you have been able to keep compatibility with the  25 surrounding development?</p>	<p style="text-align: right;">Page 153</p> <p>1 Number two, in the white circle, is a second  2 stormwater management facility that is proposed. And again,  3 this is where I mentioned earlier we have the 109-foot  4 dimension from the property line to the road right-of-way,  5 as we've given you --  6 MR. GROSSMAN: I notice that appears to be light  7 blue. What does that signify?  8 THE WITNESS: These are graphically showing there  9 is a change from the two stormwater ponds. You'll hear  10 further testimony, these are dry facilities that will be  11 landscaped.  12 MR. GROSSMAN: Well, can you point to the area  13 that you're saying is a dry facility?  14 THE WITNESS: There's two of them. One is on the  15 southern portion.  16 MR. GROSSMAN: Yes.  17 BY MR. KLINE:  18 Q They're labeled as?  19 A Number two, which is, well, there's a, talk about  20 environmental concept, which also includes the stormwater  21 management. And then there is a second one which is just  22 south of 305, which is also a stormwater facility.  23 MR. GROSSMAN: That's seems to be a different  24 color from the rest of, everything else on the chart.  25 That's why.</p>

<p style="text-align: right;">Page 154</p> <p>1 THE WITNESS: There's no reason for that. It's a</p> <p>2 graphic representation. They are similar in function and</p> <p>3 landscaping and so forth.</p> <p>4 MR. GROSSMAN: So that will be dry most of the</p> <p>5 time, but might fill up with water. Is that the idea?</p> <p>6 THE WITNESS: Correct. It's dry. When there is a</p> <p>7 storm event, it will fill up with water.</p> <p>8 MR. GROSSMAN: Okay.</p> <p>9 THE WITNESS: You will hear further testimony on</p> <p>10 that.</p> <p>11 MR. GROSSMAN: All right.</p> <p>12 MR. WILLS: Can I ask a question about that. Most</p> <p>13 of these I've seen they're just kind of, it's not a pond,</p> <p>14 because there's no water in it, but it's just a, you create</p> <p>15 a depression in the soil so that, you know, at some point if</p> <p>16 there's a lot of rain there will be run-off and it will fill</p> <p>17 up.</p> <p>18 But I'm looking at, there's a home that backs</p> <p>19 right up to that. Are they basically going to be looking at</p> <p>20 open space, other than a little buffer that may be existing</p> <p>21 buffer? But they're going to be looking at open space into</p> <p>22 this depression in the ground? This is where the blue area</p> <p>23 is on top.</p> <p>24 THE WITNESS: You're talking about here?</p> <p>25 MR. WILLS: Yes. Would that, I mean, they're</p>	<p style="text-align: right;">Page 156</p> <p>1 external access are safe, adequate, and efficient.</p> <p>2 MR. GROSSMAN: Well, before you address that, are</p> <p>3 you finished with the whole concept of compatibility,</p> <p>4 because you only address it in terms of setbacks, as far as</p> <p>5 I could tell, and screening. Is there anything else on</p> <p>6 compatibility that you think should be --</p> <p>7 THE WITNESS: The PRC stresses setback and the</p> <p>8 adjoining zones. So based on the PRC zone, we meet that.</p> <p>9 And actually we exceed the setbacks and are compatible.</p> <p>10 MR. GROSSMAN: All right. You have nothing else</p> <p>11 to say on the point?</p> <p>12 THE WITNESS: Correct.</p> <p>13 MR. GROSSMAN: All right.</p> <p>14 BY MR. KLINE:</p> <p>15 Q Well, I guess as the hearing examiner asked that,</p> <p>16 I guess maybe we should go back to that. The land uses are</p> <p>17 essentially similar to what's going on to the west of the</p> <p>18 property. So I guess the question is, because we've got</p> <p>19 more density, are they looking at more units, and therefore</p> <p>20 that's inherently incompatible?</p> <p>21 A Rephrase that or say that again?</p> <p>22 Q Yes. Sure. What --</p> <p>23 MR. GROSSMAN: The question is, I mean, that's</p> <p>24 essentially the question I'm getting at. Is there, is the</p> <p>25 difference in density raise issues of compatibility?</p>
<p style="text-align: right;">Page 155</p> <p>1 going to be basically looking out at a depression in the</p> <p>2 ground, but really not much of a buffer space?</p> <p>3 THE WITNESS: Well, there is the existing</p> <p>4 hedgerow, and then this will be primarily lawn area, which</p> <p>5 is, there would be a dam and a depression. It's a dry</p> <p>6 facility for most of the time. When it does rain, it will</p> <p>7 fill up.</p> <p>8 MR. GROSSMAN: Is there --</p> <p>9 THE WITNESS: There will be landscaping,</p> <p>10 particularly on the uphill side that can be done to upgrade</p> <p>11 that.</p> <p>12 MR. GROSSMAN: Is there typically fencing that</p> <p>13 goes around that?</p> <p>14 THE WITNESS: There can be fencing, and depending</p> <p>15 on the type of facility, if all our slopes work, there would</p> <p>16 not be fencing. But that would be something we would</p> <p>17 determine as we go forward to site plan.</p> <p>18 Last but not least, as we go further north, which</p> <p>19 would get into the setback with the Country Inn, you can</p> <p>20 see, this is the Country Inn parcel, which is the northern-</p> <p>21 western corner. And then this corner is already</p> <p>22 apportioned.</p> <p>23 BY MR. KLINE:</p> <p>24 Q Subsection C says, the proposed internal</p> <p>25 circulation and pedestrian circulation systems and points of</p>	<p style="text-align: right;">Page 157</p> <p>1 Because the opposition has raised that point, as has the</p> <p>2 technical staff.</p> <p>3 THE WITNESS: I do not believe so, and a couple of</p> <p>4 reasons why. We are a like use with single-family detached,</p> <p>5 the single-family detached. We have provided the space, and</p> <p>6 exceed the space per the PRC zone.</p> <p>7 In addition, the RE-2 zone has a building coverage</p> <p>8 of a maximum of 25 percent. We're actually going to be a</p> <p>9 lot coverage for the whole site less than that, based on our</p> <p>10 binding element that we do not exceed 28 percent to be</p> <p>11 impervious. So our actually building coverage, even though</p> <p>12 there is not a PRC requirement, will be less than 25</p> <p>13 percent, because we have a number, well, that 28 percent</p> <p>14 impervious also includes the roads.</p> <p>15 Another point on compatibility in relation to the</p> <p>16 RE-2 zone, the maximum height for RE-2 is 50 feet. We are</p> <p>17 proposing the height of the PRC zone to be 35 feet. So</p> <p>18 we're at a lower height, in addition to the setbacks. And</p> <p>19 based on that, I believe we are compatible.</p> <p>20 MR. GROSSMAN: All right.</p> <p>21 BY MR. KLINE:</p> <p>22 Q And previously, we've focused on the edge issue to</p> <p>23 the west as being where we had to address it. But by virtue</p> <p>24 of changing the definition of the surrounding area, talk</p> <p>25 about how out compatibility with the houses up in that</p>



<p style="text-align: right;">Page 158</p> <p>1 northeast corner on the east side of 27 that we've included 2 in. 3 A Yes, with the setback, which is front setback with 4 the RDT zone, the minimum is 50 feet, and our homes are at 5 70 feet or greater. So we exceed that setback. In 6 addition, there is actually, and I'll go back to the section 7 which was alluded to a little bit earlier. This did not 8 exaggerate the vertical scale that was modified. 9 Ridge Road is up high, and there will be a slope 10 that will vary possibly five to 10 feet, depending on the 11 final grade. But the homes that are setback, they will be 12 set down lower than Ridge Road. So in addition to the 13 setback and the grading or the citing, you will have less, 14 they will be less noticeable to Ridge Road than the existing 15 homes. 16 MR. WILLIS: Can I just ask one quick question? 17 MR. GROSSMAN: Let's not because I think we're 18 going to have to break here, in any event. 19 MR. WILLIS: All right. 20 MR. GROSSMAN: But I'll ask a quick question. 21 MR. WILLIS: That doesn't seem fair. 22 MR. GROSSMAN: No, it doesn't. Attachment 8 to 23 the technical staff report, page three, this is the portion 24 of technical staff that addresses master plan compliance, 25 page three, is a finding, "The proposed age-restricted</p>	<p style="text-align: right;">Page 160</p> <p>1 MR. GROSSMAN: Well, that was the Planning Board 2 conclusion. I was just wrestling with the -- 3 THE WITNESS: Staff focused on, and made mention 4 of the two to four units per acre in the technical master 5 plan. They focused on the land use that reflected the RE-2 6 zoning. And the density of RE-2 is a two-acre lot, which is 7 basically a half unit per acre. That's the density they 8 noted, which is the existing zoning, or what could be built 9 under the existing zoning. 10 MR. GROSSMAN: So you're saying they, you feel 11 that their reliance on the text -- 12 MR. KLINE: It's the other way around. 13 MR. GROSSMAN: I'm sorry, reliance on the image or 14 whatever, misrepresented the intent of the master plan? 15 THE WITNESS: Correct. And it only represented 16 one part of the master plan, not the other two pages that 17 were noted, page 40 and page 75. 18 MR. GROSSMAN: Okay. So in your opinion, the 19 density, as well as these other setbacks, screening, et 20 cetera, the density is compatible with surrounding 21 densities? 22 THE WITNESS: Yes, and with the master plan. 23 MR. GROSSMAN: Okay. All right. Why don't we -- 24 MR. KLINE: I can actually ask three or four quick 25 questions, just do you agree, professionally, and wrap it up</p>
<p style="text-align: right;">Page 159</p> <p>1 housing in the PRC zone at a density of 2.576 units per acre 2 is 2.5 time the upper range of the rural residential density 3 proposed in the master plan for the subject site. It also 4 has a significantly higher density than the adjacent 5 parcels. With respect to density, this application does not 6 provide an appropriate east-west transition between the 7 specifically designated adjacent land areas." Can you 8 address that? 9 THE WITNESS: Part of it. And I know Ms. Russel 10 will also address that. We've had several conversations 11 with staff prior to that report. There is a discrepancy on 12 what the actual map shows, which reflects the existing RE-2 13 zoning and that density, versus what the text, particularly 14 on page 75 of the master plan that speaks that the 15 neighborhood with the single-family should be two to four 16 units per acre. So there is a discrepancy within the master 17 plan. 18 The finding with Planning Board in similar 19 presentation that was the finding, we are compatible based 20 on the gateway, the green edge, particularly on 27, that 21 allows us to have that transition by not having units right 22 up on the road; that we do have that green edge. And that 23 we were in substantial compliance with the master plan, 24 based on those issues. And Ms. Russel will be providing 25 more detail.</p>	<p style="text-align: right;">Page 161</p> <p>1 for him so he is available for cross-examination. 2 MR. GROSSMAN: Fair enough. But if they don't get 3 their food you're, you're going to have to face them. 4 MR. WILLIS: What time do they close down there? 5 MR. KLINE: Actually, maybe you're right, Mr. 6 Grossman. Good idea. We probably are getting low on time. 7 MR. GROSSMAN: All right. 8 MR. KLINE: But he will be available for cross- 9 examination very quickly after our return. 10 MR. GROSSMAN: Right. You will all get your shot 11 at him, I guarantee you that. Shall we come back at 2:15, 12 then? We'll break for lunch. 13 (Whereupon, at 1:34 p.m., a luncheon recess was 14 taken.) 15 MR. GROSSMAN: All right. Shall we resume? 16 MR. KLINE: Yes. I'm sorry, Mr. Grossman. 17 MR. GROSSMAN: Okay. We're back on the record. 18 Mr. Kline. 19 MR. KLINE: We'd like to continue and wrap up our 20 testimony by Mr. Unterberg. 21 BY MR. KLINE: 22 Q By way of conclusionary (phonetic sp.) remarks, 23 Mr. Unterberg, is it your opinion, then, based on your 24 professional judgment, that the proposal set forth in G-881 25 is in substantial conformance with the master plan and the</p>

<p style="text-align: right;">Page 162</p> <p>1 intended purposes of the master plan?</p> <p>2 A Yes, it is, and it's based on the prior testimony.</p> <p>3 Q And as you mentioned in the questions today, that</p> <p>4 the request complies with all the dimensional and regulatory</p> <p>5 standards for the PRC zone?</p> <p>6 A Yes, it does.</p> <p>7 Q And the purpose clause as well?</p> <p>8 A Yes.</p> <p>9 Q In your opinion, is the arrangement of uses</p> <p>10 compatible with surrounding land uses?</p> <p>11 A Yes, and particularly that were with the PRC</p> <p>12 setback requirements and that were single-family to single-</p> <p>13 family. We are compatible with the surrounding uses.</p> <p>14 Q And in your opinion in overlooking all of that, is</p> <p>15 this application in the public interest?</p> <p>16 A Yes, it is.</p> <p>17 MR. KLINE: No further questions of Mr. Unterberg.</p> <p>18 MR. GROSSMAN: Okay, Mr. Hancock, cross-</p> <p>19 examination.</p> <p>20 MR. HANCOCK: I just had a couple of questions.</p> <p>21 CROSS-EXAMINATION</p> <p>22 BY MR. HANCOCK:</p> <p>23 Q Could we put one of the charts up? I believe</p> <p>24 it's, yes, the one that's in front, please, Mr. Unterberg.</p> <p>25 A This one?</p>	<p style="text-align: right;">Page 164</p> <p>1 houses way above Route 27, and there is actually over 25</p> <p>2 feet from drop from Route 27 down. So I don't understand</p> <p>3 that. That's why I wanted to --</p> <p>4 A We are showing houses below.</p> <p>5 Q Pardon?</p> <p>6 A We're showing houses below. They are lower than</p> <p>7 Route 27.</p> <p>8 Q Those houses, I misunderstood you. Those houses</p> <p>9 are not Brink Meadows to the left. They are the houses that</p> <p>10 you propose to build?</p> <p>11 A These are the proposed houses.</p> <p>12 Q Proposed houses that you are going to build?</p> <p>13 A These are the proposed houses and plan view.</p> <p>14 Q Okay.</p> <p>15 MR. KLINE: The house to the far right is the</p> <p>16 existing residence in Brink Meadows?</p> <p>17 THE WITNESS: The house to the far -- is the</p> <p>18 existing.</p> <p>19 BY MR. HANCOCK:</p> <p>20 Q Okay.</p> <p>21 A And to reiterate, Ridge Road is high. It drops</p> <p>22 down into the site, and the houses to be built are lower</p> <p>23 than Ridge Road.</p> <p>24 Q But looking back the other way, it would be just</p> <p>25 the reverse, right? You're looking up a hill? Looking from</p>
<p style="text-align: right;">Page 163</p> <p>1 Q No, the left side. I'm sorry.</p> <p>2 A This one?</p> <p>3 Q Yes, please. This purports to be a view, on the</p> <p>4 bottom line, that purports to be a view looking from Route</p> <p>5 27 towards the west, is that correct?</p> <p>6 A Correct.</p> <p>7 Q Okay. That really is not representative because</p> <p>8 the height, I mean, you may not think a five percent grade</p> <p>9 is much. In a building, I think a five percent grade is.</p> <p>10 But that's totally erroneous.</p> <p>11 MR. GROSSMAN: Well, that's not really -- that's</p> <p>12 not really a question. Well, you can say, isn't that</p> <p>13 erroneous because, whatever. But you have to have a</p> <p>14 question. You can't make a speech.</p> <p>15 BY MR. HANCOCK:</p> <p>16 Q That doesn't represent a five percent grade.</p> <p>17 MR. GROSSMAN: Does it?</p> <p>18 BY MR. HANCOCK:</p> <p>19 Q Does it?</p> <p>20 A Actually, it does. It is to scale. The vertical</p> <p>21 scale is not exaggerated. As you can see, Route 27 is</p> <p>22 higher. It goes back down.</p> <p>23 Q Is that black line Route 27?</p> <p>24 A This is Route 27.</p> <p>25 Q Your topo disagrees with that. You're showing</p>	<p style="text-align: right;">Page 165</p> <p>1 there towards 27 --</p> <p>2 A This is low. This continues uphill, yes.</p> <p>3 Q You would see all of those?</p> <p>4 A Well, we have a substantial buffer in here that</p> <p>5 will be planted.</p> <p>6 Q Except for that top section that was in blue?</p> <p>7 A This still has the distance and the buffer. And</p> <p>8 at site plan, there will be a landscape plan that goes with</p> <p>9 that stormwater facility.</p> <p>10 Q Do I understand that that's something that we</p> <p>11 would have to deal with, with Park and Planning when they</p> <p>12 actually submit a plat of subdivision?</p> <p>13 A Yes.</p> <p>14 Q Because that line of trees now is not any kind of</p> <p>15 a buffer.</p> <p>16 A That all will be --</p> <p>17 Q That's what I mean, that will be further down the</p> <p>18 line?</p> <p>19 MR. KLINE: Why don't you explain what the steps</p> <p>20 are if we're successful in obtaining the rezoning.</p> <p>21 THE WITNESS: Okay. Several steps. The zoning</p> <p>22 has to be approved. Once the zoning is approved, then we</p> <p>23 need to file for a preliminary plan of subdivision. Also,</p> <p>24 and that has a whole process and approval through Park and</p> <p>25 Planning.</p>

<p style="text-align: right;">Page 166</p> <p>1 From there, there is a site plan that's required.</p> <p>2 And that site plan is, that's all the specifics of what's to</p> <p>3 be built. The specific trees, the specific --</p> <p>4 BY MR. HANCOCK:</p> <p>5 Q Does the public have a chance to comment on that?</p> <p>6 A Each of these is a public hearing. There is a</p> <p>7 development review committee that's a public hearing, and</p> <p>8 there will be a Planning Board hearing.</p> <p>9 Q Thank you.</p> <p>10 A There will be a staff member assigned to it, so</p> <p>11 interaction with staff, once it's submitted, the public is</p> <p>12 available to review that with staff also.</p> <p>13 Q Thank you.</p> <p>14 MR. GROSSMAN: Staff meaning technical staff --</p> <p>15 THE WITNESS: Technical staff.</p> <p>16 MR. GROSSMAN: -- for the Maryland National</p> <p>17 Capital Park and Planning.</p> <p>18 MR. HANCOCK: I'm sorry, sir?</p> <p>19 MR. GROSSMAN: Staff meaning the technical staff</p> <p>20 of the Maryland National Capital Park and Planning</p> <p>21 Commission. We have a very small staff here. It's</p> <p>22 currently one person.</p> <p>23 MR. HANCOCK: Those are the only questions I had.</p> <p>24 MR. GROSSMAN: Are you finished, Mr. Hancock?</p> <p>25 MR. HANCOCK: Yes.</p>	<p style="text-align: right;">Page 168</p> <p>1 MS. GOODRICK: Can you see?</p> <p>2 MR. GROSSMAN: Thank you.</p> <p>3 THE WITNESS: Good job. Ridge Road is Ridge Road</p> <p>4 that comes down and that stands alone, is also the planning</p> <p>5 boundary which is the Clarksburg master plan limits. A-305</p> <p>6 is designated in the Clarksburg master plan, which continues</p> <p>7 north and west through Clarksburg Village. When you get to</p> <p>8 Ridge Road, this is --</p> <p>9 MR. GROSSMAN: Just for the record, A-305 is the</p> <p>10 road that is going to bisect your property, the subject</p> <p>11 site.</p> <p>12 THE WITNESS: The subject site. Correct.</p> <p>13 MR. GROSSMAN: And then towards the northern area,</p> <p>14 and then it's going to head north-northwest through</p> <p>15 Clarksburg Village.</p> <p>16 THE WITNESS: Through Clarksburg Village. And</p> <p>17 that is in the Clarksburg master plan, and it is on the</p> <p>18 approved Clarksville Village plans. For all purposes, or</p> <p>19 for M-83 practically starts at Ridge Road and then continues</p> <p>20 east. And there are various alignments. This is the master</p> <p>21 plan alignment, that continues east and south.</p> <p>22 MR. GROSSMAN: So M-83 is an east-west road at the</p> <p>23 point where it intersects with the subject site. And then</p> <p>24 as it goes further east, it then heads south, is that</p> <p>25 correct?</p>
<p style="text-align: right;">Page 167</p> <p>1 MR. GROSSMAN: Okay. Ms. Goodrick, do you want</p> <p>2 to?</p> <p>3 MS. GOODRICK: Yes, I do. I have a couple of</p> <p>4 questions.</p> <p>5 MR. GROSSMAN: Go right ahead.</p> <p>6 CROSS-EXAMINATION</p> <p>7 BY MS. GOODRICK:</p> <p>8 Q I'll keep it to questions. Okay. This will work.</p> <p>9 I --</p> <p>10 MR. KLINE: You're just going to need to refer to</p> <p>11 the number on the exhibit in the lower right-hand corner?</p> <p>12 BY MS. GOODRICK:</p> <p>13 Q Okay. All right. This is 34(m). And I just want</p> <p>14 to ask about the size of the road. So the proposed M-83</p> <p>15 comes down Ridge Road, right? It comes down Ridge Road and</p> <p>16 turns here?</p> <p>17 MR. GROSSMAN: Comes south on Ridge Road?</p> <p>18 THE WITNESS: No. 27 is Ridge Road, which stands</p> <p>19 alone. To the west of Ridge Road is master plan, which is</p> <p>20 in the Clarksburg master plan, this Ridge Road is also the</p> <p>21 master plan boundary.</p> <p>22 MR. GROSSMAN: I can't see. Actually, you are</p> <p>23 blocking my view.</p> <p>24 THE WITNESS: I'm sorry. I don't know if you want</p> <p>25 to stand back. Let's trade places.</p>	<p style="text-align: right;">Page 169</p> <p>1 THE WITNESS: Correct. And everything on the east</p> <p>2 side, the road continues through per the master plan, but</p> <p>3 everything on the east side is future M-83. Everything on</p> <p>4 the west side of Ridge Road is the approved A-305.</p> <p>5 BY MS. GOODRICK:</p> <p>6 Q And that is not a part of any of the alternatives?</p> <p>7 A Correct. Anything west of Ridge Road, this has a</p> <p>8 series of approvals with the preliminary plan for Clarksburg</p> <p>9 Village, and actually paving and road plans with the County</p> <p>10 that are in for approval. So anything west of Ridge Road is</p> <p>11 a different designation and not part of anything east of</p> <p>12 Ridge Road, which is M-83.</p> <p>13 Q Okay. And 27 going south, it's 120 feet, the</p> <p>14 entire road? Is that what you're saying, 27?</p> <p>15 A No, I was saying A-305 is 120-feet of right-of-</p> <p>16 way.</p> <p>17 Q What's 27?</p> <p>18 A 27 varies. The master plan for our frontage calls</p> <p>19 for 150-foot of right-of-way for Route 27. That actual</p> <p>20 right-of-way varies, based on what's been, the widening</p> <p>21 that's been previously approved in coordination with</p> <p>22 Clarksburg Village.</p> <p>23 MR. GROSSMAN: But the width of the road does not</p> <p>24 always coincide with the size of the right-of-way, is that</p> <p>25 correct?</p>

<p style="text-align: right;">Page 170</p> <p>1 THE WITNESS: Correct. A-305 is a consistent four  2 lanes, and it crosses through the subject property. Ridge  3 Road, which currently is four lanes, south of A-305 is going  4 to be widened to six lanes. Most of that widening is coming  5 from the subject property because of the existing water  6 tower on the other side of the road.  7 North of 305 it continues as four lanes. And  8 those improvements are already programmed and part of the  9 responsibility of the Clarksburg Village approvals.  10 BY MS. GOODRICK:  11 Q It goes from four to six lanes, and then how far  12 do the six lanes continue down?  13 A The six lanes, I believe it's already six lanes at  14 355, Frederick Road. And I believe the six lanes come to a  15 portion almost to Brink Road. So that will be extended and  16 the number of lanes will be consistent.  17 Q Okay. I have a question that has to do with the  18 chart that you gave us about -- this one.  19 MR. GROSSMAN: The recreational facilities?  20 MS. GOODRICK: Yes. Okay.  21 MR. GROSSMAN: Okay. That's Exhibit 66.  22 BY MS. GOODRICK:  23 Q Okay. And that has to do with the, you are  24 getting these points, for example, the bike system. Do you  25 get points for just having a bike system? Do you get 1.82?</p>	<p style="text-align: right;">Page 172</p> <p>1 here.  2 Q But the Seneca Meadows, that was the one, then,  3 that has not been developed. Is that correct?  4 A That is, there is a concept approved, and it's a  5 program. And this has the ball fields. And this is  6 programmed for two soccer fields in the future. Those are  7 not built yet.  8 Q Okay. When you say approved, approved by whom?  9 A Park and Planning Commission. They have a, there  10 is a concept in their capital budgets. They have approved a  11 schematic plan for this.  12 Q Okay.  13 A That went to the Planning Board.  14 Q Okay. So I think there is a difference, but I'm  15 not sure. It can be approved, but it's not authorized?  16 MR. HANCOCK: Ask if the capital budget has been  17 approved.  18 BY MS. GOODRICK:  19 Q Has the capital budget been approved?  20 A For this?  21 Q Yes.  22 A That I do not know.  23 MR. GROSSMAN: For this being the Seneca Park?  24 THE WITNESS: Seneca Crossing Park.  25 MS. GOODRICK: Yes. Right.</p>
<p style="text-align: right;">Page 171</p> <p>1 Or does it have to do with the number of feet or miles that  2 you get that credit? How do you get credits for this?  3 A It's more general. If you have a bike system --  4 Q You get that many points.  5 A -- you get points.  6 MR. GROSSMAN: That was a good question. I like  7 that one.  8 BY MS. GOODRICK:  9 Q Thanks. Okay. So having a community garden gives  10 you 4.55 points, for example.  11 A Uh-huh.  12 Q So just, so having these things.  13 A Now, this will be proved in the appropriate, like  14 for a garden, the appropriate size when we go to site plan  15 down the road. This will be approved and reviewed by the  16 technical staff of Park and Planning that the size is  17 appropriate.  18 Q So, and then these other things, if I'm  19 understanding, so the other things that you can get credit  20 for are things that are not built, if I am understanding?  21 In other words, the Ridge Road Recreational Park, and Seneca  22 Meadows Crossing Park doesn't have these things?  23 A Actually, most of these are existing in the Ridge  24 Road Recreational Park, with the ball fields and the dog  25 park and so forth. Actually, the dog park is not even on</p>	<p style="text-align: right;">Page 173</p> <p>1 BY MS. GOODRICK:  2 Q So it has -- I'm sorry. You didn't know. Okay.  3 I'm sorry.  4 A These are, these are definitely future uses that  5 have not been built. And the status, I do know they  6 approved the concept with that last review. More to the  7 point, for the credit and the partial credit up to 35  8 percent for existing park and existing uses adjacent to the  9 site, we've received a credit for the existing Ridge Road  10 Recreation Park with the ball fields and the uses that are  11 already there.  12 Q Okay.  13 MR. GROSSMAN: Well, are you saying that the  14 Seneca Meadows Crossing Park recreational facilities are not  15 included in this list? Because you do mention them as part  16 of your supply side.  17 THE WITNESS: They are mentioned in this. For  18 example, the football/soccer, I believe two of those were  19 the soccer fields on the Seneca Meadows.  20 MR. GROSSMAN: Anything else from this list that  21 does not exist and has not yet been formally approved as far  22 as you can testify, as far as the budget approval?  23 THE WITNESS: As far as I recall it's the two  24 soccer fields, and the rest is in Ridge Road.  25 MR. GROSSMAN: Okay. So the supply points for</p>

<p style="text-align: right;">Page 174</p> <p>1 this may be somewhat lower, but I take it that they'll</p> <p>2 still, since even the on-site amount is --</p> <p>3 THE WITNESS: The on-site exceeds the demand.</p> <p>4 MR. GROSSMAN: Exceeds it.</p> <p>5 THE WITNESS: The adjacent park is extra, icing on</p> <p>6 the cake, if you would.</p> <p>7 MR. GROSSMAN: Okay.</p> <p>8 BY MS. GOODRICK:</p> <p>9 Q Are there other requirements that we are not aware</p> <p>10 of that you need to have that, in order to get, other than</p> <p>11 the ones that we have discussed. Do you have to come up</p> <p>12 with lists like this of other things? Because this one is</p> <p>13 somewhat confusing since not everything is on here. So, you</p> <p>14 know, is there, you know, are there other things that we</p> <p>15 don't know about, or that you get credit for, that don't</p> <p>16 exist yet?</p> <p>17 A As far as purely recreation?</p> <p>18 Q Well, I'm interested in the recreation, but just</p> <p>19 as a whole, you know, we were provided with this sheet, and</p> <p>20 there are some questions about it. So are there other</p> <p>21 things that you take credit for that have not been achieved?</p> <p>22 A Not that I'm aware of.</p> <p>23 Q Okay. All right. Now, there is public, you are</p> <p>24 going to get public sewer and water. And where does the</p> <p>25 public sewer and water come from? Are they, can you point</p>	<p style="text-align: right;">Page 176</p> <p>1 that, please tell me, but of all the realistic rezonings</p> <p>2 that you could have done for this property, does this PRC</p> <p>3 zoning provide the highest density of anything that would be</p> <p>4 realistically rezoned in this particular location?</p> <p>5 A The highest density? Not necessarily. There's</p> <p>6 other floating zones that you could attribute to a higher</p> <p>7 density.</p> <p>8 Q Well, I understand that you could have other</p> <p>9 higher density, but realistic rezoning in this location, is</p> <p>10 this the highest density rezoning you could have chosen?</p> <p>11 A Well, previously mentioned, working with the</p> <p>12 master plan, and page 40, where it talks about the Brink</p> <p>13 Road neighborhood, up to 1,000 units, there's still density</p> <p>14 that you could push to get to that 1,000 units.</p> <p>15 Also, on page 75 it talks about a density range of</p> <p>16 two to four units per acre. We're at 2.6 units per acre.</p> <p>17 You could push for more density. And actually, originally</p> <p>18 there was more density on the table with this proposal. And</p> <p>19 then working with the staff of Park and Planning and the</p> <p>20 environmental factors, the impervious cap, et cetera, we've</p> <p>21 reduced the density working with staff.</p> <p>22 MR. GROSSMAN: Were you asking whether or not this</p> <p>23 particular proposed zone, the PRC zone, could itself have a</p> <p>24 higher density? Or were you asking whether there are other</p> <p>25 zones that could have been applied for that would have</p>
<p style="text-align: right;">Page 175</p> <p>1 that out?</p> <p>2 A I'll address that. I know Mr. Bossong is going to</p> <p>3 address that later. The water, there is water across the</p> <p>4 street with the water tower and the storage facility.</p> <p>5 There's water lines in Ridge Road, Route 27. There are</p> <p>6 water lines in Brink Road. So water is available at the</p> <p>7 site.</p> <p>8 The proposed sewer outfall, the property would</p> <p>9 interconnect with the system. It goes to 305, travels along</p> <p>10 305. This first cul-de-sac within Clarksburg Village, they</p> <p>11 are currently building sewer in this cul-de-sac. And then</p> <p>12 there's a sewer outfall that continues down this stream</p> <p>13 valley as it continues west of Clarksburg Village.</p> <p>14 So we are extending a sewer outfall north of the</p> <p>15 property along, within the 305 right-of-way to get to the</p> <p>16 first western cul-de-sac in Clarksburg Village, where there</p> <p>17 will be an existing sewer line to connect to.</p> <p>18 MS. GOODRICK: Okay. Those are all the questions</p> <p>19 I have.</p> <p>20 MR. GROSSMAN: All right.</p> <p>21 MR. WILLS: Those are better than my questions,</p> <p>22 but I'll still ask them.</p> <p>23 CROSS-EXAMINATION</p> <p>24 BY MR. WILLS:</p> <p>25 Q As maybe a land use expert, and if I'm wrong on</p>	<p style="text-align: right;">Page 177</p> <p>1 resulted in a higher density? Or are you asking him whether</p> <p>2 it is his opinion that a higher density than this would not</p> <p>3 be warranted? I'm not sure which of those three things.</p> <p>4 MR. WILLS: B.</p> <p>5 MR. GROSSMAN: Okay, so other zones.</p> <p>6 MR. WILLS: My question was, was this ultimate</p> <p>7 zone that they're requesting, rezoning --</p> <p>8 MR. GROSSMAN: Right.</p> <p>9 MR. WILLS: -- that they're requesting, ultimately</p> <p>10 is this, this provides them the highest amount of density of</p> <p>11 the other options that could have possibly been on the</p> <p>12 table.</p> <p>13 MR. GROSSMAN: So are there other floating zones</p> <p>14 that could have been asked for here that would have resulted</p> <p>15 in a higher density in this area?</p> <p>16 THE WITNESS: There are, and in my opinion, there</p> <p>17 are other zones that you could get higher density. But that</p> <p>18 does not correspond with the vision the property had to</p> <p>19 provide the age-restricted housing, particularly the single-</p> <p>20 family housing that Mr. Butz alluded to earlier.</p> <p>21 There are PD zones that are, it gets complicated</p> <p>22 real fast as far as if they are applicable or not. But</p> <p>23 there are PD zones that with higher densities that are</p> <p>24 floating zones. And you get into five units per acre, 10</p> <p>25 units per acre, et cetera.</p>

<p style="text-align: right;">Page 178</p> <p>1 BY MR. WILLS:</p> <p>2 Q Would those, any of those really be realistic that</p> <p>3 you could --</p> <p>4 MR. GROSSMAN: I'm not sure what the word</p> <p>5 realistic means. Do you mean, by realistic, do you mean</p> <p>6 they could be approved?</p> <p>7 BY MR. WILLS:</p> <p>8 Q Probable. Yes. Could they, would there be a</p> <p>9 reasonable expectation of approving any of those others?</p> <p>10 MR. GROSSMAN: That's a tough question to answer,</p> <p>11 but I'm not sure that you're not just asking him to</p> <p>12 speculate on whether or not --</p> <p>13 MR. WILLS: Well, I do want to ask --</p> <p>14 MR. GROSSMAN: I'll let him answer the question,</p> <p>15 if he gets it.</p> <p>16 THE WITNESS: I'm speculating but part of this</p> <p>17 answer is, the PRC zone you can go up to 10 units per acre,</p> <p>18 which is in the zone. There was a discussion with Park and</p> <p>19 Planning, and this is not consistent with the vision or</p> <p>20 consistent with the master plan, that why don't you just do</p> <p>21 a high-rise building here for age-restricted, and have, you</p> <p>22 know, a lot more units. That, arguably, you could make a</p> <p>23 case for, but it's not the vision for this property with the</p> <p>24 owner.</p> <p>25 BY MR. WILLS:</p>	<p style="text-align: right;">Page 180</p> <p>1 going to be offered?</p> <p>2 A Well, I was looking, if you do two smaller rooms,</p> <p>3 10 by 10, that's 100 square feet each. Okay. If you do a</p> <p>4 larger room, 30 by 30, that's 900 square feet. So 900 plus</p> <p>5 200, that's 1,100. That leaves another 300 square feet for</p> <p>6 hallways. You're going to have a bathroom, maybe closets.</p> <p>7 So something like that is realistic, which would be one</p> <p>8 large community room, and then two smaller rooms.</p> <p>9 Q You also indicated on Brink Road access to the</p> <p>10 park. Just explain to me, access to the park. I know where</p> <p>11 it's going to be, down right by the street entrance to this</p> <p>12 property, is that correct?</p> <p>13 A Correct.</p> <p>14 Q And access to the park is a crosswalk that's like</p> <p>15 painted on the road?</p> <p>16 A It would be a crosswalk, or some type of marked,</p> <p>17 well, a crosswalk is the first choice, to at that</p> <p>18 intersection you'll have the markings of the crosswalk.</p> <p>19 Q Now, around that area, there's different grades on</p> <p>20 both sides of that street. And right across from where you</p> <p>21 would be coming out, I'm familiar with that area, it's</p> <p>22 heavily wooded. Is there anything from the park side that</p> <p>23 says that they will create some form of entrance on their</p> <p>24 side of the park to allow, you know, in other words, this</p> <p>25 crosswalk doesn't just dead end into a stand of trees,</p>
<p style="text-align: right;">Page 179</p> <p>1 Q You had --</p> <p>2 MR. GROSSMAN: And that would have been under a</p> <p>3 different zone. That would have been under the PD zone. It</p> <p>4 could be PD --</p> <p>5 THE WITNESS: It could be PD or you could make an</p> <p>6 argument that you could do a taller building and there would</p> <p>7 be compatibility questions, and so --</p> <p>8 MR. GROSSMAN: Still PRC. Okay.</p> <p>9 THE WITNESS: -- under PRC which allows 10 units</p> <p>10 per acre.</p> <p>11 MR. KLINE: Or a special exception.</p> <p>12 MR. GROSSMAN: We know about those.</p> <p>13 BY MR. WILLS:</p> <p>14 Q You talked about a number of amenities, one of</p> <p>15 which was this community center at 35 by 40, roughly 1,400</p> <p>16 square foot building, right, is that correct?</p> <p>17 A That's correct.</p> <p>18 Q And it is going to have three rooms in this</p> <p>19 building?</p> <p>20 A That's what we're proposing right now. And again,</p> <p>21 that will be finalized at site plan.</p> <p>22 Q And I don't know if you know buildings of 1,400</p> <p>23 square feet, but I'm going to guess you might net maybe</p> <p>24 1,000 good square feet, so three rooms in that 1,000 square</p> <p>25 feet range. I'm just trying to get a sense of what's really</p>	<p style="text-align: right;">Page 181</p> <p>1 which is what it would do right now?</p> <p>2 A We want to make the connection in a full -- let's</p> <p>3 see if it shows up on the aerial here. Let's go back to</p> <p>4 Exhibit 34(e). Well, it's hard to see with the trees here.</p> <p>5 There is parking lot, ball fields. There is a trail that</p> <p>6 comes around the park. There is a trail that partially</p> <p>7 comes up into the trees.</p> <p>8 We're anticipating that we want to connect to that</p> <p>9 trail, and that we don't want a gap there that working with</p> <p>10 this crosswalk, with the improvements to Brink Road, we need</p> <p>11 to make that connection to that trail so it works. And</p> <p>12 therefore the site distance on Brink Road and the crosswalk</p> <p>13 and how that connection, that will all need to work.</p> <p>14 Q I agree with you it would need to work, because</p> <p>15 otherwise it kind of dumps out, as I said, in kind of a</p> <p>16 stand of trees. It would be very --</p> <p>17 A If we just stubbed it. We want to make that</p> <p>18 connection so you can talk across, keep to the trail, and</p> <p>19 then walk --</p> <p>20 Q And who makes the decision on the other side? Is</p> <p>21 that --</p> <p>22 A Well, this is owned by the County, the Park and</p> <p>23 Planning. At site plan and preliminary plan, we propose</p> <p>24 this connection. So we would be working with the County to</p> <p>25 facilitate that.</p>

<p style="text-align: right;">Page 182</p> <p>1 Q And is that, do you feel that sort of amenity is  2 necessary to sort of justify the amount of amenities that  3 you need for this kind of a property? In other words, I'm  4 trying to figure out, what if you just decide to paint the  5 road and let it go like that?  6 A Well, I don't think that will be our decision.  7 Working with the County, with Permitting Services, with Park  8 and Planning, that has got to make sense and connect.  9 Independent of that, we will have our facilities on-site  10 that meet the requirements. But we feel this, so these  11 people have access to the park, you want it to work, because  12 that's to the benefit of the new residents, in addition to  13 the existing residents.  14 Q And just one more question. This, is it A-305  15 highway?  16 A Yes, the --  17 Q I asked Mr. Butz earlier what would be the speed  18 limit on this four-lane divided highway. As a land expert,  19 would you know what that would be?  20 A That I do not know. That's --  21 MR. GROSSMAN: But you can ask the transportation  22 planner when he testifies.  23 MR. WILLS: I don't know if I was asking the right  24 person.  25 THE WITNESS: I do know that the tertiary streets,</p>	<p style="text-align: right;">Page 184</p> <p>1 you haven't addressed that. Is there anything you want to  2 say about that?  3 THE WITNESS: I don't believe I can speak to  4 property values.  5 MR. GROSSMAN: Okay.  6 MR. KLINE: And Mr. Grossman, we did not call a  7 witness on that, because it's not like a special exception  8 case where that is a defined standard.  9 MR. GROSSMAN: Okay. What about some of the other  10 assertions here of issues. Noise, dust, and loss of  11 pastoral scenery?  12 THE WITNESS: Well, I'll start with --  13 MR. KLINE: Thank you. That's one we forgot.  14 Correct.  15 THE WITNESS: In the technical appendix, under  16 environment, under the environment heading, under N-1,  17 there's the Courts at Clarksburg phase I noise analysis by  18 Phoenix Noise and Vibration, dated June 27, 2012. So there  19 is a preliminary phase I study that was done. And that  20 identifies noise impacts primarily from Ridge Road, Route  21 27, and future 305.  22 They made, which I believe is a summary. And this  23 report talks about interior noise and exterior noise.  24 MR. GROSSMAN: I'm just trying to put my fingers  25 on it. Hold on a second. I don't have any tabs on mine.</p>
<p style="text-align: right;">Page 183</p> <p>1 which are the local streets, they'll be signed 25 miles an  2 hour. But I do not know what the speed limit for 305 is.  3 MR. WILLS: Okay. Thank you.  4 MR. GROSSMAN: Any redirect?  5 REDIRECT EXAMINATION  6 BY MR. KLINE:  7 Q Well, it's kind of a general question, that is,  8 though there are other zones available, or other processes,  9 such as special exception, but in the end, don't you end up  10 having to deal with the same issues of compatibility and  11 what the master plan says? And aren't you going to end up  12 with essentially pretty much the same form of development,  13 no matter what tool you use, what zone you use?  14 A Yes, I agree with that. We've been working on  15 this for a number of years, so it has been a give and take,  16 particularly with the park and planning staff of -- and the  17 original proposal did have more units on it. But we've made  18 the plan better, in my opinion.  19 MR. HANCOCK: But Park and Planning still voted to  20 -- Park and Planning staff still decided to deny it.  21 THE WITNESS: Staff recommended denial, but the  22 Planning Board recommended approval.  23 MR. HANCOCK: We know the staff did.  24 MR. GROSSMAN: One of the items raised by the  25 opposition had been an effect on property values. I notice</p>	<p style="text-align: right;">Page 185</p> <p>1 THE WITNESS: Yes. In hindsight, we should have  2 included tabs.  3 MR. GROSSMAN: This is forest conservation.  4 MR. KLINE: You're in about the right area,  5 thought. That's about it.  6 MR. GROSSMAN: The next one up.  7 THE WITNESS: The summary is the environmental  8 section, and the cover sheet is N-1.  9 MR. GROSSMAN: Right.  10 THE WITNESS: And it's after the natural resource  11 inventory. And it's before the Rodgers --  12 MR. GROSSMAN: I'll tell you what, will you find  13 it for me?  14 MR. KLINE: Yes.  15 THE WITNESS: This is the summary or conclusions.  16 MR. GROSSMAN: All right.  17 THE WITNESS: Which is page 11. They do address,  18 well, the first paragraph states, "The Courts at Clarksburg  19 single-family home development will be exposed to future  20 roadway noise level above 70 dba. While this represents a  21 moderate level of noise impact, compliance with Montgomery  22 County's residential noise regulations can be achieved  23 through useful modifications to propose building plans."  24 And it talks about, the second paragraph, "Outdoor  25 areas belonging to the 39 single-family homes closest to</p>

<p style="text-align: right;">Page 186</p> <p>1 Route 27 and Brink will be exposed to noise levels above 60 2 dba. Of the 39 lots, five are impacted by levels slightly 3 above 65 dba.” 4 MR. GROSSMAN: I think that’s actually, this 5 section you’re referring to, deals with the impact of 6 traffic noise on the potential units. 7 THE WITNESS: Correct. 8 MR. GROSSMAN: I think that the objection, the 9 opposition was raising the question of whether or not you 10 will create noise. Maybe I’m wrong, got that objection 11 wrong. 12 THE WITNESS: Okay. Well, just to wrap this up, 13 they go on to recommend a phase II study, which will be done 14 at site plan -- 15 MR. GROSSMAN: Right. 16 THE WITNESS: -- can be accomplished to mitigate 17 the noise for the new units. 18 MR. GROSSMAN: Right. 19 THE WITNESS: Well, I presume noise is subjective, 20 particularly what’s happening there now, when there is farm 21 equipment out there versus when there is not. It’s probably 22 pretty quiet when there is nothing there. 23 MR. HANCOCK: But can you image 150 lawn mowers on 24 a Saturday. 25 MR. GROSSMAN: Mr. Hancock, you can’t interrupt.</p>	<p style="text-align: right;">Page 188</p> <p>1 evaluation? 2 THE WITNESS: Dust and maybe Mr. Rood can speak to 3 this a little bit, but presumably we’re going to be less -- 4 it is being farmed right now. It is being tilled, spring 5 and fall. So when they do plant or harvest, they make a lot 6 of dust. 7 Once the site is developed, it basically will be 8 stabilized. There will be lawns and yards where there won’t 9 be any dust. 10 MR. GROSSMAN: How about the loss of pastoral 11 scenery? 12 THE WITNESS: That to me is a little bit out there 13 because it is zoned residential. So if it was developed 14 residential, you’d still have houses there. You know, we’re 15 providing appropriate buffers to be compatible. 16 MR. GROSSMAN: Okay. 17 THE WITNESS: So even though it is a farm field 18 right now, it is not by right zoned, or well, by right it’s 19 zoned residential. 20 MR. GROSSMAN: All right. What about potential 21 breeding of mosquitoes and other pests as a result of the 22 proposed stormwater management ponds? 23 THE WITNESS: I’m going to leave that to Mr. 24 Bossong, who is going to speak to stormwater management. 25 MR. GROSSMAN: I’ve never heard an engineer</p>
<p style="text-align: right;">Page 187</p> <p>1 MR. HANCOCK: I’m sorry. 2 THE WITNESS: Well, the noise from these single- 3 family residential homes aren’t going to be dissimilar from 4 the noise from the existing single-family homes either in 5 the RE-2 or the R-200 zones west and north of the site. 6 MR. GROSSMAN: What about light pollution? 7 MR. KLINE: And before you leave that, could I 8 just ask a follow-up question on that? 9 MR. GROSSMAN: Yes. 10 MR. KLINE: I know Mr. Butz talked a lot about his 11 research on housing, but is there anything about the 12 material that’s in the appendix about the quality of that 13 housing? Why do I have this gut reaction that a community 14 of people over 50 years old gardening is going to be quieter 15 than a conventional suburban community with the same number 16 of houses? 17 THE WITNESS: That’s a good gut assumption. That, 18 well, one, you’re not going to have the basketball court 19 with the kids playing outside with the loud music. That’s 20 stereotyping, but typically this would be quieter than a 21 community that’s full of children, and with those type of 22 outdoor activities. 23 MR. GROSSMAN: All right. What about the 24 remainder of that sentence was, dust and lots of pastoral 25 scenery? How does that factor into your land use</p>	<p style="text-align: right;">Page 189</p> <p>1 testify about mosquitoes from stormwater management. Is 2 that in his area of expertise? 3 THE WITNESS: Well, maybe we can clarify that 4 question, also. 5 MR. GROSSMAN: All right. Well, I’m just raising 6 it. You can address it or not. That’s what is listed in 7 staff, by staff for, among the concerns raised by the 8 community. All right. 9 MR. KLINE: And actually, I think you asked us 10 about light, light pollution also. 11 MR. GROSSMAN: Yes. That was another issue that 12 was raised. 13 THE WITNESS: As we go forward with the site plan, 14 there will be a specific lighting plan. And that will be 15 primarily for the public street lights. And the County’s 16 ordinance, or the County’s regulations, you need to capture 17 any light on-site with cutoff fixtures so it doesn’t overlap 18 onto the surrounding properties. And again, that would be 19 detailed out at site plan. 20 MR. GROSSMAN: All right. I’m unsure whether the 21 -- well, it can’t impact residential communities. It’s a 22 question of how that particular part of the zoning ordinance 23 is phrased. But, all right. We’ll accept your answer. 24 Anything for -- I’ll come back to you in a minute, ma’am. 25 Anything further on redirect?</p>



<p style="text-align: right;">Page 190</p> <p>1 MR. KLINE: Nothing from me, sir.</p> <p>2 MR. GROSSMAN: All right. Did you have a further</p> <p>3 cross-examination question? Go right ahead.</p> <p>4 MS. GOLDRICK: I just have another question.</p> <p>5 MR. GROSSMAN: Yes.</p> <p>6 MS. GOLDRICK: And that is, from what you read it</p> <p>7 said that at certain levels it has to be mitigated. So on,</p> <p>8 you know, from what they are suggesting the noise level</p> <p>9 would be, and I'm guessing on Ridge Road, what are, what are</p> <p>10 things that you can do?</p> <p>11 I see where you have the tree buffers, but it</p> <p>12 looks like there's open space there. And then across from</p> <p>13 it there are other houses that would --</p> <p>14 THE WITNESS: Yes. There's generally two types of</p> <p>15 noise mitigation. One is for interior noise, so when you</p> <p>16 close all your windows that the noise inside the house is</p> <p>17 not affected by the traffic, et cetera. That's usually</p> <p>18 mitigated by double or triple-glazed windows, upgraded</p> <p>19 building materials, such as brick. So the building itself</p> <p>20 provides that mitigation.</p> <p>21 For outdoor noise, it's particularly for the</p> <p>22 outdoor useful area, so typically the backyard and patio</p> <p>23 area. And one example of mitigation is a noise fence. So</p> <p>24 there may be a six-foot fence that goes around the patio, so</p> <p>25 that that fence mitigates the noise. So when you're outside</p>	<p style="text-align: right;">Page 192</p> <p>1 certain other soundproofing methodologies. That has nothing</p> <p>2 to do with the noise that might be produced by this</p> <p>3 community that might impact people outside. That is</p> <p>4 something else.</p> <p>5 MS. GOODRICK: Okay. For example, having more,</p> <p>6 because you have these houses, you have much more traffic</p> <p>7 there.</p> <p>8 MR. GROSSMAN: Right.</p> <p>9 MS. GOODRICK: Which makes more noise. So does</p> <p>10 that reach a level, or do we think that that kind of noise</p> <p>11 would be perspective noise from having that many people and</p> <p>12 that many cars there? Does that need to be mitigated? Does</p> <p>13 that come to that level? Or how do you determine that</p> <p>14 level, that proposed level?</p> <p>15 MR. GROSSMAN: We'll ask the expert. What about</p> <p>16 that? If you build a community that would produce a certain</p> <p>17 level of traffic which would raise the noise level for those</p> <p>18 living on Ridge Road on the other side, are you required to</p> <p>19 mitigate that noise level?</p> <p>20 THE WITNESS: I think it's regardless, it's</p> <p>21 whatever estimate traffic volumes are on this road, with the</p> <p>22 existing traffic and the additional traffic from the</p> <p>23 community, what's that grand total or worst case, you have</p> <p>24 to mitigate that noise.</p> <p>25 MR. GROSSMAN: No, but you're talking about inside</p>
<p style="text-align: right;">Page 191</p> <p>1 barbequing, the decibels are below that, per the code,</p> <p>2 actually.</p> <p>3 MS. GOODRICK: So on Ridge Road, for example, does</p> <p>4 that mean that you put triple panes, or whatever, on -- in</p> <p>5 other words, it seems that, is this -- it seems that --</p> <p>6 MR. GROSSMAN: He's not talking about noise in</p> <p>7 your home, if you're there. He's talking about noise inside</p> <p>8 the community that he's planning.</p> <p>9 THE WITNESS: This is noise from the road.</p> <p>10 MR. GROSSMAN: Noise from the road impinging on</p> <p>11 the planned community. That's the noise that he's talking</p> <p>12 about that would be mitigated.</p> <p>13 MS. GOODRICK: Yes, that's right. But what I</p> <p>14 thought he said you put extra panes of glass on, or</p> <p>15 something like that?</p> <p>16 MR. GROSSMAN: You do it, in other words, what</p> <p>17 would happen is, when they get to site plan, a question will</p> <p>18 come up as to how do they build these homes that they are</p> <p>19 planning, assuming they get through rezoning, how do they</p> <p>20 build those houses that they are planning so that the noise</p> <p>21 levels inside and outside will not exceed the recommended</p> <p>22 noise levels for a residential community as a result of the</p> <p>23 traffic. And so the technical staff has a manual on that.</p> <p>24 And there are ways in which it can be reduced.</p> <p>25 One of them is glazing the windows in certain ways. And</p>	<p style="text-align: right;">Page 193</p> <p>1 your planned community. Would you have to mitigate it</p> <p>2 inside somebody else's house who lives to the east?</p> <p>3 THE WITNESS: Oh, you're talking about any</p> <p>4 mitigation --</p> <p>5 MR. GROSSMAN: Well, that's on the west. I'm</p> <p>6 talking about the east, right next to the --</p> <p>7 THE WITNESS: You're talking about over here?</p> <p>8 MR. GROSSMAN: Yes, that's correct.</p> <p>9 MS. GOODRICK: That's right. That's the question.</p> <p>10 All up and down there, we can have houses. There are houses</p> <p>11 over there.</p> <p>12 MR. GROSSMAN: When you add 140 units, there's</p> <p>13 going to be some additional amount of traffic which</p> <p>14 presumptively would add some additional amount of noise.</p> <p>15 And is there any study done to determine whether or not that</p> <p>16 additional amount of traffic would add an additional amount</p> <p>17 of noise, which has to be mitigated in some way by the</p> <p>18 applicant in the home across the street? Did I fairly</p> <p>19 summarize that?</p> <p>20 MS. GOODRICK: Yes.</p> <p>21 MR. GROSSMAN: Okay.</p> <p>22 THE WITNESS: Typically, no. But let me walk</p> <p>23 through the, you know, across the street. I lost my</p> <p>24 pointer. But anyway, across the street from --</p> <p>25 MR. GROSSMAN: You can use the laser pointer that</p>

<p style="text-align: right;">Page 194</p> <p>1 my staff fixed.</p> <p>2 THE WITNESS: It's buried on the table there</p> <p>3 someplace.</p> <p>4 MR. KLINE: I'll find it for you.</p> <p>5 THE WITNESS: From Brink Road is traveling north,</p> <p>6 this is the WSSC property which is water tower, a water</p> <p>7 tank, water tower and property for any other WSSC use. So</p> <p>8 there is no residential use here .</p> <p>9 MR. GROSSMAN: Right.</p> <p>10 THE WITNESS: This again is zoned RDT, no existing</p> <p>11 units. And whether or not there will ever be units here is</p> <p>12 a question.</p> <p>13 MR. GROSSMAN: All right.</p> <p>14 THE WITNESS: We do, as we mentioned, there is</p> <p>15 one, two, three, and there is a fourth, which is not</p> <p>16 actually north of our property, basically three that are</p> <p>17 across from our property.</p> <p>18 Right now, the road improvement plans for Ridge</p> <p>19 Road, the widening, the extra two lanes comes up to A-305.</p> <p>20 The areas to the north is not being widened. So the</p> <p>21 widening is from 305 south to Brink, and then traffic coming</p> <p>22 across.</p> <p>23 And I'll let Mr. Guckert, who is doing the</p> <p>24 traffic, discuss any additional trips that may be going up</p> <p>25 and down. Most of the trips, I believe, and the future</p>	<p style="text-align: right;">Page 196</p> <p>1 volume of traffic that is projected from this site. If this</p> <p>2 witness is correct, it's not going to be a significant</p> <p>3 amount north of the projected 305.</p> <p>4 MS. GOODRICK: I guess what I'm concerned about is</p> <p>5 a sound barrier being, you know, a big sound barrier in</p> <p>6 front of these people's houses as well. I don't know. But</p> <p>7 when you talked about mitigation, I was concerned about</p> <p>8 that.</p> <p>9 MR. GROSSMAN: Well, his testimony is that</p> <p>10 ordinarily, this would not fall on the applicant to look at.</p> <p>11 It's unusual, in all the cases I've handled, I don't think</p> <p>12 I've ever seen one where an applicant was required to put up</p> <p>13 some kind of a traffic sound wall to protect other</p> <p>14 communities from traffic that might result from their</p> <p>15 project. It's an unusual thing.</p> <p>16 The question comes up as to how much traffic the</p> <p>17 roads will bear, and whether or not that would create either</p> <p>18 too high an impact on the public facility, the road, or</p> <p>19 create a non-compatible condition with the people who live</p> <p>20 there.</p> <p>21 I haven't seen it in connection with creating so</p> <p>22 much additional traffic that there would be road noise of a</p> <p>23 significant measure. And I don't know, we'll hear from the</p> <p>24 traffic expert, so we'll get a better idea of that in a few</p> <p>25 minutes. Hopefully in a few minutes. All right. Any</p>
<p style="text-align: right;">Page 195</p> <p>1 widening come from 305 on this side, M-83 on this side, and</p> <p>2 south, where there would be no impact across the street.</p> <p>3 And then I believe this is the existing condition. I'll let</p> <p>4 Mr. Guckert address that.</p> <p>5 MR. GROSSMAN: All right.</p> <p>6 THE WITNESS: As far as additional traffic.</p> <p>7 MR. GROSSMAN: Okay. Let's indulge in the</p> <p>8 assumption, for a second, that it's going to produce</p> <p>9 additional traffic next to those homes in the north there,</p> <p>10 in the northeast. Would there be any obligation by the</p> <p>11 applicant to mitigate that effect, noise effect on those</p> <p>12 houses?</p> <p>13 THE WITNESS: I don't believe so. I believe some</p> <p>14 of that obligation, again, would -- I'm thinking of other</p> <p>15 projects, would come into like as possibly a County</p> <p>16 obligation, because this is a main regional road.</p> <p>17 MR. GROSSMAN: Okay.</p> <p>18 THE WITNESS: We have seen, I presume you've seen</p> <p>19 where fencing in the front yard to mitigate noise would have</p> <p>20 to be built. But my assumption would be that would be a</p> <p>21 County or in this case, this is a State road, obligation.</p> <p>22 Because the volume on this road, the vast majority of it,</p> <p>23 and you'll hear numbers, but it's not from this property.</p> <p>24 MR. GROSSMAN: Right. I suspect it's something</p> <p>25 that can be taken up with technical staff, depending on the</p>	<p style="text-align: right;">Page 197</p> <p>1 further questions? Any further redirect?</p> <p>2 MR. KLINE: No, sir.</p> <p>3 MR. GROSSMAN: All right. Thank you, sir. I</p> <p>4 appreciate it. You got off the hot seat. All right. Your</p> <p>5 next witness?</p> <p>6 MR. KLINE: Ms. Russel.</p> <p>7 MR. GROSSMAN: Would you state your full name,</p> <p>8 please?</p> <p>9 MS. RUSSEL: Jennifer Russel.</p> <p>10 MR. GROSSMAN: All right, Ms. Russel. Would you</p> <p>11 raise your right hand, please?</p> <p>12 (Witness sworn.)</p> <p>13 MR. GROSSMAN: All right. You may proceed, Mr.</p> <p>14 Kline.</p> <p>15 DIRECT EXAMINATION</p> <p>16 BY MR. KLINE:</p> <p>17 Q Ms. Russel, would you please state and spell your</p> <p>18 name, and give us your business address?</p> <p>19 A Jennifer Russel, J-E-N-N-I-F-E-R, R-U-S-S-E-L.</p> <p>20 One L. 19847 Century Boulevard, Suite 200, Germantown,</p> <p>21 Maryland 20874.</p> <p>22 Q Ms. Russel, I'll ask the question, have you</p> <p>23 qualified as an expert in the subject of master planning</p> <p>24 before this hearing examiner or any other hearing examiner</p> <p>25 in Montgomery County?</p>

<p style="text-align: right;">Page 198</p> <p>1 A No, sir.</p> <p>2 MR. KLINE: Mr. Grossman, I would like to provide</p> <p>3 a copy of Ms. Russel's resume, and ask her to explain what</p> <p>4 she's been doing all these many years.</p> <p>5 MR. GROSSMAN: I have a copy from the file.</p> <p>6 MR. KLINE: Yes, sir.</p> <p>7 MR. GROSSMAN: And it's 55(b). Do the other --</p> <p>8 MR. KLINE: I gave copies to the other folks, yes.</p> <p>9 MR. GROSSMAN: Okay. Great. Thank you. All</p> <p>10 right.</p> <p>11 BY MR. KLINE:</p> <p>12 Q Ms. Russel, those of us who know you are surprised</p> <p>13 we haven't done this before. So you need to kind of tell us</p> <p>14 what you've been doing?</p> <p>15 A All right. Hopefully you weren't going to</p> <p>16 emphasize my age.</p> <p>17 Q I consider it years of experience.</p> <p>18 A Thank you very much. Wisdom. Well, I'll start</p> <p>19 by talking about my role which is germane here, more recent</p> <p>20 role prior to my coming to Rodgers, where I was the first</p> <p>21 Clarksburg ombudsman. I was appointed by then County</p> <p>22 Executive Doug Duncan in 2006 to act as a type of conduit,</p> <p>23 if you will, between the development community and the</p> <p>24 citizens of Clarksburg.</p> <p>25 There was, many people are aware of the fact there</p>	<p style="text-align: right;">Page 200</p> <p>1 residents who really wanted to see the vision realized. And</p> <p>2 particularly once the violations were cited, and there was</p> <p>3 initial mediation of the violations, the mediated plan had</p> <p>4 been mandated and concluded, and there was a revamped</p> <p>5 approach to Town Center.</p> <p>6 But that was only in 2006. So I had, as I kind of</p> <p>7 alluded to, I've been around for a long time. And when I</p> <p>8 started to think about my background, to explain it to you</p> <p>9 today, I realized that 2013, the beginning of this calendar</p> <p>10 year, actually marks 40 years since the start of my career</p> <p>11 as a land planner. Obviously, I started as a child.</p> <p>12 But during that period of time, I spent 26 years</p> <p>13 at the City of Gaithersburg. For most of that time I was</p> <p>14 director of planning code administration. And as you're</p> <p>15 probably aware, Gaithersburg is autonomous in terms of</p> <p>16 planning and zoning within Montgomery County. We had our</p> <p>17 own planning review process, our own zoning ordinance,</p> <p>18 building permit issuance, the like. A mini microcosm of the</p> <p>19 County.</p> <p>20 And during that span of time, the 26 years, I</p> <p>21 actually wrote many of the master plans, the city-wide</p> <p>22 master plans, neighborhood master plans. I oversaw the</p> <p>23 development and the writing of transportation master plans,</p> <p>24 community facility master plans, as well as the more</p> <p>25 dominant land use elements.</p>
<p style="text-align: right;">Page 199</p> <p>1 was a discovery that there had been numerous site plan</p> <p>2 violations in Clarksburg Town Center, many infringements on</p> <p>3 height restrictions, setback violations, and a general lack</p> <p>4 of completed amenities for the community, and a great deal</p> <p>5 of dissatisfaction regarding, particularly regarding</p> <p>6 delivery and completion of needed roadways for the</p> <p>7 community.</p> <p>8 So my role was to act as a liaison to the</p> <p>9 community, to businesses, and to top government official,</p> <p>10 department heads in the County Government, to kind of bridge</p> <p>11 the gap and achieve for the community, the vision that they</p> <p>12 had bought into, they expected, and they deserved to come.</p> <p>13 I was appointed to be a problem solver, if you</p> <p>14 will, and a facilitator of County services to the community.</p> <p>15 And most importantly, to be the County Executive's</p> <p>16 representative on the ground.</p> <p>17 On the other hand, I was also instructed to try to</p> <p>18 learn and understand the community, and to help the</p> <p>19 community deal in negotiating with the developers on site.</p> <p>20 and that was primarily due to my own negotiating background,</p> <p>21 years and years in Gaithersburg, which I'll get to in a</p> <p>22 moment.</p> <p>23 So during the time that I was the ombudsman, I</p> <p>24 believe I became quite acquainted with the community, with</p> <p>25 the master plan, the nature of the vision, as well as the</p>	<p style="text-align: right;">Page 201</p> <p>1 Then I moved onto Clarksburg, and was charged with</p> <p>2 reconciling the variations in the planning implementation,</p> <p>3 as I mentioned previously, that related to site plan</p> <p>4 enforcement and trying to judge concurrence with the vision</p> <p>5 that was in the 1994 master plan for what people viewed as</p> <p>6 the final corridor town on the 270 network.</p> <p>7 My current tender at Rodgers Consulting, which is</p> <p>8 where I've been the last five and a half years, I am also,</p> <p>9 I'm very much involved in the master plan process at the</p> <p>10 County level. I monitor all the Planning Board's master</p> <p>11 plan activities, as the master plans make their way through</p> <p>12 the Planning Board, and then subsequent County Council</p> <p>13 processes. I advise our clients on how to best position</p> <p>14 their properties for favorable master plan alignment</p> <p>15 designations for the future. And then I offer</p> <p>16 interpretations of existing adopted land use plans for</p> <p>17 clients, as they steer their way through the development</p> <p>18 entitlement processes in the County.</p> <p>19 MR. GROSSMAN: Okay.</p> <p>20 BY MR. KLINE:</p> <p>21 Q Ms. Russel, the resume that I've handed out talks</p> <p>22 about your background. You've got a master's in planning.</p> <p>23 A Yes.</p> <p>24 Q Are you a member of AICP?</p> <p>25 A No. At the time, AICP didn't exist. And I'm an</p>

<p style="text-align: right;">Page 202</p> <p>1 AK member, CNU member.</p> <p>2 MR. GROSSMAN: What does CNU stand for?</p> <p>3 THE WITNESS: Congress for New Urbanism,</p> <p>4 neotraditional --</p> <p>5 MR. GROSSMAN: Say that again?</p> <p>6 THE WITNESS: Congress for New Urbanism.</p> <p>7 MR. GROSSMAN: All right. Thank you.</p> <p>8 THE WITNESS: I was in Gaithersburg at the time</p> <p>9 the Kentlands began, before, during and after. So I became</p> <p>10 an expert, of sorts, on neotraditionalism, when no one knew</p> <p>11 what, even how to spell it.</p> <p>12 BY MR. KLINE:</p> <p>13 Q So to summarize, based on your resume, since</p> <p>14 probably the mid-1970's, you've been writing, interpreting,</p> <p>15 and now influencing master plans. Is that correct?</p> <p>16 A Yes.</p> <p>17 MR. KLINE: Based on that depth of experience and</p> <p>18 length of experience, I'd like to offer Ms. Russel belatedly</p> <p>19 as an expert in master plan --</p> <p>20 MR. GROSSMAN: She's going to hit you in a second.</p> <p>21 MR. KLINE: Yes, I know. She should have been</p> <p>22 approved a long time ago. I just never had the --</p> <p>23 THE WITNESS: I avoided it.</p> <p>24 MR. GROSSMAN: Yes.</p> <p>25 MR. KLINE: As an expert in master planning, as</p>	<p style="text-align: right;">Page 204</p> <p>1 Planning Board on another. Ms. Russel?</p> <p>2 A Yes. Thank you. And I'm going to try to submit</p> <p>3 the individual pages of the master plan that everyone has</p> <p>4 been talking about, so you can really focus on those.</p> <p>5 Because there is a lot, there's a variety of discrepancies.</p> <p>6 And it's true that the applicant and the staff</p> <p>7 were in disagreement about the language. And that's because</p> <p>8 the language is somewhat confusing. And the disagreement</p> <p>9 stems from conflicting language in the master plan.</p> <p>10 But I believe very strongly that the development</p> <p>11 proposal that we are shown here of 140 age-restricted units</p> <p>12 in the PRC zone does conform to the recommendations of the</p> <p>13 1994 plan, as specifically stated in that oft referred to</p> <p>14 page 75 of the master plan. And 75, pages 75 through 77</p> <p>15 need to be entered into the record specifically.</p> <p>16 Q Okay.</p> <p>17 MR. GROSSMAN: All right. You want those to be</p> <p>18 pages separately as an exhibit, although the master plan</p> <p>19 will be part of the record in any event.</p> <p>20 MR. KLINE: Yes.</p> <p>21 MR. GROSSMAN: This will be Exhibit No. 67 and</p> <p>22 that's pages 75 through 77 of the, what year is the</p> <p>23 Clarksburg --</p> <p>24 THE WITNESS: 1994.</p> <p>25 MR. GROSSMAN: -- 1994 Clarksburg plan.</p>
<p style="text-align: right;">Page 203</p> <p>1 distinct from the land use planning because of the focus of</p> <p>2 the testimony we're going to ask her for today.</p> <p>3 MR. GROSSMAN: All right. Anybody have any</p> <p>4 questions of this witness regarding her credentials to be</p> <p>5 certified as an expert in master planning?</p> <p>6 MS. GOODRICK: No.</p> <p>7 MR. WILLS: No.</p> <p>8 MR. HANCOCK: No.</p> <p>9 MR. GROSSMAN: Okay. Based on your background, as</p> <p>10 you described it and on your resume, I accept you as an</p> <p>11 expert in master planning.</p> <p>12 THE WITNESS: Thank you.</p> <p>13 MR. GROSSMAN: As, I guess, a subcategory of land</p> <p>14 use planning.</p> <p>15 MR. KLINE: I'm not quite, I don't think I've ever</p> <p>16 done it this way before.</p> <p>17 MR. GROSSMAN: Right.</p> <p>18 MR. KLINE: But because the interpretation of the</p> <p>19 master plan, as you point out, is so integral in this case,</p> <p>20 we felt we needed that special retention.</p> <p>21 MR. GROSSMAN: Right.</p> <p>22 BY MR. KLINE:</p> <p>23 Q And I think we're going to start by having Ms.</p> <p>24 Russel try and highlight for you what the plan says and why</p> <p>25 we came down one side, and the staff another, and then the</p>	<p style="text-align: right;">Page 205</p> <p>1 (Exhibit No. 67 was marked</p> <p>2 for identification.)</p> <p>3 MR. KLINE: And, Mr. Grossman, did you say number</p> <p>4 67?</p> <p>5 MR. GROSSMAN: Yes.</p> <p>6 MR. KLINE: Okay. Did I get off my number then,</p> <p>7 because what did we do with Ms. Russel's resume?</p> <p>8 MR. GROSSMAN: It was already in the record.</p> <p>9 MR. KLINE: You didn't need it. That's right.</p> <p>10 Okay. Got you. All right.</p> <p>11 THE WITNESS: Okay. If you go to the language on</p> <p>12 75, which addresses the transition from Germantown to</p> <p>13 Clarksburg, and the language reads, and I'm going to quote.</p> <p>14 It's under the first bullet.</p> <p>15 "To further reinforce the transition from</p> <p>16 Germantown to Clarksburg, this plan proposes the entry to</p> <p>17 Clarksburg be characterized by low density residential</p> <p>18 development, two to four units per acre," end of quote.</p> <p>19 The subject property is clearly the entry point to</p> <p>20 Clarksburg, as it transitions from neighboring Germantown.</p> <p>21 We indicated to you the boundary of the Clarksburg planning</p> <p>22 area.</p> <p>23 Page 77 of the master plan, which follows after</p> <p>24 page 76, includes a land use plan. It's called, "Brink Road</p> <p>25 transition areas land use plan." And it includes a land use</p>

<p style="text-align: right;">Page 206</p> <p>1 plan that is in conflict with the language that as stated</p> <p>2 above because it designates the property in a much lower</p> <p>3 density range. If you take a quick look at it, you'll see</p> <p>4 it is designated as rural residential, one deed per acre to</p> <p>5 the range of one deed per five acres.</p> <p>6 MR. GROSSMAN: First I have to find the cite on</p> <p>7 the --</p> <p>8 THE WITNESS: Okay. All right.</p> <p>9 MR. GROSSMAN: I never found a master plan map to</p> <p>10 be very easy to read.</p> <p>11 THE WITNESS: They're challenging.</p> <p>12 MR. GROSSMAN: So Mr. Kline is going to come --</p> <p>13 THE WITNESS: And it only has a few roads in</p> <p>14 there.</p> <p>15 MR. KLINE: This is A-305 right here.</p> <p>16 MR. GROSSMAN: Okay. Okay. So we're talking</p> <p>17 right through here, right?</p> <p>18 MR. KLINE: Yes, probably right down there.</p> <p>19 THE WITNESS: So remember, it's two to four units</p> <p>20 per acre, and then it shows it as rural residential. And</p> <p>21 then to further muddle the waters, I'm going to introduce</p> <p>22 another page, page 97, which we should also enter --</p> <p>23 MR. GROSSMAN: Before you do that, does anybody</p> <p>24 have an objection to my marking off and calling, putting an</p> <p>25 arrow there and saying, the site, on this exhibit.</p>	<p style="text-align: right;">Page 208</p> <p>1 zoning is.</p> <p>2 MR. GROSSMAN: Right. Actually.</p> <p>3 THE WITNESS: So there is an obvious discrepancy.</p> <p>4 MR. GROSSMAN: I'm going to put the word site,</p> <p>5 once again. Okay.</p> <p>6 THE WITNESS: So we have the language of two to</p> <p>7 four units per acre, and we have the map that shows rural</p> <p>8 residential, and we have the RE-2. And there's an obvious</p> <p>9 discrepancy with respect to the land use recommendation.</p> <p>10 We feel very strongly that this parcel is at the</p> <p>11 entry to Clarksburg, and that the language that</p> <p>12 characterizes it as low density residential, two to four</p> <p>13 units per acre, should prevail.</p> <p>14 MR. GROSSMAN: What is the density of the RE-2</p> <p>15 zone, typically?</p> <p>16 THE WITNESS: Well, there's a range. And that</p> <p>17 range is shown there under rural residential. The land use</p> <p>18 designation for rural residential on page 77. That's where</p> <p>19 the most obvious discrepancy is.</p> <p>20 BY MR. KLINE:</p> <p>21 Q Well, in translating the RE-2 into a units per</p> <p>22 acre, you'd end up with .5 dwelling units per acre.</p> <p>23 A Yes.</p> <p>24 MS. GOODRICK: Excuse me, what does DU stand for?</p> <p>25 THE WITNESS: Dwelling unit.</p>
<p style="text-align: right;">Page 207</p> <p>1 THE WITNESS: That helps.</p> <p>2 MR. GROSSMAN: It helps me.</p> <p>3 THE WITNESS: In the same document, page 97, which</p> <p>4 we need to enter in as an exhibit as well, shows the zoning</p> <p>5 plan that accompanied the master plan, that shows the</p> <p>6 property, they are difficult to fine, as RE-2.</p> <p>7 MR. GROSSMAN: Okay. So why don't we do this.</p> <p>8 How many more pages of the master plan do you plan to</p> <p>9 produce?</p> <p>10 THE WITNESS: A couple. Two more.</p> <p>11 MR. GROSSMAN: Okay. So why don't we say this</p> <p>12 first one we'll say was Exhibit 67(a), is pages 75 to 77.</p> <p>13 And the this next on you gave me now was 67(b), and that's</p> <p>14 page 38.</p> <p>15 THE WITNESS: No, it's page 97. It's figure 38.</p> <p>16 MR. GROSSMAN: Oh, figure 38. I'm sorry.</p> <p>17 THE WITNESS: Yes.</p> <p>18 MR. GROSSMAN: Page 97. Thank you for that</p> <p>19 correction. And what am I looking for here?</p> <p>20 THE WITNESS: You are looking for the parcel,</p> <p>21 again, I'm sorry to say. It's smaller.</p> <p>22 MR. KLINE: It's where the two is. You can pretty</p> <p>23 well, it actually lines up.</p> <p>24 MR. GROSSMAN: Okay. Yes.</p> <p>25 THE WITNESS: And that just reiterates what the</p>	<p style="text-align: right;">Page 209</p> <p>1 MR. KLINE: Dwelling unit.</p> <p>2 MS. GOODRICK: Dwelling unit. Okay. Thank you.</p> <p>3 MR. GROSSMAN: So I was just trying to understand</p> <p>4 your density argument. So this, the RE-2 zone you would</p> <p>5 translate into, you're saying --</p> <p>6 THE WITNESS: .5.</p> <p>7 MR. GROSSMAN: .5.</p> <p>8 MR. KLINE: .5, right.</p> <p>9 THE WITNESS: And the language on page 75 that we</p> <p>10 believe prevails, suggests two to four units per acre. So</p> <p>11 you might say, well, what prevailed that there's a rural,</p> <p>12 rural residential designation, and that the zoning remained</p> <p>13 the same?</p> <p>14 And we believe that the absence of sewer, the</p> <p>15 understanding that the site, at the time, in 1994, that it</p> <p>16 was a strong belief that the site could not be sewer, held</p> <p>17 the parcel captive to the lower density.</p> <p>18 And Mr. Bossong, I believe, is going to follow me.</p> <p>19 And he's going to describe the history of the sewer on site.</p> <p>20 And if you go back to page 75, in the first paragraph, it</p> <p>21 alludes to the fact that there's an absence of sewer in this</p> <p>22 general area. There's language that says, "The absence of</p> <p>23 sewer has resulted in most of the existing subdivisions</p> <p>24 being built on well and septic," and it refers to the lower</p> <p>25 lot size, and ranges of lot size.</p>

<p style="text-align: right;">Page 210</p> <p>1 So we believe that part of the discrepancy is</p> <p>2 attributable to the absence of sewer, and the thought at the</p> <p>3 time, in 1994, that the site could not be sewered.</p> <p>4 Moving along to the Brink Road issue, which has</p> <p>5 come up quite a bit, the master plan is clear on the</p> <p>6 transition between Germantown and Clarksburg. And I believe</p> <p>7 that is so because it gives the Brink Road area a special</p> <p>8 kind of responsibility based upon its unique location.</p> <p>9 And if you go back, again, bring the Brink Road</p> <p>10 plan up. If you go back again to page 75, under the first</p> <p>11 bullet it says, this areas, and once again it's referring to</p> <p>12 this Brink Road sub-area, which is shown on Exhibit 34 --</p> <p>13 BY MR. KLINE:</p> <p>14 Q 34(q).</p> <p>15 A -- (q), it states, "This area lies just north of</p> <p>16 the Germantown green belt which forms a visual buffer</p> <p>17 between Germantown and Clarksburg, and to further reinforce</p> <p>18 the tradition between Germantown and, as a corridor city,</p> <p>19 and Clarksburg as a corridor town," notice town.</p> <p>20 It emphasizes, I believe, the unique and</p> <p>21 individual nature of each of the communities. And you'll</p> <p>22 see as Mr. Unterberg had shown on, let's say the</p> <p>23 illustrative plan, that the development plan for the Courts</p> <p>24 -- under there, yes -- kind of subtly shifts density to the</p> <p>25 north. And it creates a very robust green belt and an</p>	<p style="text-align: right;">Page 212</p> <p>1 MR. GROSSMAN: So I guess my question would be</p> <p>2 then, whether or not, since there are other entries to</p> <p>3 Clarksburg Village, what is the density of those other</p> <p>4 entrances. I'm just trying to figure out whether or not the</p> <p>5 Clarksburg plan was referring to the southern entrance that</p> <p>6 your site is in, or referring to some other entrance when it</p> <p>7 says it should be characterized by two to four units per</p> <p>8 acre?</p> <p>9 THE WITNESS: Well, this is the area where it</p> <p>10 transitions most from Germantown, the Germantown planning</p> <p>11 area to the Clarksburg planning area.</p> <p>12 MR. GROSSMAN: That's the only area that</p> <p>13 Germantown transitions to Clarksburg?</p> <p>14 THE WITNESS: Well, you could say from the south</p> <p>15 as well, from Brink Road.</p> <p>16 MR. GROSSMAN: All right. And what --</p> <p>17 MR. KLINE: Mr. Grossman, are you asking us what's</p> <p>18 the density in Clarksburg Village or --</p> <p>19 MR. GROSSMAN: I'm asking, what -- I mean, as I</p> <p>20 understand the argument here --</p> <p>21 THE WITNESS: I'm just trying to figure out this</p> <p>22 language.</p> <p>23 MR. GROSSMAN: -- if I understand the argument</p> <p>24 that the applicant is making, it is that the text in the</p> <p>25 zoning, in the master plan, on page 75, is the true intent</p>
<p style="text-align: right;">Page 211</p> <p>1 entryway into the Clarksburg planning area, which is</p> <p>2 demarked by Route 27.</p> <p>3 In fact, the monumental entrance for Clarksburg</p> <p>4 Village, which you've head a good bit about, is going to be</p> <p>5 situated at the intersection of Route 27 and A-305. And I</p> <p>6 feel that the --</p> <p>7 MR. GROSSMAN: You say that will be the</p> <p>8 monumental?</p> <p>9 THE WITNESS: Monumental entrance to the</p> <p>10 Clarksburg Village.</p> <p>11 MR. GROSSMAN: So you're saying you're going to</p> <p>12 have a monument up there, a monument size that says this is</p> <p>13 Clarksburg Village?</p> <p>14 THE WITNESS: Yes, that's going to be where the</p> <p>15 entry signs are going to be. That's my understanding.</p> <p>16 MR. GROSSMAN: There are going to be no other</p> <p>17 entries to Clarksburg Village that will have such a</p> <p>18 designation?</p> <p>19 THE WITNESS: I don't know if there's going to be</p> <p>20 other, I'm sure there will be other entries, but this is --</p> <p>21 MR. KLINE: Well, since there's multiple points to</p> <p>22 enter --</p> <p>23 THE WITNESS: Yes.</p> <p>24 MR. KLINE: -- Clarksburg Village, probably so.</p> <p>25 We just happen to be the one on the southern end.</p>	<p style="text-align: right;">Page 213</p> <p>1 of the framers, not these diagrams. And the text here talks</p> <p>2 about a density of two to four units per acre because it's</p> <p>3 an entry to Clarksburg.</p> <p>4 And so I'm wondering whether the writers of the</p> <p>5 text were referring to this particular entry, so I know if</p> <p>6 they are talking about this, this location, or to some other</p> <p>7 entry to Clarksburg where they may also be a reason for</p> <p>8 existing two to four dwelling units per acre density?</p> <p>9 MR. KLINE: Well, I think what Ms. Russel was</p> <p>10 saying is, since we're within a section of the master plan</p> <p>11 entitled, Brink Road transition area, we can only be talking</p> <p>12 about an entry point that is within the transition area.</p> <p>13 MR. GROSSMAN: Fair enough.</p> <p>14 THE WITNESS: Yes, look at the blue area.</p> <p>15 MR. GROSSMAN: Yes, I understand.</p> <p>16 THE WITNESS: Yes.</p> <p>17 MR. GROSSMAN: So are there any other entries to</p> <p>18 Clarksburg Village from the Brink Road transition area?</p> <p>19 THE WITNESS: Not really. Not from where it would</p> <p>20 transition between Germantown and Clarksburg, no. That's</p> <p>21 very clever though.</p> <p>22 MR. GROSSMAN: Well, I don't know if I'd go all</p> <p>23 the way to clever but, all right.</p> <p>24 THE WITNESS: I saw one ambiguity and you saw</p> <p>25 another one. Interesting. Okay. But I don't think there</p>

<p style="text-align: right;">Page 214</p> <p>1 is one, actually.</p> <p>2 I would also move again to the Exhibit 40(a) which</p> <p>3 shows you, again, the transition how we are trying to deal</p> <p>4 with the transition in the master plan to help reinforce</p> <p>5 each community's specific identity. This exhibit, I think,</p> <p>6 highlights our enhanced efforts which Mr. Unterberg</p> <p>7 emphasized quite a bit at the southeast corner of the</p> <p>8 property amplifies and, I think, strengthens the adjacent</p> <p>9 Germantown green belt that is just south of Brink Road. And</p> <p>10 I think the master plan urged us to do that as well.</p> <p>11 The Planning Board also recognized that the</p> <p>12 development plan we are proposing achieves the transition.</p> <p>13 And in going back to their letter, the Planning Board found,</p> <p>14 quote, "That the development plan provides a low density</p> <p>15 transition, which coupled with the forest buffers and</p> <p>16 setbacks, which have been enumerated, provides compatibility</p> <p>17 with the surrounding community."</p> <p>18 MR. GROSSMAN: That letter is Exhibit 54.</p> <p>19 THE WITNESS: Right. Now, going back to Brink</p> <p>20 Road a little bit more, in a little bit more detail, I think</p> <p>21 it's clear that there are ambiguities in the master plan.</p> <p>22 The language reflects and 18-year-old master plan that's</p> <p>23 inconsistent, but I --</p> <p>24 MR. GROSSMAN: Is there another one in process now</p> <p>25 for Clarksburg?</p>	<p style="text-align: right;">Page 216</p> <p>1 something Mr. Unterberg had alluded to --</p> <p>2 A Right.</p> <p>3 Q -- when he was talking about this earlier?</p> <p>4 A Uh-huh. Under the type of density guidance that is</p> <p>5 indicated on page 40, the Brink Road transition area, once</p> <p>6 again the area within which the subject property is located,</p> <p>7 is designated to contain, I see in the charge, up to 1,000</p> <p>8 dwelling units. And with the addition of the 140 units for</p> <p>9 the Courts at Clarksburg, the planning area still only</p> <p>10 incorporated 969 units, well below the stated cap.</p> <p>11 And the Brink Road sub-area is 860 acres. It's a</p> <p>12 sub-area of the master plan, and it's one of eight separate</p> <p>13 analysis areas that were studied during the plan.</p> <p>14 MR. GROSSMAN: Well, let me ask you this. First</p> <p>15 of all, it's Exhibit 67(c) is page 40 of the master plan.</p> <p>16 And given that you'd still be below the 1,000 dwelling</p> <p>17 units, does that mean -- which are close at this point, that</p> <p>18 there's no further room for expansion of dwelling units in</p> <p>19 this transition area?</p> <p>20 THE WITNESS: Well, if you take a look at the</p> <p>21 Brink Road transition area, you'll see that it's pretty</p> <p>22 populated by dwelling units. And those, each of the unit</p> <p>23 counts that are shown there, A through J, I guess it is, are</p> <p>24 the 969 are --</p> <p>25 MR. GROSSMAN: Which exhibit are we looking at, by</p>
<p style="text-align: right;">Page 215</p> <p>1 THE WITNESS: There's a limited amendment underway</p> <p>2 that is looking at a small portion of the Clarksburg master</p> <p>3 plan, but no, not a wholesale revision. It's not in the</p> <p>4 Planning Board's current work plan.</p> <p>5 MR. GROSSMAN: Does the limited amendment in any</p> <p>6 way touch the area of the subject site?</p> <p>7 THE WITNESS: No.</p> <p>8 MR. GROSSMAN: Okay.</p> <p>9 MR. KLINE: It deals only with the Cabin Branch</p> <p>10 area, which means you'll see development plan amendments.</p> <p>11 MR. GROSSMAN: Okay.</p> <p>12 THE WITNESS: I believe, in my observation of</p> <p>13 master plans, that this particular master plan took a great</p> <p>14 deal of care to pay attention to the distribution of</p> <p>15 dwelling units, more so than the typical master plan.</p> <p>16 There was also a safe objective within the</p> <p>17 planning area to provide a wide variety of housing types.</p> <p>18 And I think attention to the caps and distribution of unit</p> <p>19 types is not typical of other master plans. Here is page</p> <p>20 40, which is the next, that's a portion of the master plan</p> <p>21 that alludes to this comment.</p> <p>22 MR. GROSSMAN: Okay. We'll make that 67(c).</p> <p>23 Thank you.</p> <p>24 BY MR. KLINE:</p> <p>25 Q And Ms. Russel, this is the paperwork backing up</p>	<p style="text-align: right;">Page 217</p> <p>1 number?</p> <p>2 MR. UNTERBERG: 34(q).</p> <p>3 MR. GROSSMAN: Okay.</p> <p>4 THE WITNESS: 34(q). So you can see that the area</p> <p>5 within the blue area, which is the Brink Road area, that</p> <p>6 it's very much built out, the cemetery side.</p> <p>7 MR. GROSSMAN: But is it the intention, your</p> <p>8 understanding of the master plan, that that should be it,</p> <p>9 that essentially we're not going to have any more units, any</p> <p>10 more dwelling units in this area? Is that your</p> <p>11 understanding?</p> <p>12 THE WITNESS: Yes.</p> <p>13 MR. GROSSMAN: Okay.</p> <p>14 THE WITNESS: It looks built out to me, yes.</p> <p>15 MR. GROSSMAN: Okay.</p> <p>16 THE WITNESS: Can I go onto the next issue?</p> <p>17 MR. KLINE: Yes.</p> <p>18 THE WITNESS: Okay. Just a little bit of</p> <p>19 editorial comment on the PRC zone. In terms of its role as</p> <p>20 a floating zone. In order for a floating zone to be affixed</p> <p>21 to the site, you know that you have to make a finding that</p> <p>22 the proposed rezoning of the parcel and its development plan</p> <p>23 is compatible with the surrounding land uses, and we've</p> <p>24 discussed that. And it's also in accordance with the</p> <p>25 express purpose clause of the zone and its requirements.</p>

<p style="text-align: right;">Page 218</p> <p>1 One important point, historically, to take note  2 of, is that at the time of the master plan's adoption, which  3 was 1994, 18 years ago, the property was not and could not  4 have been considered for the PRC zone because the zone at  5 the time was applicable only to parcels in excess of 150  6 acres or more.</p> <p>7 However, the master plan does not have to  8 specifically recommend for this zone to be applied to the  9 site, as long as those findings that we've outlined have  10 been met. Just a small technical issue. Moving onto some  11 of the, reiterating some of the points about --</p> <p>12 MR. GROSSMAN: I'm not --</p> <p>13 THE WITNESS: I'm sorry.</p> <p>14 MR. GROSSMAN: -- quite sure I understand the  15 point you're making. What--</p> <p>16 THE WITNESS: I just want to remind you --</p> <p>17 MR. GROSSMAN: Yes.</p> <p>18 THE WITNESS: -- that the PRC zone could not have  19 been thought about in 1994 --</p> <p>20 MR. GROSSMAN: Right.</p> <p>21 THE WITNESS: -- for this property, because there  22 were substantial changes in the context of the PRC zone,  23 which I'm going to get into in a moment, that will reduce  24 the minimum size of a parcel that could utilize the PRC  25 zone. And in 1994, that was applicable only to parcels in</p>	<p style="text-align: right;">Page 220</p> <p>1 THE WITNESS: Yes. I mean, it's really two  2 issues. It's one is what, you know, how to you affix a  3 floating zone. Okay. And then the other issue is, oh by  4 the way, it wasn't available in 1994, which highlights,  5 again, the age of the master plan, because there were --  6 which leads me to my next point about, the age of the plan  7 raises questions as to its relevancy to current day public  8 policies, that I think even bring to mind and make, create  9 even greater concern about the inconsistency of the density  10 language.</p> <p>11 We're trying to provide non-vertical age-  12 restricted housing of a single-family nature in the upcounty  13 area, where there is nothing of that sort. and this is in a  14 county where the demographic data shows an increasing number  15 of residents entering the 50 and older age group. And those  16 are the kinds of current public policy needs that simply  17 couldn't have been addressed or reflected in a  18 recommendation of the 18-year-old master plan.</p> <p>19 And it brings me to some of the data gathering  20 which Mr., which the applicant and the property owner had  21 discussed. And I want to reiterate some of those. And I  22 have a little bit more specific information about the data.  23 It would bring us back, again, to the larger document where  24 the SR's are located.</p> <p>25 The data gathering has been done by the county in</p>
<p style="text-align: right;">Page 219</p> <p>1 excess of 750 acres.</p> <p>2 MR. GROSSMAN: Right, but are you telling me that,  3 because, to say that that's one reason why the plan would  4 not have specifically recommended the PRC zone for this  5 site?</p> <p>6 THE WITNESS: That being said --</p> <p>7 MR. GROSSMAN: Or are you saying there's some  8 other technical --</p> <p>9 THE WITNESS: No.</p> <p>10 MR. GROSSMAN: I thought you said there was some  11 technical --</p> <p>12 MR. KLINE: Well, I'll -- maybe I set her up the  13 wrong way. Here is my concern, is that we had difficulty  14 convincing staff that they were spending too much time  15 fixating on what we felt was a confused recommendation on  16 the master plan when we were dealing with a floating zone  17 that should be, for which the standard can be different in  18 terms of how you analyze its applicability. And you don't  19 find any floating zone reference, you don't find very many  20 floating zone references in the staff report at all.</p> <p>21 So I had wanted to ask Ms. Russel to kind of  22 highlight the point that floating zones, particularly on a  23 plan that's 18 years old when this zone wasn't allowed,  24 ought to be looked at a little bit more open minded. And  25 that's, I think, the point she was trying to make.</p>	<p style="text-align: right;">Page 221</p> <p>1 an effort to try to address and shape future housing policy.  2 And SR-5, which we discussed earlier, which is arguably from  3 an exhibit, in the large appendix.</p> <p>4 BY MR. KLINE:</p> <p>5 Q Is that the preference survey?</p> <p>6 A Yes. The Planning Department conducted a housing  7 preference survey which we alluded to earlier. It was  8 actually a sample of 1,200 interviews of folks who were 55  9 and above, to take a look at housing trends. And as we  10 indicated earlier, more than half surveyed was the  11 preference for its buying a single-family home, which we're  12 proposing here, or a townhouse.</p> <p>13 Younger seniors, in the age group of 55 to 64,  14 expressed a preference for the I-270 corridor, in which we  15 are located, and 30 percent of those polled expressed  16 interest in an active adult community, which is viewed very  17 differently from a senior community. And I think that's an  18 important distinction to make, that this is an age-  19 restricted active adult community, and is not a senior  20 community.</p> <p>21 So all of these opinions that are in the housing  22 preference survey, SR-5, underscore the need for non-  23 vertical age-restricted housing. And I think it's  24 particularly important, given that much of the new housing  25 plan under construction in the County is multi-family. And</p>



<p style="text-align: right;">Page 222</p> <p>1 I knew that you would ask me where I got that figure, after  2 listening this morning. And rather than just conjecture --  3 here is another exhibit.  4 This is not in the master plan. But this is from  5 the Montgomery County Planning Research and Technology  6 Division. And it shows current --  7 MR. GROSSMAN: Division of what?  8 THE WITNESS: Of the Planning Board staff.  9 MR. GROSSMAN: Okay.  10 THE WITNESS: It includes all County data  11 excluding the cities of Rockville and Gaithersburg. And it  12 shows the current development pipeline dated July 2012. And  13 you'll see that what I'd like to call attention to are two  14 figures, unbuilt single-family dwellings and --  15 MR. GROSSMAN: Hold on a second.  16 THE WITNESS: I'm sorry.  17 MR. GROSSMAN: This will be Exhibit No. 68. Are  18 these two, you gave me two pages, Mr. Kline?  19 (Exhibit No. 68 was marked  20 for identification.)  21 THE WITNESS: Yes.  22 MR. KLINE: Yes, sir.  23 MR. GROSSMAN: Are these two different exhibits or  24 are these part of the one?  25 MR. KLINE: No, yes. You're good.</p>	<p style="text-align: right;">Page 224</p> <p>1 headlines --  2 THE WITNESS: Yes.  3 MR. GROSSMAN: Unbuilt --  4 THE WITNESS: If you go to the bottom, you will  5 see --  6 MR. GROSSMAN: Which column am I looking at?  7 THE WITNESS: You'll see 8,430 at the bottom, and  8 21,000.  9 MR. GROSSMAN: Okay. 8,430. Okay.  10 THE WITNESS: So it's about two and a half times  11 the number of multi-family dwellings being built as opposed  12 to single-family. That's because most of the development  13 are proximate to transit or transit oriented. We previously  14 indicated --  15 MR. GROSSMAN: And what's the significance of  16 that?  17 THE WITNESS: The significance is that, the point  18 I'm trying to make is that many seniors, or many people on  19 the, the housing preference survey indicated that many, more  20 than half surveyed had a preference towards buying a single-  21 family home or a townhouse. And there really aren't -- and  22 if they're looking for new housing, there are not as many  23 choices, because most of the, two and a half times the  24 amount of housing that are -- two and a half times more  25 multi-family units planned and under construction in the</p>
<p style="text-align: right;">Page 223</p> <p>1 MR. GROSSMAN: They are part of one exhibit?  2 MR. KLINE: One is just a cover page, pipeline.  3 MR. GROSSMAN: Okay. So Exhibit No. 68, and that  4 is pipeline approved development as of, when is this as of?  5 THE WITNESS: July 2012.  6 MR. GROSSMAN: As of July 2012 for --  7 THE WITNESS: Montgomery County.  8 MR. GROSSMAN: All of the County?  9 THE WITNESS: Yes. Excluding Rockville and  10 Gaithersburg, which is noted in there.  11 MR. GROSSMAN: Okay.  12 THE WITNESS: So the point is that, the point is  13 that there seems to be a desire by seniors interviewed, age  14 55 and over, to look for non-vertical age-restricted  15 housing. And much of the housing under construction planned  16 and under construction in the County now is multi-family.  17 You'll see the bottom line figures, project totals. Unbuilt  18 single-family dwellings, 8,430 versus unbuilt multi-family  19 dwellings, 21,373.  20 And much of this is transit-oriented development,  21 smart growth oriented development that is at metro stations,  22 proximate to metro states, very transit oriented.  23 MR. GROSSMAN: I'm not following.  24 THE WITNESS: Okay.  25 MR. GROSSMAN: Oh, I see it. I see the column</p>	<p style="text-align: right;">Page 225</p> <p>1 County. There aren't as many choices from a single-family  2 perspective.  3 MR. GROSSMAN: Well, this indicates they are not  4 in the pipeline, which could indicate that there are so many  5 single-family homes already available that they are not  6 building more. They are building multi-family. I mean, you  7 can interpret this data that way, too.  8 THE WITNESS: I supposed, but there is nothing,  9 there is very little, there is no age-restricted non-  10 vertical housing under consideration in the upcounty where  11 30 percent of those polled, rather, the younger seniors  12 expressed a preference for the I-270 corridor.  13 MR. GROSSMAN: Well, getting back to the point I'm  14 making, I'm not, I don't -- I understand your other points.  15 This one, as far as what's in the pipeline, I don't know  16 that it tends to prove your case, because it could be  17 interpreted the way I suggest it, it could be interpreted as  18 well. So if it's susceptible of both of those  19 interpretations, I don't see how it helps to prove your  20 case.  21 I don't doubt, you know, the other statistics that  22 have been presented about preferences and so on. But as far  23 as that, I can't tell you.  24 THE WITNESS: All right. We had already indicated  25 previously under SR-7, the survey conducted by AARP, that 71</p>

<p style="text-align: right;">Page 226</p> <p>1 percent of adults age 50 live in single-family homes, and  2 that there is some general racial resistance to the  3 densities that characterize multi-family units. And this  4 was discussed, and I'm not, this is just not something that  5 I'm alluding to.  6 The County Council in July of, no, excuse me,  7 March of 2012, had a briefing called, shaping our future,  8 adapting to change, our growing senior population. There  9 were a wide, there were four or five experts who testified  10 that day on the provision of services and housing for the  11 County's aging population. And these experts suggested that  12 the goal of aging residents is to stay within the community.  13 If it's not within their current home, it's within the  14 existing jurisdiction.  15 The experts also suggested that purpose built  16 senior housing is a new approach that lets the 50-year-old  17 and older citizen remain independent with enhanced  18 opportunities for socialization and recreation. And they  19 also indicated that accessibility to care and services,  20 which of course the PRC zone mandates, is important.  21 And these experts also told the County Council  22 that the alternatives to multi-family housing should be  23 examined, because there appears to be some generational  24 resistance to densities in the TOD multi-family housing.  25 And I'm just saying that the figures alone could</p>	<p style="text-align: right;">Page 228</p> <p>1 master plan designation.  2 MR. GROSSMAN: No, I understand that.  3 THE WITNESS: Yes.  4 MR. GROSSMAN: I'm just saying that some zones are  5 very particular about requiring adherence to master plans.  6 Others don't seem to make a point of it.  7 THE WITNESS: Yes. I don't believe so. I think  8 it's very focused on the accessibility of the provision of  9 services. I don't believe there's any specific language.  10 MR. GROSSMAN: So this appears not to be one of  11 those zones that requires strict adherence to the master  12 plan.  13 THE WITNESS: I don't believe so.  14 MR. GROSSMAN: And now, of course, the findings  15 that the Council is required to make, they're required to  16 make a finding under 59D-1.61(a), "That the proposed  17 development plan substantially complies with the use and  18 density indicated in a master plan or sector plan." And  19 then it goes onto other things. It also has some exceptions  20 for MPDU's and so on.  21 So the focus, I suppose, ought to be on this use  22 and density issue. So let me, we've talked about density,  23 and you've explained the ambiguity in the master plan  24 regarding density, and your interpretation of it. What  25 about use of the site? Is there anything in the master plan</p>
<p style="text-align: right;">Page 227</p> <p>1 lead you to believe that there aren't as many choices with  2 respect to single-family. And there certainly is no non-  3 vertical age-restricted housing in the upcounty area.  4 MR. GROSSMAN: Okay. These aren't so much master  5 plan arguments as public policy argument in favor of more  6 single-family housing for seniors.  7 THE WITNESS: Right.  8 MR. GROSSMAN: Okay.  9 THE WITNESS: And it also, but it also, to me, are  10 issues that could not have been considered in 1994 when the  11 master plan was developed, because of the age of the  12 document.  13 MR. GROSSMAN: I think what's not always clear to  14 everybody is that master plans, generally speaking, are not  15 binding documents. They are considered recommendations,  16 unless the statute, unless the zoning ordinance says that  17 they should be considered binding in a particular place, or  18 required.  19 THE WITNESS: It's a policy document, and it  20 offers guidance.  21 MR. GROSSMAN: And so the question, the first  22 question I have is, is there anything in this particular  23 zone that requires that master plan be followed completely?  24 THE WITNESS: Master plan be followed completely?  25 Well, I think that the zone can be affixed without the</p>	<p style="text-align: right;">Page 229</p> <p>1 that would help us to understand the master plan's concept  2 of the use of the site?  3 THE WITNESS: I think so. I have something that I  4 was going to get to, but I can bring it out now. I alluded  5 to the fact that I thought that this particular master plan  6 was unusual in that it took a strong, made a strong case for  7 housing mix. And there is language in the master plan on  8 page 39, once again, and I'll wait for you to get it.  9 MR. GROSSMAN: I don't know, Mr. Kline, you ran  10 out to the end of my piece of paper here on your exhibits.  11 You know what that means. I have to turn the page.  12 MR. KLINE: I'm getting to the same place myself.  13 MR. GROSSMAN: All right. So this will be Exhibit  14 -- so, this is another page of the master plan.  15 MR. KLINE: You might make this 67(d).  16 MR. GROSSMAN: Yes, 67(d). Okay. You snuck in on  17 the same page. 67(d) is page 39 of the master plan.  18 THE WITNESS: We had a previous exhibit, Exhibit  19 67(c) that showed you each of the sub-areas by acre with  20 your dwelling units, and was very specific. And I believe  21 this demonstrated the vision for Clarksburg by planning sub-  22 areas. It was pretty specific as to dwelling units. And  23 that's the area where we're at 969 and Brink Road is at  24 1,000.  25 And if you take a look at page 39, I think I</p>

<p style="text-align: right;">Page 230</p> <p>1 highlighted it, actually. A key objective which has guided  2 this planning process has been the need for Clarksburg to  3 provide a variety of housing types.  4 Now, the Clarksburg community has been a long time  5 coming. There have been, the development of what is known  6 as a corridor town has had some jump starts, was impacted,  7 of course, by the violations and also the economy. But it  8 has a very interesting, I think an enviable housing mix.  9 And there was a lot of attention paid to it.  10 I think that the plan takes a great deal of care  11 via of the unit caps and the density, as well as this  12 language, to develop these housing mix guidelines to oversee  13 the housing mix in a way that many master plans do not do.  14 And by adding --  15 MR. GROSSMAN: Well, do you know of any master  16 plan that does not say, have this sentence, a key objective  17 which has guided this planning process has been the need  18 for, instead of Clarksburg, any-burg to provide a variety of  19 housing types?  20 THE WITNESS: I think when you add this to the  21 chart, I think it makes a much stronger statement. I do.  22 And I think that by adding the development of age-restricted  23 housing on the site, it would help round out housing  24 choices, because clearly there are people, as has been  25 indicated by letters that we received into the record, there</p>	<p style="text-align: right;">Page 232</p> <p>1 about was the PRC zone and the changes to the PRC zone which  2 had been alluded to. But I thought I might mention them.  3 In 1994, as I indicated, the zone did not permit, did not  4 permit its use on parcels that were under 750 acres. There  5 have been three separate efforts to change that over the  6 history of the zoning text amendments.  7 In 2002, ZTA 2-05 split the property, the PRC zone  8 into two categories for properties 25 acres and properties  9 of 750 acres. In other words, it reduced the required  10 minimum lot to 25 acres from 750 acres. And for the first  11 time the zoning ordinance allowed parcels with less than 750  12 acres to wear the PRC nomenclature, once again remembering  13 that, you know, in 1994 there was no such thing.  14 The parcel couldn't have had the PRC nomenclature  15 because the existing requirement was 750 acres. However,  16 the 2002 ZTA, it did adopt the minimum lot size, but it did  17 not change any kind of requirements for services. Services  18 still had to be provided on-site for both a 25-acre PRC as  19 well as a 750-acre PRC. In 2006, moving along --  20 MR. GROSSMAN: And what was that ZTA?  21 THE WITNESS: 0205.  22 MR. GROSSMAN: Okay.  23 THE WITNESS: In 2006 there was another amendment,  24 ZTA-0618, and that was introduced to allow the necessary  25 uses and the services and the facilities to be accessible to</p>
<p style="text-align: right;">Page 231</p> <p>1 are people who have been looking for housing like this, and  2 want to stay in this, if you will, Brink Road sub-area, and  3 have not been able to find age-restricted housing. So I  4 think it does a better job and a strong job of doing that.  5 And also, you're probably right that the newer  6 master plans are more keyed into housing policy, because  7 that is more important and it's become more of a critical  8 issue in, I would say, the last 10 years. But for a plan of  9 this age to address it, I think was very unique.  10 MR. GROSSMAN: Is there anything in the master  11 plan which specifies an intended use for this particular  12 site? Not a zoning, not a zone, but --  13 THE WITNESS: Other than residential? Other than  14 residential?  15 MR. GROSSMAN: Right.  16 THE WITNESS: I guess so.  17 MR. GROSSMAN: There's nothing in there that  18 recommends a change to the RE-2, specifically, or a use  19 other than residential?  20 THE WITNESS: Other than residential, no.  21 MR. GROSSMAN: Okay.  22 THE WITNESS: I just think it goes above and  23 beyond what you see in a master plan of comparable age.  24 MR. GROSSMAN: Okay.  25 THE WITNESS: The other thing I wanted to talk</p>	<p style="text-align: right;">Page 233</p> <p>1 properties that were of 25 acres, so therefore no longer  2 requiring the services to be provided on site.  3 This amendment was never adopted, and the Council  4 did not act in time, and there were a variety of issues  5 associated with it. And it just died a silent death.  6 However, in 2007, ZTA-0627 was adopted to allow  7 off-site services. And this added language to the purpose  8 clause, indicating that a smaller PRC may not have to  9 contain all the services on-site, and in fact, instead, such  10 communities could alternatively be accessible, too. And  11 that's the, those are the optimum terms, be accessible to  12 services.  13 BY MR. KLINE:  14 Q And that is the current language in the zoning  15 ordinance today?  16 A Yes, it is. And I think we've done a pretty good  17 job of demonstrating where local retail, such as Clarksburg  18 Village will be, and Milestone, as well as some of the  19 services in Germantown Town Center, where there are  20 services, including medical services, that fall within at  21 least my understanding of what accessible to means. And  22 this allowed a 25-acre site to enjoy the PRC without  23 burdening them with the provision of services that could be  24 easily accessible.  25 Okay. So that just gives you sort of a brief</p>

<p style="text-align: right;">Page 234</p> <p>1 history of why we are where we are now, and why we couldn't 2 be there before.</p> <p>3 MR. GROSSMAN: All right.</p> <p>4 THE WITNESS: In terms of anything else I might 5 have to say, I guess I would go back to the whole issue of 6 compliance with the master plan, since that's very 7 important. And I believe that the Planning Board agrees 8 with me that --</p> <p>9 BY MR. KLINE:</p> <p>10 Q It's nice they agree with you.</p> <p>11 A What?</p> <p>12 Q Is that how you wanted to say that, the Planning 13 Board agrees with you?</p> <p>14 A No. I'm saying that I agree with them. Okay.</p> <p>15 MR. GROSSMAN: Well, they agree with her because 16 she came up with her recommendation, probably testified in 17 front of the Planning Board.</p> <p>18 THE WITNESS: I did.</p> <p>19 MR. KLINE: She did.</p> <p>20 MR. GROSSMAN: So there you go. They did agree 21 with you.</p> <p>22 THE WITNESS: Maybe I influenced them. Yes.</p> <p>23 Thank you. I believe that the Planning Board agrees with me 24 that the rezoning request was substantially, request 25 substantially complies with the 1994 Clarksburg master plan.</p>	<p style="text-align: right;">Page 236</p> <p>1 indicating that this is a transit-oriented community. And 2 although the transit is not there yet, transit needs density 3 in order to survive and in order to have success. And even 4 though it's been a long time in coming, I think that the 5 density that would be enjoyed on this site will also help 6 contribute to the viability of the community.</p> <p>7 MR. GROSSMAN: I don't know whether that last one 8 is too much of a bootstrap, I think, for me to buy but --</p> <p>9 THE WITNESS: Well, I know, but that's what 10 they've --</p> <p>11 MR. GROSSMAN: Let me go back to a different 12 question about amenities. I mean, I'll assume that this 13 list of amenities qualifies under the technical staff's 14 standards for and their point counting for amenities. I'm 15 just curious to know why the proposed community center seems 16 to be so anemic in size.</p> <p>17 I mean, you're talking about a three room 18 building, two of the rooms being 10 feet by 10 feet. It 19 just struck me as a little bit curious. I don't know that 20 it undermines your application, but perhaps you could 21 explain that a little bit?</p> <p>22 THE WITNESS: I'm not sure that's something that 23 you want me to explain?</p> <p>24 BY MR. KLINE:</p> <p>25 Q Well, Ms. Russel, if you can answer the question,</p>
<p style="text-align: right;">Page 235</p> <p>1 And in their letter they offered the opinion that the 2 proposal, quote, "Appeared to be in concert with the master 3 plan's objectives, despite some ambiguities and text 4 language within the confines of an 18-year-old document." 5 And they labored a bit through it, but I think 6 that we have shown quite a concerted effort to adhere to the 7 intent of the PRC zone. And the Planning Board, of course, 8 agreed with us that the site's location within a short drive 9 of shopping centers and other amenities, with a community 10 center on-site and a park within walking distance, satisfied 11 the requirement in the purpose clause for adequate access to 12 day-to-day and recreational services.</p> <p>13 Additionally, we're providing, as Mr. Unterberg 14 outlined, a connective trail system throughout the community 15 which, just for informational purposes, is viewed as the 16 most popular recreational amenity for, requested by adults 17 of age 50 and above, which also reinforces the requirement.</p> <p>18 And I guess the only other thing I would offer is 19 that I really think the provision of age-restricted non- 20 vertical housing rounds out this housing mix, and will 21 provide opportunities for a variety of folks to populate 22 Clarksburg, which is clearly what the community is looking 23 for.</p> <p>24 The master plan made a big statement by approving 25 -- the Council made a huge statement, I think, in 1994, by</p>	<p style="text-align: right;">Page 237</p> <p>1 great. If not, we'll call a later witness to supplement it.</p> <p>2 A Well, I think that's, I think that's our idea for 3 now. And I think one of the, my understanding is that the 4 applicant wants the community center to have a lot of 5 flexibility to provide the kind of services that he ever 6 moves in might want to enjoy. And right now, we're not 7 really sure what that might be. I'm not sure that answers 8 your question about the size.</p> <p>9 MR. GROSSMAN: Do you really think that a 10 building, yes, that a building that size with three rooms, 11 two of which are very small, 10 by 10 is a small room, 12 could, does that provide the kind of flexibility you're 13 talking about?</p> <p>14 THE WITNESS: Well, I think if you have one large 15 meeting room. I mean, these are people who are probably 16 still going to be working. So you're not, so there's going 17 to be a lot of -- people are not, I don't think people are 18 going to be there all day.</p> <p>19 I mean, I think we're going to have to try to 20 figure out afterwards, we'll have to try to figure out what 21 the demand is for services. I think having one meeting room 22 is important, and I think we're flexible in terms of how it 23 may emerge. But we don't really know what the need is going 24 to be.</p> <p>25 MR. GROSSMAN: All right. I raise the issue of</p>

<p style="text-align: right;">Page 238</p> <p>1 you --</p> <p>2 MR. KLINE: We'll remember that for later.</p> <p>3 MR. GROSSMAN: -- and you're entitled to have,</p> <p>4 you're entitled to have this application in exactly its form</p> <p>5 presented to the Council. You know, you have that right.</p> <p>6 It just seemed to me that that would be, even though you</p> <p>7 list all these amenities by point count, that that's an</p> <p>8 awful small community center. It doesn't have anything but</p> <p>9 empty rooms in it. It doesn't have an exercise center, for</p> <p>10 example, or anything like that. I mean, I don't know, just</p> <p>11 a reaction.</p> <p>12 MR. KLINE: Well, it's not a binding element, so</p> <p>13 it's still subject to some --</p> <p>14 MR. GROSSMAN: Right.</p> <p>15 THE WITNESS: And I think we want to see who lives</p> <p>16 there and what they might want. Can I go back to one thing</p> <p>17 that, my bootstrap thing? I just want you to know that I</p> <p>18 didn't that the transit orientation of the Clarksburg master</p> <p>19 plan, albeit a bone of contention with the community because</p> <p>20 transit is not there, but the plan has language in it that</p> <p>21 says, "The plan proposes a comprehensive transit system that</p> <p>22 will reduce dependence on the automobile."</p> <p>23 And even though the transit is not there yet, the</p> <p>24 land use element of the plan was adopted with a, as a</p> <p>25 transit-dependent community. That was one of the bulwarks</p>	<p style="text-align: right;">Page 240</p> <p>1 MR. GROSSMAN: Right.</p> <p>2 THE WITNESS: I understand that.</p> <p>3 MR. GROSSMAN: I thought that was the suggestion</p> <p>4 in what you said.</p> <p>5 THE WITNESS: No. But I believe that there are</p> <p>6 people there who strongly feel that the community needs to</p> <p>7 continue to develop to help with the future of transit,</p> <p>8 because transit only happens if there is ridership.</p> <p>9 MR. GROSSMAN: Okay.</p> <p>10 THE WITNESS: I wouldn't mean to infer that 140</p> <p>11 units is going to bring the CCT into existence.</p> <p>12 MR. GROSSMAN: All right.</p> <p>13 BY MR. KLINE:</p> <p>14 Q One simple conclusionary question, and that was,</p> <p>15 from your unique perspective as the Clarksburg ombudsman, in</p> <p>16 your opinion, is this application in accordance with the</p> <p>17 public interest and the ultimate benefits to Clarksburg?</p> <p>18 A Yes, I do believe so, most emphatically.</p> <p>19 MR. KLINE: Thank you. No further question of</p> <p>20 Ms. Russel.</p> <p>21 MR. GROSSMAN: All right. Cross-examination?</p> <p>22 Anybody? Yes.</p> <p>23 CROSS-EXAMINATION</p> <p>24 BY MS. GOODRICK:</p> <p>25 Q Okay. I wanted to look back again at the map.</p>
<p style="text-align: right;">Page 239</p> <p>1 of this plan.</p> <p>2 MR. GROSSMAN: Right.</p> <p>3 THE WITNESS: Whether it's there or not is kind of</p> <p>4 beside the point.</p> <p>5 MR. GROSSMAN: The bootstrap reference I was</p> <p>6 talking about is, I got the idea that the sense of your</p> <p>7 argument was that having this proposed development there</p> <p>8 would aid in justifying or bringing about the kind of</p> <p>9 transit that is suggested would be helpful to the community.</p> <p>10 And I don't know that that, in terms of a rezoning, that</p> <p>11 that's something, a conclusion I could reach.</p> <p>12 THE WITNESS: I guess what I would like to say is</p> <p>13 that I know that there are people in the community, from my</p> <p>14 tenure there in Clarksburg as the ombudsman, who felt very</p> <p>15 strongly that density was not a nasty word because in order,</p> <p>16 throughout the County, I mean, it's a basic land use issue</p> <p>17 that in order to have transit, you have to have ridership.</p> <p>18 MR. GROSSMAN: Right.</p> <p>19 THE WITNESS: And without ridership, without units</p> <p>20 and households, you don't have ridership. So it, I think</p> <p>21 that's a concern. And I think there were people, and there</p> <p>22 are people in the community with whom I communicate, who</p> <p>23 feel that additional ridership is important. 140 units are</p> <p>24 not going to be the end all be all to bring the CCT to</p> <p>25 Clarksburg.</p>	<p style="text-align: right;">Page 241</p> <p>1 And that's the one that shows the entrance, and make sure I</p> <p>2 understand something.</p> <p>3 A That one?</p> <p>4 Q It's the one that shows the entrance into</p> <p>5 Clarksburg Village.</p> <p>6 A That one?</p> <p>7 Q Okay. All right. So am I correct in saying that</p> <p>8 what, they say the primary entrance to Clarksburg Village is</p> <p>9 going to be through here?</p> <p>10 MR. GROSSMAN: Through here being?</p> <p>11 BY MS. GOODRICK:</p> <p>12 Q Through, down A-305, which goes into the Butz</p> <p>13 property.</p> <p>14 MR. GROSSMAN: Okay.</p> <p>15 BY MS. GOODRICK:</p> <p>16 Q Is that the primary entrance to Clarksburg</p> <p>17 Village?</p> <p>18 A What I said was that there will be a monumental</p> <p>19 entrance feature at the intersection where you just pointed,</p> <p>20 on either side of that road.</p> <p>21 MR. GROSSMAN: That's Ridge Road and 305?</p> <p>22 THE WITNESS: Yes. I said, there's a -- do you</p> <p>23 know what, I mean a sign. Yeah, yeah.</p> <p>24 BY MS. GOODRICK:</p> <p>25 Q A sign. Okay.</p>

<p style="text-align: right;">Page 242</p> <p>1 A There are other entrances to Clarksburg Village.</p> <p>2 And the other point I made was that that's the area that I</p> <p>3 believe the document is referring to on the two to four</p> <p>4 units per acre, because that's a boundary between Germantown</p> <p>5 planning area to the east and Clarksburg to the west.</p> <p>6 Q But, you know, this is a road coming down this</p> <p>7 way. And this --</p> <p>8 MR. GROSSMAN: You can't argue with her. You can</p> <p>9 only ask questions.</p> <p>10 BY MS. GOODRICK:</p> <p>11 Q Okay. And so this is an entrance to Clarksburg</p> <p>12 Village. So what you are suggesting is that there are --</p> <p>13 A Yes.</p> <p>14 Q -- other entrances?</p> <p>15 A Absolutely. You can see it from the roads.</p> <p>16 Q Right. But this is, what you said, a monumental</p> <p>17 one? I mean, the only monumental one?</p> <p>18 A No, no. No, I meant the sign. The monumental</p> <p>19 entrance refers to the sign. It's not an adjective.</p> <p>20 MR. GROSSMAN: A monument sign. A monument sign.</p> <p>21 THE WITNESS: Yes.</p> <p>22 MR. GROSSMAN: I asked the same question.</p> <p>23 BY MS. GOODRICK:</p> <p>24 Q So, I --</p> <p>25 A It's not an adjective.</p>	<p style="text-align: right;">Page 244</p> <p>1 question, a cross-examination question, if that's what you</p> <p>2 are --</p> <p>3 MS. GOODRICK: I'm trying to get to a question.</p> <p>4 MR. GROSSMAN: All right. Just start with a</p> <p>5 question.</p> <p>6 MS. GOODRICK: I'm trying my best.</p> <p>7 MR. GROSSMAN: Start with a question. Skip the</p> <p>8 preamble.</p> <p>9 BY MS. GOODRICK:</p> <p>10 Q Okay. What you had said here today differs from</p> <p>11 the planning staff's report.</p> <p>12 MR. GROSSMAN: Does what you've said here today</p> <p>13 differ from the planning staff report? That's a question.</p> <p>14 THE WITNESS: Portions of --</p> <p>15 BY MS. GOODRICK:</p> <p>16 Q That's the question.</p> <p>17 A Well, it's not a yes or no answer. The planning</p> <p>18 staff chose to downplay, I guess you would say, the language</p> <p>19 on page 75.</p> <p>20 MR. GROSSMAN: I think the plain answer in writing</p> <p>21 is yes.</p> <p>22 THE WITNESS: Yes.</p> <p>23 MR. GROSSMAN: I mean, it does differ.</p> <p>24 THE WITNESS: Yeah. Yeah.</p> <p>25 MR. GROSSMAN: I mean, the planning staff found</p>
<p style="text-align: right;">Page 243</p> <p>1 Q But still, okay, that's a major entrance, then. I</p> <p>2 understand.</p> <p>3 A I didn't mean monumental in terms of --</p> <p>4 Q No, I get it now. But there's still an issue.</p> <p>5 MR. GROSSMAN: In terms of magnificent and --</p> <p>6 THE WITNESS: Maybe.</p> <p>7 MR. GROSSMAN: I had the same question. Don't</p> <p>8 worry.</p> <p>9 BY MS. GOODRICK:</p> <p>10 Q It's still, it's still a regular, proper view.</p> <p>11 Okay. So it's the only entrance when you approach from the</p> <p>12 south? Is that true, the only entrance when you approach</p> <p>13 from the south, or the first entrance?</p> <p>14 A It's the first. Yes.</p> <p>15 Q Okay. I also just want to, I think draw a</p> <p>16 distinction, if I am correct.</p> <p>17 MR. GROSSMAN: You can ask the question, if you</p> <p>18 can ask a question.</p> <p>19 BY MS. GOODRICK:</p> <p>20 Q I will. That what is being said here is --</p> <p>21 MR. GROSSMAN: No, no, no. You have to ask her,</p> <p>22 you'll be allowed to testify.</p> <p>23 MS. GOODRICK: No, no.</p> <p>24 MR. GROSSMAN: You can say, give any testimony you</p> <p>25 want with what is said here, but you have to ask her a</p>	<p style="text-align: right;">Page 245</p> <p>1 that there was too much density, because they interpreted</p> <p>2 the master plan differently.</p> <p>3 THE WITNESS: Absolutely.</p> <p>4 MR. GROSSMAN: I'll answer it for her.</p> <p>5 MS. GOODRICK: Thank you.</p> <p>6 THE WITNESS: Okay.</p> <p>7 MR. GROSSMAN: I probably shouldn't do that, but I</p> <p>8 mean --</p> <p>9 THE WITNESS: No, no, no.</p> <p>10 MR. GROSSMAN: -- it's quite obvious on the</p> <p>11 surface that that's the case.</p> <p>12 THE WITNESS: Right.</p> <p>13 MR. GROSSMAN: And the Planning Board also</p> <p>14 disagreed with the planning staff.</p> <p>15 THE WITNESS: Right.</p> <p>16 BY MS. GOODRICK:</p> <p>17 Q Okay. So does the document that the planning</p> <p>18 staff wrote, is that a part of the record --</p> <p>19 MR. GROSSMAN: Absolutely.</p> <p>20 BY MS. GOODRICK:</p> <p>21 Q -- that you have?</p> <p>22 MR. GROSSMAN: It's required --</p> <p>23 THE WITNESS: Absolutely.</p> <p>24 MR. GROSSMAN: -- to be a part of the record, as</p> <p>25 is the Planning Board letter. They are both required to be</p>

<p style="text-align: right;">Page 246</p> <p>1 part of the record, and they are part of the record.  2 BY MS. GOODRICK:  3 Q Okay. So as a result of these discussion, can a  4 decision be made that, well, I'm not going to ask that,  5 because I think that's -- I don't think you'd answer me,  6 from what I've heard.  7 MR. GROSSMAN: One can never tell.  8 MS. GOODRICK: Okay. But I would like to say also  9 that from what has been said, that it looks like to me --  10 MR. GROSSMAN: No, no, no, you're testifying.  11 MS. GOODRICK: Okay.  12 MR. GROSSMAN: I'll swear you in later, and you  13 can testify, but let's get to the end of the applicant's  14 case, unless you have to leave now.  15 MS. GOODRICK: No.  16 MR. GROSSMAN: If that's the case, I would swear  17 you in now and take your testimony.  18 MS. GOODRICK: No. Okay. Here's the question.  19 Okay. Can I ask? Is it okay? Okay.  20 BY MS. GOODRICK:  21 Q Are the only things that you are proposing to be  22 the services that are provided on site, the building and the  23 trails?  24 MR. KLINE: I'm going to object to that question,  25 because I don't think Ms. Russel testified in that regard at</p>	<p style="text-align: right;">Page 248</p> <p>1 MR. GROSSMAN: Sure. If you think that's better,  2 Mr. Kline, because he's the one who testified about it.  3 MR. KLINE: It's better than me objecting to  4 having the wrong answer.  5 MR. GROSSMAN: Right, right.  6 MR. KLINE: So we put up Exhibit No. --  7 MR. UNTERBERG: 34(k).  8 MR. KLINE: Ms. Goodrick, if it's okay, can --  9 MS. GOODRICK: Of course.  10 MR. KLINE: -- Mr. Unterberg answer the question?  11 MR. GROSSMAN: Yes.  12 MR. UNTERBERG: Speaking from 34(l), the road  13 plans for A-305 and which include the portion that goes  14 through the subject property, and the widening for Route 27,  15 they are the responsibility of Clarksburg Village. They  16 have plans pending that are going through final engineering  17 approval, that include those bikeways. Those bikeways are  18 required for their approvals.  19 So the bikeway that would be along 27 and then go  20 up 305 to the north and west are included in that approval  21 package.  22 MR. GROSSMAN: Okay.  23 MS. GOODRICK: Okay. All right. I think that's  24 it.  25 MR. GROSSMAN: All right. Mr. Wills?</p>
<p style="text-align: right;">Page 247</p> <p>1 all. I'll be glad to put back witnesses who did testify or  2 will, Mr. Chairman.  3 MR. GROSSMAN: That's fair. They listed their  4 amenities, and they did testify as to what they were. And  5 they list them in the exhibit. Exhibit, I think we have  6 plenty of information on it.  7 MR. KLINE: Number 66.  8 MR. GROSSMAN: 66. Okay. And they list the  9 exhibits that are on-site. Pedestrian system, under (b)(1).  10 Pedestrian system, bike system, natural areas, and three  11 indoor community spaces, and the community garden. Those  12 are the on-site amenities.  13 BY MS. GOODRICK:  14 Q Okay. Is it true that the, when you talk about  15 the bike trails, and the bike trails being hooked up to the  16 ones in Clarksburg Village or across Brink Road, that, do we  17 know that those bike trails will connect with Clarksburg  18 Village, for example?  19 A Yes. I think, yes. I think Mr. Unterberg already  20 had an exhibit.  21 Q Yes.  22 MR. GROSSMAN: You can answer that, Mr. Unterberg,  23 if you want to.  24 MR. KLINE: Do you want him to answer at this  25 time?</p>	<p style="text-align: right;">Page 249</p> <p>1 MR. WILLS: I have no questions.  2 MR. GROSSMAN: Okay. Any redirect?  3 MR. KLINE: No, sir.  4 MR. GROSSMAN: All right. I thank you very much  5 for your testimony, Ms. Russel.  6 MS. RUSSEL: Thank you.  7 MR. GROSSMAN: Shall we take a break here?  8 MR. KLINE: Could I just ask the indulgence of  9 these folks first?  10 MR. GROSSMAN: Right.  11 MR. KLINE: There's a young lady who has been kind  12 of in and out a couple of times today hoping to get a chance  13 to talk, and she's frankly run out of time. And I wonder if  14 I could slide her in? She would be testifying in support of  15 the application a little bit premature, but she can't hang  16 around much longer. And if I could have your indulgence --  17 MR. GROSSMAN: She's not an expert? She's a  18 member of the community?  19 MR. KLINE: Right. Right. I don't have any  20 questions to ask her. I'm not sure what she's going to say.  21 MR. WILLS: My only question is, how long can this  22 go on for today? I'd like to at least get my testimony in  23 before the end, whatever time it ends.  24 MR. GROSSMAN: We will get your testimony. How  25 long is your testimony going to take? You can estimate.</p>

<p style="text-align: right;">Page 250</p> <p>1 MR. WILLS: Five minutes.</p> <p>2 MR. GROSSMAN: We will definitely get your</p> <p>3 testimony in.</p> <p>4 MR. KLINE: We would be glad to defer some of our</p> <p>5 witnesses to accommodate Mr. Wills.</p> <p>6 MR. GROSSMAN: Right, and will do it for the</p> <p>7 others of you, also, if you wish to make sure that you get</p> <p>8 your testimony in today, because we did set a second day</p> <p>9 here for this hearing. But I will certainly accommodate</p> <p>10 anybody who needs to get it in today.</p> <p>11 MR. KLINE: So I will call her.</p> <p>12 MR. GROSSMAN: We generally end at 5:00. We've</p> <p>13 gone on for much past that, depending on whether people can</p> <p>14 do it or not, including the court reporter, and so on. But</p> <p>15 since we have a second day scheduled, unless we look like</p> <p>16 we're about to finish, I probably wouldn't go beyond. So if</p> <p>17 there is no objection, I would accommodation --</p> <p>18 MR. KLINE: And we'll do that after the break.</p> <p>19 MS. KUBIT: That's fine.</p> <p>20 MR. KLINE: That's fine. Thank you.</p> <p>21 MR. GROSSMAN: Okay. All right. So we'll take a</p> <p>22 five-minute break here and come back at 20 after 4:00.</p> <p>23 (Whereupon, at 4:13 p.m., a brief recess was</p> <p>24 taken.)</p> <p>25 MR. GROSSMAN: All right. We're back on the</p>	<p style="text-align: right;">Page 252</p> <p>1 is Kate Kubit. And I'm a vice-president with Elm Street</p> <p>2 Development.</p> <p>3 Elm Street Development is the largest green field</p> <p>4 developer in Montgomery County. And we're currently, we've</p> <p>5 been active in Clarksburg for over 30 years, acquiring land,</p> <p>6 helping with the 1994 master plan. And now we're developing</p> <p>7 Clarksburg Village, which is a community adjacent to this</p> <p>8 one, or nearby this one. Not quite adjacent, but nearby.</p> <p>9 We're also the ones responsible for building the</p> <p>10 connection of Snowden Farm Parkway from Maryland 27 to</p> <p>11 Clarksburg Village.</p> <p>12 We've been working in Clarksburg Village</p> <p>13 developing it for 10 years. And Clarksburg Village is a</p> <p>14 2,700 unit community, as I mentioned, adjacent to this one.</p> <p>15 I'm here speaking to voice our support, our very strong</p> <p>16 support for this particular project and the local map</p> <p>17 amendment for this project.</p> <p>18 Clarksburg Village, right now, is growing. We</p> <p>19 have about 1,000 units built, and in the next one to two</p> <p>20 years, in addition to several hundred additional units,</p> <p>21 we're looking to have an elementary school built, a retail</p> <p>22 area is going to be built. And many of our facilities,</p> <p>23 including a large park in Clarksburg Village adjacent or</p> <p>24 nearby this community, additional rec center and pool is</p> <p>25 going to be built. A bunch of trails are going to be built.</p>
<p style="text-align: right;">Page 251</p> <p>1 record. And Mr. Kline, did you have an additional witness?</p> <p>2 MR. KLINE: Thank you, again, to these folks for</p> <p>3 letting us go a little bit out of order. I'm just going to</p> <p>4 merely, I asked Ms. Kubit to introduce herself and let her</p> <p>5 have her say.</p> <p>6 MR. GROSSMAN: All right, ma'am. Would you state</p> <p>7 your full name, please?</p> <p>8 MS. KUBIT: Sure. My name is Kathryn Kubit, and</p> <p>9 I'm with Elm Street Development.</p> <p>10 MR. GROSSMAN: Okay. And how do you spell your</p> <p>11 last name?</p> <p>12 MS. KUBIT: K-U-B-I-T.</p> <p>13 MR. GROSSMAN: Okay. And your first name with a K</p> <p>14 also?</p> <p>15 MS. KUBIT: Yes. K-A-T-H-R-Y-N.</p> <p>16 MR. GROSSMAN: All right. With Elm Street.</p> <p>17 MS. KUBIT: Uh-huh.</p> <p>18 MR. GROSSMAN: Would you raise your right hand,</p> <p>19 please?</p> <p>20 (Witness sworn.)</p> <p>21 MR. GROSSMAN: All right. You may proceed.</p> <p>22 STATEMENT OF KATHRYN KUBIT</p> <p>23 THE WITNESS: Thank you. First of all, thank you</p> <p>24 for letting me speak in front of you today, and thank you</p> <p>25 for letting me sneak in. My name, as I mentioned earlier,</p>	<p style="text-align: right;">Page 253</p> <p>1 And finally, we're also building a for-rent</p> <p>2 affordable multi-family senior housing project in Clarksburg</p> <p>3 Village for 100 low-income seniors. But that project is</p> <p>4 very different from this one. I wanted to make sure that's</p> <p>5 clear. It's an affordable deal. It's a multi-family deal.</p> <p>6 And it's a for rent. So that's a very different animal from</p> <p>7 what's being proposed by Mr. Butz.</p> <p>8 We are very excited to be part of this growing</p> <p>9 community. However, one thing that we have noticed as we've</p> <p>10 gone through the process over the past 30 years, and in the</p> <p>11 past 10 years in particular, is the fact that there is no,</p> <p>12 aside from what we are proposing, to build the 100 units</p> <p>13 we're proposing in Clarksburg Village, there is no other</p> <p>14 senior or active adult community in Clarksburg. And we fell</p> <p>15 that this is a disservice to the Clarksburg community.</p> <p>16 Many, I am the main interface between the</p> <p>17 residents of Clarksburg Village and Elm Street Development.</p> <p>18 So whenever there is an issue, people come to me. Whenever</p> <p>19 there is a request, people come to me. So I'm the main</p> <p>20 source on the ground of interface with Clarksburg Village.</p> <p>21 And over the past, my tenure on the project, I</p> <p>22 often get questions from residents about where their parents</p> <p>23 can move, as they have parents that are aging. They want</p> <p>24 their parents to be nearby them, and their grandchildren.</p> <p>25 And they're looking for a place near Clarksburg Village that</p>



<p style="text-align: right;">Page 254</p> <p>1 their parents can live.</p> <p>2 And unfortunately, other than the affordable</p> <p>3 limited income project that we're building, there is nothing</p> <p>4 else in the upcounty area, which is a disappointment to a</p> <p>5 lot of the residents.</p> <p>6 So we were very excited to hear when Mr. Butz was</p> <p>7 going to propose an active adult community for his</p> <p>8 particular property. And so, and we're very much in support</p> <p>9 of that. And we feel that the proposal is a fantastic</p> <p>10 addition to the community, so much so that we've partnered</p> <p>11 with Mr. Butz to identify synergies between our projects.</p> <p>12 So far we've worked with them on infrastructure</p> <p>13 building, in particular, the road, Snowden Farm Parkway, as</p> <p>14 well as some utilities, utility work that we are doing. And</p> <p>15 in addition to that, we've also extended the invitation to</p> <p>16 Mr. Butz that after his community were to get approved, that</p> <p>17 they could join our HOA if they wanted to do so, because we</p> <p>18 feel so strongly that the addition of an active adult</p> <p>19 community in our community overall would be a great addition</p> <p>20 to the community.</p> <p>21 So given all of this, we do strongly support the</p> <p>22 local map amendment for the Butz property. We think that it</p> <p>23 serves a badly under-addressed and growing demographic. Our</p> <p>24 residents would like to see something like this nearby. And</p> <p>25 we're very excited at the prospect that something like that</p>	<p style="text-align: right;">Page 256</p> <p>1 Q Okay. So what we're supposed to glean is that --</p> <p>2 MR. GROSSMAN: No, no, no. That's not a question.</p> <p>3 BY MS. GOODRICK:</p> <p>4 Q From what you were saying, that since there are</p> <p>5 only the broad parameters of this, that there is no</p> <p>6 assurance that this would happen, or there's no assurance as</p> <p>7 to the way that this would happen? In other words --</p> <p>8 MR. GROSSMAN: No, that's a question.</p> <p>9 MS. GOODRICK: Okay.</p> <p>10 MR. GROSSMAN: Is there any assurance that this</p> <p>11 would work?</p> <p>12 THE WITNESS: We've worked out much more</p> <p>13 complicated situations other than this with respect to other</p> <p>14 communities that we've worked in. So I don't think that</p> <p>15 this would be problematic for the HOA at all. Right now we</p> <p>16 have townhomes and single-family homes in our community.</p> <p>17 And there is a different level of service for each</p> <p>18 one of those unit types. And dues and services and things</p> <p>19 like that, are identified by unit type. And our HOA</p> <p>20 management company is very proficient. And they are able to</p> <p>21 manage that right now. So I don't anticipate that the</p> <p>22 addition of these 140 units would be problematic at all from</p> <p>23 the management perspective.</p> <p>24 MR. GROSSMAN: Ms. Goodrick's questions raised one</p> <p>25 in my head, and that is, can we have a copy of this</p>
<p style="text-align: right;">Page 255</p> <p>1 would be in our community.</p> <p>2 MR. GROSSMAN: All right. Cross-examination,</p> <p>3 Mr. Hancock? Okay. Ms. Goodrick?</p> <p>4 CROSS-EXAMINATION</p> <p>5 BY MS. GOODRICK:</p> <p>6 Q Do you have anything in writing about residents in</p> <p>7 this area being members of the HOA? Have you written any</p> <p>8 rules of agreement, or is there anything --</p> <p>9 A We have a general agreement in writing, but it's a</p> <p>10 very rough draft at this point until things are more</p> <p>11 finalized in terms of approvals and things like that.</p> <p>12 That's when we would start to hammer out the agreements.</p> <p>13 But it is a written invitation that's been signed, at this</p> <p>14 point, for them to join the HOA if they wish to do so.</p> <p>15 That's their decision. If they don't wish to join, that's</p> <p>16 also their, you know, that's their prerogative. But we have</p> <p>17 invited them to join if they would like to.</p> <p>18 Q Is the HOA an independent body from Elm Street?</p> <p>19 A No, not at this point.</p> <p>20 Q At some point is it going to be an independent</p> <p>21 body?</p> <p>22 A Yes.</p> <p>23 Q And what has to occur for that to be an</p> <p>24 independent body?</p> <p>25 A Lots of more houses need to get built.</p>	<p style="text-align: right;">Page 257</p> <p>1 agreement regarding the HOA in the record? I think that</p> <p>2 since it's been mentioned a couple of times now, we should</p> <p>3 have a copy of this in the record.</p> <p>4 MR. KLINE: Do we even have a signed agreement?</p> <p>5 THE WITNESS: We do have a signed -- I mean, it's</p> <p>6 more than just that. There are some other things in that</p> <p>7 agreement. But if you, we can get you something in writing</p> <p>8 that would --</p> <p>9 MR. KLINE: Is there anything about it that you</p> <p>10 would not want to have out in the public realm at all?</p> <p>11 THE WITNESS: I would have to go back and look.</p> <p>12 And worst case, if we can't get you that specific agreement,</p> <p>13 we would get something in writing. But it is definitely</p> <p>14 something that we are interested in having this community</p> <p>15 join ours. And there has been an agreement in writing, but</p> <p>16 there are other things in that agreement that we may not</p> <p>17 want to be public.</p> <p>18 MR. GROSSMAN: Okay.</p> <p>19 THE WITNESS: So I would have to check.</p> <p>20 MR. GROSSMAN: All right. And it affects the</p> <p>21 maintenance, the perpetual maintenance of the organization,</p> <p>22 which is a Council area of inquiry, by statute. And it also</p> <p>23 potentially affects how the community will be run. So it is</p> <p>24 of interest here.</p> <p>25 THE WITNESS: Right now, the document is very</p>

<p style="text-align: right;">Page 258</p> <p>1 loose.</p> <p>2 MR. GROSSMAN: Right now the document is?</p> <p>3 THE WITNESS: It's very loosely written. So the</p> <p>4 details of the agreement would have to, would be fleshed out</p> <p>5 at a later date.</p> <p>6 MR. GROSSMAN: I understand.</p> <p>7 MS. GOODRICK: Okay.</p> <p>8 MR. HANCOCK: Excuse me.</p> <p>9 MR. GROSSMAN: Yes, Mr. Hancock.</p> <p>10 MR. HANCOCK: I have a question.</p> <p>11 CROSS-EXAMINATION</p> <p>12 BY MR. HANCOCK:</p> <p>13 Q Since the, if these went through, these people</p> <p>14 really have a totally different, they're totally diverse</p> <p>15 from what the rest of the community to the north is. So are</p> <p>16 you envisioning that there would be two homeowners</p> <p>17 associations? There would be one for this community, and</p> <p>18 one for the property that Elm Street is developing north of</p> <p>19 it now? Would these people then have two homeowner fees?</p> <p>20 MR. GROSSMAN: Which property are you talking</p> <p>21 about that Elm Street is developing?</p> <p>22 MR. HANCOCK: The piece, they're saying --</p> <p>23 MR. GROSSMAN: You mean the Village itself?</p> <p>24 MR. HANCOCK: They're saying, yes, the larger</p> <p>25 piece.</p>	<p style="text-align: right;">Page 260</p> <p>1 questions.</p> <p>2 MS. GOODRICK: That's okay. That's all right.</p> <p>3 MR. GROSSMAN: Go ahead.</p> <p>4 BY MS. GOODRICK:</p> <p>5 Q So can you have for us the, whatever the agreement</p> <p>6 is that you have, provided for us before we have the hearing</p> <p>7 on Friday? In other words, this may be extended to Friday,</p> <p>8 and this is a key issue. So can we have that as soon as</p> <p>9 possible, so that we can react to that?</p> <p>10 A We will try. We will get you something by Friday.</p> <p>11 Q We would like it before Friday, because if we show</p> <p>12 up, then there it is, it takes too long for us to react.</p> <p>13 A I understand.</p> <p>14 Q Okay.</p> <p>15 A I understand.</p> <p>16 Q So shall I say, Thursday night at 9:00 p.m. is not</p> <p>17 helpful either.</p> <p>18 A I understand. I got you.</p> <p>19 Q Okay. So when do you think you might be able to</p> <p>20 provide that for us?</p> <p>21 A Before, before Friday.</p> <p>22 MR. GROSSMAN: Can we --</p> <p>23 MR. KLINE: I'd like to look at this document. I</p> <p>24 don't even know what it says. We will share what we can as</p> <p>25 quickly as possible.</p>
<p style="text-align: right;">Page 259</p> <p>1 MR. GROSSMAN: Clarksburg Village.</p> <p>2 MR. HANCOCK: Yes, Clarksburg Village.</p> <p>3 MR. GROSSMAN: I see. Okay.</p> <p>4 BY MR. HANCOCK:</p> <p>5 Q When that's developed, are you, is this going to</p> <p>6 become a part of that same HOA, or are these people going to</p> <p>7 be separate? Because they have a total different interest</p> <p>8 in life than what Clarksburg does?</p> <p>9 A I think that it's ultimately going to be their</p> <p>10 decision whether or not they join. We've extended the</p> <p>11 invitation for them to join. We think that, you know, we</p> <p>12 think it would be great to integrate a different group of</p> <p>13 people, if you will, into the community. And we don't think</p> <p>14 that they're, I mean, yes, some of their interests may be a</p> <p>15 little bit different. But ultimately, we have many things</p> <p>16 we think that would interest them, the trails, the retail,</p> <p>17 the community centers, and things like that. And so we've</p> <p>18 extended the invitation.</p> <p>19 If they do join us, again, the details on the</p> <p>20 HOA's would have to be worked out, whether or not there</p> <p>21 would be one or two. I would assume there would be one. I</p> <p>22 would assume the fee structure might be a little bit</p> <p>23 different. But again, none of those details have been</p> <p>24 worked out at this point.</p> <p>25 MR. GROSSMAN: Okay. You were cut off from</p>	<p style="text-align: right;">Page 261</p> <p>1 MR. GROSSMAN: All right.</p> <p>2 MR. KLINE: Before we leave today, if I can get</p> <p>3 your e-mail addresses, we will discuss it tonight, and</p> <p>4 probably be able to make a decision tomorrow on it.</p> <p>5 MR. GROSSMAN: Okay.</p> <p>6 MR. KLINE: And get to you whatever we can.</p> <p>7 MR. GROSSMAN: Yes. Let's do it by Wednesday,</p> <p>8 since the document already exists. And I think that's a</p> <p>9 fair question by Ms. Goodrick.</p> <p>10 BY MS. GOODRICK:</p> <p>11 Q So does there already --</p> <p>12 MR. KLINE: Yes, yes.</p> <p>13 BY MS. GOODRICK:</p> <p>14 Q Does there already exist an HOA agreement with the</p> <p>15 people who now live there? I mean, do you already have an</p> <p>16 existing HOA agreement for those people?</p> <p>17 A Well, there are documents that the HOA, with</p> <p>18 respect to --</p> <p>19 Q No, I'm talking about the people, in other words,</p> <p>20 what you were suggesting, I believe, is that the people in</p> <p>21 the Butz property area would be a part of that HOA. So it</p> <p>22 would be of interest to us to see what those agreement are,</p> <p>23 are right now, you know. What are those agreements?</p> <p>24 A So like the covenants and the bylaws of the</p> <p>25 community?</p>

<p style="text-align: right;">Page 262</p> <p>1 Q Well, whatever --</p> <p>2 MR. KLINE: Today, you must have a mechanism for</p> <p>3 assessing the townhouses in the HOA. So you'd have a</p> <p>4 recorded declaration of covenants to them.</p> <p>5 THE WITNESS: Uh-huh.</p> <p>6 MR. KLINE: And in fact, it is part of 34(b).</p> <p>7 It's shown in there. I realize you don't have that.</p> <p>8 MS. GOODRICK: Right.</p> <p>9 MR. GROSSMAN: We do have a copy in here. You can</p> <p>10 look at it.</p> <p>11 MR. KLINE: So there is an existing HOA for</p> <p>12 Clarksburg Village.</p> <p>13 MR. GROSSMAN: Okay. So you included it in 34(b)?</p> <p>14 You've got the --</p> <p>15 MR. KLINE: It would be CV 2, 3 and 4.</p> <p>16 MR. GROSSMAN: Okay. There you go. So you are</p> <p>17 certainly welcome to take a look at it at our office.</p> <p>18 BY MS. GOODRICK:</p> <p>19 Q Okay. So, and are there other, I don't know the</p> <p>20 terminology, other things over than the HOA agreements that</p> <p>21 potentially, that potentially the people in the Butz</p> <p>22 property would have to agree to, or sign onto, that exist</p> <p>23 now or are proposed?</p> <p>24 MR. KLINE: If you know.</p> <p>25 THE WITNESS: I mean, there are some architectural</p>	<p style="text-align: right;">Page 264</p> <p>1 outside. I'm sure there's been other provisions made, but I</p> <p>2 am not privy to the decisions to provide other types of</p> <p>3 amenities and things like that. I know that Clarksburg</p> <p>4 Village has a lot of amenities, I think, that would be of</p> <p>5 interest to this demographic.</p> <p>6 Q Can you provide for us whatever amenities that</p> <p>7 you, that will be a part of the HOA agreement? In other</p> <p>8 words, it seems to me that you already have a lot of --</p> <p>9 MR. GROSSMAN: No, that's okay. They had a</p> <p>10 question there.</p> <p>11 MS. GOODRICK: Okay.</p> <p>12 MR. GROSSMAN: Can you provide whatever other</p> <p>13 amenities as part of the HOA agreement that presumably would</p> <p>14 be available to the residents of this proposed community?</p> <p>15 THE WITNESS: Sure.</p> <p>16 MR. GROSSMAN: Okay.</p> <p>17 MS. GOODRICK: But -- okay.</p> <p>18 MR. GROSSMAN: You have a great instinct for</p> <p>19 closing the door, better than many, many attorneys I've see.</p> <p>20 I want to congratulate you.</p> <p>21 MS. GOODRICK: Really?</p> <p>22 MR. GROSSMAN: Yes.</p> <p>23 MS. GOODRICK: Well, thank you.</p> <p>24 MR. GROSSMAN: Closing the door meaning, getting</p> <p>25 to the bottom of the point. So you --</p>
<p style="text-align: right;">Page 263</p> <p>1 guidelines.</p> <p>2 BY MS. GOODRICK:</p> <p>3 Q So would the Butz property have to agree to those?</p> <p>4 A We would have to look at those, because I think</p> <p>5 given the unique nature of the unit types here compared to</p> <p>6 what we're doing in Clarksburg Village, I mean, all of that</p> <p>7 stuff would have to be worked out once the decision was</p> <p>8 made.</p> <p>9 The Butz family hasn't even decided whether or not</p> <p>10 they would like to annex the property into the Clarksburg</p> <p>11 Village HOA. And once that occurs, there would be a lot of</p> <p>12 discussions that would have to happen, and decisions that</p> <p>13 would need to be made. But, you know, nothing is so set in</p> <p>14 stone in Clarksburg Village that it's not amenable to</p> <p>15 accommodate the inclusion of the 104 units if they chose to</p> <p>16 annex themselves and work with the community.</p> <p>17 Q But I believe that it is true, though, that you,</p> <p>18 that a part of the agreement to get --</p> <p>19 MR. GROSSMAN: That's not a question.</p> <p>20 BY MS. GOODRICK:</p> <p>21 Q Okay. You have to have services provided close by</p> <p>22 in order to -- and that has to be, these services are said</p> <p>23 to be provided by Clarksburg Village.</p> <p>24 A I know that there are specific services provided</p> <p>25 within Clarksburg Village. I don't know what's provided</p>	<p style="text-align: right;">Page 265</p> <p>1 MS. GOODRICK: All right. Thank you.</p> <p>2 MR. GROSSMAN: But you've gotten there, so --</p> <p>3 BY MS. GOODRICK:</p> <p>4 Q Okay. So, okay. I want to make sure, I want to</p> <p>5 see, I wonder if you agree with the fact that this is a</p> <p>6 statement made in the Elm Street Development letter of May</p> <p>7 18th, 2012. And it says, "The primary entrance to the</p> <p>8 Clarksburg Village will be through the Butz Farm along</p> <p>9 future Snowden Farm Parkway."</p> <p>10 "The primary entrance to Clarksburg Village will</p> <p>11 be through the Butz Farm along the Future Snowden Farm</p> <p>12 Parkway." So you are saying that the primary entrance to</p> <p>13 Clarksburg Village is through the Butz Farm. Is that</p> <p>14 correct?</p> <p>15 A Yes. According to my boss, that is correct. Yes.</p> <p>16 Q Your boss said that in writing.</p> <p>17 A In writing, so yes.</p> <p>18 Q Thank you.</p> <p>19 A So I will agree with that. I mean, It's a four-</p> <p>20 lane divided roadway. There are going to be two left turns.</p> <p>21 I mean, it's a, that intersection is a big intersection. So</p> <p>22 that will be the main entrance coming into the community.</p> <p>23 Q Right. Okay. I think, I think that's it.</p> <p>24 MR. GROSSMAN: All right. Mr. Wills?</p> <p>25 MR. WILLS: I don't know if I can top that, but</p>

<p style="text-align: right;">Page 266</p> <p>1 I'm going to try.</p> <p>2 CROSS-EXAMINATION</p> <p>3 BY MR. WILLS:</p> <p>4 Q I'm sorry, I didn't catch your --</p> <p>5 A My name is, you can call me Kate. Kathryn.</p> <p>6 MR. GROSSMAN: Kathryn Kubit.</p> <p>7 BY MR. WILLS:</p> <p>8 Q Okay, Kate. Kathryn, are there financial</p> <p>9 agreements between, or anticipated between Clarksburg</p> <p>10 Village and the owners of the Butz property, or the</p> <p>11 developers of the Butz property?</p> <p>12 MR. KLINE: Can you be more specific, Mr. Wills.</p> <p>13 That term just sort of sounds a little loose and ominous.</p> <p>14 BY MR. WILLS:</p> <p>15 Q Well, I'm just wondering, we have testimony here</p> <p>16 that this is a great property, from this group. And I just</p> <p>17 want to know if there's other agreements, financial</p> <p>18 agreements.</p> <p>19 MR. GROSSMAN: It goes to question of bias, and</p> <p>20 it's a legitimate inquiry for any witness. So I --</p> <p>21 MR. KLINE: Are you suggesting that we paid her to</p> <p>22 show up?</p> <p>23 MR. GROSSMAN: I understand. But, I mean, it's a</p> <p>24 legitimate line of inquiry as to any witness that goes to</p> <p>25 the question of bias. So yes, you may answer that.</p>	<p style="text-align: right;">Page 268</p> <p>1 Q At this point, then, there is no agreement for</p> <p>2 access to any of the amenities of Clarksburg Village for the</p> <p>3 Butz property?</p> <p>4 A There is an invitation for them if they choose to</p> <p>5 join the HOA.</p> <p>6 Q There's an invitation.</p> <p>7 A Yes.</p> <p>8 Q But there's no agreement at this time?</p> <p>9 A There is no agreement at this point. It's at</p> <p>10 their, it's their decision --</p> <p>11 Q Okay.</p> <p>12 A -- whether or not they'd like to be in the</p> <p>13 community.</p> <p>14 Q You had mentioned something about senior housing.</p> <p>15 And I was rapidly writing some notes which I had to do for</p> <p>16 tomorrow, or otherwise I wouldn't have a job so I can afford</p> <p>17 to pay taxes and live in the neighborhood next to this. So</p> <p>18 you had mentioned 100 units of senior housing?</p> <p>19 A Yes.</p> <p>20 Q And your comment to that, I think I caught the</p> <p>21 tail end, was that that's the only upcounty --</p> <p>22 A That we're aware of. That's the only senior</p> <p>23 housing project, especially in this area of the upcounty,</p> <p>24 that we are aware of. And so we feel that because of that,</p> <p>25 it's 100 units. It's not enough to serve the senior, the</p>
<p style="text-align: right;">Page 267</p> <p>1 THE WITNESS: There is no major financial gain for</p> <p>2 us to be here supporting this project today. There are some</p> <p>3 agreements that there is some money exchanging hands, but it</p> <p>4 has nothing to do with the integration of this. It has to</p> <p>5 do with the road right-of-way that we are acquiring through</p> <p>6 the community. And that's a completely separate issue, and</p> <p>7 it's a completely separate issue.</p> <p>8 And if that, and we have to also compensate</p> <p>9 the other homeowner that we are getting right-of-way from.</p> <p>10 And that's all part of the road project that we have to</p> <p>11 build for the County.</p> <p>12 MR. KLINE: And that's the Country Inn owner?</p> <p>13 THE WITNESS: Yes. That's Mr. Yeager. He's the</p> <p>14 Country Inn owner. So it's no more or less than we're</p> <p>15 paying anybody else for their land to build this off-site</p> <p>16 road that we need to build for Montgomery County.</p> <p>17 BY MR. WILLS:</p> <p>18 Q This off-site road meaning this A-305 roadway?</p> <p>19 A Right.</p> <p>20 Q And no other, you know, again, partnership planned</p> <p>21 other than what we talked about here --</p> <p>22 A No.</p> <p>23 Q -- regarding maybe they'd be part of the community</p> <p>24 documents of Clarksburg Village or community?</p> <p>25 A Not to my knowledge, no.</p>	<p style="text-align: right;">Page 269</p> <p>1 population as it continues to get older.</p> <p>2 MR. GROSSMAN: The witness also had indicated that</p> <p>3 it was low income senior housing, and I think you said it</p> <p>4 was rental? Is that correct?</p> <p>5 THE WITNESS: Yes. It's affordable. It's a</p> <p>6 building. It's a rental building, low income seniors who</p> <p>7 are living on a very fixed income.</p> <p>8 BY MR. WILLS:</p> <p>9 Q Right. And again, you know, I'm asking questions,</p> <p>10 but I'm aware of a couple of others, so I don't know if</p> <p>11 that's, do I just use that when I --</p> <p>12 MR. GROSSMAN: Well, you can testify about it.</p> <p>13 MR. WILLS: All right. Those are my questions.</p> <p>14 MR. GROSSMAN: Okay.</p> <p>15 MS. GOODRICK: Is it possible to ask another</p> <p>16 question, or two other questions or not?</p> <p>17 MR. GROSSMAN: Well, here's the problem. I want</p> <p>18 to make sure, I promised Mr. Wills I would get his testimony</p> <p>19 in today, and it's now quarter to 5:00. So I'm not sure</p> <p>20 what everybody's schedule is here.</p> <p>21 MR. WILLS: I can stay for some time.</p> <p>22 MR. GROSSMAN: Court reporter, can you stay over a</p> <p>23 little bit? Okay. All right. So go ahead and ask your</p> <p>24 questions.</p> <p>25 BY MS. GOODRICK:</p>

<p style="text-align: right;">Page 270</p> <p>1 Q Okay. All right. I'm not impugning in any way,  2 but were you saying that the only financial agreement that  3 you have with Butz has to do with the right-of-way for the  4 roads? In other words, there is no other financial  5 agreement?</p> <p>6 A That's my understanding. Now, that's, because  7 I've worked on that project, I'm working on this project.  8 By that's my understanding.</p> <p>9 Q Okay. So how do we find out, if that's your  10 understanding, there is no other --  11 (Discussion off the record.)</p> <p>12 BY MS. GOODRICK:</p> <p>13 Q Excuse me. I wanted to know if there are other  14 financial agreements between Elm Street and the Butz  15 property owners other than the roads? That's what you said.  16 You were asked the question and you said --</p> <p>17 MR. GROSSMAN: Well, she answered that, not that  18 she knows of. And I think that, and then you asked her, how  19 can you find out. Do you know how she could find out if  20 there are other agreements?</p> <p>21 BY MS. GOODRICK:</p> <p>22 Q Or can you provide that?</p> <p>23 A I can look into it and find out, but, you know,  24 there would be no other public information on that.</p> <p>25 MR. GROSSMAN: Well, you're not required to look</p>	<p style="text-align: right;">Page 272</p> <p>1 proprietary interest and rights of privacy to some extent,  2 unless the questioning requires, unless this inquiry  3 requires that kind of information.</p> <p>4 And I think that you've gone as far as is  5 reasonable to go on what amounts to a bias inquiry. Because  6 that's really the only justification for us seeking that  7 kind of information, as to whether or not there is some kind  8 of financial exchange which biases this witness. I think  9 it's a little bit, you know, going any further than this  10 would be a little bit far-fetched, I think. But in any  11 event, all right. Any redirect of this witness?</p> <p>12 MR. KLINE: No redirect, but I would like to note,  13 just so I don't offend anybody, as I said, I would like to  14 look at these documents.</p> <p>15 MR. GROSSMAN: All right.</p> <p>16 MR. KLINE: It's entirely possible we will redact  17 some parts of it, because our response is going to be  18 consistent with the standards of 59D-1.61 to show whether it  19 ensures perpetual maintenance of any areas intended for  20 recreational public purposes. And I think that's what the  21 zoning ordinance looks at, and that's all we should be  22 providing information on.</p> <p>23 MR. GROSSMAN: Well, there were two areas. There  24 was that area. There was also the question of shared  25 amenities which came up.</p>
<p style="text-align: right;">Page 271</p> <p>1 into it. The question is, do you know how she could find  2 out?</p> <p>3 THE WITNESS: She could ask the Butz family. She  4 could ask, I mean, there's nothing in the public record that  5 I'm aware of.</p> <p>6 MS. GOODRICK: Okay.</p> <p>7 MR. GROSSMAN: The public record is not the issue.  8 The question is, do you know of any, and you said no.</p> <p>9 THE WITNESS: No.</p> <p>10 MR. GROSSMAN: Okay.</p> <p>11 MS. GOODRICK: She said, not that she knew of.</p> <p>12 MR. GROSSMAN: Right. Not that she knew of.</p> <p>13 Right. But it's not a question of whether it's in the  14 public record or not.</p> <p>15 MS. GOODRICK: No.</p> <p>16 MR. GROSSMAN: Whether it's in the private record  17 or the public record, she said she doesn't know. That's my  18 point.</p> <p>19 THE WITNESS: It would not be easily accessible.  20 Let me put it to you that way. That's what I'm trying to  21 get it, not in the public record, so it's not easy.</p> <p>22 MR. GROSSMAN: Okay.</p> <p>23 MS. GOODRICK: Okay. All right. So I'm just  24 going to stop.</p> <p>25 MR. GROSSMAN: I mean, they have certain</p>	<p style="text-align: right;">Page 273</p> <p>1 MR. KLINE: Which has a cost implication. I  2 understand that.</p> <p>3 MR. GROSSMAN: And then the third question went to  4 whether or not there is some financial arrangement --</p> <p>5 MR. KLINE: Right.</p> <p>6 MR. GROSSMAN: -- which biases Elm Street to  7 support this. So there are three areas that are legitimate  8 inquiries. It's not just the zoning code area. When you  9 put a witness on, the question of bias is always an area.  10 But as I say, I think it was pretty much exhausted here.  11 All right.</p> <p>12 MR. KLINE: Could I ask one more question?</p> <p>13 MR. GROSSMAN: It will open up further cross-  14 examination.</p> <p>15 MR. KLINE: Well, you know.</p> <p>16 REDIRECT EXAMINATION</p> <p>17 BY MR. KLINE:</p> <p>18 Q How big is your community center for Clarksburg  19 Village?</p> <p>20 A The one we're building right now, or that we  21 currently have one under design, there's a pool house  22 connected to it, but the community center room itself is  23 1,300 square feet.</p> <p>24 Q To serve how many residents?</p> <p>25 A It's, on that side of the stream valley it's about</p>

<p style="text-align: right;">Page 274</p> <p>1 1,300.</p> <p>2 Q And why do you feel that's adequate for what you</p> <p>3 want to accomplish to serve those residents?</p> <p>4 A We find that community centers are used in certain</p> <p>5 ways. And for the ways that our community, because we</p> <p>6 already have one community center that's built. And that</p> <p>7 community center is approximately the same size. And for</p> <p>8 the way our community is using that center, we feel that</p> <p>9 this center is the right size to serve our community.</p> <p>10 MR. KLINE: Thank you.</p> <p>11 MR. GROSSMAN: I'm glad you raised that, actually,</p> <p>12 because that's useful to me. Any questions of this witness</p> <p>13 on that particular question?</p> <p>14 MS. GOODRICK: No, not from me.</p> <p>15 MR. GROSSMAN: All right. All right. I thank you</p> <p>16 very much, Ms. Kubit.</p> <p>17 MS. KUBIT: Thank you.</p> <p>18 MR. GROSSMAN: Thank you very much for coming</p> <p>19 down. All right. Let's turn directly to Mr. Wills here,</p> <p>20 because I promised to get him in here before closure. So</p> <p>21 Mr. Wills, would you raise your right hand, please?</p> <p>22 (Witness sworn.)</p> <p>23 MR. GROSSMAN: All right. You may proceed with</p> <p>24 your testimony.</p> <p>25 STATEMENT OF RON WILLS</p>	<p style="text-align: right;">Page 276</p> <p>1 MR. GROSSMAN: Does that say 22, or what does that</p> <p>2 square say?</p> <p>3 MR. UNTERBERG: D 23 units.</p> <p>4 MR. GROSSMAN: 23.</p> <p>5 THE WITNESS: 23. It's right where the D is.</p> <p>6 MR. GROSSMAN: All right. So you're due west of</p> <p>7 the site, and about a block over or so.</p> <p>8 THE WITNESS: Yes.</p> <p>9 MR. GROSSMAN: All right. Okay.</p> <p>10 THE WITNESS: My comments are, I reviewed the 19-</p> <p>11 page report, plus all the attachments that were provided by</p> <p>12 the staff. And I just today received the Planning Board</p> <p>13 document. Again, coming into this, this is the first time</p> <p>14 I've ever done this, so I'm a little naïve about what can be</p> <p>15 done, what can't be done.</p> <p>16 I was a little taken back reading the staff</p> <p>17 recommendations, which was very, very clear cut throughout</p> <p>18 this document, about the request and why they denied the</p> <p>19 request.</p> <p>20 MR. GROSSMAN: Why they recommended.</p> <p>21 THE WITNESS: Why they recommended it. I'm sorry.</p> <p>22 And again, I don't want to restate, but it seemed to say two</p> <p>23 different things. One is that it wasn't compatible to the</p> <p>24 master plan. And I know we've heard testimony today</p> <p>25 otherwise. But I thought it had some very, very strong</p>
<p style="text-align: right;">Page 275</p> <p>1 THE WITNESS: All right. I am a resident of Brink</p> <p>2 Meadows. I live on Brink Meadow Lane, where I have lived</p> <p>3 for the past 23 years with my wife and three children.</p> <p>4 MR. GROSSMAN: What's the specific address?</p> <p>5 THE WITNESS: 21732 Brink Meadow Lane.</p> <p>6 MR. GROSSMAN: Okay. And does it appear on any of</p> <p>7 these maps that we've -- not quite?</p> <p>8 THE WITNESS: Not quite on the map that we're</p> <p>9 looking at that's visible right now. I'm in the cul-de-sac</p> <p>10 area. And if you look to the west of the property on the</p> <p>11 left hand --</p> <p>12 MR. GROSSMAN: Well, first of all, which one are</p> <p>13 you looking at there? All right.</p> <p>14 THE WITNESS: Yes. That I'm about where that --</p> <p>15 MR. GROSSMAN: What exhibit is this?</p> <p>16 THE WITNESS: 34(q).</p> <p>17 MR. GROSSMAN: Okay.</p> <p>18 THE WITNESS: There is a square there. I think it</p> <p>19 says 21, if my eyes serve me right. 21.</p> <p>20 MR. UNTERBERG: Yes. That's right there.</p> <p>21 THE WITNESS: I'm about right where that square is</p> <p>22 placed.</p> <p>23 MR. UNTERBERG: Right where your pointer is, that</p> <p>24 house.</p> <p>25 THE WITNESS: So I'm in the cul-de-sac of that.</p>	<p style="text-align: right;">Page 277</p> <p>1 arguments there.</p> <p>2 And then secondly, there was some issue that even</p> <p>3 with the new PRC requested zoning that it also called into</p> <p>4 question whether it was even compatible with that.</p> <p>5 So, you know, given that there is this large</p> <p>6 discrepancy, and then it seemed that the Montgomery County</p> <p>7 Planning Board overturned that, or again --</p> <p>8 MR. GROSSMAN: They didn't agree with the</p> <p>9 recommendation.</p> <p>10 THE WITNESS: They didn't agree with the</p> <p>11 recommendation.</p> <p>12 MR. GROSSMAN: And so they recommended approval.</p> <p>13 THE WITNESS: And then they approved it.</p> <p>14 MR. GROSSMAN: Well, they don't approve it. They</p> <p>15 recommend approval.</p> <p>16 THE WITNESS: Okay. I'm sorry, recommended</p> <p>17 approval.</p> <p>18 MR. GROSSMAN: It's the Council that will make the</p> <p>19 decision. What I produce will also be a recommendation.</p> <p>20 THE WITNESS: And then I saw, you know, looking at</p> <p>21 these documents, here again, they didn't really provide</p> <p>22 detail of why they recommended otherwise, from the staff, at</p> <p>23 least. I didn't see the detail.</p> <p>24 MR. GROSSMAN: You mean, the Planning Board did</p> <p>25 not.</p>

<p style="text-align: right;">Page 278</p> <p>1 THE WITNESS: The Planning Board did not.</p> <p>2 MR. GROSSMAN: It had a few sentences, but --</p> <p>3 THE WITNESS: Yeah, right. And you know, they</p> <p>4 talked about, you know, a couple of reasons shopping centers</p> <p>5 are -- I mean, I disagree with that. We do have plenty of</p> <p>6 shopping. Within the area, they talked about a community</p> <p>7 center within the facilities. There has been a bit of</p> <p>8 discussion about that today.</p> <p>9 A park within walking distance. I will tell you</p> <p>10 this, as a resident of the Great Meadows Community, it has</p> <p>11 gotten so bad on Brink Road, we do not cross Brink Road to</p> <p>12 try to go to the park. And my only comment about this park</p> <p>13 is, and I know it's a check off box, you know, where you've</p> <p>14 got a park and you have picnic benches and so forth. But</p> <p>15 this is not in any way a senior's park.</p> <p>16 This is a park that is full of soccer fields.</p> <p>17 It's full of baseball fields, softball fields. There is one</p> <p>18 tennis court. And there are picnic benches, but it's</p> <p>19 surrounding a children's area. And whether you go any day,</p> <p>20 any time that you go up there, it's always kids around. So</p> <p>21 it's not really an adult park in any way.</p> <p>22 MR. GROSSMAN: You said you do not cross Brink</p> <p>23 Road. It's become too bad. Are you talking about traffic,</p> <p>24 volume, high speed? What are you talking about?</p> <p>25 THE WITNESS: The traffic that's coming down</p>	<p style="text-align: right;">Page 280</p> <p>1 MR. UNTERBERG: The other map showed it.</p> <p>2 THE WITNESS: I'm sorry. I'm just so familiar</p> <p>3 with this area. Here's Brink Road here.</p> <p>4 MR. GROSSMAN: Yes, on the south.</p> <p>5 THE WITNESS: Here is where I, you know, if we</p> <p>6 were ever to cross the road, we would cross the road here to</p> <p>7 get into the park area. This is all the park area over</p> <p>8 here.</p> <p>9 MR. GROSSMAN: Okay.</p> <p>10 THE WITNESS: Here is where they are proposing to</p> <p>11 put a crosswalk into the park.</p> <p>12 MR. GROSSMAN: Right.</p> <p>13 THE WITNESS: The fact that you're going to have</p> <p>14 this buffer zone of green, it's, you're on a decline right</p> <p>15 here. In fact, this is an area where a lot of deer would</p> <p>16 cross. And it's a very, very dangerous section. And the</p> <p>17 cars come down here at very, very fast speeds.</p> <p>18 So having this as an amenity, I understand it's a</p> <p>19 check off on the Park and Planning Commission list of things</p> <p>20 that you have to have. But realistically, this is not an</p> <p>21 adult park. This is a park for kids and something when my</p> <p>22 kids were younger, we would take them over to play baseball,</p> <p>23 and the roller skating rink and so forth.</p> <p>24 But it's not an adult park. It's not a park that</p> <p>25 you would go -- I'm 59 years old. It's not a park I would</p>
<p style="text-align: right;">Page 279</p> <p>1 there, and the speed that it's coming down there. We</p> <p>2 literally stopped doing it because it gets very, very</p> <p>3 dangerous. Now we get into the car if we're going to go</p> <p>4 anywhere, and we actually skip that park, if we're going to</p> <p>5 go to a park, and we go to another park.</p> <p>6 MR. GROSSMAN: Right.</p> <p>7 THE WITNESS: And this, you know, it's in walking</p> <p>8 distance of my house, but it's very, very dangerous. What</p> <p>9 concerned me when they talked about the access to the park,</p> <p>10 and there's going to be, you know, a painted strip across</p> <p>11 the road, I misinterpreted when I was reading some of the</p> <p>12 documents. I thought there was actually going to be an</p> <p>13 overpass, you know, a walking path to the park.</p> <p>14 Where they're talking about, I'm very, very</p> <p>15 familiar with it, because it does back up in the mornings.</p> <p>16 But there's a fairly steep dissent from Route 27 to the</p> <p>17 entryway to this Butz property. They're talking about</p> <p>18 putting a buffer there. In one sense, I like the idea of</p> <p>19 having a buffer there, because it's a buffer of trees and so</p> <p>20 forth. But it's a very --</p> <p>21 MR. GROSSMAN: Which side of the property are you</p> <p>22 talking about?</p> <p>23 THE WITNESS: I can show you.</p> <p>24 MR. GROSSMAN: Okay. Because they've talked about</p> <p>25 a variety of different buffers.</p>	<p style="text-align: right;">Page 281</p> <p>1 go to sit. There's just no where to sit without being in a</p> <p>2 section with a lot of young children, or being near ball</p> <p>3 fields and so forth.</p> <p>4 So concern about the crossway there. Concern</p> <p>5 about the speed on this road. The other issue, in the</p> <p>6 morning, this backs up here.</p> <p>7 MR. GROSSMAN: This being Brink Road --</p> <p>8 THE WITNESS: Brink Road turning onto Route 27.</p> <p>9 MR. GROSSMAN: All right. So heading eastbound</p> <p>10 and then to turn south.</p> <p>11 THE WITNESS: Head eastbound to turn south. This</p> <p>12 backs up three-quarters of the way to this entrance here,</p> <p>13 and it's --</p> <p>14 MR. GROSSMAN: To the park entrance?</p> <p>15 THE WITNESS: To the entrance to the Butz property</p> <p>16 off of Brink Road. So it's a very dangerous road. It's,</p> <p>17 there will be some issues about ingress and egress on this</p> <p>18 side. I understand that this could maybe alleviate that,</p> <p>19 and I'm not making that my total argument. But it's a very</p> <p>20 dangerous road down in here. So that's about all I can say</p> <p>21 about that section.</p> <p>22 Up here, you know, my concern is --</p> <p>23 MR. GROSSMAN: Up here being at --</p> <p>24 THE WITNESS: I'm sorry.</p> <p>25 MR. GROSSMAN: -- Ridge Road intersection with</p>

<p style="text-align: right;">Page 282</p> <p>1 305.</p> <p>2 THE WITNESS: -- Ridge Road at A-305.</p> <p>3 MR. GROSSMAN: Right.</p> <p>4 THE WITNESS: My guess is for the Mid-County</p> <p>5 Highway, it's around 40, no one testified to the speed</p> <p>6 limit, but I've seen it typically around 40 miles an hour.</p> <p>7 MR. GROSSMAN: There's going to be a</p> <p>8 transportation expert who's going to testify.</p> <p>9 THE WITNESS: Okay. But, you know, given then my</p> <p>10 guess is it's going to be roughly a 40-mile an hour. This</p> <p>11 is going to be very interesting and problematic, I think,</p> <p>12 splitting the neighborhood in half like that. But I do</p> <p>13 anticipate the fact that even the Elm Street Property letter</p> <p>14 indicates this is going to be the major entrance. And it</p> <p>15 makes sense it's going to be the major entrance because all</p> <p>16 your traffic flow is coming down south to go to work, and</p> <p>17 coming back this way to get home. So what do you do? You</p> <p>18 take your first turn into your subdivision.</p> <p>19 So it's just going to be an amazing amount of</p> <p>20 traffic flowing across here. And then you split your</p> <p>21 subdivision in half here. And you talk about walking trails</p> <p>22 and so forth.</p> <p>23 My concern on this, I've heard about all these</p> <p>24 amenities that we talked about today. I've heard about the</p> <p>25 clubhouse and so forth. And then we've been sold on these</p>	<p style="text-align: right;">Page 284</p> <p>1 And that's about it.</p> <p>2 MR. GROSSMAN: Okay. You referenced that the</p> <p>3 staff, we know the staff recommended against this, based, in</p> <p>4 my understanding, on their failing to comply with the master</p> <p>5 plan recommendations. But you said that also, that staff</p> <p>6 had also found that it didn't comply with the PRC zone.</p> <p>7 THE WITNESS: Uh-huh.</p> <p>8 MR. GROSSMAN: What are you specifically referring</p> <p>9 to in the staff report?</p> <p>10 THE WITNESS: I'm going to find it.</p> <p>11 MR. GROSSMAN: Okay. Sure.</p> <p>12 THE WITNESS: Page nine.</p> <p>13 MR. GROSSMAN: Okay. This is Exhibit 53? It is</p> <p>14 also 46.</p> <p>15 THE WITNESS: I don't know what exhibit number,</p> <p>16 but this is the staff report, page nine, dated 12/20.</p> <p>17 MR. GROSSMAN: Yes.</p> <p>18 THE WITNESS: And if you look at page nine where</p> <p>19 it says, "Staff response. The property does not meet the</p> <p>20 purpose of the PRC zone."</p> <p>21 MR. GROSSMAN: I see. Because it's not within,</p> <p>22 it's not recommended with the -- it's not within the</p> <p>23 recommended water and service sewer envelope.</p> <p>24 THE WITNESS: That's the first paragraph.</p> <p>25 MR. GROSSMAN: Right.</p>
<p style="text-align: right;">Page 283</p> <p>1 amenities that are coming north. But there's really, what</p> <p>2 we've heard today in testimony, there's no real agreement to</p> <p>3 any of those amenities actually being there at this point.</p> <p>4 I don't see, you know, I think it's more of a</p> <p>5 matter of coincidence that this park is right here, but I</p> <p>6 don't see that as a major --</p> <p>7 MR. GROSSMAN: You're talking about the park to</p> <p>8 the south?</p> <p>9 THE WITNESS: The park to the south. I don't see</p> <p>10 that as a major item for an adult 50 and above community.</p> <p>11 So what I'm kind of left with is this question of this</p> <p>12 facility that states it's going to be a 50 and year older</p> <p>13 community, and it's going to have these amenities, most of</p> <p>14 which are all off-site and many of which have not even been,</p> <p>15 there's no lock in to those amenities at this point.</p> <p>16 It just calls into question that this ends up</p> <p>17 getting approved after staff recommendation that it's not</p> <p>18 even appropriate for the master plan, and that the zoning</p> <p>19 they've requested here, according to staff, doesn't even</p> <p>20 comply.</p> <p>21 So I come into this naïve, and really just reading</p> <p>22 these documents provided, and I'm a little shocked that this</p> <p>23 amendment density was allowed to happen on this property,</p> <p>24 given everything that I've seen so far with the lack of</p> <p>25 amenities, with the conflict with the staff recommendations.</p>	<p style="text-align: right;">Page 285</p> <p>1 THE WITNESS: You can go down further, it does not</p> <p>2 contain the day-to-day services generally anticipated with</p> <p>3 the planned development, which I, that's been the biggie,</p> <p>4 one of my points. These amenities, I call them false</p> <p>5 amenities. You talk about them, but they're not really part</p> <p>6 of the property.</p> <p>7 MR. GROSSMAN: Okay. Well, they have a listing of</p> <p>8 what they contend are sufficient amenities in Exhibit 66</p> <p>9 that are on site. And according to the point spread they've</p> <p>10 listed, they say they satisfy what's required by technical</p> <p>11 staff for amenities. That's what they rely on there. It's</p> <p>12 their on-site amenities.</p> <p>13 THE WITNESS: I understand.</p> <p>14 MR. GROSSMAN: Okay.</p> <p>15 THE WITNESS: I understand that.</p> <p>16 MR. GROSSMAN: Yes. Okay. Cross-examination?</p> <p>17 MR. KLINE: No cross-examination.</p> <p>18 MR. GROSSMAN: Would either one of you like to</p> <p>19 brutalize your neighbor?</p> <p>20 MS. GOODRICK: We wouldn't do that.</p> <p>21 MR. GROSSMAN: No. Okay. All right. Thank you,</p> <p>22 Mr. Wills.</p> <p>23 MR. WILLS: Thank you very much.</p> <p>24 MR. GROSSMAN: All right, so we're obviously not</p> <p>25 going to finish today. Yes, sir.</p>



<p style="text-align: right;">Page 286</p> <p>1 MR. HANCOCK: I only need about five minutes.  2 Could I take that?  3 MR. GROSSMAN: You certainly can. But you're  4 welcome also to come back on Friday.  5 MR. HANCOCK: No, that's okay.  6 MR. GROSSMAN: You can pull yourself away from the  7 excitement?  8 MR. HANCOCK: I missed my nap.  9 MR. KLINE: She truly can't afford another day out  10 of her office.  11 MR. HANCOCK: All right. I spend most of, at this  12 time, I'm usually curled up in front of the fire with an  13 electric blanket turned on fricassee to keep the bones warm.  14 MR. GROSSMAN: And Mr. Hancock, I think I already  15 swore you in. Is that correct?  16 MR. HANCOCK: I'll be very quick on this.  17 STATEMENT OF WILLIAM HANCOCK  18 THE WITNESS: I built all these 22 houses. And I  19 have --  20 MR. GROSSMAN: By these 22 houses, you're talking  21 about the community immediately --  22 THE WITNESS: The 22, this is called Brink Meadow.  23 MR. GROSSMAN: Okay, immediately to the west of  24 the subject site.  25 THE WITNESS: Immediately to the west of this</p>	<p style="text-align: right;">Page 288</p> <p>1 contract that says they've reviewed the master plan. And  2 the master plan that they are reviewing today, if they are  3 going to buy this house, doesn't show this. It doesn't show  4 any possibility of this.  5 MR. GROSSMAN: And by this you mean the proposed  6 project.  7 THE WITNESS: I'm sorry, sir?  8 MR. GROSSMAN: By this you mean the proposed  9 project?  10 THE WITNESS: That's correct.  11 MR. GROSSMAN: I'm just trying to make sure the  12 record reflects what you are saying.  13 THE WITNESS: I understand. And in my particular  14 case, I built all these homes. I live in one. And I live  15 in one that backs up to this, to the Butz property. So I  16 experience this traffic problem all the time. And I need to  17 expand that just a bit.  18 There is a walk along here, along Route 27, a  19 paved walkway, on this side, not on this side, just a little  20 way.  21 MR. GROSSMAN: I'm sorry, which side is the --  22 which side is the walkway on?  23 THE WITNESS: The walkway is on the east side.  24 MR. GROSSMAN: Okay.  25 THE WITNESS: It's a paved walkway.</p>
<p style="text-align: right;">Page 287</p> <p>1 property.  2 MR. GROSSMAN: All right.  3 THE WITNESS: I built all these houses.  4 MR. GROSSMAN: What do you mean by you built them?  5 THE WITNESS: I physically designed the houses as  6 an architect, and I physically built the houses.  7 MR. GROSSMAN: Okay.  8 THE WITNESS: Okay. And when each of these  9 people, each of the individuals bought that house, they  10 signed a contract. And the contract had in it that they had  11 reviewed the master plan. As a matter of fact, the County  12 requires that they sign contracts saying that they had  13 reviewed the master plan, so they knew there wasn't going to  14 be an air field here. But it didn't say anything about this  15 kind of density. It was very plain. It was signed a number  16 of years ago.  17 The problem I have is, I think that the County has  18 a responsibility. They made a contract with these people  19 saying that there is not going to be 140 or the original  20 plan was 240 houses, but it's 140 houses now, behind you.  21 You're on two-acres, essentially at this point, million  22 dollar houses, and this is not going to be your view.  23 And I think that the County has the responsibility  24 to keep their promise. Even today, the people that are, the  25 individuals that are buying the re-sales have to sign the</p>	<p style="text-align: right;">Page 289</p> <p>1 MR. GROSSMAN: And that's south of Brink Road on  2 27 on the eastern side of Route 27?  3 THE WITNESS: That's correct.  4 MR. GROSSMAN: Okay.  5 THE WITNESS: So occasionally, rather than walking  6 the park, there is a nice path through the park down to  7 Milestone, but there's quite a long stretch of it that's in  8 the woods, and I don't like to do that. But to walk up  9 here, there is no walk up here, but you get up here to get  10 to the sidewalk, there's a traffic light there now. It's  11 worth your life to cross, even at the traffic light. And  12 this is four lanes.  13 In the morning, now, I know there is going to be a  14 traffic expert that's going to testify that this traffic is  15 just fine and dandy, but I have to speak from experience,  16 because I stand right here and I look at Route 27 all the  17 time.  18 MR. GROSSMAN: And right here you mean just --  19 THE WITNESS: Right here is my house, the house  20 that I live in that backs up to the Butz property.  21 MR. GROSSMAN: Okay, and that is?  22 THE WITNESS: 21721 Brink Meadow Lane. And this  23 is very elevated. Route 27 is at least 30 feet above this  24 grade. So I'm looking at a hill here. I see it all the  25 time.</p>

<p style="text-align: right;">Page 290</p> <p>1 At 6:00 in the morning, the traffic is dead  2 stopped. At 6:00 in the evening, it's backed up clear to  3 355 going north. It's horrendous. When I come out, to come  4 out of here, come out of Brink Meadow Lane and get onto  5 Brink Road, we back up three or four cars in the morning  6 quite often. And getting out of there, it's damn near worth  7 your life.  8 But when you turn and you come up, Ron said that  9 this is backed up all the way. This is widened a little  10 bit, not quite showing here, but it's backed up all the way  11 down to here. And this is a hill. This is totally blind.  12 When you turn here, when you turn onto Brink Road, you're  13 blind from this point out, from the Butz property up, that's  14 going uphill. There's trees, some scraggly trees along  15 there. And you can't even see. And these cars come down  16 here at 45 and 50 miles an hour. It's unreal.  17 Now, if we just have 22 houses in here, there's  18 about 45 or so in here, and there's no traffic right there,  19 there's 30 some houses up in here, and another 50 or so  20 there, I don't see that they have a light planned there.  21 MR. GROSSMAN: Now, when you say there, you mean  22 on --  23 THE WITNESS: And this traffic coming down,  24 there's a light planned here. But this traffic and this  25 light is going to back up beyond this intersection.</p>	<p style="text-align: right;">Page 292</p> <p>1 whatever it's called, new kind of evaluation that the  2 Council has made effective beginning January 1, 2013.  3 I'm not sure how that is going to play out. I  4 would ask, I don't know if your expert has done a TPAR  5 evaluation here, because technically, we have an unusual  6 system here. We have, they measured traffic up until  7 January 1st of this year, they measured traffic in two ways  8 in the County, something called LATR, local area  9 transportation review, and something called PAMR, policy  10 area mobility review.  11 Now they are replacing PAMR with TPAR, but under,  12 as I understand the way it works, for rezoning they apply  13 the, what they used to call the growth policy. They no  14 longer call it that, which is what those traffic standards  15 are under. They apply the one that was in effect when the  16 zoning application was filed, for purposes of the rezoning.  17 For purposes of the subdivision and site plan  18 review, they will apply the new standards. Am I stating  19 that fairly --  20 MR. KLINE: I think that's correct.  21 MR. GROSSMAN: So I think it would be helpful if  22 your witness, your traffic witness is prepared to testify on  23 that as well, just so I get some idea, we have something in  24 the record as to how that other new measurement will apply  25 to this situation. It's hard for me to say anything about</p>
<p style="text-align: right;">Page 291</p> <p>1 MR. GROSSMAN: Just to clarify for the record what  2 you said, there is no traffic light planned on 305 inside  3 the site. There is one planned at Ridge Road and 305.  4 THE WITNESS: Yes.  5 MR. GROSSMAN: A-305. And you were counting the  6 number of houses at various locations that are proposed on-  7 site?  8 THE WITNESS: At least 80.  9 MR. GROSSMAN: Okay.  10 THE WITNESS: At least 80 houses. We have a  11 problem with 22. There is at least 80, and they're opposite  12 each other. They're not even offset. So you've got people  13 trying to get out here and out here. You've got them coming  14 down here at 45 miles an hour. And there is no light here.  15 MR. GROSSMAN: Well, they testified --  16 THE WITNESS: This light is going to be really  17 fun, because this will really mess up this one down here.  18 The next light above this is about two miles up. And this  19 is just solid traffic. I don't know what the average is  20 during the day, but during rush hour, it just barely -- I  21 can walk faster. I can literally walk faster.  22 MR. GROSSMAN: Well, we're going to, I mean, we're  23 going to hear about what the counts are. And I would assume  24 that this is also going to be reviewed, not under,  25 ultimately, not under PAMR, but under the new TPAR, or</p>	<p style="text-align: right;">Page 293</p> <p>1 traffic until I have heard the evidence.  2 THE WITNESS: I understand.  3 MR. GROSSMAN: Although we do have extensive  4 reports in the file.  5 THE WITNESS: I have one more comment. Again, we  6 didn't bargain for this kind of density, but what we really  7 didn't bargain for was townhouses. I am so much upset to  8 have townhouses backing up to the five-acre lots. This just  9 is not right. They should be single-family, should not be  10 townhouses in this at all. I'm sorry. It's just plain  11 greed.  12 Now, in Mr. Butz defense, if I owned this  13 property, I would be trying to do something with it, just  14 like he is. But there's got to be an end somewhere.  15 Townhouses is really where I really get upset. There just  16 is not any kind of transition from two-acre to townhouse  17 retirement project.  18 MR. GROSSMAN: Of course, they say that the  19 townhouse provision is only a possible alternative for up to  20 20 percent. The plan is to have 140 single-family units, if  21 I understand the development plan. Is that correct, Mr.  22 Kline?  23 MR. KLINE: That is correct.  24 MR. GROSSMAN: But the plan is not to have  25 townhouses. It is to have 140 single-family units, is that</p>

<p style="text-align: right;">Page 294</p> <p>1 correct?</p> <p>2 MR. KLINE: That is the preferred way of handling</p> <p>3 the property, yes.</p> <p>4 THE WITNESS: You say that's preferred.</p> <p>5 MR. KLINE: That's what's shown on the</p> <p>6 illustrations.</p> <p>7 THE WITNESS: But I know the difference in a</p> <p>8 townhouse lot, the cost of a townhouse lot and a single-</p> <p>9 family lot in this type of thing is probable less and 10</p> <p>10 percent. And if they can put townhouses in here, they're</p> <p>11 going to do it, Mr. Kline. I'm sorry. It's going to be</p> <p>12 done. It's greed. It's just as simple as that. And I</p> <p>13 really feel very strongly about that. That's really all I</p> <p>14 have. Thank you.</p> <p>15 MR. GROSSMAN: All right. Cross-examination?</p> <p>16 REDIRECT EXAMINATION</p> <p>17 BY MR. KLINE:</p> <p>18 Q Mr. Hancock, I'll give you a chance to take your</p> <p>19 seat back, but you said, we didn't bargain for this kind of</p> <p>20 density.</p> <p>21 A No, we sure didn't.</p> <p>22 Q I'll talk to you so you can hear me a little bit</p> <p>23 better. But when you platted your, when you bought the</p> <p>24 property, when you platted your property --</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 296</p> <p>1 was completely built out by 1994.</p> <p>2 Q Right.</p> <p>3 A And the people that bought two years ago, they are</p> <p>4 still not looking at this kind of density. There's nothing</p> <p>5 in the master plan. If you buy a house today, there's</p> <p>6 nothing in the master plan that shows this kind of density</p> <p>7 is even proposed anywhere.</p> <p>8 Q Let me just say, because you've been candid. If</p> <p>9 your zoning was R-200 and you could have, if you could have</p> <p>10 built more lots and on basically still do it on sewer, you</p> <p>11 would have built more lots if you could have, wouldn't you?</p> <p>12 A I'll tell you honestly, we perked it out for one-</p> <p>13 acre lots. And we said, okay, we'd like to build one acre.</p> <p>14 Because we wanted to keep sort of a country type of effect.</p> <p>15 And what the areas that is now park land was also zoned for</p> <p>16 half-acre lots.</p> <p>17 And a preliminary plan for half-acre lots. They</p> <p>18 got it approved for half-acre lots, and the sold it to the</p> <p>19 park. They got approved so they had basis for getting a</p> <p>20 nice price from the park area. But we wanted to build one-</p> <p>21 acre lots. And they said, if you do, then you will have to</p> <p>22 dry line for sewer and water. And we said, well, okay.</p> <p>23 When will we get sewer and water? Never. You're never</p> <p>24 going to get it.</p> <p>25 Well, we have water right across the street.</p>
<p style="text-align: right;">Page 295</p> <p>1 Q -- your property was zoned R-200, wasn't it?</p> <p>2 A Yes. Half-acre.</p> <p>3 Q Correct.</p> <p>4 A Yes.</p> <p>5 Q And the Butz property was zoned R-200.</p> <p>6 A That's correct.</p> <p>7 Q So when you bought that property, and you started</p> <p>8 building houses, the master plan that the people looked at,</p> <p>9 recommended R-200 zoning on the Butz property --</p> <p>10 A Also said, no more impermeable, no more coverage</p> <p>11 of impermeable area would not exceed 16 percent, and that</p> <p>12 sewer and water would not be available except to a nonprofit</p> <p>13 organization.</p> <p>14 Q In the master plan prior to 1994 that said that?</p> <p>15 A I believe so. That's my -- I'd have to go back</p> <p>16 and check it. It's been a while, Jody, but I believe that</p> <p>17 that is. Yes.</p> <p>18 Q I mean, I guess you are having trouble convincing</p> <p>19 us that this is unexpected when in fact when your whole</p> <p>20 Brink Meadows started, the density that we're proposing</p> <p>21 today is not substantially different than what you could</p> <p>22 have anticipated would occur up until 1994 when the County</p> <p>23 changed the zoning because they thought you couldn't sewer</p> <p>24 it.</p> <p>25 A But those houses were already built. Brink Meadow</p>	<p style="text-align: right;">Page 297</p> <p>1 We've got gravity sewer. We'll build our own plant. You're</p> <p>2 never going to get it. Well then why do we want to spend</p> <p>3 \$10,000 to dry line to put in one acre houses, because we</p> <p>4 would get water. We wouldn't get sewer, but we would get</p> <p>5 water, public water. Why do we want to spend that, you</p> <p>6 know. So we went with two-acre lots, simply because we</p> <p>7 didn't want to blow a quarter of a million dollars.</p> <p>8 MR. KLINE: I have no further questions of Mr.</p> <p>9 Hancock.</p> <p>10 MR. GROSSMAN: Okay. Any other cross-examination</p> <p>11 of Mr. Hancock?</p> <p>12 MS. GOODRICK: No.</p> <p>13 MR. WILLS: No.</p> <p>14 MR. GROSSMAN: Do you have any redirect you want</p> <p>15 to add anything on as a result of Mr. Kline's questions?</p> <p>16 THE WITNESS: No, I think I'm talked out. My</p> <p>17 voice is gone.</p> <p>18 MR. GROSSMAN: Okay. All right. You did a good</p> <p>19 job, though. Okay. So, I guess that, unless you want to be</p> <p>20 heard, or do you want to be here on Friday?</p> <p>21 MS. GOODRICK: I would rather come back on Friday,</p> <p>22 thank you.</p> <p>23 MR. GROSSMAN: You are all welcome to come back on</p> <p>24 Friday. We will be happy to have you back. But in any</p> <p>25 event, we will reconvene here on Friday at 9:30. How many</p>

<p style="text-align: right;">Page 298</p> <p>1 witnesses do you have left?</p> <p>2 MR. KLINE: We have three left, and my guess is</p> <p>3 we'll probably have some rebuttal testimony as well.</p> <p>4 MR. GROSSMAN: Okay.</p> <p>5 MR. KLINE: Before you send us home, Mr. Grossman,</p> <p>6 I have accumulated some of the things you've asked for</p> <p>7 today.</p> <p>8 MR. GROSSMAN: Okay.</p> <p>9 MR. KLINE: May I clean up my desk here a little</p> <p>10 bit.</p> <p>11 MR. GROSSMAN: Sure.</p> <p>12 MR. KLINE: I did tell you that we would bring you</p> <p>13 a disk with all of the exhibits that are here today.</p> <p>14 MR. GROSSMAN: Yes.</p> <p>15 MR. KLINE: Okay. I did have the affidavit of</p> <p>16 posting signed by Mr. Butz --</p> <p>17 MR. GROSSMAN: All right.</p> <p>18 MR. KLINE: -- verifying the signs are posted on</p> <p>19 the property. I guess you'll just put a number on them.</p> <p>20 This is the special exception opinion for the Catholic</p> <p>21 Cemetery east of the subject property.</p> <p>22 MR. GROSSMAN: Okay.</p> <p>23 MR. KLINE: and this is a copy of the deed showing</p> <p>24 the four Butz sons as the owners of the property.</p> <p>25 MR. GROSSMAN: Wow. That's very impressive,</p>	<p style="text-align: right;">Page 300</p> <p>1 MR. GROSSMAN: Yes, ma'am.</p> <p>2 MS. GOODRICK: Do we have access online to these</p> <p>3 materials?</p> <p>4 MR. GROSSMAN: You don't have them online, but if</p> <p>5 you come in, especially if you call ahead it would be</p> <p>6 better, but if you come in you can see the exhibits here.</p> <p>7 They won't be online.</p> <p>8 MS. GOODRICK: May I?</p> <p>9 MR. GROSSMAN: Unless somebody puts them online,</p> <p>10 they won't be online.</p> <p>11 MS. GOODRICK: Okay. So the current new exhibits</p> <p>12 that he has a CD of?</p> <p>13 MR. GROSSMAN: Yes.</p> <p>14 MS. GOODRICK: Okay. Does that include the maps?</p> <p>15 MR. KLINE: It's all the exhibits that were here</p> <p>16 today.</p> <p>17 MR. GROSSMAN: Could you produce a copy of this CD</p> <p>18 for them?</p> <p>19 MS. GOODRICK: Yes. Thank you. That would be my</p> <p>20 question.</p> <p>21 MR. KLINE: Yes. You'll just have to give me some</p> <p>22 delivery information, but we'll do that. Give me an e-mail</p> <p>23 and some delivery information.</p> <p>24 MS. GOODRICK: So will we get a CD? In other</p> <p>25 words --</p>
<p style="text-align: right;">Page 299</p> <p>1 Mr. Kline. All right. So let's --</p> <p>2 MR. KLINE: We've been here all day. There was</p> <p>3 plenty of time to get things done outside.</p> <p>4 MR. GROSSMAN: All right. Let's give them exhibit</p> <p>5 numbers while we're still on the record here. And that will</p> <p>6 be, we'll get your affidavit of posting will be Exhibit No.</p> <p>7 69. And then the deed will be Exhibit No. 70. The copy of</p> <p>8 the special exception resolution or opinion would be Exhibit</p> <p>9 No. 71. That's Council Resolution 14-393 dated 1/18/2000.</p> <p>10 And we'll say the CD of the current new exhibits is Exhibit</p> <p>11 No. 72. I'll say hearing exhibits.</p> <p>12 (Exhibit Nos. 69-72 were</p> <p>13 marked for identification.)</p> <p>14 MR. GROSSMAN: Okay.</p> <p>15 MR. KLINE: One last question, Mr. Grossman.</p> <p>16 MR. GROSSMAN: Yes, sir.</p> <p>17 MR. KLINE: Could we take these exhibits and put</p> <p>18 them in your library off to the side rather than have to</p> <p>19 cart them out and bring them back?</p> <p>20 MR. GROSSMAN: Yes. I think probably the safest</p> <p>21 thing to do would be to put them in the hallway between my</p> <p>22 outer office and my office.</p> <p>23 MR. KLINE: Okay.</p> <p>24 MR. GROSSMAN: That little hallway.</p> <p>25 MR. KLINE: Thank you.</p>	<p style="text-align: right;">Page 301</p> <p>1 MR. KLINE: I've got to talk to the people who are</p> <p>2 smarter about it than I am. But we will figure out some way</p> <p>3 to electronically get that information to you.</p> <p>4 MS. GOODRICK: Okay.</p> <p>5 MR. GROSSMAN: Mr. Wills.</p> <p>6 MR. WILLS: Given the rather large difference of</p> <p>7 opinion of the staff report and the Board vote, is there any</p> <p>8 provision for something like this going back to staff for</p> <p>9 re-review of the proposal, and seeing if additional</p> <p>10 information or whatever may change their opinion, or they</p> <p>11 are steadfast in their opinion? Is there any provision for</p> <p>12 something like that?</p> <p>13 MR. GROSSMAN: Once it goes to the, conceivably,</p> <p>14 if I wanted more information from the staff, I could send it</p> <p>15 back for some further staff review. Also, when I, if I send</p> <p>16 up a report to the Council, and they decide they want to</p> <p>17 hear more from the staff, they could send it back to me and</p> <p>18 say, please send it back to the Planning Board and ask the</p> <p>19 staff to give further information.</p> <p>20 So in those two ways it could be, it could be</p> <p>21 formally remanded back from the Council, or I could</p> <p>22 informally, by informally I mean, without, before it goes up</p> <p>23 to the Council, I could send it back, or not send it back,</p> <p>24 but I could ask the staff whether they'd reconsider in light</p> <p>25 of what the Planning Board said.</p>

<p style="text-align: right;">Page 302</p> <p>1 I'm not sure that that would help anything. I</p> <p>2 mean, I would be more inclined to ask the technical staff</p> <p>3 about something they neglected to opine on, which is the</p> <p>4 surrounding area. but I don't think that's going to clarify</p> <p>5 much for me because I've pretty much decided that I think</p> <p>6 the surrounding area ought to be the larger one which</p> <p>7 includes the apartments, or the houses across Ridge Road.</p> <p>8 So I don't know if that's going to help anything.</p> <p>9 What do you feel would be gained by having staff</p> <p>10 look at this again?</p> <p>11 MR. WILLS: Well, I guess I was struck by reading</p> <p>12 the staff report and then having this unanimous vote of the</p> <p>13 Board, the Planning Board. And that they really, it was</p> <p>14 very cursory, as far as the Planning Board reason why they</p> <p>15 think it should be approved.</p> <p>16 MR. GROSSMAN: Well, it may not be that what went</p> <p>17 on at the Planning Board was cursory. Did you attend the</p> <p>18 Planning Board meeting?</p> <p>19 MR. WILLS: I did not, but I think Mr. Hancock</p> <p>20 did, and it was reported to me that --</p> <p>21 MR. HANCOCK: I did.</p> <p>22 MR. GROSSMAN: All right.</p> <p>23 MR. WILLS: -- it was a rather brief discussion at</p> <p>24 the Planning Board.</p> <p>25 MR. GROSSMAN: Ms. Goodrick, did you want to say</p>	<p style="text-align: right;">Page 304</p> <p>1 MS. GOODRICK: Well, they would say --</p> <p>2 MR. GROSSMAN: That, by the way, is not part of,</p> <p>3 it's not part of the record here unless somebody makes it</p> <p>4 part of the record, because they're not sworn witnesses.</p> <p>5 MR. HANCOCK: The Planning Board spent months</p> <p>6 reviewing it.</p> <p>7 MR. GROSSMAN: You mean the staff.</p> <p>8 MR. HANCOCK: Yes, staff. And then they had a</p> <p>9 staff individual there who had it, and they went through it</p> <p>10 item by item.</p> <p>11 MR. GROSSMAN: I understand. I'm talking about</p> <p>12 the Planning Board meeting.</p> <p>13 MR. KLINE: The whole duration. How long --</p> <p>14 MR. GROSSMAN: The duration. How long was the</p> <p>15 Planning Board?</p> <p>16 MR. HANCOCK: For them to make up their mind, less</p> <p>17 than 10 minutes.</p> <p>18 MR. GROSSMAN: No, I mean, the meeting, what was</p> <p>19 presented at the meeting? Mr. Kline?</p> <p>20 MS. GOODRICK: These are billable hours. They</p> <p>21 were not --</p> <p>22 MR. KLINE: Help me out.</p> <p>23 MS. RUSSEL: Two hours.</p> <p>24 MR. KLINE: I thought it was over two hours.</p> <p>25 MR. GROSSMAN: I don't think that's cursory. They</p>
<p style="text-align: right;">Page 303</p> <p>1 something about it?</p> <p>2 MS. GOODRICK: Well, what struck me as I listened</p> <p>3 to this was that the Rodgers Reporting, or whatever it was,</p> <p>4 said, I believe this is our interpretation. This is their</p> <p>5 interpretation of what those maps said, as far as zoning</p> <p>6 goes. Whereas, the Planning Department had a difference of</p> <p>7 opinion. That's really crucial here to what that difference</p> <p>8 is.</p> <p>9 They presented what they believe is what the</p> <p>10 zoning wanted to do at the time the master plan was written.</p> <p>11 And they say that there are ambiguities. But I don't know</p> <p>12 whether there are, the planning staff thought that there</p> <p>13 were ambiguities. And that, to me, seems crucial to these</p> <p>14 arguments.</p> <p>15 MR. GROSSMAN: Well, before I address that, did</p> <p>16 you, you say you attended the Planning Board meeting?</p> <p>17 MS. GOODRICK: Yes.</p> <p>18 MR. GROSSMAN: You said, and I'll hear from Mr.</p> <p>19 Wills, that somebody told him it was a cursory examination,</p> <p>20 or whatever of it. What was your, how much time was spent</p> <p>21 on it before the Planning Board?</p> <p>22 MS. GOODRICK: Well, I don't remember specifically</p> <p>23 that issue.</p> <p>24 MR. GROSSMAN: Not that issue, but the whole</p> <p>25 session before the Planning Board?</p>	<p style="text-align: right;">Page 305</p> <p>1 obviously, they may have made up their mind as part of</p> <p>2 listening to the presentation, but I wouldn't characterize</p> <p>3 that as cursory.</p> <p>4 I guess you have to ask yourself what advantage</p> <p>5 there would be to anybody concerned here in my requesting</p> <p>6 staff to reconsider what their boss has already decided.</p> <p>7 Mr. Kline might actually like me to do that. So --</p> <p>8 MR. KLINE: Well, I think their point is, they're</p> <p>9 going to try to get the planning staff to change. They want</p> <p>10 it to go back to the Planning Board and say, you didn't</p> <p>11 listen to your staff. You ought to rethink this. They'd</p> <p>12 actually have the Planning Board reconsider it.</p> <p>13 MR. GROSSMAN: Well, all right, then if I'm</p> <p>14 addressing that question the answer would be, no. I would</p> <p>15 not send it back to the Planning Board to reconsider what</p> <p>16 they've already decided, unless there was some new</p> <p>17 information that they hadn't been presented that could</p> <p>18 possibly change their position, because they have made their</p> <p>19 evaluation unanimously based on the information they had.</p> <p>20 Now, if there was some change in the information</p> <p>21 that was above and beyond that was so pertinent that it</p> <p>22 might change how they evaluated it, that would be different.</p> <p>23 But absent that, you can't ask a body to just reconsider</p> <p>24 something on no basis. In fact there's actually some case</p> <p>25 law on exactly that in terms of administrative bodies.</p>

<p style="text-align: right;">Page 306</p> <p>1       An administrative body can't change, unless they</p> <p>2       have a change in the factual scenario or the law, they can't</p> <p>3       just change their opinion on something they've decided</p> <p>4       without a change in the basis for it. But in any event, so</p> <p>5       that would be the answer to your question.</p> <p>6       No, I can't see a basis for sending it, based on</p> <p>7       anything I've heard thus far for sending it back either to</p> <p>8       technical staff or to the Planning Board. It is unusual to</p> <p>9       get a case in which the technical staff has recommended one</p> <p>10      way, and the Planning Board disagrees. It's not unheard of.</p> <p>11      I've had a number of them. But it is relatively unusual in</p> <p>12      the run of these things.</p> <p>13      But really, the Council will make the final</p> <p>14      decision, based on the record that is presented here by all</p> <p>15      the witnesses.</p> <p>16      The Planning Board doesn't get quite the same</p> <p>17      presentation obviously that you get here, because we have a</p> <p>18      full hearing with cross-examination, et cetera. So this</p> <p>19      gets to be a fuller record than the Planning Board gets to</p> <p>20      see, as you can see from what has gone on here. So there's</p> <p>21      no, we can't tell from what the Planning Board said whether</p> <p>22      or not, what the Council is going to do.</p> <p>23      The Council also has its own standards that they</p> <p>24      follow as well. All right. Anything else of an</p> <p>25      administrative nature? And if not, we are adjourned until</p>	<p style="text-align: right;">Page 308</p> <p>tsh</p> <p>. Digitally signed by Teresa S. Hinds</p> <p style="text-align: center;"><b>ELECTRONIC CERTIFICATE</b></p> <p style="text-align: center;">DEPOSITION SERVICES, INC., hereby certifies that</p> <p style="text-align: center;">the attached pages represent an accurate transcript of the</p> <p style="text-align: center;">electronic sound recording of the proceedings before the</p> <p style="text-align: center;">Office of Zoning and Administrative Hearings in the matter</p> <p style="text-align: center;">of:</p> <p style="text-align: center;">Petition of Thomas Butz, et al.</p> <p style="text-align: center;">Local Map Amendment No. G-881</p> <p style="text-align: center;">By:</p> <p style="text-align: center;">_____ Teresa S. Hinds, Transcriber</p>
<p style="text-align: right;">Page 307</p> <p>1       9:30 on Friday morning, this coming Friday, which I believe</p> <p>2       is the 18th. Is that correct? Yes, the 18th.</p> <p>3       (Whereupon, at 5:30 p.m., the hearing was</p> <p>4       adjourned.)</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

	125:3;129:19;139:20; 24;140:13;145:11,17; 149:1;150:13;168:5,9; 169:4,15;170:1,3; 182:14;194:19;206:15; 211:5;241:12;248:13; 267:18;282:2;291:5	10,14;182:11;235:11; 268:2;279:9;300:2	205:18	
<b>\$</b>			<b>acreage (3)</b> 107:16;110:6;123:8	<b>add (14)</b> 42:17;59:1;83:5; 106:12;107:13;109:2; 115:9;117:15;121:2; 193:12,14,16;230:20; 297:15
<b>\$10,000 (1)</b> 297:3		<b>access” (2)</b> 88:22;89:24	<b>acres (45)</b> 4:5;29:21;73:7;79:5; 80:8,8;82:14;89:18; 90:6,16,18;91:12; 107:2,16;108:17; 110:6;113:8,20; 114:24;122:17;123:5, 8,10,10,18;134:24; 137:9;138:9;139:9; 147:3,4,12;149:22; 206:5;216:11;218:6; 219:1;232:4,8,9,10,10, 12,15;233:1	<b>added (6)</b> 11:21;78:10;82:5,8; 147:15;233:7
<b>‘</b>		<b>accesses (2)</b> 92:13;124:20		<b>adding (4)</b> 107:1;109:15; 230:14,22
	<b>AARP (4)</b> 41:1;57:13,24; 225:25	<b>accessibility (2)</b> 226:19;228:8		<b>addition (18)</b> 12:1;113:15;121:2; 126:22;132:14;134:20; 157:7,18;158:6,12; 182:12;216:8;252:20; 254:10,15,18,19; 256:22
<b>“A (1)</b> 113:8	<b>abandonment (1)</b> 88:14	<b>accessible (11)</b> 134:10,15,18,25; 136:4;232:25;233:10, 11,21,24;271:19	<b>across (25)</b> 20:10;21:14;52:23; 54:5;59:2;60:22;61:11; 98:6;99:22;100:4; 175:3;180:20;181:18; 190:12;193:18,23,24; 194:17,22;195:2; 247:16;279:10;282:20; 296:25;302:7	<b>additional (26)</b> 6:7;8:7;10:2;43:4; 50:9;55:15;63:3;83:5; 85:3;107:11;123:15; 137:19;192:22;193:13; 14,16,16;194:24;195:6, 9;196:22;239:23; 251:1;252:20,24;301:9
<b>“Appeared (1)</b> 235:2	<b>abilities (1)</b> 32:10	<b>accessing (1)</b> 86:15		<b>Additionally (1)</b> 235:13
<b>“Applicant (1)</b> 17:5	<b>ability (1)</b> 116:18	<b>accommodate (8)</b> 30:8;33:12;35:17; 142:25;147:19;250:5, 9;263:15	<b>act (7)</b> 51:13,15,23;113:17; 198:22;199:8;233:4	<b>address (34)</b> 11:6;12:5,17;13:11; 17:13,16;19:12;23:25; 47:16;50:1;56:19; 68:18;86:12,17; 101:10;141:2;152:9; 14,15;156:2,4;157:23; 159:8,10;175:2,3; 185:17;189:6;195:4; 197:18;221:1;231:9; 275:4;303:15
<b>“Beyond (1)</b> 41:2	<b>able (13)</b> 38:4;46:5;52:17; 66:11;91:7;105:14; 112:20;119:20;151:24; 231:3;256:20;260:19; 261:4	<b>accommodated (1)</b> 55:6	<b>active (9)</b> 43:13;52:17;132:19; 221:16,19;252:5; 253:14;254:7,18	<b>addressed (6)</b> 12:18;37:14;67:3,10; 184:1;220:17
<b>“Brink (1)</b> 205:24	<b>above (18)</b> 115:13;116:9; 117:13,14;141:19; 149:24;164:1;185:20; 186:1,3;206:2;221:9; 231:22;235:17;283:10; 289:23;291:18;305:21	<b>accommodation (1)</b> 250:17	<b>activities (6)</b> 27:7;57:2;64:5; 103:21;187:22;201:11	<b>addresses (5)</b> 19:17;55:20;158:24; 205:12;261:3
<b>“Concerns (2)</b> 88:22,23	<b>absence (4)</b> 209:14,21,22;210:2	<b>accompanied (1)</b> 207:5	<b>activity (3)</b> 54:10;58:6,14	<b>addressing (3)</b> 12:6;27:20;305:14
<b>“Encourage (1)</b> 29:11	<b>absent (1)</b> 305:23	<b>accomplish (1)</b> 274:3	<b>actual (7)</b> 39:4;40:7;85:19; 86:1;121:15;159:12; 169:19	<b>adds (3)</b> 35:23;36:17;117:19
<b>“Except (1)</b> 113:14	<b>Absolutely (10)</b> 19:7;20:4;23:2;29:7; 55:24;94:15;242:15; 245:3,19,23	<b>accomplished (2)</b> 39:13;186:16	<b>actually (53)</b> 31:8;39:4;47:5; 48:10;64:14;65:10; 74:5;80:7;82:2,3; 97:22;100:18;120:6; 121:10;124:4;127:20; 129:1,10;132:16; 138:15;141:4;156:9; 157:8,11;158:6; 160:24;161:5;163:20; 164:1;165:12;167:22; 169:9;171:23,25; 176:17;186:4;189:9; 191:2;194:16;200:10, 21;207:23;208:2; 214:1;221:8;230:1; 274:11;279:4,12; 283:3;305:7,12,24	<b>adequate (8)</b> 38:5;128:23;131:1; 136:9;149:16;156:1; 235:11;274:2
<b>“Look (1)</b> 30:7	<b>abut (1)</b> 100:25	<b>accordance (5)</b> 40:16;113:16; 134:12;217:24;240:16	<b>Adamstown (1)</b> 17:17	<b>adequately (1)</b> 38:4
<b>“Many (2)</b> 48:16;50:4	<b>abuts (1)</b> 5:15	<b>according (7)</b> 9:5;43:15,16;62:22; 265:15;283:19;285:9	<b>adapting (1)</b> 226:8	<b>adhere (1)</b> 235:6
<b>“Montgomery (1)</b> 44:8	<b>abutting (1)</b> 20:9	<b>accounted (1)</b> 139:21		<b>adherence (2)</b> 228:5,11
<b>“Outdoor (1)</b> 185:24	<b>academic (2)</b> 71:11;72:4	<b>accumulated (1)</b> 298:6		<b>adjacent (20)</b> 56:14;77:2;100:4; 104:18;115:25;127:1;
<b>“Retirement (2)</b> 47:19;48:1	<b>accept (3)</b> 72:17;189:23;203:10	<b>accuracy (1)</b> 45:23		
<b>“Staff (1)</b> 284:19	<b>acceptance (1)</b> 72:16	<b>accurately (1)</b> 49:4		
<b>“That (2)</b> 214:14;228:16	<b>accepted (3)</b> 70:5,7;71:5	<b>achieve (2)</b> 39:14;199:11		
<b>“The (8)</b> 40:22;89:22;158:25; 185:18;209:22;238:21; 265:7,10	<b>accepting (1)</b> 133:6	<b>achieved (2)</b> 174:21;185:22		
<b>“This (2)</b> 89:20;210:15	<b>access (47)</b> 11:23;36:15;44:3; 62:8;85:20;86:5,10,12; 87:7,18,21;88:8,15,21, 24;89:2,3,4,5,16,19; 90:11,21,23;91:6,12; 92:6,13,16,19;104:18; 123:12;124:19;128:9; 129:22;130:17;146:16; 151:17;156:1;180:9,	<b>achieves (1)</b> 214:12		
<b>“To (2)</b> 32:9;205:15		<b>acquainted (1)</b> 199:24		
<b>“Traffic (1)</b> 89:13		<b>acquiring (2)</b> 252:5;267:5		
<b>“We (3)</b> 45:6,19;89:25		<b>acre (33)</b> 73:22,25;75:5;80:7; 139:7,9;151:7;159:1, 16;160:4,7;176:16,16; 177:24,25;178:17; 179:10;206:4,20; 208:7,13,22,22;209:10; 212:8;213:2,8;229:19; 242:4;296:13,13,21; 297:3		
		<b>acre” (1)</b>		

128:5;147:14;149:5; 151:21;152:2;159:4,7; 173:8;174:5;214:8; 252:7,8,14,23 <b>adjective (2)</b> 242:19,25 <b>adjoining (7)</b> 5:21;14:17;81:14; 147:11;148:6;149:4; 156:8 <b>adjourned (2)</b> 306:25;307:4 <b>administration (1)</b> 200:14 <b>administrative (6)</b> 9:5;71:4;105:14; 305:25;306:1,25 <b>admit (1)</b> 46:2 <b>admitted (2)</b> 49:7,15 <b>adopt (3)</b> 112:8,11;232:16 <b>adopted (7)</b> 29:20;30:4;43:20; 201:16;233:3,6;238:24 <b>adoption (1)</b> 218:2 <b>ads (1)</b> 128:10 <b>adult (11)</b> 43:14;52:17;221:16, 19;253:14;254:7,18; 278:21;280:21,24; 283:10 <b>adults (2)</b> 226:1;235:16 <b>advantage (4)</b> 7:2;15:10;52:18; 305:4 <b>advantages (1)</b> 58:1 <b>advisable (1)</b> 110:11 <b>advise (2)</b> 70:16;201:13 <b>aerial (11)</b> 53:3;81:3;82:2; 95:25;97:3;98:9; 100:19;103:13,14; 143:4;181:3 <b>affect (2)</b> 37:20;138:22 <b>affected (8)</b> 97:8,9,12;99:2,25; 100:10;105:1;190:17 <b>affects (2)</b> 257:20,23 <b>affidavit (7)</b> 13:15;14:5,8,15; 38:24;298:15;299:6 <b>affidavits (1)</b> 11:1	<b>affiliation (1)</b> 17:14 <b>affix (1)</b> 220:2 <b>affixed (2)</b> 217:20;227:25 <b>afford (2)</b> 268:16;286:9 <b>affordable (6)</b> 30:18;55:11;253:2,5; 254:2;269:5 <b>afield (1)</b> 120:6 <b>afraid (1)</b> 118:12 <b>afternoon (5)</b> 5:3;13:25;67:6; 93:16;114:17 <b>afterwards (1)</b> 237:20 <b>Ag (5)</b> 11:24;16:21;18:1; 20:8;21:14 <b>again (63)</b> 15:11;21:11;43:4; 46:19;47:22;52:3; 63:22;74:22;76:10; 77:1;79:6,21;81:4; 92:12;98:9,21;100:2; 101:13;102:23;107:12; 119:16;123:5;130:21; 138:5,24;139:9; 140:14;148:2;150:2,4; 151:4,23;153:2; 156:21;179:20;189:18; 194:10;195:14;202:5; 207:21;208:5;210:9, 10,11;214:2,3;216:6; 220:5,23;229:8; 232:12;240:25;251:2; 259:19,23;267:20; 269:9;276:13,22; 277:7,21;293:5;302:10 <b>against (1)</b> 284:3 <b>age (31)</b> 33:8;42:6;50:4,24; 58:6,18,23;61:5;63:4; 108:18;109:4;111:21; 112:22;113:9,21; 115:6;117:13,16; 131:10;147:5;198:16; 220:5,6,15;221:13; 223:13;226:1;227:11; 231:9,23;235:17 <b>age- (2)</b> 220:11;221:18 <b>Aged (1)</b> 108:15 <b>agency (1)</b> 91:10 <b>age-restricted (22)</b> 4:11;33:14,24;61:5;	66:22;106:22;108:6; 115:3;116:1;125:23; 131:9;158:25;177:19; 178:21;204:11;221:23; 223:14;225:9;227:3; 230:22;231:3;235:19 <b>ages (2)</b> 29:12;32:9 <b>aggrieved (1)</b> 9:14 <b>aging (6)</b> 28:13;44:8;50:2; 226:11,12;253:23 <b>aging'' (1)</b> 41:3 <b>ago (7)</b> 23:24;24:4;55:8; 202:22;218:3;287:16; 296:3 <b>agree (21)</b> 11:11;26:22;96:15; 99:10;100:3,24;101:1; 129:2;160:25;181:14; 183:14;234:10,14,15, 20;262:22;263:3; 265:5,19;277:8,10 <b>agreed (2)</b> 151:2;235:8 <b>agreement (24)</b> 36:7;132:24;255:8,9; 257:1,4,7,12,15,16; 258:4;260:5;261:14, 16,22;263:18;264:7, 13;268:1,8,9;270:2,5; 283:2 <b>agreements (9)</b> 255:12;261:23; 262:20;266:9,17,18; 267:3;270:14,20 <b>agrees (3)</b> 234:7,13,23 <b>agricultural (11)</b> 17:21;18:19;20:9; 51:13,14,23;98:16; 100:23,24;101:1;104:2 <b>agriculturally (1)</b> 104:24 <b>agriculture (1)</b> 20:8 <b>ahead (11)</b> 20:23;24:15;58:21; 67:25;105:7;122:12; 167:5;190:3;260:3; 269:23;300:5 <b>AICP (2)</b> 201:24,25 <b>aid (1)</b> 239:8 <b>air (1)</b> 287:14 <b>AK (1)</b> 202:1 <b>al (3)</b>	4:3;10:7;16:16 <b>al/Windridge (1)</b> 17:5 <b>al's (1)</b> 16:18 <b>albeit (1)</b> 238:19 <b>alignment (5)</b> 26:3;82:8,9;168:21; 201:14 <b>alignments (1)</b> 168:20 <b>alleviate (1)</b> 281:18 <b>allocation (1)</b> 77:12 <b>allow (8)</b> 9:3;27:25;36:3;49:7; 88:15;180:24;232:24; 233:6 <b>allowances (1)</b> 7:6 <b>allowed (6)</b> 87:21;219:23; 232:11;233:22;243:22; 283:23 <b>allows (5)</b> 36:13,14;130:6; 159:21;179:9 <b>alluded (7)</b> 158:7;177:20;200:7; 216:1;221:7;229:4; 232:2 <b>alludes (2)</b> 209:21;215:21 <b>alluding (4)</b> 24:14;31:14;103:19; 226:5 <b>almost (2)</b> 48:13;170:15 <b>alone (3)</b> 167:19;168:4;226:25 <b>along (30)</b> 11:16;76:16,21; 82:17,18;89:2;97:24; 98:10,11,18;107:5,8; 123:1;125:3;129:14, 19;130:12,20;149:1; 152:16;175:9,15; 210:4;232:19;248:19; 265:8,11;288:18,18; 290:14 <b>alternate (1)</b> 51:8 <b>alternative (3)</b> 30:2;90:22;293:19 <b>alternatively (1)</b> 233:10 <b>alternatives (3)</b> 144:4;169:6;226:22 <b>although (6)</b> 9:10;18:13;132:7; 204:18;236:2;293:3	<b>always (8)</b> 12:10;49:7;116:6; 139:15;169:24;227:13; 273:9;278:20 <b>amazing (1)</b> 282:19 <b>ambiguities (4)</b> 214:21;235:3; 303:11,13 <b>ambiguity (2)</b> 213:24;228:23 <b>ameliorated (1)</b> 49:10 <b>amenable (1)</b> 263:14 <b>amend (3)</b> 103:8;110:16;114:12 <b>amended (7)</b> 37:2;102:13;103:1, 13;105:9;106:7,16 <b>amended'' (1)</b> 113:18 <b>amendment (8)</b> 4:4;215:1,5;232:23; 233:3;252:17;254:22; 283:23 <b>amendments (4)</b> 71:18;113:17; 215:10;232:6 <b>amenities (44)</b> 27:13;33:12;36:15; 52:8,12,18,19,19; 54:22;57:20;62:11; 63:25;126:9;131:21, 23,23;134:21;179:14; 182:2;199:4;235:9; 236:12,13,14;238:7; 247:4,12;264:3,4,6,13; 268:2;272:25;282:24; 283:1,3,13,15,25; 285:4,5,8,11,12 <b>amenity (9)</b> 33:3;54:11;56:13; 63:23;64:3;151:14; 182:1;235:16;280:18 <b>American (2)</b> 44:6,7 <b>among (1)</b> 189:7 <b>amount (14)</b> 8:24;26:17;36:3; 99:23;174:2;177:10; 182:2;193:13,14,16,16; 196:3;224:24;282:19 <b>amounts (1)</b> 272:5 <b>amplifies (1)</b> 214:8 <b>analysis (4)</b> 128:19,21;184:17; 216:13 <b>analyze (1)</b> 219:18
---	---	--	--	---



<b>anchor (1)</b> 136:2	17:14;120:13;145:4; 193:18;195:11;196:10; 12;204:6;212:24; 220:20;237:4	173:6,21;178:6; 202:22;223:4;254:16; 277:13;283:17;296:18; 19;302:15	126:15,16;128:17; 129:5,8;130:5;132:5; 136:8;152:13;185:25; 194:20;205:25;210:11; 216:13;229:22;247:10; 272:19,23;273:7; 296:15	<b>assessment (2)</b> 9:1;38:5
<b>and/or (4)</b> 74:19;110:25; 121:20;150:23	<b>applicant's (4)</b> 7:18;84:4,12;246:13	<b>approving (4)</b> 84:4,12;178:9; 235:24	<b>areas'' (1)</b> 159:7	<b>assigned (2)</b> 138:25;166:10
<b>anemic (1)</b> 236:16	<b>applicants (4)</b> 4:7,11;14:6;16:11	<b>approximate (1)</b> 123:9	<b>aren't (6)</b> 183:11;187:3; 224:21;225:1;227:1,4	<b>associate (1)</b> 122:19
<b>angle (1)</b> 81:4	<b>application (29)</b> 4:3;7:1;9:23;10:9; 14:14;29:5;38:3,17; 39:8;40:21;90:25;91:3; 21,25;92:20;93:1,3; 95:9;116:24;118:21; 119:1,20;159:5; 162:15;236:20;238:4; 240:16;249:15;292:16	<b>approximately (15)</b> 42:9;48:3;73:23; 80:7;122:15,17;123:5; 10,18;135:6,23;138:8; 147:3;148:8;274:7	<b>arguably (2)</b> 178:22;221:2	<b>associated (3)</b> 123:7;132:5;233:5
<b>Angled (1)</b> 81:8	<b>applied (3)</b> 117:17;176:25;218:8	<b>architect (1)</b> 287:6	<b>argue (2)</b> 61:8;242:8	<b>Association (22)</b> 6:3,4;11:22;37:6,13; 38:2;40:10;88:7,23; 89:8;92:18;93:21;95:3, 12;108:24;109:13; 110:21;111:1,9,16; 115:6;117:18
<b>animal (1)</b> 253:6	<b>applies (2)</b> 65:10;110:25	<b>architectural (1)</b> 262:25	<b>argument (10)</b> 9:13,15;10:1;179:6; 209:4;212:20,23; 227:5;239:7;281:19	<b>Association's (1)</b> 11:20
<b>annex (3)</b> 37:12;263:10,16	<b>apply (7)</b> 117:14;118:20,20; 292:12,15,18,24	<b>architecture (1)</b> 70:25	<b>arguments (3)</b> 227:5;277:1;303:14	<b>associations (1)</b> 258:17
<b>annexation (2)</b> 36:21;71:24	<b>applying (1)</b> 118:22	<b>area (158)</b> 14:7;18:1,2,4,5; 19:21;21:23;22:2;24:2; 28:21;37:1;50:23;55:5; 65:25;66:1;73:2,17,19; 76:9,12,25;77:5,23; 80:13,15;90:16;95:22; 96:1,16,18;97:1,6,8,10, 16,18,19,20,23;98:2,2, 8,15,20,22,25;99:4,6,9; 100:3,10;101:6,11,14; 102:8,14,16,21;103:2, 3,3,13;105:9,11; 107:15,19;110:5; 115:1;122:15,16,23; 123:1,4,13,14;124:4, 13,15;127:3,6,14; 129:4;132:2,8,11; 137:10;140:13,14; 147:16;149:3,7,20; 150:1,2;153:12; 154:22;155:4;157:24; 168:13;177:15;180:19, 21;185:4;189:2; 190:22,23;205:22; 209:22;210:7,15; 211:1;212:9,11,11,12; 213:11,12,14,18;215:6, 10,17;216:5,6,9,19,21; 217:4,5,5,10;220:13; 227:3;229:23;242:2,5; 252:22;254:4;255:7; 257:22;261:21;268:23; 272:24;273:8,9; 275:10;278:6,19; 280:3,7,7,15;292:8,10; 295:11;296:20;302:4,6	<b>assume (7)</b> 101:10,12;102:6; 236:12;259:21,22; 291:23	<b>assurances (1)</b> 258:17
<b>annexed (3)</b> 36:9,19,23	<b>appointed (2)</b> 198:21;199:13	<b>architectural (1)</b> 262:25	<b>around (21)</b> 19:5;22:20;30:10; 52:4,13;54:22;64:3; 76:22;81:24;117:5; 137:16;155:13;160:12; 180:19;181:6;190:24; 200:7;249:16;278:20; 282:5,6	<b>assuming (1)</b> 191:19
<b>annexing (1)</b> 131:6	<b>apportioned (1)</b> 155:22	<b>area (158)</b> 14:7;18:1,2,4,5; 19:21;21:23;22:2;24:2; 28:21;37:1;50:23;55:5; 65:25;66:1;73:2,17,19; 76:9,12,25;77:5,23; 80:13,15;90:16;95:22; 96:1,16,18;97:1,6,8,10, 16,18,19,20,23;98:2,2, 8,15,20,22,25;99:4,6,9; 100:3,10;101:6,11,14; 102:8,14,16,21;103:2, 3,3,13;105:9,11; 107:15,19;110:5; 115:1;122:15,16,23; 123:1,4,13,14;124:4, 13,15;127:3,6,14; 129:4;132:2,8,11; 137:10;140:13,14; 147:16;149:3,7,20; 150:1,2;153:12; 154:22;155:4;157:24; 168:13;177:15;180:19, 21;185:4;189:2; 190:22,23;205:22; 209:22;210:7,15; 211:1;212:9,11,11,12; 213:11,12,14,18;215:6, 10,17;216:5,6,9,19,21; 217:4,5,5,10;220:13; 227:3;229:23;242:2,5; 252:22;254:4;255:7; 257:22;261:21;268:23; 272:24;273:8,9; 275:10;278:6,19; 280:3,7,7,15;292:8,10; 295:11;296:20;302:4,6	<b>arrangement (2)</b> 162:9;273:4	<b>assumption (6)</b> 102:2;104:10; 126:25;187:17;195:8, 20
<b>announced (1)</b> 136:1	<b>appreciate (2)</b> 94:10;197:4	<b>area (158)</b> 14:7;18:1,2,4,5; 19:21;21:23;22:2;24:2; 28:21;37:1;50:23;55:5; 65:25;66:1;73:2,17,19; 76:9,12,25;77:5,23; 80:13,15;90:16;95:22; 96:1,16,18;97:1,6,8,10, 16,18,19,20,23;98:2,2, 8,15,20,22,25;99:4,6,9; 100:3,10;101:6,11,14; 102:8,14,16,21;103:2, 3,3,13;105:9,11; 107:15,19;110:5; 115:1;122:15,16,23; 123:1,4,13,14;124:4, 13,15;127:3,6,14; 129:4;132:2,8,11; 137:10;140:13,14; 147:16;149:3,7,20; 150:1,2;153:12; 154:22;155:4;157:24; 168:13;177:15;180:19, 21;185:4;189:2; 190:22,23;205:22; 209:22;210:7,15; 211:1;212:9,11,11,12; 213:11,12,14,18;215:6, 10,17;216:5,6,9,19,21; 217:4,5,5,10;220:13; 227:3;229:23;242:2,5; 252:22;254:4;255:7; 257:22;261:21;268:23; 272:24;273:8,9; 275:10;278:6,19; 280:3,7,7,15;292:8,10; 295:11;296:20;302:4,6	<b>arrow (1)</b> 206:25	<b>assurance (3)</b> 256:6,6,10
<b>answered (4)</b> 60:3;61:10,11; 270:17	<b>approach (5)</b> 28:25;200:5;226:16; 243:11,12	<b>area (158)</b> 14:7;18:1,2,4,5; 19:21;21:23;22:2;24:2; 28:21;37:1;50:23;55:5; 65:25;66:1;73:2,17,19; 76:9,12,25;77:5,23; 80:13,15;90:16;95:22; 96:1,16,18;97:1,6,8,10, 16,18,19,20,23;98:2,2, 8,15,20,22,25;99:4,6,9; 100:3,10;101:6,11,14; 102:8,14,16,21;103:2, 3,3,13;105:9,11; 107:15,19;110:5; 115:1;122:15,16,23; 123:1,4,13,14;124:4, 13,15;127:3,6,14; 129:4;132:2,8,11; 137:10;140:13,14; 147:16;149:3,7,20; 150:1,2;153:12; 154:22;155:4;157:24; 168:13;177:15;180:19, 21;185:4;189:2; 190:22,23;205:22; 209:22;210:7,15; 211:1;212:9,11,11,12; 213:11,12,14,18;215:6, 10,17;216:5,6,9,19,21; 217:4,5,5,10;220:13; 227:3;229:23;242:2,5; 252:22;254:4;255:7; 257:22;261:21;268:23; 272:24;273:8,9; 275:10;278:6,19; 280:3,7,7,15;292:8,10; 295:11;296:20;302:4,6	<b>arrows (1)</b> 141:15	<b>assuring (1)</b> 39:10
<b>antecedent (2)</b> 41:25;77:15	<b>appropriate (19)</b> 14:16;27:12;28:10; 29:13;40:16;43:22; 55:12,13;60:13;97:1; 102:9,16;110:3;159:6; 171:13,14,17;188:15; 283:18	<b>area (158)</b> 14:7;18:1,2,4,5; 19:21;21:23;22:2;24:2; 28:21;37:1;50:23;55:5; 65:25;66:1;73:2,17,19; 76:9,12,25;77:5,23; 80:13,15;90:16;95:22; 96:1,16,18;97:1,6,8,10, 16,18,19,20,23;98:2,2, 8,15,20,22,25;99:4,6,9; 100:3,10;101:6,11,14; 102:8,14,16,21;103:2, 3,3,13;105:9,11; 107:15,19;110:5; 115:1;122:15,16,23; 123:1,4,13,14;124:4, 13,15;127:3,6,14; 129:4;132:2,8,11; 137:10;140:13,14; 147:16;149:3,7,20; 150:1,2;153:12; 154:22;155:4;157:24; 168:13;177:15;180:19, 21;185:4;189:2; 190:22,23;205:22; 209:22;210:7,15; 211:1;212:9,11,11,12; 213:11,12,14,18;215:6, 10,17;216:5,6,9,19,21; 217:4,5,5,10;220:13; 227:3;229:23;242:2,5; 252:22;254:4;255:7; 257:22;261:21;268:23; 272:24;273:8,9; 275:10;278:6,19; 280:3,7,7,15;292:8,10; 295:11;296:20;302:4,6	<b>art (2)</b> 36:20;52:20	<b>AT&amp;T (1)</b> 53:14
<b>anticipate (3)</b> 5:2;256:21;282:13	<b>appropriateness (1)</b> 27:3	<b>area (158)</b> 14:7;18:1,2,4,5; 19:21;21:23;22:2;24:2; 28:21;37:1;50:23;55:5; 65:25;66:1;73:2,17,19; 76:9,12,25;77:5,23; 80:13,15;90:16;95:22; 96:1,16,18;97:1,6,8,10, 16,18,19,20,23;98:2,2, 8,15,20,22,25;99:4,6,9; 100:3,10;101:6,11,14; 102:8,14,16,21;103:2, 3,3,13;105:9,11; 107:15,19;110:5; 115:1;122:15,16,23; 123:1,4,13,14;124:4, 13,15;127:3,6,14; 129:4;132:2,8,11; 137:10;140:13,14; 147:16;149:3,7,20; 150:1,2;153:12; 154:22;155:4;157:24; 168:13;177:15;180:19, 21;185:4;189:2; 190:22,23;205:22; 209:22;210:7,15; 211:1;212:9,11,11,12; 213:11,12,14,18;215:6, 10,17;216:5,6,9,19,21; 217:4,5,5,10;220:13; 227:3;229:23;242:2,5; 252:22;254:4;255:7; 257:22;261:21;268:23; 272:24;273:8,9; 275:10;278:6,19; 280:3,7,7,15;292:8,10; 295:11;296:20;302:4,6	<b>articles (1)</b> 40:7	<b>athletic (1)</b> 132:21
<b>anticipated (3)</b> 266:9;285:2;295:22	<b>approval (15)</b> 80:21;107:17; 118:14;139:22;150:17, 21;165:24;169:10; 173:22;183:22;248:17, 20;277:12,15,17	<b>area (158)</b> 14:7;18:1,2,4,5; 19:21;21:23;22:2;24:2; 28:21;37:1;50:23;55:5; 65:25;66:1;73:2,17,19; 76:9,12,25;77:5,23; 80:13,15;90:16;95:22; 96:1,16,18;97:1,6,8,10, 16,18,19,20,23;98:2,2, 8,15,20,22,25;99:4,6,9; 100:3,10;101:6,11,14; 102:8,14,16,21;103:2, 3,3,13;105:9,11; 107:15,19;110:5; 115:1;122:15,16,23; 123:1,4,13,14;124:4, 13,15;127:3,6,14; 129:4;132:2,8,11; 137:10;140:13,14; 147:16;149:3,7,20; 150:1,2;153:12; 154:22;155:4;157:24; 168:13;177:15;180:19, 21;185:4;189:2; 190:22,23;205:22; 209:22;210:7,15; 211:1;212:9,11,11,12; 213:11,12,14,18;215:6, 10,17;216:5,6,9,19,21; 217:4,5,5,10;220:13; 227:3;229:23;242:2,5; 252:22;254:4;255:7; 257:22;261:21;268:23; 272:24;273:8,9; 275:10;278:6,19; 280:3,7,7,15;292:8,10; 295:11;296:20;302:4,6	<b>arterial (6)</b> 18:11;24:18;27:4,5; 51:3,4	<b>Atlantic (2)</b> 48:9;79:12
<b>anticipating (1)</b> 181:8	<b>approvals (7)</b> 87:6,14;88:9;169:8; 170:9;248:18;255:11	<b>area (158)</b> 14:7;18:1,2,4,5; 19:21;21:23;22:2;24:2; 28:21;37:1;50:23;55:5; 65:25;66:1;73:2,17,19; 76:9,12,25;77:5,23; 80:13,15;90:16;95:22; 96:1,16,18;97:1,6,8,10, 16,18,19,20,23;98:2,2, 8,15,20,22,25;99:4,6,9; 100:3,10;101:6,11,14; 102:8,14,16,21;103:2, 3,3,13;105:9,11; 107:15,19;110:5; 115:1;122:15,16,23; 123:1,4,13,14;124:4, 13,15;127:3,6,14; 129:4;132:2,8,11; 137:10;140:13,14; 147:16;149:3,7,20; 150:1,2;153:12; 154:22;155:4;157:24; 168:13;177:15;180:19, 21;185:4;189:2; 190:22,23;205:22; 209:22;210:7,15; 211:1;212:9,11,11,12; 213:11,12,14,18;215:6, 10,17;216:5,6,9,19,21; 217:4,5,5,10;220:13; 227:3;229:23;242:2,5; 252:22;254:4;255:7; 257:22;261:21;268:23; 272:24;273:8,9; 275:10;278:6,19; 280:3,7,7,15;292:8,10; 295:11;296:20;302:4,6	<b>article (2)</b> 46:24;49:19	<b>attached (3)</b> 84:10;115:14;133:7
<b>any-burg (1)</b> 230:18	<b>approve (1)</b> 277:14	<b>area (158)</b> 14:7;18:1,2,4,5; 19:21;21:23;22:2;24:2; 28:21;37:1;50:23;55:5; 65:25;66:1;73:2,17,19; 76:9,12,25;77:5,23; 80:13,15;90:16;95:22; 96:1,16,18;97:1,6,8,10, 16,18,19,20,23;98:2,2, 8,15,20,22,25;99:4,6,9; 100:3,10;101:6,11,14; 102:8,14,16,21;103:2, 3,3,13;105:9,11; 107:15,19;110:5; 115:1;122:15,16,23; 123:1,4,13,14;124:4, 13,15;127:3,6,14; 129:4;132:2,8,11; 137:10;140:13,14; 147:16;149:3,7,20; 150:1,2;153:12; 154:22;155:4;157:24; 168:13;177:15;180:19, 21;185:4;189:2; 190:22,23;205:22; 209:22;210:7,15; 211:1;212:9,11,11,12; 213:11,12,14,18;215:6, 10,17;216:5,6,9,19,21; 217:4,5,5,10;220:13; 227:3;229:23;242:2,5; 252:22;254:4;255:7; 257:22;261:21;268:23; 272:24;273:8,9; 275:10;278:6,19; 280:3,7,7,15;292:8,10; 295:11;296:20;302:4,6	<b>Articles (1)</b> 40:7	<b>attachments (2)</b> 31:5;276:11
<b>apart (1)</b> 77:9	<b>approved (37)</b> 63:21;79:16;80:16; 84:21;87:3;109:10; 115:15;122:4,4,10; 132:18;134:13;145:15; 165:22,22;168:18; 169:4,21;171:15; 172:4,8,8,10,15,17,19;	<b>area (158)</b> 14:7;18:1,2,4,5; 19:21;21:23;22:2;24:2; 28:21;37:1;50:23;55:5; 65:25;66:1;73:2,17,19; 76:9,12,25;77:5,23; 80:13,15;90:16;95:22; 96:1,16,18;97:1,6,8,10, 16,18,19,20,23;98:2,2, 8,15,20,22,25;99:4,6,9; 100:3,10;101:6,11,14; 102:8,14,16,21;103:2, 3,3,13;105:9,11; 107:15,19;110:5; 115:1;122:15,16,23; 123:1,4,13,14;124:4, 13,15;127:3,6,14; 129:4;132:2,8,11; 137:10;140:13,14; 147:16;149:3,7,20; 150:1,2;153:12; 154:22;155:4;157:24; 168:13;177:15;180:19, 21;185:4;189:2; 190:22,23;205:22; 209:22;210:7,15; 211:1;212:9,11,11,12; 213:11,12,14,18;215:6, 10,17;216:5,6,9,19,21; 217:4,5,5,10;220:13; 227:3;229:23;242:2,5; 252:22;254:4;255:7; 257:22;261:21;268:23; 272:24;273:8,9; 275:10;278:6,19; 280:3,7,7,15;292:8,10; 295:11;296:20;302:4,6	<b>artificial (1)</b> 97:13	<b>attend (1)</b> 302:17
<b>apartment (1)</b> 43:5	<b>area's (1)</b> 18:6	<b>area (158)</b> 14:7;18:1,2,4,5; 19:21;21:23;22:2;24:2; 28:21;37:1;50:23;55:5; 65:25;66:1;73:2,17,19; 76:9,12,25;77:5,23; 80:13,15;90:16;95:22; 96:1,16,18;97:1,6,8,10, 16,18,19,20,23;98:2,2, 8,15,20,22,25;99:4,6,9; 100:3,10;101:6,11,14; 102:8,14,16,21;103:2, 3,3,13;105:9,11; 107:15,19;110:5; 115:1;122:15,16,23; 123:1,4,13,14;124:4, 13,15;127:3,6,14; 129:4;132:2,8,11; 137:10;140:13,14; 147:16;149:3,7,20; 150:1,2;153:12; 154:22;155:4;157:24; 168:13;177:15;180:19, 21;185:4;189:2; 190:22,23;205:22; 209:22;210:7,15; 211:1;212:9,11,11,12; 213:11,12,14,18;215:6, 10,17;216:5,6,9,19,21; 217:4,5,5,10;220:13; 227:3;229:23;242:2,5; 252:22;254:4;255:7; 257:22;261:21;268:23; 272:24;273:8,9; 275:10;278:6,19; 280:3,7,7,15;292:8,10; 295:11;296:20;302:4,6	<b>aside (3)</b> 48:11;98:24;253:12	<b>attended (1)</b> 303:16
<b>apartments (2)</b> 42:21;302:7	<b>areas (31)</b> 38:4;39:3,10;52:6; 55:12;75:23;79:23,24; 96:7;99:1;121:19;	<b>area (158)</b> 14:7;18:1,2,4,5; 19:21;21:23;22:2;24:2; 28:21;37:1;50:23;55:5; 65:25;66:1;73:2,17,19; 76:9,12,25;77:		

49:3 <b>authority (1)</b> 92:2 <b>authorized (1)</b> 172:15 <b>automobile” (1)</b> 238:22 <b>autonomous (1)</b> 200:15 <b>available (12)</b> 27:13;45:23;52:9; 161:1,8;166:12;175:6; 183:8;220:4;225:5; 264:14;295:12 <b>average (2)</b> 152:6;291:19 <b>avoided (1)</b> 202:23 <b>aware (11)</b> 102:19;116:13; 118:16;174:9,22; 198:25;200:15;268:22, 24;269:10;271:5 <b>away (2)</b> 23:21;286:6 <b>awful (1)</b> 238:8	215:25;293:8 <b>backs (5)</b> 154:18;281:6,12; 288:15;289:20 <b>backyard (1)</b> 190:22 <b>bad (3)</b> 96:22;278:11,23 <b>badly (1)</b> 254:23 <b>ball (7)</b> 54:10;132:1;171:24; 172:5;173:10;181:5; 281:2 <b>banks (1)</b> 135:15 <b>barbequing (1)</b> 191:1 <b>barely (1)</b> 291:20 <b>bargain (3)</b> 293:6,7;294:19 <b>barrier (2)</b> 196:5,5 <b>baseball (2)</b> 278:17;280:22 <b>based (29)</b> 38:22;72:4,13,15; 88:9;104:15,16; 107:15;110:5;125:19, 20;150:6;152:2;156:8; 157:9,19;159:19,24; 161:23;162:2;169:20; 202:13,17;203:9; 210:8;284:3;305:19; 306:6,14 <b>basic (1)</b> 239:16 <b>basically (20)</b> 16:20;39:14;42:5; 48:12;53:10,18;55:23; 58:23;59:6;114:19; 115:14;116:1;139:16; 151:23;154:19;155:1; 160:7;188:7;194:16; 296:10 <b>basis (5)</b> 49:18;296:19; 305:24;306:4,6 <b>basketball (1)</b> 187:18 <b>Bathhouse (1)</b> 132:7 <b>bathroom (1)</b> 180:6 <b>Bear (3)</b> 40:6;120:1;196:17 <b>bearing (1)</b> 91:21 <b>became (2)</b> 199:24;202:9 <b>become (6)</b> 18:4,20;114:11;	231:7;259:6;278:23 <b>becomes (1)</b> 37:5 <b>bedrooms (2)</b> 33:12,15 <b>began (1)</b> 202:9 <b>begin (2)</b> 23:25;93:12 <b>beginning (4)</b> 56:19;152:9;200:9; 292:2 <b>behalf (5)</b> 35:7;95:3,11,11,12 <b>behind (1)</b> 287:20 <b>belatedly (1)</b> 202:18 <b>belief (1)</b> 209:16 <b>bell (1)</b> 116:11 <b>belonging (1)</b> 185:25 <b>below (5)</b> 164:4,6;191:1; 216:10,16 <b>belt (3)</b> 210:16,25;214:9 <b>benches (2)</b> 278:14,18 <b>benefit (2)</b> 34:13;182:12 <b>benefits (1)</b> 240:17 <b>beside (1)</b> 239:4 <b>besides (1)</b> 111:12 <b>Best (4)</b> 53:13;72:23;201:13; 244:6 <b>Bethesda (1)</b> 50:6 <b>better (15)</b> 11:9;26:7;72:20; 97:11;101:14;147:20; 175:21;183:18;196:24; 231:4;248:1,3;264:19; 294:23;300:6 <b>beyond (12)</b> 5:9;36:5;40:22; 57:13;67:3;135:17; 144:25;148:9;231:23; 250:16;290:25;305:21 <b>bias (4)</b> 266:19,25;272:5; 273:9 <b>biases (2)</b> 272:8;273:6 <b>big (10)</b> 7:11;31:17,19;47:2; 73:2;81:12;196:5;	235:24;265:21;273:18 <b>bigger (1)</b> 31:8 <b>biggie (1)</b> 285:3 <b>bike (25)</b> 52:22;60:18;64:2; 74:21,24,25;125:3,5; 126:14;127:13;129:11, 13,14,15,19,22;130:6; 135:10;170:24,25; 171:3;247:10,15,15,17 <b>bikeway (1)</b> 248:19 <b>bikeways (4)</b> 124:8;126:23; 248:17,17 <b>biking (4)</b> 58:5,8;130:6;135:1 <b>billable (1)</b> 304:20 <b>bind (1)</b> 110:18 <b>binding (32)</b> 107:13,14,17; 109:18,18,19,23; 110:12;114:3,5; 116:10;117:16;118:7; 120:22,24;121:1,3,4, 11;122:14;131:10; 133:15,16,18;147:6; 149:23;150:4,6; 157:10;227:15,17; 238:12 <b>bird’s (1)</b> 138:6 <b>bisect (5)</b> 18:11;24:18;25:19, 22;168:10 <b>bisected (1)</b> 51:4 <b>bisects (1)</b> 79:11 <b>bit (51)</b> 8:13;9:2;23:21; 39:17;45:9;46:14;49:8, 13;81:3;90:6;99:21; 107:23;116:8;123:3; 126:16;129:19;131:4; 135:24;136:14;137:13; 138:14;140:1;147:8; 148:6;152:11;158:7; 188:3,12;210:5;211:4; 214:7,20,20;217:18; 219:24;220:22;235:5; 236:19,21;249:15; 251:3;259:15,22; 269:23;272:9,10; 278:7;288:17;290:10; 294:22;298:10 <b>black (5)</b> 75:8,9,21,24;163:23 <b>blame (1)</b>	120:7 <b>blanket (1)</b> 286:13 <b>blind (2)</b> 290:11,13 <b>block (1)</b> 276:7 <b>blocking (1)</b> 167:23 <b>blow (1)</b> 297:7 <b>blue (11)</b> 74:7,12;76:14;77:17; 124:16,17;153:7; 154:22;165:6;213:14; 217:5 <b>Board (67)</b> 11:9;12:7,8,9,23; 13:5,11;71:5;80:16,21; 83:20;84:3,12,21; 87:14;90:2;93:20; 119:5,6,16;122:5; 134:14;151:2;159:18; 160:1;166:8;172:13; 183:22;201:12;204:1; 214:11,13;222:8; 234:7,13,17,23;235:7; 245:13,25;276:12; 277:7,24;278:1;301:7, 18,25;302:13,13,14,17, 18,24;303:16,21,25; 304:5,12,15;305:10,12, 15;306:8,10,16,19,21 <b>Board’s (3)</b> 135:3;201:10;215:4 <b>boards (4)</b> 72:21,21,24;85:8 <b>bodies (1)</b> 305:25 <b>body (6)</b> 72:16;255:18,21,24; 305:23;306:1 <b>body’s (1)</b> 110:21 <b>bolded (3)</b> 89:22;91:4,18 <b>bona (1)</b> 28:3 <b>bone (1)</b> 238:19 <b>bones (1)</b> 286:13 <b>book (2)</b> 40:21;52:22 <b>booklet (1)</b> 125:18 <b>boomer (1)</b> 28:13 <b>bootstrap (3)</b> 236:8;238:17;239:5 <b>border (1)</b> 149:1 <b>Border’s (1)</b>
<b>B</b>				
<b>b1 (1)</b> 247:9 <b>B-1 (3)</b> 127:9,10;128:17 <b>baby (1)</b> 28:13 <b>back (67)</b> 5:12;12:25;14:1; 23:14;25:15;33:20; 40:13,14;47:17;70:22; 85:18;91:16;99:7,15, 18;118:10;124:2; 133:2;141:10;142:16; 151:22;156:16;158:6; 161:11,17;163:22; 164:24;167:25;181:3; 189:24;209:20;210:9, 10;214:13,19;220:23; 225:13;234:5;236:11; 238:16;240:25;247:1; 250:22,25;257:11; 276:16;279:15;282:17; 286:4;290:5,25; 294:19;295:15;297:21, 23,24;299:19;301:8,15, 17,18,21,23,23;305:10, 15;306:7 <b>backed (3)</b> 290:2,9,10 <b>background (5)</b> 28:13;199:20;200:8; 201:22;203:9 <b>backing (2)</b>				

53:12 <b>boss (3)</b> 265:15,16;305:6 <b>Bossong (5)</b> 80:18;152:15;175:2; 188:24;209:18 <b>both (11)</b> 11:6;38:8;42:20; 65:10;84:10;148:19; 151:8;180:20;225:18; 232:18;245:25 <b>bottom (9)</b> 73:14;102:23;127:9; 141:14;163:4;223:17; 224:4,7;264:25 <b>bought (5)</b> 199:12;287:9; 294:23;295:7;296:3 <b>Boulevard (2)</b> 68:20;197:20 <b>boundaries (1)</b> 140:9 <b>boundary (26)</b> 73:24;74:16,19; 76:14,19,21;77:3,5,6,7, 8,17;87:1;97:4,23; 98:2,22;99:16,20; 101:3,7;137:19; 167:21;168:5;205:21; 242:4 <b>bounds (1)</b> 79:6 <b>Box (2)</b> 17:17;278:13 <b>Branch (3)</b> 70:24;71:16;215:9 <b>break (17)</b> 7:19;12:21;68:4; 92:13,16;93:6,6; 100:14,16,16,17; 146:15;158:18;161:12; 249:7;250:18,22 <b>breakdowns (1)</b> 100:11 <b>breeding (2)</b> 11:15;188:21 <b>brick (1)</b> 190:19 <b>bridge (1)</b> 199:10 <b>brief (5)</b> 13:1;93:9;233:25; 250:23;302:23 <b>briefing (1)</b> 226:7 <b>bright (1)</b> 105:23 <b>bring (13)</b> 20:12;69:5,11,18,19; 210:9;220:8,23;229:4; 239:24;240:11;298:12; 299:19 <b>bringing (2)</b>	14:1;239:8 <b>brings (1)</b> 220:19 <b>Brink (95)</b> 5:15,21;11:16;54:15; 64:11,12,16,17,23; 65:9;67:1;73:3,7,18,23, 25;76:9,11,11,13,14, 15;77:5,18;78:10;79:8; 82:11,13;84:24;89:4, 22;96:10;101:21; 107:1;123:17;124:20, 20,23;125:6,6,10; 129:10;130:17,17,19; 138:7;139:3;144:17; 149:17;151:6;164:9, 16;170:15;175:6; 176:12;180:9;181:10, 12;186:1;194:5,21; 210:4,7,9,12;212:15; 213:11,18;214:9,19; 216:5,11,21;217:5; 229:23;231:2;247:16; 275:1,2,5;278:11,11, 22;280:3;281:7,8,16; 286:22;289:1,22; 290:4,5,12;295:20,25 <b>broad (2)</b> 121:24;256:5 <b>broader (1)</b> 101:11 <b>broker (1)</b> 111:7 <b>brought (3)</b> 20:7;85:20;151:19 <b>brutalize (1)</b> 285:19 <b>budget (3)</b> 172:16,19;173:22 <b>budgets (1)</b> 172:10 <b>buffer (17)</b> 66:25;76:17;137:18, 19;152:13,20;154:20, 21;155:2;165:4,7,15; 210:16;279:18,19,19; 280:14 <b>buffers (5)</b> 85:6;188:15;190:11; 214:15;279:25 <b>build (15)</b> 32:23,24;33:6; 164:10,12;191:18,20; 192:16;253:12;267:11, 15,16;296:13,20;297:1 <b>builder (1)</b> 111:8 <b>building (32)</b> 115:24;123:25; 136:1;148:3;149:21, 24;157:7,11;163:9; 175:11;178:21;179:6, 16,19;185:23;190:19,	19;200:18;225:6,6; 236:18;237:10,10; 246:22;252:9;253:1; 254:3,13;269:6,6; 273:20;295:8 <b>buildings (2)</b> 121:7;179:22 <b>built (33)</b> 33:7;56:11;63:19; 125:3;132:3;160:8; 164:22;166:3;171:20; 172:7;173:5;195:20; 209:24;217:6,14; 224:11;226:15;252:19, 21,22,25,25;255:25; 274:6;286:18;287:3,4, 6;288:14;295:25; 296:1,10,11 <b>bull's (1)</b> 135:11 <b>bullet (2)</b> 205:14;210:11 <b>bulls (1)</b> 74:7 <b>bulwarks (1)</b> 238:25 <b>bunch (1)</b> 252:25 <b>bundle (1)</b> 31:12 <b>burdening (1)</b> 233:23 <b>buried (1)</b> 194:2 <b>business (5)</b> 18:16,23;19:2;68:18; 197:18 <b>businesses (1)</b> 199:9 <b>Butler (3)</b> 103:24;104:11,23 <b>Butler's (1)</b> 98:15 <b>Butz (71)</b> 4:3,9;5:21;10:7,16; 15:20,21,23;16:1,8,14, 14,14,14;17:5,16; 20:20;23:21;25:23; 28:2;31:6;37:12;38:20; 39:7,23;46:9;47:4; 56:18;59:9,14,16,20; 60:18,24;67:5;22,23; 106:21;125:11;177:20; 182:17;187:10;241:12; 253:7;254:6,11,16,22; 261:21;262:21;263:3, 9;265:8,11,13;266:10, 11;268:3;270:3,14; 271:3;279:17;281:15; 288:15;289:20;290:13; 293:12;295:5,9; 298:16,24 <b>Butz' (1)</b>	36:9 <b>buy (8)</b> 42:15;43:2,6;53:13; 111:14;236:8;288:3; 296:5 <b>buying (3)</b> 221:11;224:20; 287:25 <b>bylaws (3)</b> 40:7;109:12;261:24  <b>C</b>  <b>C-7.44 (1)</b> 113:6 <b>Cabin (3)</b> 70:24;71:16;215:9 <b>cafeteria (1)</b> 146:17 <b>cake (1)</b> 174:6 <b>calculations (1)</b> 126:6 <b>calendar (1)</b> 200:9 <b>call (25)</b> 15:19;47:11;50:3; 64:23;68:7;87:7;97:14, 15;102:11,13;103:1; 114:17;116:5;122:11; 142:15;148:13;184:6; 222:13;237:1;250:11; 266:5;285:4;292:13, 14;300:5 <b>called (14)</b> 15:23;35:5;40:9,22; 62:3;70:3;115:11; 205:24;226:7;277:3; 286:22;292:1,8,9 <b>calling (3)</b> 4:22;8:7;206:24 <b>calls (4)</b> 8:17;57:19;169:18; 283:16 <b>came (4)</b> 58:19;203:25; 234:16;272:25 <b>campaign (1)</b> 11:1 <b>can (188)</b> 6:16;7:12,25;8:11; 9:1,7,14,15,19;11:3; 12:16,17,24;13:22; 17:23;18:21;20:2; 21:10;22:7;23:7,12; 24:11,15;30:23;31:21; 35:20;37:10;42:17; 51:17;53:10;54:12; 58:10,14;59:6;60:1,2, 6;61:9,9;63:7;69:22; 70:16;77:5;79:1;80:24; 81:24;82:15,16,21; 84:2;86:17,22;87:23;	88:3;90:5;92:25;97:11; 99:14;100:19;101:10, 14,23;102:6,22;104:11, 11;105:2;108:12,25; 109:1;112:21;113:7; 115:9;116:20;117:10, 15,20;118:6,17,17,20, 20;120:15,15,16; 121:2;122:6;131:1; 136:3,18;138:13; 141:25;142:14,16; 143:11,15,15;153:12; 154:12;155:10,14,19; 158:16;159:7;160:24; 163:12,21;168:1; 171:19;172:15;173:22; 174:25;178:17;181:18; 182:21;184:3;185:22; 186:16,23;188:2; 189:3,6;190:10; 191:24;193:10,25; 195:25;204:4;207:22; 213:11;217:4,16; 219:17;225:7;227:25; 229:4;236:25;238:16; 242:8,15;243:17,18,24; 246:3,7,13,19;247:22; 248:8;249:21,25; 250:13;253:23;254:1; 256:25;257:7;260:5,8, 9,22,24;261:2,6;262:9; 264:6,12;265:25; 266:5,12;268:16; 269:12,21,22;270:19, 22,23;276:14;279:23; 281:20;285:1;286:3,6; 291:21,21;294:10,22; 300:6;306:20 <b>can't (38)</b> 29:3;34:22;59:22; 60:2,3,11,11;61:8; 63:6;96:14;111:11,17, 19;112:10,18,19; 116:21;119:12;120:3; 122:7;141:21,21; 163:14;167:22;186:25; 189:21;225:23;242:8; 249:15;257:12;276:15; 286:9;290:15;305:23; 306:1,2,6,21 <b>Canby (1)</b> 4:21 <b>candid (1)</b> 296:8 <b>cap (4)</b> 77:13;139:4;176:20; 216:10 <b>capabilities (1)</b> 29:13 <b>Capital (7)</b> 119:3;125:17; 166:17,20;172:10,16, 19
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<b>capping (1)</b> 107:18	217:6;298:21	114:9;116:17;118:22; 295:23	222:11	25;264:3;265:8,10,13; 266:9;267:24;268:2; 273:18
<b>caps (2)</b> 215:18;230:11	<b>census (1)</b> 43:22	<b>changes (6)</b> 116:25;117:4; 145:10,12;218:22; 232:1	<b>citing (1)</b> 158:13	<b>Clarksville (1)</b> 168:18
<b>captive (1)</b> 209:17	<b>center (56)</b> 4:12;27:6;52:7,20; 53:4,5,9,13;57:2,5,8, 23;58:9,10,10;59:4,5, 20;64:4,5;71:24;73:24; 74:9,12,17,23;122:23, 23,25;123:24;133:19; 135:5,8,14,23,25,25; 136:2;144:19;179:15; 199:2;200:5;233:19; 235:10;236:15;237:4; 238:8,9;252:24; 273:18,22;274:6,7,8,9; 278:7	<b>changing (4)</b> 104:4,8,9;157:24	<b>citizen (2)</b> 64:4;226:17	<b>class (1)</b> 78:18
<b>capture (1)</b> 189:16		<b>characterize (2)</b> 226:3;305:2	<b>citizens (3)</b> 116:17;118:11; 198:24	<b>classes (1)</b> 58:14
<b>car (1)</b> 279:3		<b>characterized (2)</b> 205:17;212:7	<b>City (4)</b> 70:20;71:22;200:13; 210:18	<b>clause (5)</b> 136:8;162:7;217:25; 233:8;235:11
<b>care (5)</b> 43:6;106:24;215:14; 226:19;230:10		<b>characterizes (1)</b> 208:12	<b>city-wide (1)</b> 200:21	<b>clean (1)</b> 298:9
<b>career (1)</b> 200:10		<b>charge (1)</b> 216:7	<b>Civic (10)</b> 6:3;11:20,22;88:6, 23;89:8;92:18;93:20; 95:3,12	<b>clear (8)</b> 99:16;103:10;210:5; 214:21;227:13;253:5; 276:17;290:2
<b>Carrier (2)</b> 70:23;71:1	<b>centers (5)</b> 52:20;235:9;259:17; 274:4;278:4	<b>charged (1)</b> 201:1	<b>clarification (2)</b> 141:23;144:25	<b>clearly (5)</b> 18:1;38:25;205:19; 230:24;235:22
<b>carry (1)</b> 145:24	<b>central (1)</b> 91:19	<b>chart (9)</b> 126:2;127:15,25; 133:17,17;142:6; 153:24;170:18;230:21	<b>clarify (7)</b> 66:11;90:5;92:24; 143:1;189:3;291:1; 302:4	<b>clever (2)</b> 213:21,23
<b>cars (4)</b> 192:12;280:17; 290:5,15	<b>Century (2)</b> 68:20;197:20	<b>charts (5)</b> 109:22;122:14; 141:10;142:4;162:23	<b>clarity (1)</b> 103:11	<b>clients (3)</b> 55:11;201:13,17
<b>cart (1)</b> 299:19	<b>certain (10)</b> 9:3,3;58:24;121:3; 190:7;191:25;192:1, 16;271:25;274:4	<b>check (4)</b> 257:19;278:13; 280:19;295:16	<b>Clarksburg (178)</b> 11:22;18:20;24:10, 12,14,16,23;25:6,8,17; 29:18;33:25;34:3; 35:23;36:10,11,16,17, 18,23,25;37:6,13,24; 38:6;52:18;58:2;62:9; 70:22;71:16;73:1,5; 75:11,17,18,24;76:20; 77:4,6;87:1,2;88:6,23; 89:7,15,18;90:14; 92:18;96:8;97:23,23; 98:1,22;100:3;101:2,4; 128:15;129:20,23; 131:20;132:2,4,6,8,10, 13,23;135:22,24; 136:20;137:12;138:10; 143:7,11,21,23;144:12; 145:10;167:20;168:5, 6,7,15,16,17;169:8,22; 170:9;175:10,13,16; 184:17;185:18;198:21, 24;199:2;201:1; 204:23,25;205:13,16, 17,20,21;208:11;210:6, 17,19;211:1,3,10,13, 17,24;212:3,5,11,13, 18;213:3,7,18,20; 214:25;215:2;216:9; 229:21;230:2,4,18; 233:17;234:25;235:22; 238:18;239:14,25; 240:15,17;241:5,8,16; 242:1,5,11;247:16,17; 248:15;252:5,7,11,12, 13,18,23;253:2,13,14, 15,17,20,25;259:1,2,8, 262:12;263:6,10,14,23,	<b>close (6)</b> 56:1;144:3;161:4; 190:16;216:17;263:21
<b>case (48)</b> 4:14,17;7:6,18;8:23; 9:10;10:20;11:7;15:6; 16:11;18:2;20:21; 23:18;37:21;38:20; 48:13;70:9,22,22; 74:23;76:2;77:7;79:7; 88:10;113:22;120:12, 25;121:1;128:6,20; 134:1;145:4;147:19; 178:23;184:8;192:23; 195:21;203:19;225:16, 20;229:6;245:11; 246:14,16;257:12; 288:14;305:24;306:9	<b>certainly (6)</b> 114:20;141:24; 227:2;250:9;262:17; 286:3	<b>child (1)</b> 200:11		<b>closely (1)</b> 35:16
<b>cases (10)</b> 38:16;70:10,18,19; 71:17;97:7,15;119:19, 22;196:11	<b>certified (5)</b> 70:9;85:14;95:19; 98:4;203:5	<b>children (5)</b> 111:11,17;187:21; 275:3;281:2		<b>closest (4)</b> 149:6,9;152:22; 185:25
<b>cash (1)</b> 133:9	<b>cetera (6)</b> 145:14;160:20; 176:20;177:25;190:17; 306:18	<b>children's (1)</b> 278:19		<b>closets (1)</b> 180:6
<b>catch (2)</b> 65:13;266:4	<b>chair (1)</b> 71:5	<b>choice (2)</b> 29:11;180:17		<b>closing (3)</b> 8:23;264:19,24
<b>categories (1)</b> 232:8	<b>Chairman (1)</b> 247:2	<b>choices (4)</b> 224:23;225:1;227:1; 230:24		<b>closure (1)</b> 274:20
<b>category (6)</b> 30:6;33:19;51:15,16; 138:16;152:24	<b>chairs (1)</b> 6:10	<b>choose (1)</b> 268:4		<b>club (1)</b> 131:15
<b>Catholic (3)</b> 21:15;22:10;298:20	<b>challenged (2)</b> 18:8;78:24	<b>chose (2)</b> 244:18;263:15		<b>clubhouse (4)</b> 126:17;127:1;132:3; 282:25
<b>caught (1)</b> 268:20	<b>challenging (3)</b> 18:16,21;206:11	<b>chosen (1)</b> 176:10		<b>CNU (2)</b> 202:1,2
<b>CCT (2)</b> 239:24;240:11	<b>chance (5)</b> 6:19;15:8;166:5; 249:12;294:18	<b>church (4)</b> 21:15;22:4,9,19		<b>coaching (1)</b> 58:13
<b>CD (4)</b> 299:10;300:12,17,24	<b>change (26)</b> 29:23;50:25;104:16, 25;110:16;116:19; 118:17,24;121:20; 126:12;133:6;140:18; 153:9;226:8;231:18; 232:5,17;301:10; 305:9,18,20,22;306:1, 2,3,4	<b>circle (11)</b> 74:10,12,18,20,20, 23,25;75:2,8,9;153:1		<b>code (6)</b> 39:1;74:5;124:5; 191:1;200:14;273:8
<b>cemetery (8)</b> 20:11;21:16;22:10; 23:4;76:22;96:12;	<b>changed (8)</b> 17:24;43:19;51:6,9;	<b>circles (5)</b> 74:6;75:21,23,24; 143:5		<b>coincide (1)</b> 169:24
		<b>circulation (2)</b> 155:25,25		<b>coincidence (1)</b> 283:5
		<b>circumstances (2)</b> 49:22;60:14		<b>colleagues (1)</b> 94:6
		<b>cite (1)</b> 206:6		<b>color (4)</b> 74:21;106:5;147:21; 153:24
		<b>cited (1)</b> 200:2		<b>column (2)</b> 223:25;224:6
		<b>cities (1)</b>		<b>combination (2)</b>

38:8;138:12 <b>coming (26)</b> 32:14;40:19;102:7; 143:14,21,22;144:2,12; 170:4;180:21;194:21; 198:20;230:5;236:4; 242:6;265:22;274:18; 276:13;278:25;279:1; 282:16,17;283:1; 290:23;291:13;307:1 <b>comment (13)</b> 56:19;59:11;60:1,2; 115:10;116:4;139:14; 166:5;215:21;217:19; 268:20;278:12;293:5 <b>commentary (1)</b> 5:17 <b>comments (1)</b> 276:10 <b>commercial (2)</b> 134:11;136:9 <b>Commission (5)</b> 119:3;125:18; 166:21;172:9;280:19 <b>Committed (3)</b> 147:4,5,6 <b>committee (1)</b> 166:7 <b>commodity (1)</b> 18:6 <b>common (4)</b> 16:13;32:13;39:3,11 <b>communicate (1)</b> 239:22 <b>communities (10)</b> 32:19;33:22,25; 35:15;41:2;189:21; 196:14;210:21;233:10; 256:14 <b>communities'' (1)</b> 40:23 <b>community (153)</b> 4:6,12;24:12,25; 28:12,16;29:8;33:1,3, 13;35:22;36:9,11,14, 15;37:3;40:15,20; 43:14;50:23;54:25; 55:23,25;57:1,3,4,7,23; 58:9,10,16;59:4,5,20; 61:5;62:10;63:20;64:3, 4,5;66:18,22;73:5; 85:4;86:11;87:25; 108:15,16;111:14; 113:8,20;115:20,23; 116:14;117:5,5; 122:22,23,25;126:24; 127:5,14;133:19; 134:9;136:10;171:9; 179:15;180:8;187:13, 15,21;189:8;191:8,11, 22;192:3,16,23;193:1; 198:23;199:4,7,9,11, 14,18,19,24;200:24;	221:16,17,19,20; 226:12;230:4;235:9, 14,22;236:1,6,15; 237:4;238:8,19,25; 239:9,13,22;240:6; 247:11,11;249:18; 252:7,14,24;253:9,14, 15;254:7,10,16,19,19, 20;255:1;256:16; 257:14,23;258:15,17; 259:13,17;261:25; 263:16;264:14;265:22; 267:6,23,24;268:13; 273:18,22;274:4,5,6,7, 8,9;278:6,10;283:10, 13;286:21 <b>community'' (1)</b> 214:17 <b>community's (1)</b> 214:5 <b>company (2)</b> 16:20;256:20 <b>comparable (1)</b> 231:23 <b>compared (2)</b> 81:9;263:5 <b>compatibility (13)</b> 11:24;99:12;105:11; 151:24;152:2;156:3,6, 25;157:15,25;179:7; 183:10;214:16 <b>compatible (11)</b> 151:20;156:9; 157:19;159:19;160:20; 162:10,13;188:15; 217:23;276:23;277:4 <b>compelling (1)</b> 6:24 <b>compensate (1)</b> 267:8 <b>complement (2)</b> 136:18;137:11 <b>complements (1)</b> 107:3 <b>complete (2)</b> 7:16;9:17 <b>completed (5)</b> 5:3;60:13;120:14; 146:20;199:4 <b>completely (10)</b> 36:8;37:3;91:22; 93:1,2;227:23,24; 267:6,7;296:1 <b>completion (1)</b> 199:6 <b>compliance (12)</b> 107:24;108:1; 109:10;139:12;140:22; 146:12;147:9;151:3; 158:24;159:23;185:21; 234:6 <b>complicated (2)</b> 177:21;256:13	<b>complies (3)</b> 162:4;228:17;234:25 <b>comply (6)</b> 150:22;151:8,10; 283:20;284:4,6 <b>complying (1)</b> 109:3 <b>comprehensive (2)</b> 134:13;238:21 <b>comprised (1)</b> 42:1 <b>conceivably (1)</b> 301:13 <b>concept (11)</b> 32:17;80:18;96:25; 106:4;110:1;153:20; 156:3;172:4,10;173:6; 229:1 <b>concern (13)</b> 86:11;88:4;104:23; 120:11,12;151:22; 219:13;220:9;239:21; 281:4,4,22;282:23 <b>concerned (7)</b> 49:8;56:21;111:25; 196:4,7;279:9;305:5 <b>concerns (7)</b> 11:22,23;19:2;20:16; 49:2;87:25;189:7 <b>concert (1)</b> 235:2 <b>concerted (1)</b> 235:6 <b>concluded (2)</b> 65:5;200:4 <b>conclusion (4)</b> 9:10;106:12;160:2; 239:11 <b>conclusionary (2)</b> 161:22;240:14 <b>conclusions (1)</b> 185:15 <b>concurrence (1)</b> 201:4 <b>condition (4)</b> 79:21;90:8;195:3; 196:19 <b>conditions (3)</b> 40:8;109:10;131:23 <b>condo (2)</b> 42:21;43:2 <b>conducted (4)</b> 47:18,24;221:6; 225:25 <b>conducts (1)</b> 119:8 <b>conduit (1)</b> 198:22 <b>confident (1)</b> 38:8 <b>confines (1)</b> 235:4 <b>conflict (3)</b>	150:24;206:1;283:25 <b>conflicting (1)</b> 204:9 <b>conform (1)</b> 204:12 <b>conformance (2)</b> 136:14;161:25 <b>confronting (4)</b> 14:17;98:6,19; 104:17 <b>confused (3)</b> 78:25;88:20;219:15 <b>confusing (2)</b> 174:13;204:8 <b>congratulate (1)</b> 264:20 <b>Congress (2)</b> 202:3,6 <b>conjecture (1)</b> 222:2 <b>connect (9)</b> 24:19;89:15;130:4, 14,20;175:17;181:8; 182:8;247:17 <b>connected (3)</b> 83:1;92:20;273:22 <b>connecting (2)</b> 27:5;91:7 <b>connection (10)</b> 51:20;52:10;124:23; 181:2,11,13,18,24; 196:21;252:10 <b>connective (1)</b> 235:14 <b>connects (1)</b> 129:15 <b>consent (1)</b> 6:17 <b>conservation (10)</b> 83:19;84:13,21;85:3; 126:15;138:16,16; 139:24;152:24;185:3 <b>consider (8)</b> 19:22;29:4,5;30:10; 43:17;52:12;100:10; 198:17 <b>consideration (5)</b> 30:1;54:22;91:1,2; 225:10 <b>consideration'' (1)</b> 90:2 <b>considered (6)</b> 9:8,23;218:4;227:10, 15,17 <b>considering (1)</b> 27:12 <b>consistent (6)</b> 11:13;170:1,16; 178:19,20;272:18 <b>constitutes (2)</b> 51:2;75:7 <b>construct (1)</b> 97:13	<b>constructed (3)</b> 25:19;132:7;144:2 <b>construction (11)</b> 24:8,9;27:10;32:11, 12;132:9;135:19; 221:25;223:15,16; 224:25 <b>consult (1)</b> 9:7 <b>Consulting (2)</b> 68:20;201:7 <b>contact (2)</b> 9:22;24:4 <b>contacted (2)</b> 25:17;27:1 <b>contain (4)</b> 147:3;216:7;233:9; 285:2 <b>contend (1)</b> 285:8 <b>contention (1)</b> 238:19 <b>contested (1)</b> 70:19 <b>context (3)</b> 52:13;53:2;218:22 <b>contiguous (2)</b> 76:24;100:4 <b>continue (11)</b> 48:16,18;50:20; 85:24;125:6,7;145:13; 149:2;161:19;170:12; 240:7 <b>continues (21)</b> 73:12,14,15;75:10; 76:15;82:10;86:25,25; 129:14,16,19;148:25; 165:2;168:6,19,21; 169:2;170:7;175:12, 13;269:1 <b>continuous (1)</b> 17:21 <b>countours (1)</b> 122:1 <b>contract (4)</b> 287:10,10,18;288:1 <b>contracts (1)</b> 287:12 <b>contrary (1)</b> 93:3 <b>contrast (1)</b> 140:19 <b>contribute (1)</b> 236:6 <b>contributions (1)</b> 11:2 <b>control (1)</b> 104:3 <b>controlled (4)</b> 103:24;105:24; 130:22,22 <b>convenience (1)</b> 151:14
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<b>convenient (1)</b> 142:7	37:20;51:12;97:11; 118:21,22;119:10,10;	56:6	145:2,3;161:1;162:21; 167:6;175:23;190:3;	<b>cycle (1)</b> 55:23
<b>conventional (1)</b> 187:15	121:23;122:7;201:12; 226:6,21;228:15;	<b>course (7)</b> 10:3;226:20;228:14; 230:7;235:7;248:9; 293:18	240:21,23;244:1; 255:2,4;258:11;266:2; 285:16,17;294:15; 297:10;306:18	<b>D</b>
<b>conversation (1)</b> 131:5	233:3;235:25;238:5; 257:22;277:18;292:2;	<b>court (9)</b> 7:25;8:11;9:6;67:1; 68:5;187:18;250:14; 269:22;278:18	<b>cross-examine (4)</b> 60:6;95:9;108:12; 141:24	<b>dam (1)</b> 155:5
<b>conversations (1)</b> 159:10	299:9;301:16,21,23; 306:13,22,23	<b>courtroom (2)</b> 8:15;9:2	<b>cross-examined (2)</b> 45:23;46:4	<b>Damascus (1)</b> 89:21
<b>converted (1)</b> 111:23	<b>counsel (2)</b> 6:11;105:22	<b>Courts (9)</b> 110:2;124:18; 132:12,24;136:5; 184:17;185:18;210:23; 216:9	<b>Crossing (9)</b> 75:7;76:3;96:11; 132:17,21;144:17; 171:22;172:24;173:14	<b>damn (1)</b> 290:6
<b>converting (1)</b> 112:21	<b>count (4)</b> 82:19,24;83:2;238:7	<b>covenants (3)</b> 40:8;261:24;262:4	<b>crosswalk (11)</b> 64:13;125:1,8; 180:14,16,17,18,25; 181:10,12;280:11	<b>dandy (1)</b> 289:15
<b>convincing (2)</b> 219:14;295:18	<b>Counties (1)</b> 16:22	<b>cover (2)</b> 185:8;223:2	<b>crosswalks (3)</b> 66:7;130:21;140:8	<b>dangerous (6)</b> 105:19;279:3,8; 280:16;281:16,20
<b>cooking (1)</b> 58:15	<b>counting (2)</b> 236:14;291:5	<b>coverage (5)</b> 149:21;157:7,9,11; 295:10	<b>crossway (1)</b> 281:4	<b>darker (1)</b> 96:12
<b>cooperation (1)</b> 56:25	<b>Country (11)</b> 85:17,24;148:6,11, 21,24;155:19,20; 267:12,14;296:14	<b>covers (1)</b> 12:2	<b>Crown (1)</b> 71:23	<b>dashed (2)</b> 125:2;130:9
<b>coordination (3)</b> 131:18;139:11; 169:21	<b>counts (2)</b> 216:23;291:23	<b>create (13)</b> 32:21,21;33:21; 52:16;114:2,4;120:4; 154:14;180:23;186:10; 196:17,19;220:8	<b>crucial (2)</b> 303:7,13	<b>data (8)</b> 50:22;51:10;220:14, 19,22,25;222:10;225:7
<b>copies (8)</b> 10:3;12:14,16,22; 69:18,19;83:16;198:8	<b>County (89)</b> 17:20;19:5;23:5,25; 28:14,17;30:6,16,19; 32:14,15;40:19;42:5; 43:19;45:17;46:7,9,10; 47:1,13;48:7,8,15;50:6; 25:51;52:14;55:3,5, 21,25;56:7,9,13;70:10, 21;71:15;75:25;79:14; 88:14;92:15;109:2,14; 111:8,13;114:23; 116:5;118:13;124:11; 125:17;131:2;151:17; 169:9;181:22,24; 182:7;195:15,21; 197:25;198:21;199:10, 14,15;200:16,19; 201:10,12,18;220:14, 25;221:25;222:5,10; 223:7,8,16;225:1; 226:6,21;239:16; 252:4;267:11,16; 277:6;287:11,17,23; 292:8;295:22	<b>creates (1)</b> 210:25	<b>cul-de-sac (8)</b> 87:17,18;88:9; 175:10,11,16;275:9,25	<b>date (5)</b> 5:4;23:7;44:19; 51:12;258:5
<b>copy (18)</b> 10:21;11:4;12:7; 31:21,25;34:13,14; 81:2;84:5,20;198:3,5; 256:25;257:3;262:9; 298:23;299:7;300:17	<b>County's (9)</b> 32:22;44:8,24;45:18; 56:10;185:22;189:15, 16;226:11	<b>creating (5)</b> 41:3;52:13;114:3; 149:20;196:21	<b>cul-de-sac'd (1)</b> 90:21	<b>dated (6)</b> 34:19;44:9;184:18; 222:12;284:16;299:9
<b>corner (23)</b> 73:25;74:4;80:5; 82:17;84:24;107:2; 129:10,10;137:2,12; 138:8;139:20;143:20; 148:25;149:7,9,20; 152:22;155:21,21; 158:1;167:11;214:7	<b>county-wide (1)</b> 116:18	<b>credentials (3)</b> 71:11;72:5;203:4	<b>cul-de-sacs (1)</b> 124:18	<b>David (2)</b> 34:24;35:17
<b>corrected (1)</b> 80:8	<b>couple (20)</b> 7:19;10:1;59:17; 66:13;100:14;124:18; 126:14;136:21;140:6, 17;146:23;147:20; 157:3;162:20;167:3; 207:10;249:12;257:2; 269:10;278:4	<b>credit (10)</b> 126:16;128:8,11; 171:2,19;173:7,7,9; 174:15,21	<b>curious (2)</b> 236:15,19	<b>day (12)</b> 18:23;134:10,10; 220:7;226:10;237:18; 250:8,15;278:19; 286:9;291:20;299:2
<b>correction (1)</b> 207:19	<b>coupled (1)</b> 214:15	<b>credits (1)</b> 171:2	<b>curled (1)</b> 286:12	<b>days (3)</b> 9:10,12;40:9
<b>correctly (2)</b> 26:13;144:16	<b>couples (1)</b>	<b>criteria (1)</b> 92:15	<b>current (14)</b> 21:4;48:4;50:5;88:9; 201:7;215:4;220:7,16; 222:6,12;226:13; 233:14;299:10;300:11	<b>day-to-day (2)</b> 235:12;285:2
<b>correspond (1)</b> 177:18		<b>criterion (1)</b> 38:25	<b>currently (10)</b> 64:12,17;85:15;87:5; 132:8;166:22;170:3; 175:11;252:4;273:21	<b>dba (2)</b> 185:20;186:2
<b>corridor (8)</b> 50:7,16;201:6; 210:18,19;221:14; 225:12;230:6		<b>critical (1)</b> 231:7	<b>cursor (5)</b> 302:14,17;303:19; 304:25;305:3	<b>dba'' (1)</b> 186:3
<b>corridor'' (1)</b> 50:8		<b>crop (1)</b> 18:5	<b>cut (7)</b> 86:6,10,13;88:8; 90:21;259:25;276:17	<b>dead (2)</b> 180:25;290:1
<b>cost (2)</b> 273:1;294:8		<b>cross (8)</b> 66:2;144:19;278:11, 22;280:6,6,16;289:11	<b>cutoff (1)</b> 189:17	<b>deal (13)</b> 37:24;48:18;115:23; 121:14;165:11;183:10; 199:4,19;214:3; 215:14;230:10;253:5,5
<b>cost- (1)</b> 19:16		<b>cross- (5)</b> 8:20;120:15;161:8; 162:18;273:13	<b>cuts (1)</b> 107:6	<b>dealing (2)</b> 31:10;219:16
<b>couldn't (8)</b> 7:24;29:20;105:23; 111:20;220:17;232:14; 234:1;295:23		<b>crosses (2)</b> 79:15;170:2	<b>CV (1)</b> 262:15	<b>deals (2)</b> 186:5;215:9
<b>Council (37)</b> 4:15,16,16;9:9,13,15, 15,20,22;23:5,29;22;		<b>cross-examination (30)</b> 5:2;8:16,18;47:7; 59:15,18;61:15;66:12, 15;141:25;142:10;	<b>CV-1 (1)</b> 35:5	<b>death (1)</b> 233:5

<b>decibels (1)</b> 191:1	<b>demarked (1)</b> 211:2	53:12;135:15	89:21	180:19;219:17;222:23; 236:11;253:4,6; 256:17;258:14;259:7, 12,15,23;276:23; 279:25;295:21;305:22
<b>decide (2)</b> 182:4;301:16	<b>demographic (9)</b> 43:12,18;58:7,18,23; 62:19;220:14;254:23; 264:5	<b>depression (4)</b> 154:15,22;155:1,5	<b>develop (3)</b> 51:17;230:12;240:7	<b>differently (2)</b> 221:17;245:2
<b>decided (6)</b> 183:20;263:9;302:5; 305:6,16;306:3	<b>demographics (2)</b> 50:24,25	<b>depth (3)</b> 83:9,11;202:17	<b>developed (9)</b> 9:9;56:11;78:7; 122:3;172:3;188:7,13; 227:11;259:5	<b>differs (1)</b> 244:10
<b>deciduous (1)</b> 138:18	<b>demonstrate (2)</b> 55:21;137:15	<b>describe (5)</b> 57:20;65:22;88:3; 152:12;209:19	<b>developer (5)</b> 24:7,9;25:16;87:20; 252:4	<b>difficult (2)</b> 46:3;207:6
<b>decision (11)</b> 4:17;181:20;182:6; 246:4;255:15;259:10; 261:4;263:7;268:10; 277:19;306:14	<b>demonstrated (1)</b> 229:21	<b>described (3)</b> 21:11;31:1;203:10	<b>developers (3)</b> 131:19;199:19; 266:11	<b>difficulties (1)</b> 19:10
<b>decisions (3)</b> 104:15;263:12;264:2	<b>demonstrating (1)</b> 233:17	<b>describes (2)</b> 77:14,16	<b>developing (4)</b> 252:6,13;258:18,21	<b>difficulty (1)</b> 219:13
<b>declaration (2)</b> 40:8;262:4	<b>demonstration (1)</b> 37:22	<b>description (1)</b> 151:22	<b>development (78)</b> 6:4,5;24:7;34:2; 35:7;37:21;67:1;71:18; 78:10;87:20,22;88:11; 100:1;106:5,7,9; 109:20,25;110:2,17; 114:13;115:24;120:22, 25;121:1,6,11,24; 124:3;129:1;131:5,19; 132:25;133:2;134:9; 139:15;146:13;147:9, 12,13;150:3,14,18,21, 22;151:9,15,21,25; 166:7;183:12;185:19; 198:23;200:23;201:17; 204:10;205:18;210:23; 214:12,14;215:10; 217:22;222:12;223:4, 20,21;224:12;228:17; 230:5,22;239:7;251:9; 252:2,3;253:17;265:6; 285:3;293:21	<b>digress (1)</b> 108:3
<b>decline (1)</b> 280:14	<b>denial (1)</b> 183:21	<b>deserved (1)</b> 199:12		<b>dimension (2)</b> 126:18;153:4
<b>dedicated (4)</b> 103:20;104:3;125:2; 129:13	<b>denied (1)</b> 276:18	<b>deserves (1)</b> 49:22		<b>dimensional (1)</b> 162:4
<b>dedicating (1)</b> 150:12	<b>denominated (1)</b> 97:10	<b>design (4)</b> 32:10;136:16; 149:22;273:21		<b>dimensions (3)</b> 85:6;123:2;149:6
<b>dedication (4)</b> 123:11,15,16,20	<b>denotes (1)</b> 77:11	<b>designated (5)</b> 25:1;159:7;168:6; 206:4;216:7		<b>diminishing (1)</b> 19:15
<b>deed (10)</b> 10:21;11:3,5;17:8; 66:24;116:8;206:4,5; 298:23;299:7	<b>densities (10)</b> 29:13;30:13;73:21; 108:16;109:22;110:2; 160:21;177:23;226:3, 24	<b>designates (1)</b> 206:2		<b>dire (3)</b> 28:17;69:6;70:4
<b>deeds (1)</b> 66:20	<b>density (70)</b> 11:21;75:5;77:12; 78:15;98:3;139:6; 140:16,20,25;141:1; 150:23;151:2,7; 156:19,25;159:1,2,4,5, 13;160:6,7,19,20; 176:3,5,7,9,10,13,15, 17,18,21,24;177:1,2, 10,15,17;205:17; 206:3;208:12,14; 209:4,17;210:24; 212:3,18;213:2,8; 214:14;216:4;220:9; 228:18,22,22,24; 230:11;236:2,5; 239:15;245:1;283:23; 287:15;293:6;294:20; 295:20;296:4,6	<b>designation (6)</b> 86:9;169:11;208:18; 209:12;211:18;228:1		<b>direct (9)</b> 8:20;11:10;16:6; 28:25;60:15;68:15; 102:7;120:16;197:15
<b>deeds (1)</b> 66:20		<b>designations (1)</b> 201:15		<b>directed (2)</b> 58:10;64:4
<b>deemed (1)</b> 74:22		<b>designed (3)</b> 33:18;89:14;287:5		<b>direction (1)</b> 96:22
<b>deep (1)</b> 83:10		<b>desire (3)</b> 42:18;55:4;223:13		<b>directly (9)</b> 9:22;22:3;32:7; 37:15;59:1;89:19;98:6; 99:22;274:19
<b>deer (1)</b> 280:15		<b>desired (2)</b> 43:12;126:23		<b>director (6)</b> 44:24;45:17,18; 71:3;200:14
<b>defense (1)</b> 293:12		<b>desk (1)</b> 298:9	<b>diagrams (1)</b> 213:1	<b>directors (1)</b> 93:20
<b>defer (1)</b> 250:4		<b>despite (1)</b> 235:3	<b>dichotomy (1)</b> 121:23	<b>disabled (2)</b> 113:10,14
<b>define (1)</b> 101:11		<b>detached (8)</b> 41:7;62:13,14; 115:25;122:19;133:5; 157:4,5	<b>didn't (32)</b> 31:20;36:8;65:14; 69:5,11,12,15,17,19; 112:20;113:12;117:6; 118:15;142:6;173:2; 201:25;205:9;238:18; 243:3;266:4;277:8,10, 21,23;284:6;287:14; 293:6,7;294:19,21; 297:7;305:10	<b>disagree (1)</b> 278:5
<b>defined (3)</b> 77:23;136:9;184:8		<b>detail (10)</b> 29:24;56:24;89:1; 123:23;136:15;139:10; 159:25;214:20;277:22, 23		<b>disagreed (1)</b> 245:14
<b>definitely (5)</b> 109:2;148:22;173:4; 250:2;257:13	<b>deny (2)</b> 89:16;183:20	<b>detailed (2)</b> 152:24;189:19		<b>disagreement (2)</b> 204:7,8
<b>definition (7)</b> 83:1;96:15;97:17; 102:9;113:3,5;157:24	<b>Department (7)</b> 41:15;44:25;45:19; 109:8;199:10;221:6; 303:6	<b>details (10)</b> 36:7;37:10;107:22; 116:16;119:16;122:2; 138:25;258:4;259:19, 23	<b>died (1)</b> 233:5	<b>disagrees (2)</b> 163:25;306:10
<b>delineation (1)</b> 79:17	<b>dependence (1)</b> 238:22		<b>differ (2)</b> 244:13,23	<b>disappointment (1)</b> 254:4
<b>delivery (3)</b> 199:6;300:22,23	<b>depending (7)</b> 37:4;60:14;133:5; 155:14;158:10;195:25; 250:13	<b>determine (4)</b> 83:12;155:17; 192:13;193:15	<b>difference (7)</b> 118:5;156:25; 172:14;294:7;301:6; 303:6,7	<b>disclosure (1)</b> 11:1
<b>demand (12)</b> 50:15;125:16,23,24; 126:2,4,7;127:16,25; 128:12;174:3;237:21	<b>depicts (1)</b> 110:1	<b>determined (2)</b> 123:25;133:20	<b>different (26)</b> 64:11,20;81:3;93:1, 2;116:8;145:21; 153:23;169:11;179:3;	<b>disconnected (1)</b> 85:19
<b>demarcated (1)</b> 22:2	<b>Depot (2)</b>	<b>detour (1)</b>		<b>discovery (1)</b> 199:1
				<b>discrepancies (1)</b>

204:5 <b>discrepancy (7)</b> 159:11,16;208:3,9, 19;210:1;277:6 <b>discuss (3)</b> 100:6;194:24;261:3 <b>discussed (9)</b> 57:1;140:16;147:6,7; 174:11;217:24;220:21; 221:2;226:4 <b>discussing (3)</b> 40:15,19;73:1 <b>Discussion (12)</b> 50:19;53:21;59:21; 68:10;94:17;105:25; 134:5;178:18;246:3; 270:11;278:8;302:23 <b>discussions (2)</b> 56:24;263:12 <b>disk (4)</b> 81:12,16;106:13; 298:13 <b>dissatisfaction (1)</b> 199:5 <b>dissent (1)</b> 279:16 <b>disservice (1)</b> 253:15 <b>dissimilar (1)</b> 187:3 <b>distance (9)</b> 53:16;135:1,2,3; 165:7;181:12;235:10; 278:9;279:8 <b>distinct (1)</b> 203:1 <b>distinction (3)</b> 101:5;221:18;243:16 <b>distinguished (1)</b> 15:14 <b>distribution (2)</b> 215:14,18 <b>District (1)</b> 4:16 <b>districts (2)</b> 30:9;46:10 <b>diverse (2)</b> 32:7;258:14 <b>diversity (1)</b> 33:22 <b>divide (1)</b> 26:8 <b>divided (5)</b> 24:18;26:10;140:5; 182:18;265:20 <b>Division (2)</b> 222:6,7 <b>document (26)</b> 31:7;32:15;34:1; 40:22;41:5;48:22;49:3, 12;57:10,13,14;58:4; 109:16;131:12;207:3; 220:23;227:12,19;	242:3;245:17;257:25; 258:2;260:23;261:8; 276:13,18 <b>document'' (1)</b> 235:4 <b>documents (23)</b> 30:17;33:21;37:2,14; 38:2,7,9,15,16,23;39:8, 9,14,22;55:8;116:10; 227:15;261:17;267:24; 272:14;277:21;279:12; 283:22 <b>doesn't (25)</b> 45:10,11;46:12;60:4; 61:7;65:19;82:19,24; 83:2,8,9;110:16; 158:21,22;163:16; 171:22;180:25;189:17; 238:8,9;271:17; 283:19;288:3,3;306:16 <b>dog (3)</b> 54:11;171:24,25 <b>dollar (2)</b> 51:3;287:22 <b>dollars (1)</b> 297:7 <b>dominant (1)</b> 200:25 <b>dominated (1)</b> 18:2 <b>don' (1)</b> 161:2 <b>don't (83)</b> 5:4;6:10;7:17,18; 10:12;12:21;18:25; 23:4,12,16;31:22; 32:16;34:13;35:13; 38:18;43:3;44:1;48:17; 51:12;56:6,12;57:11, 23;59:9,12;64:15; 69:10;70:15;78:24; 88:4;91:11;95:16; 105:3,20;109:12; 110:15;111:5,13,15; 114:2,8,12;120:14; 140:17;160:23;164:2; 165:19;174:15,15; 178:20;181:9;183:9; 184:25;195:13;207:7, 11;219:18,19;225:14, 19,21;228:6,7,9; 237:23;239:20;243:7; 249:19;255:15;256:21; 259:13;260:24;262:7; 263:25;272:13;276:22; 277:14;283:4,6,9; 289:8;290:20;300:4 <b>done (23)</b> 13:21;23:22;24:1; 36:7;118:17;120:13; 122:11;152:12;155:10; 176:2;184:19;186:13; 193:15;198:13;203:16;	220:25;233:16;276:14, 15,15;292:4;294:12; 299:3 <b>door (2)</b> 264:19,24 <b>dots (2)</b> 76:25;77:4 <b>double (2)</b> 7:13;190:18 <b>doubt (2)</b> 146:20;225:21 <b>Doug (1)</b> 198:22 <b>down (54)</b> 8:12;9:6;24:21; 25:20;51:5,7;62:15; 76:20;85:8;94:12; 97:24,24;102:4; 103:18;123:17;125:5; 140:2;143:7,7,10,14, 22;158:12;161:4; 163:22;164:2,22; 165:17;167:15,15; 168:4;170:12;171:15; 175:12;180:11;193:10; 194:25;203:25;206:18; 241:12;242:6;274:19; 278:25;279:1;280:17; 281:20;282:16;285:1; 289:6;290:11,15,23; 291:14,17 <b>downplay (1)</b> 244:18 <b>downsizing (2)</b> 33:14;56:5 <b>draft (1)</b> 255:10 <b>drainage (1)</b> 80:3 <b>drains (1)</b> 140:2 <b>draw (2)</b> 150:16;243:15 <b>drawings (1)</b> 79:3 <b>dreamed (1)</b> 115:20 <b>drive (11)</b> 62:10;87:5,8,16,17; 88:8;90:7,15,19; 135:17;235:8 <b>driveway (5)</b> 85:17,19,23;86:5; 101:15 <b>driveways (3)</b> 91:7;100:19,20 <b>driving (2)</b> 54:24;135:3 <b>drop (1)</b> 164:2 <b>drops (2)</b> 140:2;164:21 <b>dry (7)</b>	153:10,13;154:4,6; 155:5;296:22;297:3 <b>DU (1)</b> 208:24 <b>due (4)</b> 119:9;150:4;199:20; 276:6 <b>dues (1)</b> 256:18 <b>dumps (1)</b> 181:15 <b>Duncan (1)</b> 198:22 <b>duplexes (1)</b> 133:8 <b>duration (2)</b> 304:13,14 <b>during (9)</b> 145:2,3;199:23; 200:12,20;202:9; 216:13;291:20,20 <b>dust (6)</b> 11:14;184:10; 187:24;188:2,6,9 <b>dwelling (13)</b> 208:22,25;209:1,2; 213:8;215:15;216:8, 16,18,22;217:10; 229:20,22 <b>dwelling (4)</b> 222:14;223:18,19; 224:11	<b>east-west (5)</b> 90:9,9,11;159:6; 168:22 <b>easy (3)</b> 119:1;206:10;271:21 <b>economy (1)</b> 230:7 <b>edge (9)</b> 107:4;135:6,7,24; 137:14;152:4;157:22; 159:20,22 <b>edges (3)</b> 106:24;107:7;139:2 <b>editorial (1)</b> 217:19 <b>educational (1)</b> 58:15 <b>effect (8)</b> 11:20;112:2;121:9; 183:25;195:11,11; 292:15;296:14 <b>effective (2)</b> 19:17;292:2 <b>effectiveness (1)</b> 138:23 <b>effects (1)</b> 101:17 <b>efficient (1)</b> 156:1 <b>effort (4)</b> 55:20;97:7;221:1; 235:6 <b>efforts (3)</b> 32:14;214:6;232:5 <b>egress (1)</b> 281:17 <b>eight (2)</b> 30:4;216:12 <b>either (12)</b> 6:8;9:14,15;60:13; 75:25;133:12;187:4; 196:17;241:20;260:17; 285:18;306:7 <b>elderly (5)</b> 113:3;115:3,15; 116:25;117:1 <b>electric (1)</b> 286:13 <b>electronic (2)</b> 10:3;137:23 <b>electronically (1)</b> 301:3 <b>elegant (1)</b> 115:20 <b>element (22)</b> 30:4,12,20;31:13; 32:6;106:7;107:14,14, 17;110:12;114:3,5; 117:16;118:7;131:10; 147:7;149:23;150:4,6; 157:10;238:12,24 <b>elementary (2)</b> 132:1;252:21
<b>E</b>				
<b>earlier (17)</b> 60:13;74:4;95:6; 108:6;114:23;116:4; 131:5;150:7;153:3; 158:7;177:20;182:17; 216:3;221:2,7,10; 251:25 <b>easement (7)</b> 79:11,21;82:1; 138:17;152:18,19,24 <b>easily (2)</b> 233:24;271:19 <b>east (42)</b> 21:20;22:3,14,19,20; 73:7,9,10;81:14;82:9, 10;88:16;96:6,12,13; 98:2;99:7,21,25; 100:15;101:4,12,21; 102:7;104:7;140:10; 145:13,25;146:1,3; 158:1;168:20,21,24; 169:1,3,11;193:2,6; 242:5;288:23;298:21 <b>eastbound (2)</b> 281:9,11 <b>eastern (4)</b> 76:21;132:8;137:4; 289:2				



<b>elements (13)</b> 109:18,18,19,24; 116:10;120:22,25; 121:3,11,13;122:14; 133:15;200:25	<b>enforce (4)</b> 108:6;109:16;111:9, 10	213:17	<b>evaluation (4)</b> 188:1;292:1,5; 305:19	<b>examiner (11)</b> 4:14;23:15;65:13; 70:23;71:2,4;119:8,8; 156:15;197:24,24
<b>elevated (3)</b> 81:21,22;289:23	<b>enforceable (3)</b> 111:1;112:16;114:2	<b>entry (8)</b> 205:16,19;208:11; 211:15;213:3,5,7,12	<b>even (28)</b> 26:6;36:3;105:23; 144:17;157:11;171:25; 174:2;188:17;202:11; 220:8,9;236:3;238:6, 23;257:4;260:24; 263:9;277:2,4;282:13; 283:14,18,19;287:24; 289:11;290:15;291:12; 296:7	<b>examiner's (2)</b> 16:9;56:18
<b>eligible (1)</b> 115:16	<b>enforced (3)</b> 108:23;109:3,14	<b>entryway (3)</b> 138:10;211:1;279:17	<b>events (1)</b> 290:2	<b>examiners (1)</b> 78:23
<b>eliminate (2)</b> 33:16;115:6	<b>enforcement (3)</b> 108:8;109:1;201:4	<b>enunciated (1)</b> 99:20	<b>eventing (1)</b> 290:2	<b>example (16)</b> 33:4,10;52:8;58:11; 112:16,25;115:10; 121:18;170:24;171:10; 173:18;190:23;191:3; 192:5;238:10;247:18
<b>Elm (29)</b> 24:4,6,7;25:16;34:2, 8,19;35:7,17;56:24; 66:3;87:20,22;88:11; 131:5,19;132:24; 251:9,16;252:1,3; 253:17;255:18;258:18, 21;265:6;270:14; 273:6;282:13	<b>engineer (3)</b> 86:18;146:7;188:25	<b>envelope (1)</b> 284:23	<b>event (6)</b> 154:7;158:18; 204:19;272:11;297:25; 306:4	<b>exceed (18)</b> 58:25;126:9;147:19; 148:1,5,9,19;149:16, 19;150:3;151:17; 152:2;156:9;157:6,10; 158:5;191:21;295:11
<b>else (11)</b> 49:9;117:19;153:24; 156:5,10;173:20; 192:4;234:4;254:4; 267:15;306:24	<b>engineering (1)</b> 248:16	<b>enviable (1)</b> 230:8	<b>eventually (1)</b> 115:23	<b>exceeding (1)</b> 152:5
<b>else's (1)</b> 193:2	<b>engineers (1)</b> 28:11	<b>environment (2)</b> 184:16,16	<b>evergreen (2)</b> 138:12,19	<b>exceeds (2)</b> 174:3,4
<b>eluded (1)</b> 125:11	<b>enhanced (2)</b> 214:6;226:17	<b>environmental (3)</b> 153:20;176:20;185:7	<b>everybody (3)</b> 15:7;24:11;227:14	<b>except (6)</b> 19:19;78:7;106:15; 113:10;165:6;295:12
<b>e-mail (2)</b> 261:3;300:22	<b>enjoy (2)</b> 233:22;237:6	<b>environments (1)</b> 41:3	<b>everybody's (1)</b> 269:20	<b>exception (14)</b> 23:4,10;109:9; 113:19;115:16;116:5, 25;117:2,6;179:11; 183:9;184:7;298:20; 299:8
<b>emerge (1)</b> 237:23	<b>enjoyed (1)</b> 236:5	<b>envisioning (1)</b> 258:16	<b>evidence (22)</b> 4:14;9:3,8,9;10:1,19, 22;11:10,10;29:4; 34:20;37:23;49:16; 92:25;112:2;117:10; 120:1,3,4,5,17;293:1	<b>exceptions (3)</b> 97:14;109:7;228:19
<b>emotional (1)</b> 18:14	<b>enough (7)</b> 6:10;83:9;105:5; 126:19;161:2;213:13; 268:25	<b>equal (1)</b> 16:15	<b>evolve (1)</b> 18:4	<b>excess (2)</b> 218:5;219:1
<b>emphasize (1)</b> 198:16	<b>ensure (1)</b> 108:8	<b>equation (1)</b> 128:10	<b>evoking (1)</b> 18:13	<b>exchange (1)</b> 272:8
<b>emphasized (1)</b> 214:7	<b>ensures (1)</b> 272:19	<b>equipment (2)</b> 18:19;186:21	<b>evolving (1)</b> 18:4	<b>exchanging (1)</b> 267:3
<b>emphasizes (1)</b> 210:20	<b>enter (6)</b> 89:14;122:7;137:12; 206:22;207:4;211:22	<b>erroneous (2)</b> 163:10,13	<b>exacerbate (1)</b> 11:17	<b>excited (3)</b> 253:8;254:6,25
<b>emphatically (1)</b> 240:18	<b>entered (1)</b> 204:15	<b>especially (4)</b> 70:10;98:18;268:23; 300:5	<b>exact (5)</b> 51:12;57:9;59:24; 60:7;98:11	<b>excitement (1)</b> 286:7
<b>empowered (1)</b> 19:22	<b>entering (2)</b> 132:24;220:15	<b>essential (1)</b> 134:16	<b>exactly (8)</b> 22:24;26:22,24; 109:5;120:2;138:24; 238:4;305:25	<b>excluding (2)</b> 222:11;223:9
<b>empty (2)</b> 56:5;238:9	<b>enterprise (1)</b> 104:24	<b>essentially (9)</b> 27:25;114:6;145:23, 24;156:17,24;183:12; 217:9;287:21	<b>exaggerate (1)</b> 158:8	<b>Excuse (7)</b> 84:5;93:19;142:1; 208:24;226:6;258:8; 270:13
<b>empty- (1)</b> 33:14	<b>entire (3)</b> 9:19;31:4;169:14	<b>establish (2)</b> 38:24;137:12	<b>exaggerated (1)</b> 163:21	<b>Executive (1)</b> 198:22
<b>encouraging (1)</b> 32:10	<b>entirely (1)</b> 272:16	<b>established (2)</b> 105:8;137:14	<b>EXAMINATION (12)</b> 16:6;60:16;67:3; 68:15;161:9;162:19; 183:5;197:15;273:14, 16;294:16;303:19	<b>Executive's (1)</b> 199:15
<b>end (17)</b> 22:15;51:11;87:16; 180:25;183:9,9,11; 205:18;208:22;211:25; 229:10;239:24;246:13; 249:23;250:12;268:21; 293:14	<b>entities (1)</b> 11:2	<b>establishing (1)</b> 107:4	<b>examine (2)</b> 8:21;120:16	<b>exercise (1)</b> 238:9
<b>ended (1)</b> 112:21	<b>entitled (7)</b> 8:22;29:4;76:8,9; 213:11;238:3,4	<b>establishment (1)</b> 134:8	<b>examined (1)</b> 226:23	<b>exhausted (1)</b> 273:10
<b>ends (3)</b> 109:13;249:23; 283:16	<b>entitlement (1)</b> 201:18	<b>estate (1)</b> 111:7		<b>Exhibit (132)</b> 4:25;13:5,16,25; 14:10;20:20;21:10; 24:12;30:25;34:11,18,
	<b>entity (2)</b> 10:12;16:10	<b>estimate (4)</b> 5:1;7:15;192:21; 249:25		
	<b>entrance (29)</b> 43:6;122:24,25; 180:11,23;211:3,9; 212:5,6;241:1,4,8,16, 19;242:11,19;243:1,11, 12,13;265:7,10,12,22; 281:12,14,15;282:14, 15	<b>estimates (1)</b> 7:13		
	<b>entrances (3)</b> 212:4;242:1,14	<b>et (11)</b> 4:3;10:7;16:16,18; 17:5;145:14;160:19; 176:20;177:25;190:17; 306:18		
	<b>entries (4)</b> 211:17,20;212:2;	<b>evaluated (3)</b> 52:3,8;305:22		
		<b>evaluating (1)</b> 29:5		

22,23,25;35:3,8;37:16; 18;40:4,6,25;44:2,12, 13,15;46:13;47:9; 48:18;49:7,15,24; 50:10;53:2;55:19;64:1; 69:2;72:2,14;73:2,6; 74:5;75:2,13,17;76:5, 10;78:17,20;79:16; 81:2,10;83:23,24;84:3, 8,9,14,20;85:13;88:23; 89:1,11,13,91:18; 92:11;95:18;96:2;97:3; 102:14,25;103:1,2,4,8, 12,13,15;106:3,6; 124:8,9;125:12,13,14; 126:5;134:17;135:12; 136:4,22;138:1;139:3; 140:23,24;147:23; 167:11;170:21;181:4; 204:18,21;205:1; 206:25;207:4,12; 210:12;214:2,5,18; 216:15,25;221:3; 222:3,17,19;223:1,3; 229:13,18,18;247:5,5, 20;248:6;275:15; 284:13,15;285:8; 299:4,6,7,8,10,12	<b>expands (1)</b> 152:23 <b>expansion (1)</b> 216:18 <b>expect (2)</b> 45:6,19 <b>expectation (1)</b> 178:9 <b>expected (3)</b> 46:6;47:12;199:12 <b>experience (6)</b> 72:5;198:17;202:17, 18;288:16;289:15 <b>expert (33)</b> 15:24;27:18,23;28:6; 29:24;69:3,4,24;70:1,5, 7,9,17;71:6,20,21;72:4, 16,17;175:25;182:18; 192:15;196:24;197:23; 202:10,19,25;203:5,11; 249:17;282:8;289:14; 292:4 <b>expertise (1)</b> 189:2 <b>experts (6)</b> 28:11;118:12;226:9, 11,15,21 <b>explain (10)</b> 8:12;22:23;23:1; 97:5;165:19;180:10; 198:3;200:8;236:21,23 <b>explained (1)</b> 228:23 <b>explaining (1)</b> 91:17 <b>explanation (1)</b> 6:22 <b>exposed (2)</b> 185:19;186:1 <b>express (3)</b> 8:12;120:15;217:25 <b>expressed (5)</b> 50:8;55:4;221:14,15; 225:12 <b>extend (1)</b> 102:7 <b>extended (5)</b> 170:15;254:15; 259:10,18;260:7 <b>extending (1)</b> 175:14 <b>extends (1)</b> 22:20 <b>extensive (3)</b> 119:4,11;293:3 <b>extent (5)</b> 101:14,19,20;145:2; 272:1 <b>exterior (1)</b> 184:23 <b>external (1)</b> 156:1 <b>extra (4)</b>	33:15;174:5;191:14; 194:19 <b>eye (3)</b> 74:7;135:11;138:6 <b>eyes (1)</b> 275:19	<b>false (1)</b> 285:4 <b>familiar (6)</b> 88:2;116:13,23; 180:21;279:15;280:2 <b>familiarity (1)</b> 17:14 <b>family (16)</b> 4:12;33:11;42:13,19; 103:24;104:3,11,23; 133:5;162:13;177:20; 187:3;224:21;263:9; 271:3;294:9 <b>fantastic (1)</b> 254:9 <b>far (31)</b> 10:20;17:18,23;20:2; 28:18;92:7,25;99:20; 101:20;102:6;117:11; 120:6,19;156:4; 164:15,17;170:11; 173:21,22,23;174:17; 177:22;195:6;225:15, 22;254:12;272:4; 283:24;302:14;303:5; 306:7 <b>far-fetched (1)</b> 272:10 <b>farm (30)</b> 4:9;10:7,8;16:9,19, 20,24;17:5;18:11,12, 22;25:25;37:12;85:21; 89:14,17,23;91:5;92:6; 100:22;139:19;186:20; 188:17;252:10;254:13; 265:8,9,11,11,13 <b>farmed (2)</b> 82:15;188:4 <b>farmers (1)</b> 17:20 <b>farming (8)</b> 17:25;18:5,6,15,16; 19:10;103:20;104:10 <b>farms (1)</b> 18:13 <b>fast (3)</b> 62:4;177:22;280:17 <b>faster (2)</b> 291:21,21 <b>favor (1)</b> 227:5 <b>favorable (1)</b> 201:14 <b>feature (3)</b> 22:7;117:15;241:19 <b>features (2)</b> 21:11;32:12 <b>fee (2)</b> 43:6;259:22 <b>feeder (3)</b> 143:23;144:12,13 <b>feel (18)</b> 92:18;102:18;136:8;	151:24;160:10;182:1, 10;208:10;211:6; 239:23;240:6;254:9, 18;268:24;274:2,8; 294:13;302:9 <b>feeling (1)</b> 147:7 <b>fees (1)</b> 258:19 <b>feet (42)</b> 60:9;83:10;122:18; 123:6;124:1,1;126:19; 144:9,11,20;147:16,24, 25;148:1,1,3,7,9,16; 149:6,8,8,15;152:22; 157:16,17;158:4,5,10; 164:2;169:13;171:1; 179:23,24,25;180:3,4, 5;236:18,18;273:23; 289:23 <b>fell (1)</b> 253:14 <b>fellow (1)</b> 95:10 <b>felt (4)</b> 128:23;203:20; 219:15;239:14 <b>fence (3)</b> 190:23,24,25 <b>fencing (4)</b> 155:12,14,16;195:19 <b>few (7)</b> 12:15;85:8;98:11; 196:24,25;206:13; 278:2 <b>fides (1)</b> 28:3 <b>field (6)</b> 70:5;82:16;100:22; 188:17;252:3;287:14 <b>fields (15)</b> 54:10;132:1,19,21; 171:24;172:5,6; 173:10,19,24;181:5; 278:16,17,17;281:3 <b>figure (10)</b> 127:16;182:4; 207:15,16;212:4,21; 222:1;237:20,20;301:2 <b>figures (5)</b> 120:23;123:3; 222:14;223:17;226:25 <b>file (11)</b> 6:9;14:6;34:10,15; 69:23;88:7;119:1,4; 165:23;198:5;293:4 <b>filed (6)</b> 10:21;13:16;38:23; 49:11;55:8;292:16 <b>filing (1)</b> 14:13 <b>fill (4)</b> 154:5,7,16;155:7
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<b>final (7)</b> 4:16;106:8;121:19; 158:11;201:6;248:16; 306:13 <b>finalized (2)</b> 179:21;255:11 <b>finally (1)</b> 253:1 <b>financial (13)</b> 19:9,21;29:1;58:12; 104:24;266:8,17; 267:1;270:2,4,14; 272:8;273:4 <b>find (17)</b> 34:12,17;114:18; 143:12;185:12;194:4; 206:6;219:19,19; 231:3;270:9,19,19,23; 271:1;274:4;284:10 <b>finding (5)</b> 158:25;159:18,19; 217:21;228:16 <b>findings (5)</b> 37:20;140:25; 150:20;218:9;228:14 <b>fine (9)</b> 7:22;8:1;14:4;93:22; 142:7;207:6;250:19, 20;289:15 <b>fingers (2)</b> 119:13;184:24 <b>finish (3)</b> 65:4;250:16;285:25 <b>finished (3)</b> 115:24;156:3;166:24 <b>fire (1)</b> 286:12 <b>firm (1)</b> 4:20 <b>first (48)</b> 6:22;7:4;10:10; 15:17,19;17:4;24:13; 29:9;32:19;33:2;37:17; 46:15;48:18;49:12; 57:8;65:18;74:7,10; 91:13;96:14;106:3; 108:11;109:25;120:15; 122:13;123:1;175:10, 16;180:17;185:18; 198:20;205:14;206:6; 207:12;209:20;210:10; 216:14;227:21;232:10; 243:13,14;249:9; 251:13,23;275:12; 276:13;282:18;284:24 <b>fit (3)</b> 29:8;37:9;55:12 <b>Fitness (1)</b> 53:9 <b>five (30)</b> 4:22;12:25;42:18,23; 43:7,9;62:24;73:22; 75:4;79:23;90:20;93:7;	123:10,10,18;132:10; 135:9,10;140:3; 158:10;163:8,9,16; 177:24;186:2;201:8; 206:5;226:9;250:1; 286:1 <b>five-acre (1)</b> 293:8 <b>five-minute (6)</b> 12:21;74:8,10,21,24; 250:22 <b>fix (1)</b> 105:14 <b>fixating (1)</b> 219:15 <b>fixed (2)</b> 194:1;269:7 <b>fixtures (1)</b> 189:17 <b>Flanagan (5)</b> 25:16;27:2;34:19,24; 35:17 <b>flat (2)</b> 79:23;140:3 <b>flattering (1)</b> 18:24 <b>fleshed (1)</b> 258:4 <b>flex (1)</b> 59:6 <b>flexibility (2)</b> 237:5,12 <b>flexible (1)</b> 237:22 <b>floating (10)</b> 176:6;177:13,24; 217:20,20;219:16,19, 20,22;220:3 <b>floor (1)</b> 33:2 <b>flow (1)</b> 282:16 <b>flowing (1)</b> 282:20 <b>focus (3)</b> 203:1;204:4;228:21 <b>focused (4)</b> 157:22;160:3,5; 228:8 <b>focusing (1)</b> 138:5 <b>folio (1)</b> 79:13 <b>folks (7)</b> 56:20;70:16;198:8; 221:8;235:21;249:9; 251:2 <b>follow (2)</b> 209:18;306:24 <b>followed (2)</b> 227:23,24 <b>following (1)</b> 223:23	<b>follows (1)</b> 205:23 <b>follow-up (3)</b> 46:8;62:8;187:8 <b>Food (3)</b> 135:14;146:17;161:3 <b>foot (11)</b> 124:1;126:18; 147:17;148:8,22; 149:12,16;150:10; 152:4,6;179:16 <b>footage (2)</b> 59:25;60:7 <b>football/soccer (1)</b> 173:18 <b>force (1)</b> 54:24 <b>forced (1)</b> 56:5 <b>foremost (1)</b> 32:19 <b>forest (22)</b> 79:17;80:6,9;82:16, 20,23;83:1,5,9,19; 84:13,20;85:3;126:15; 137:11;139:20,21,24; 149:2;152:24;185:3; 214:15 <b>forestation (1)</b> 137:20 <b>forested (1)</b> 149:20 <b>forgot (1)</b> 184:13 <b>form (3)</b> 180:23;183:12;238:4 <b>formal (3)</b> 8:14;9:2;36:20 <b>formally (2)</b> 173:21;301:21 <b>former (3)</b> 44:24;45:17;105:22 <b>forms (1)</b> 210:16 <b>for-rent (1)</b> 253:1 <b>forth (12)</b> 19:6;125:21,25; 154:3;161:24;171:25; 278:14;279:20;280:23; 281:3;282:22,25 <b>forward (4)</b> 6:10;152:23;155:17; 189:13 <b>found (5)</b> 35:2;206:9;214:13; 244:25;284:6 <b>four (50)</b> 7:10;16:13;17:8; 22:11;43:8;51:4;52:5, 21;53:14;60:22;61:4, 20;79:23;90:20;98:11, 18;99:8;100:13;	109:21;123:12;132:6; 139:7;140:3,9,12,15; 144:22;151:7;152:3; 159:15;160:4,24; 170:1,3,7,11;176:16; 205:18;206:19;208:7, 12;209:10;212:7; 213:2,8;226:9;242:3; 289:12;290:5;298:24 <b>four- (1)</b> 265:19 <b>four-land (1)</b> 27:5 <b>four-lane (5)</b> 18:11;24:17;62:2; 145:11;182:18 <b>fourth (4)</b> 110:7,9;122:14; 194:15 <b>framers (1)</b> 213:1 <b>frankly (3)</b> 18:18;114:16;249:13 <b>Frederick (4)</b> 16:22;18:20;73:12; 170:14 <b>fricassee (1)</b> 286:13 <b>Friday (12)</b> 260:7,7,10,11,21; 286:4;297:20,21,24,25; 307:1,1 <b>friend (1)</b> 58:12 <b>front (11)</b> 13:18;17:4;100:24; 149:18;158:3;162:24; 195:19;196:6;234:17; 251:24;286:12 <b>frontage (2)</b> 130:18;169:18 <b>fronting (1)</b> 103:19 <b>full (11)</b> 32:9;55:23;94:19; 119:8;181:2;187:21; 197:7;251:7;278:16, 17;306:18 <b>fuller (1)</b> 306:19 <b>fun (1)</b> 291:17 <b>function (1)</b> 154:2 <b>functioning (1)</b> 105:18 <b>funded (1)</b> 132:20 <b>further (40)</b> 18:8;30:3;41:7; 47:10;50:1;51:25; 59:13;77:10;86:17; 88:25;99:8,18,21;	117:21;119:15;123:21; 129:16;147:8;149:13; 153:10;154:9;155:18; 162:17;165:17;168:24; 189:25;190:2;197:1,1; 205:15;206:21;210:17; 216:18;240:19;272:9; 273:13;285:1;297:8; 301:15,19 <b>future (24)</b> 35:14;37:12;56:25; 64:16;76:21;97:24; 131:25;132:4,17,20; 133:9;135:24;169:3; 172:6;173:4;184:21; 185:19;194:25;201:15; 221:1;226:7;240:7; 265:9,11 <b>FV-122 (1)</b> 4:8
<b>G</b>				
<b>G-806 (1)</b> 70:22 <b>G-881 (4)</b> 4:3;31:4;106:7; 161:24 <b>gain (1)</b> 267:1 <b>gained (1)</b> 302:9 <b>Gaithersburg (8)</b> 70:20;71:23;199:21; 200:13,15;202:8; 222:11;223:10 <b>gap (2)</b> 181:9;199:11 <b>garden (8)</b> 126:25;127:5,6,14; 131:15;171:9,14; 247:11 <b>gardening (1)</b> 187:14 <b>Gary (2)</b> 68:7,19 <b>gas (7)</b> 79:11,14,21;82:1; 140:7;152:18,19 <b>gateway (4)</b> 136:19;138:10; 149:20;159:20 <b>gathering (2)</b> 220:19,25 <b>gave (5)</b> 10:25;170:18;198:8; 207:13;222:18 <b>general (18)</b> 8:19;12:2;30:4,12, 17,21;32:6;79:25; 97:15;111:2;140:3; 150:24;171:3;183:7; 199:3;209:22;226:2;				

<p>255:9 <b>generally (11)</b> 73:19;79:22;81:4; 97:9;98:25;99:1; 140:14;190:14;227:14; 250:12;285:2 <b>generation (1)</b> 17:20 <b>generational (1)</b> 226:23 <b>gentle (1)</b> 140:11 <b>gentleman (2)</b> 5:12;115:20 <b>gentlemen (13)</b> 6:10;7:23;8:6;12:24; 14:22;34:13;46:1,16; 48:21;69:6,20,22; 93:11 <b>geographical (1)</b> 53:2 <b>germane (1)</b> 198:19 <b>Germantown (36)</b> 4:10;52:7,19;68:21; 73:1,18,18;75:5,6,6,11; 76:16,25;77:1,7; 106:25;129:16;132:15; 135:20;136:17;137:11; 197:20;205:12,16,20; 210:6,16,17,18;212:10, 10,13;213:20;214:9; 233:19;242:4 <b>gets (8)</b> 35:19;108:11; 117:11;177:21;178:15; 279:2;306:19,19 <b>Giant (1)</b> 135:14 <b>given (16)</b> 8:18,20;28:13;49:6, 19;63:10;91:9;153:5; 216:16;221:24;254:21; 263:5;277:5;282:9; 283:24;301:6 <b>gives (3)</b> 171:9;210:7;233:25 <b>giving (2)</b> 15:14;49:11 <b>glad (8)</b> 4:23;28:2;68:22; 69:5;143:1;247:1; 250:4;274:11 <b>glass (1)</b> 191:14 <b>glazing (1)</b> 191:25 <b>glean (1)</b> 256:1 <b>glimpse (1)</b> 82:11 <b>goal (2)</b> 39:15;226:12</p>	<p><b>goals (2)</b> 24:2;33:20 <b>goes (34)</b> 7:3;30:6;67:2;79:14; 87:5;90:7;96:5,6; 109:8;110:2,4;119:4,7, 10;124:14;143:10; 145:12;152:23;155:13; 163:22;165:8;168:24; 170:11;175:9;190:24; 228:19;231:22;241:12; 248:13;266:19,24; 301:13,22;303:6 <b>GOLDBERG (24)</b> 6:2,2;12:11;13:4,9; 15:1;65:7;66:11,13,16; 67:14,15,18;72:12; 93:12,14,15,18;94:1,3, 6,8,11,14 <b>GOLDRICK (2)</b> 190:4,6 <b>Good (16)</b> 4:19;17:10;36:2; 96:22;118:8;128:25; 137:25;161:6;168:3; 171:6;179:24;187:17; 211:4;222:25;233:16; 297:18 <b>G-O-O-D- (1)</b> 94:21 <b>Goodrick (130)</b> 93:19;94:4,20,20,23; 95:1,4,7,13;116:13; 117:3,23;118:9; 119:14,18;142:1,3,11, 16,22;143:3,6,9,13,19, 21;144:1,6,8,11,15,22; 145:5,8;167:1,3,7,12; 168:1;169:5;170:10, 20,22;171:8;172:18, 25;173:1;174:8; 175:18;191:3,13; 192:5,9;193:9,20; 196:4;203:6;208:24; 209:2;240:24;241:11, 15,24;242:10,23;243:9, 19,23;244:3,6,9,15; 245:5,16,20;246:2,8, 11,15,18,20;247:13; 248:8,9,23;255:3,5; 256:3,9;258:7;260:2,4; 261:9,10,13;262:8,18; 263:2,20;264:11,17,21, 23;265:1,3;269:15,25; 270:12,21;271:6,11,15, 23;274:14;285:20; 297:12,21;300:2,8,11, 14,19,24;301:4; 302:25;303:2,17,22; 304:1,20 <b>Goodrick's (1)</b> 256:24 <b>gosh (1)</b></p>	<p>64:7 <b>Goshen (5)</b> 6:3;11:19;93:20; 95:3,12 <b>governing (1)</b> 110:21 <b>government (2)</b> 199:9,10 <b>grade (6)</b> 140:8;158:11;163:8, 9,16;289:24 <b>graded (1)</b> 81:24 <b>grades (4)</b> 139:25;140:2,4; 180:19 <b>grading (4)</b> 139:16,25;140:15; 158:13 <b>graduated (1)</b> 71:13 <b>grand (2)</b> 78:11;192:23 <b>grandchildren (1)</b> 253:24 <b>grandkids (1)</b> 56:8 <b>grant (2)</b> 9:16,16 <b>granted (3)</b> 23:5;115:13;117:6 <b>graph (4)</b> 41:5,18,19;62:18 <b>graphic (1)</b> 154:2 <b>Graphically (2)</b> 77:8;153:8 <b>graphics (1)</b> 136:21 <b>gravitate (2)</b> 51:10;55:25 <b>gravity (1)</b> 297:1 <b>gray (2)</b> 96:12,13 <b>great (14)</b> 29:8;54:11;57:25; 151:21;198:9;199:4; 215:13;230:10;237:1; 254:19;259:12;264:18; 266:16;278:10 <b>Greater (11)</b> 6:3;11:19;29:21; 36:11,14;56:24;93:20; 95:3,12;158:5;220:9 <b>greatest (1)</b> 30:5 <b>greed (2)</b> 293:11;294:12 <b>green (31)</b> 62:9;73:6;76:25; 82:14;89:17;90:6,15, 17;91:12;102:11;</p>	<p>107:4;131:24;132:10, 11;137:10,12,14,15,16; 138:9;139:2;150:1,2,5; 159:20,22;210:16,25; 214:9;252:3;280:14 <b>greenery (1)</b> 107:11 <b>greenway (8)</b> 75:7;76:16;77:1; 106:25;132:16;136:17; 137:11,18 <b>greenways (1)</b> 134:17 <b>grocery (2)</b> 52:21;136:2 <b>GROSSMAN (927)</b> 4:2,13,22;5:6,8,16, 19,23;6:1,6,13,16,23; 7:2,12,17,23;8:2,5,11; 10:14,18,24;11:4,12; 12:13;13:3,7,10,14,20, 23;14:2,5,12,15,22; 15:3,9,12,16,21,22,25; 16:4,16,23;17:2,7,10; 18:25;19:4,8,12,19,24; 20:2,5,15,18,24;21:2,5, 8,17,19,23;22:1,14,18, 23;23:3,6,10,13,17,19, 24;24:23;25:4,7,10,13, 21,24;26:1,5,8,12,15, 19,25;27:14,17,20,24; 28:5,8,21,24;29:3,15; 30:25;31:3,15,19,22; 32:1,5,24;33:5,9;34:4, 8,10,14,15,21;35:2,4,7, 25;36:19;37:5,15,19; 38:11,18;39:19,25; 40:2,11,17,24;41:4,10, 14,17,24;42:4,7,11,16, 22,25;43:10,15,24; 44:2,10,13,18,22;45:2, 5,9;46:14,19,22;47:6, 15,21,25;48:10,17,21, 24;49:2,6,17,20;50:9, 13,17;51:7,21,24;52:1, 2;53:16,24;54:8,12,17, 20;55:15;56:16,21; 57:4,11,14,16,19,22; 59:3,7,15,22;60:2,11, 20,24;61:8,14;62:22; 63:6,9,12,14,16;64:8, 21;65:3,6,19;66:4,7,10; 67:5,8,10,13,16,19,22, 24;68:1,3,9,11,14,22, 25;69:1,8,10,13,17,21; 70:17;71:1,3,8,20;72:1, 7,13;73:15;74:14;75:3, 12,20;76:1,4;77:14,20, 22;78:1,5,13,23;80:12, 20,25;81:6,16,20,22; 82:1,6,19,24;83:6,16, 18,22;84:2,8,11,17,18; 85:1,7,10,23;86:3,7,10,</p>	<p>15,20;87:24;88:18,20; 89:7,11;90:9,12,24; 91:15;92:1,8,17,24; 93:11,14,15,17,22; 94:2,5,7,9,12,15,18,21, 24;95:2,5,8,14,23; 96:14,17,19,23,25; 97:5,21,25;98:5,13,17, 23;99:5,14;100:8,15, 21;101:5,25;102:5,13, 15,19,24;103:7,11; 104:13;105:3,13,18,22; 106:8,11,18;107:10,20, 25;108:19,22;109:5,17, 23;110:7,10,20,24; 111:6,22;112:1,5,8,11, 14,23;113:4,7,14,25; 114:10,14,22;115:1,4; 116:2,12,20;117:9; 118:1,6,19;119:15,21; 120:11,24;121:16,22; 124:16;125:9,13; 126:5;127:3,8,10,12, 15,19,24;128:3,7,16, 18,25;129:7,11,17,21, 24;130:3,8,11,15,23; 131:3;133:1,11,14,21, 23,25;134:2,19;137:2, 4,7,22,25;138:3,11,20; 139:1;140:16;141:6,9, 21;142:2,5,13,20,24; 143:2,5;144:24;145:7, 16,19;146:9,15,19,22; 148:4,10,13,17,19,23; 152:8;153:6,12,16,23; 154:4,8,11;155:8,12; 156:2,10,13,23;157:20; 158:17,20,22;160:1,10, 13,18,23;161:2,6,7,10, 15,16,17;162:18; 163:11,17;166:14,16, 19,24;167:1,5,17,22; 168:2,9,13,22;169:23; 170:19,21;171:6; 172:23;173:13,20,25; 174:4,7;175:20; 176:22;177:5,8,13; 178:4,10,14;179:2,8, 12;182:21;183:4,24; 184:5,6,9,24;185:3,6,9, 12,16;186:4,8,15,18, 25;187:6,9,23;188:10, 16,20,25;189:5,11,20; 190:2,5;191:6,10,16; 192:8,15,25;193:5,8, 12,21,25;194:9,13; 195:5,7,17,24;196:9; 197:3,7,10,13;198:2,5, 7,9;201:19;202:2,5,7, 20,24;203:3,9,13,17, 21;204:17,21,25;205:3, 5,8;206:6,9,12,16,23; 207:2,7,11,16,18,24;</p>
---	--	--	--	--

208:2,4,14;209:3,7; 211:7,11,16;212:1,12, 16,17,19,23;213:13,15, 17,22;214:18,24;215:5, 8,11,22;216:14,25; 217:3,7,13,15;218:12, 14,17,20;219:2,7,10; 222:7,9,15,17,23; 223:1,3,6,8,11,23,25; 224:3,6,9,15;225:3,13; 227:4,8,13,21;228:2,4, 10,14;229:9,13,16; 230:15;231:10,15,17, 21,24;232:20,22;234:3, 15,20;236:7,11;237:9, 25;238:3,14;239:2,5, 18;240:1,3,9,12,21; 241:10,14,21;242:8,20, 22;243:5,7,17,21,24; 244:4,7,12,20,23,25; 245:4,7,10,13,19,22, 24;246:7,10,12,16; 247:3,8,22;248:1,5,11, 22,25;249:2,4,7,10,17, 24;250:2,6,12,21,25; 251:6,10,13,16,18,21; 255:2;256:2,8,10,24; 257:18,20;258:2,6,9, 20,23;259:1,3,25; 260:3,22;261:1,5,7; 262:9,13,16;263:19; 264:9,12,16,18,22,24; 265:2,24;266:6,19,23; 269:2,12,14,17,22; 270:17,25;271:7,10,12, 16,22,25;272:15,23; 273:3,6,13;274:11,15, 18,23;275:4,6,12,15, 17;276:1,4,6,9,20; 277:8,12,14,18,24; 278:2,22;279:6,21,24; 280:4,9,12;281:7,9,14, 23,25;282:3,7;283:7; 284:2,8,11,13,17,21, 25;285:7,14,16,18,21, 24;286:3,6,14,20,23; 287:2,4,7;288:5,8,11, 21,24;289:1,4,18,21; 290:21;291:1,5,9,15, 22;292:21;293:3,18, 24;294:15;297:10,14, 18,23;298:4,5,8,11,14, 17,22,25;299:4,14,15, 16,20,24;300:1,4,9,13, 17;301:5,13;302:16,22, 25;303:15,18,24;304:2, 7,11,14,18,25;305:13 <b>ground (7)</b> 81:25;95:6;138:7; 154:22;155:2;199:16; 253:20 <b>group (14)</b> 33:8;41:21;42:2,11,	19;43:8;62:20;63:4,14; 86:23;220:15;221:13; 259:12;266:16 <b>Grove (1)</b> 89:15 <b>growing (6)</b> 18:4;44:8;226:8; 252:18;253:8;254:23 <b>growth (13)</b> 18:6;27:3,11;46:6; 47:2,12,12;51:13,14, 22;55:10;223:21; 292:13 <b>guarantee (2)</b> 61:7;161:11 <b>guarantees (1)</b> 66:17 <b>Guckert (5)</b> 86:23;87:22;100:5; 194:23;195:4 <b>guess (31)</b> 6:20,21;63:5;64:21; 100:12;108:23;113:1; 118:9;119:18;139:14; 156:15,16,18;179:23; 196:4;203:13;212:1; 216:23;231:16;234:5; 235:18;239:12;244:18; 282:4,10;295:18; 297:19;298:2,19; 302:11;305:4 <b>guessing (1)</b> 190:9 <b>guidance (2)</b> 216:4;227:20 <b>guidances (1)</b> 40:18 <b>guided (2)</b> 230:1,17 <b>guideline (1)</b> 125:18 <b>guidelines (4)</b> 40:18;125:24; 230:12;263:1 <b>guides (1)</b> 19:9 <b>gut (2)</b> 187:13,17 <b>gym (1)</b> 53:10  <b>H</b>  <b>hadn't (3)</b> 6:19;120:10;305:17 <b>half (21)</b> 48:7;53:22;73:23,25; 74:1,11,13;75:1;80:7; 123:5;135:7;149:7; 160:7;201:8;221:10; 224:10,20,23,24; 282:12,21 <b>Half-acre (4)</b>	295:2;296:16,17,18 <b>hallmarks (1)</b> 18:3 <b>hallway (2)</b> 299:21,24 <b>hallways (1)</b> 180:6 <b>hammer (1)</b> 255:12 <b>Hancock (100)</b> 5:20,20,23,25;8:1,9; 11:25;12:12;13:3,6; 14:25;15:15;46:21,21, 22,23;48:23;49:1,5; 56:20;59:16,17,19; 60:1,8,17,21;61:2,13; 62:8;65:1,7,9,14,17,21, 24;66:9;72:10;102:15; 108:4,10;111:3,4,5,7, 23;112:4,10,13,18; 113:12,24;115:9,18; 116:11;141:22;151:22; 162:18,20,22;163:15, 18;164:19;166:4,18,23, 24,25;172:16;183:19, 23;186:23,25;187:1; 203:8;255:3;258:8,9, 10,12,22,24;259:2,4; 286:1,5,8,11,14,16,17; 294:18;297:9,11; 302:19,21;304:5,8,16 <b>Hancock's (4)</b> 6:7;47:16;115:10; 120:8 <b>hand (17)</b> 16:1;32:3;46:18; 49:9;68:12;75:13;79:7; 104:7;112:3,5;141:14; 142:14;197:11;199:17; 251:18;274:21;275:11 <b>handed (1)</b> 201:21 <b>handled (2)</b> 116:24;196:11 <b>handling (1)</b> 294:2 <b>hands (3)</b> 5:11;104:3;267:3 <b>hang (1)</b> 249:15 <b>HANOVER (3)</b> 141:8,10,18 <b>happen (14)</b> 63:4;111:18,19; 116:7,14;117:8,19; 118:12;191:17;211:25; 256:6,7;263:12;283:23 <b>happened (7)</b> 91:11;105:17; 112:17;113:22;118:13; 119:19;139:11 <b>happening (1)</b> 186:20	<b>happens (1)</b> 240:8 <b>happy (1)</b> 297:24 <b>hard (5)</b> 24:24;31:17;99:15; 181:4;292:25 <b>harkening (1)</b> 18:14 <b>Harris (1)</b> 136:1 <b>harvest (1)</b> 188:5 <b>hasn't (2)</b> 32:22;263:9 <b>haven't (12)</b> 6:20;10:4,21;12:11, 12,13;27:17;46:16; 121:5;184:1;196:21; 198:13 <b>He's (16)</b> 36:1;47:4;60:3;69:7; 70:7,9;72:15;108:23; 115:10;191:6,7,8,11; 209:19;248:2;267:13 <b>head (5)</b> 92:10;168:14;211:4; 256:25;281:11 <b>header (1)</b> 121:13 <b>heading (2)</b> 184:16;281:9 <b>headlines (1)</b> 224:1 <b>heads (3)</b> 24:22;168:24;199:10 <b>hear (22)</b> 6:21,22,25;7:24; 15:8;65:14;77:10; 80:15;93:3;112:10; 113:12;146:7;150:25; 153:9;154:9;195:23; 196:23;254:6;291:23; 294:22;301:17;303:18 <b>heard (17)</b> 5:11,16,22,24;6:20; 89:25;103:23;108:5; 188:25;246:6;276:24; 282:23,24;283:2; 293:1;297:20;306:7 <b>hearing (32)</b> 4:2,13;9:5;14:18; 16:8;23:15;45:14; 49:13;56:18;65:12; 70:23;71:2,4;78:23; 89:16;90:1;106:13; 117:9;119:8,8,9; 156:15;166:6,7,8; 197:24,24;250:9; 260:6;299:11;306:18; 307:3 <b>Hearings (2)</b> 71:4;88:13	<b>hearsay (6)</b> 9:4;36:1,3;45:13,13; 49:8 <b>heavily (1)</b> 180:22 <b>heck (1)</b> 114:18 <b>hedgerow (5)</b> 82:17,19;83:5,8; 155:4 <b>height (6)</b> 122:17;157:16,17, 18;163:8;199:3 <b>held (2)</b> 17:24;209:16 <b>help (10)</b> 59:22;199:18;214:4; 229:1;230:23;236:5; 240:7;302:1,8;304:22 <b>helpful (5)</b> 13:12;103:11;239:9; 260:17;292:21 <b>helping (1)</b> 252:6 <b>helps (3)</b> 207:1,2;225:19 <b>Here's (3)</b> 246:18;269:17;280:3 <b>herself (1)</b> 251:4 <b>hesitation (1)</b> 26:16 <b>high (7)</b> 60:22;80:2,2;158:9; 164:21;196:18;278:24 <b>higher (12)</b> 30:13;140:1;159:4; 163:22;176:6,9,24; 177:1,2,15,17,23 <b>highest (4)</b> 176:3,5,10;177:10 <b>highlight (5)</b> 21:10;30:18;151:23; 203:24;219:22 <b>highlighted (4)</b> 20:22;58:22;59:25; 230:1 <b>highlighting (1)</b> 24:17 <b>highlights (3)</b> 29:10;214:6;220:4 <b>high-rise (1)</b> 178:21 <b>Highway (10)</b> 61:17,23;62:2,3; 98:6;145:23,25; 182:15,18;282:5 <b>highways (1)</b> 61:4 <b>hiker-biker (3)</b> 125:2;130:5,20 <b>hill (3)</b> 164:25;289:24;
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290:11 <b>hindsight (1)</b> 185:1 <b>historic (1)</b> 85:18 <b>historically (1)</b> 218:1 <b>history (7)</b> 17:18,23;84:1;85:11; 209:19;232:6;234:1 <b>hit (2)</b> 133:22;202:20 <b>HOA (29)</b> 37:1,14;38:9;109:16; 116:10;126:21;127:7; 131:7,12,16;254:17; 255:7,14,18;256:15,19; 257:1;259:6;261:14, 16,17,21;262:3,11,20; 263:11;264:7,13;268:5 <b>HOA's (1)</b> 259:20 <b>Hold (8)</b> 47:21;48:17;65:3,3; 84:2;141:22;184:25; 222:15 <b>holding (1)</b> 18:22 <b>hollies (1)</b> 138:19 <b>home (20)</b> 33:10;42:19;43:4,7, 8;53:12;62:24,25;63:5; 90:22;135:15;154:18; 185:19;191:7;193:18; 221:11;224:21;226:13; 282:17;298:5 <b>home/apartment (1)</b> 43:3 <b>homeowner (3)</b> 108:24;258:19;267:9 <b>homeowners (12)</b> 37:6,13;38:2;40:9; 109:12;110:21;111:1, 9,16;115:5;117:18; 258:16 <b>homes (34)</b> 4:12;41:7;42:15; 51:3;62:14,15;63:4; 67:1;78:9;90:20;99:17; 100:4,24;101:20,21,23; 102:6,17;118:15; 137:18,21;147:15; 158:4,11,15;185:25; 187:3,4;191:18;195:9; 225:5;226:1;256:16; 288:14 <b>honestly (1)</b> 296:12 <b>hooked (1)</b> 247:15 <b>hope (1)</b> 5:6	<b>hopefully (3)</b> 90:5;196:25;198:15 <b>hoping (2)</b> 5:4;249:12 <b>horizontal (1)</b> 26:20 <b>horrendous (1)</b> 290:3 <b>hot (1)</b> 197:4 <b>hour (9)</b> 13:22;18:20;61:24; 183:2;282:6,10; 290:16;291:14,20 <b>hours (6)</b> 7:9,10,20;304:20,23, 24 <b>house (17)</b> 41:21;56:6;85:18; 100:23;149:8;164:15, 17;190:16;193:2; 273:21;275:24;279:8; 287:9;288:3;289:19, 19;296:5 <b>households (1)</b> 239:20 <b>houses (48)</b> 33:2;66:18,19,21; 89:17;98:11,18;99:8; 111:20;112:22;149:12; 157:25;164:1,4,6,8,8,9, 11,12,13,22;187:16; 188:14;190:13;191:20; 192:6;193:10,10; 195:12;196:6;255:25; 286:18,20;287:3,5,6, 20,20,22;290:17,19; 291:6,10;295:8,25; 297:3;302:7 <b>housing (94)</b> 29:11;30:4,6,8,9,12, 16,17,19,20;31:10,13; 32:6,7,14;33:1,13,22; 34:2;35:23;36:17; 37:12;40:21;41:8,23; 42:21;43:8,11,13; 47:17,23;50:3,15;55:2, 10,11,12,20,22,23; 62:17,20;96:4;106:22; 108:6;110:3,12; 113:17;115:15;116:24; 117:1;159:1;177:19; 20;187:11,13;215:17; 220:12;221:1,6,9,21, 23,24;223:15,15; 224:19,22,24;225:10; 226:10,16,22,24;227:3, 6;229:7;230:3,8,12,13, 19,23,23;231:1,3,6; 235:20,20;253:2; 268:14,18,23;269:3 <b>huge (1)</b> 235:25	<b>hundred (1)</b> 252:20  <b>I</b>  <b>I'd (18)</b> 6:4,21;10:3;15:19; 19:12;23:7;28:2;76:5; 93:19;95:20;101:10; 150:16;202:18;213:22; 222:13;249:22;260:23; 295:15 <b>I'll (60)</b> 8:3,4;10:16;12:16, 22;13:21;14:1;21:2; 23:18;27:25;34:13,18; 36:1;46:18;47:11,16; 65:22;88:25;92:10; 98:9;99:10,12;120:22; 123:2;124:2;128:14; 133:1;137:13,16; 138:4;141:6;142:15; 143:7;158:6,20;167:8; 175:2,22;178:14; 184:12;185:12;189:24; 194:4,23;195:3; 197:22;198:18;199:21; 219:12;229:8;236:12; 245:4;246:12;247:1; 286:16;294:18,22; 296:12;299:11;303:18 <b>I'm (190)</b> 4:13;5:1,4,14;6:2; 10:11;12:14;20:22,23; 23:21;27:20,22;28:18, 21;29:15;35:12,25; 38:8;39:24;41:12; 44:19,23;46:1,14,16; 47:8,23;49:6,7;56:1; 65:14;66:2;68:22; 69:23;72:25;74:23; 78:16;88:20;89:12; 90:2,3,4;91:16;98:7; 99:5;100:8;101:10; 105:19;108:13;109:5, 13;112:4,10,18,18,24; 113:4,12;114:17; 115:2;116:23;117:11; 118:12,19;120:1,7; 127:12;133:14;138:20; 139:18;140:21;141:13; 143:9,23;146:15; 154:18;156:24;160:13; 161:16;163:1;166:18; 167:24;171:18;172:14; 173:2,3;174:18,22; 175:25;177:3;178:4, 11,16;179:23,25; 180:21;182:3;184:24; 186:10;187:1;188:23; 189:5,20;190:9;193:5; 195:14;196:4;201:9, 25;203:15;204:2;	205:13;206:21;207:16, 21;208:4;211:20; 212:4,19,21;213:4; 218:12,13,23;222:16; 223:23;224:18;225:13, 14;226:4,5,25;228:4; 229:12;234:14;236:14, 22;237:7;244:3,6; 246:4,24;249:20; 251:3,9;252:1,15; 253:19;261:19;264:1; 266:1,4,15;269:9,10, 19;270:1,7;271:5,20, 23;274:11;275:9,14,21, 25;276:14,21;277:16; 279:14;280:2,2,25; 281:19,24;283:11,22; 284:10;286:12;288:7, 11,21;289:24;292:3; 293:10;294:11;297:16; 302:1;304:11;305:13 <b>I've (33)</b> 8:3;35:16;38:16; 65:5;71:16,21;81:2; 111:7,15;116:6;129:1; 142:17;145:20;154:13; 188:25;196:11,12; 200:7;201:8,21; 203:15;246:6;264:19; 270:7;276:14;282:6, 23,24;283:24;301:1; 302:5;306:7,11 <b>I-270 (7)</b> 24:20;27:8;50:7,8, 15;221:14;225:12 <b>icing (1)</b> 174:5 <b>idea (12)</b> 35:22;36:3;62:5; 97:14;128:25;154:5; 161:6;196:24;237:2; 239:6;279:18;292:23 <b>ideas (1)</b> 63:9 <b>identification (11)</b> 35:1;44:16;78:17; 83:25;84:15;103:5,16; 125:15;205:2;222:20; 299:13 <b>identified (5)</b> 53:3;54:7;75:22; 101:2;256:19 <b>identifies (2)</b> 30:5;184:20 <b>identify (5)</b> 4:17;24:1,13;46:19; 254:11 <b>identifying (1)</b> 96:18 <b>identity (1)</b> 214:5 <b>II (1)</b> 186:13	<b>Illinois (1)</b> 71:14 <b>illustrates (1)</b> 124:9 <b>illustrations (1)</b> 294:6 <b>illustrative (7)</b> 92:11;106:4;121:2,8; 127:2;138:4;210:23 <b>image (2)</b> 160:13;186:23 <b>imagine (1)</b> 17:23 <b>immediately (11)</b> 22:14,18;24:25; 54:15,15;99:6;101:16; 128:5;286:21,23,25 <b>imminent (1)</b> 18:8 <b>impact (8)</b> 100:6;139:21; 185:21;186:5;189:21; 192:3;195:2;196:18 <b>impacted (4)</b> 80:10;102:1;186:2; 230:6 <b>impacts (3)</b> 101:8;102:1;184:20 <b>impermeable (2)</b> 295:10,11 <b>impervious (8)</b> 107:15,19;110:5; 149:24;150:5;157:11, 14;176:20 <b>impinging (1)</b> 191:10 <b>implementation (1)</b> 201:2 <b>implemented (1)</b> 39:14 <b>implication (1)</b> 273:1 <b>important (13)</b> 36:13;43:17;52:14; 55:24;58:8;218:1; 221:18,24;226:20; 231:7;234:7;237:22; 239:23 <b>importantly (1)</b> 199:15 <b>impress (2)</b> 27:11;51:4 <b>impressive (1)</b> 298:25 <b>improper (1)</b> 38:19 <b>improvement (1)</b> 194:18 <b>improvements (3)</b> 130:18;170:8;181:10 <b>impugning (1)</b> 270:1 <b>inadequate (1)</b>
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12:2 <b>inadvisable (1)</b> 110:11 <b>inclined (2)</b> 46:1;302:2 <b>include (18)</b> 39:9;65:1;98:5,20; 99:3,6,12,22;101:17; 103:3;113:21;117:25; 145:14,16;147:15; 248:13,17;300:14 <b>included (15)</b> 78:8,15;97:18;98:8; 99:17;100:11,25; 102:8,18;137:23; 158:1;173:15;185:2; 248:20;262:13 <b>includes (12)</b> 77:1;123:10;132:19; 133:19;135:14;149:24; 153:20;157:14;205:24, 25;222:10;302:7 <b>including (7)</b> 71:17;100:3;121:18; 130:18;233:20;250:14; 252:23 <b>inclusion (2)</b> 32:9;263:15 <b>income (4)</b> 254:3;269:3,6,7 <b>incomes (1)</b> 29:12 <b>incompatible (1)</b> 156:20 <b>inconsistency (2)</b> 90:2;220:9 <b>inconsistent (1)</b> 214:23 <b>incorporate (3)</b> 32:11;37:3,11 <b>incorporated (4)</b> 66:23;131:11; 138:15;216:10 <b>incorporating (1)</b> 131:7 <b>incorporation (1)</b> 40:7 <b>incorrect (1)</b> 17:7 <b>increase (1)</b> 47:2 <b>increase'' (2)</b> 45:8,21 <b>increased (1)</b> 11:16 <b>increasing (1)</b> 220:14 <b>increasingly (1)</b> 18:20 <b>incredible (1)</b> 54:22 <b>incumbent (1)</b> 128:24	<b>Independent (5)</b> 182:9;226:17; 255:18,20,24 <b>indicate (5)</b> 14:6;23:1;38:12; 127:24;225:4 <b>indicated (22)</b> 6:8;21:24;58:4; 62:23,23,24;72:14; 75:14,15;150:23; 180:9;205:21;216:5; 221:10;224:14,19; 225:24;226:19;228:18; 230:25;232:3;269:2 <b>indicates (6)</b> 11:25;14:16;41:6; 62:18;225:3;282:14 <b>indicating (3)</b> 80:21;233:8;236:1 <b>indication (2)</b> 92:5,10 <b>individual (6)</b> 8:25;102:17;122:2; 204:3;210:21;304:9 <b>individuals (2)</b> 287:9,25 <b>indoor (1)</b> 247:11 <b>indulge (1)</b> 195:7 <b>indulgence (2)</b> 249:8,16 <b>infer (1)</b> 240:10 <b>influenced (3)</b> 104:2;105:1;234:22 <b>influencing (1)</b> 202:15 <b>informally (2)</b> 301:22,22 <b>information (17)</b> 28:19;46:12;220:22; 247:6;270:24;272:3,7, 22;300:22,23;301:3,10, 14,19;305:17,19,20 <b>informational (2)</b> 14:16;235:15 <b>infrastructure (8)</b> 27:9,13;30:9;52:4,5; 54:23;56:14;254:12 <b>infringements (1)</b> 199:2 <b>ingress (1)</b> 281:17 <b>inherently (1)</b> 156:20 <b>initial (2)</b> 55:8;200:3 <b>initially (1)</b> 17:25 <b>Inn (10)</b> 85:17,24;148:6,11, 21,24;155:19,20;	267:12,14 <b>inquiries (1)</b> 273:8 <b>inquiry (5)</b> 257:22;266:20,24; 272:2,5 <b>inside (6)</b> 190:16;191:7,21; 192:25;193:2;291:2 <b>inspection (1)</b> 109:9 <b>inspector (1)</b> 116:5 <b>instance (1)</b> 82:8 <b>instead (2)</b> 230:18;233:9 <b>instinct (1)</b> 264:18 <b>instructed (2)</b> 39:7;199:17 <b>integral (1)</b> 203:19 <b>integrate (1)</b> 259:12 <b>integrated (3)</b> 62:12;64:2;75:19 <b>integration (3)</b> 35:14;58:1;267:4 <b>intended (5)</b> 39:11,23;162:1; 231:11;272:19 <b>intent (8)</b> 39:1;85:1;86:4; 133:4,10;160:14; 212:25;235:7 <b>intention (5)</b> 38:21;39:2,9;122:1; 217:7 <b>interaction (1)</b> 166:11 <b>interconnect (1)</b> 175:9 <b>interest (12)</b> 38:9;55:2;121:23; 162:15;221:16;240:17; 257:24;259:7,16; 261:22;264:5;272:1 <b>interested (2)</b> 174:18;257:14 <b>Interesting (3)</b> 213:25;230:8;282:11 <b>interests (1)</b> 259:14 <b>interface (2)</b> 253:16,20 <b>interior (2)</b> 184:23;190:15 <b>interject (1)</b> 42:3 <b>internal (5)</b> 130:12,14;137:18; 150:13;155:24	<b>interpret (2)</b> 20:2;225:7 <b>interpretation (4)</b> 203:18;228:24; 303:4,5 <b>interpretations (2)</b> 201:16;225:19 <b>interpreted (3)</b> 225:17,17;245:1 <b>interpreting (1)</b> 202:14 <b>interrupt (3)</b> 27:14;30:23;186:25 <b>interrupted (3)</b> 25:15;40:13;54:1 <b>intersect (1)</b> 87:8 <b>intersection (17)</b> 24:20,21;123:13; 124:14,23;125:1,4,8; 130:21,22;180:18; 211:5;241:19;265:21, 21;281:25;290:25 <b>intersections (1)</b> 73:12 <b>intersects (1)</b> 168:23 <b>interviewed (1)</b> 223:13 <b>interviews (1)</b> 221:8 <b>into (64)</b> 29:24,25;34:20;35:6; 36:10;37:13;49:16; 53:2;54:21;56:23; 71:10;85:25;87:1; 88:25;90:2,3;92:2; 98:15,15;117:7;122:8; 123:13,14;124:7; 131:11;135:10;136:15; 137:12;138:15;140:5; 143:10;154:21;155:19; 164:22;177:24;180:25; 181:7;187:25;195:15; 199:12;204:15;208:21; 209:5;211:1;218:23; 230:25;231:6;232:8; 240:11;241:4,12; 259:13;263:10;265:22; 270:23;271:1;276:13; 277:3;279:3;280:7,11; 282:18;283:16,21 <b>intro (1)</b> 86:21 <b>introduce (2)</b> 206:21;251:4 <b>introduced (3)</b> 28:12;45:3;232:24 <b>introduction (2)</b> 86:18,22 <b>intrusions (1)</b> 18:9 <b>inventory (3)</b>	78:7;79:17;185:11 <b>invitation (6)</b> 254:15;255:13; 259:11,18;268:4,6 <b>invited (1)</b> 255:17 <b>involved (1)</b> 201:9 <b>inward (2)</b> 30:7,10 <b>ironed (2)</b> 36:8;37:10 <b>isn't (4)</b> 86:16;103:19; 104:25;163:12 <b>isolated (1)</b> 115:7 <b>issuance (1)</b> 200:18 <b>issue (39)</b> 7:7;9:12;11:21;19:2, 20,21;46:6;49:10;50:1; 86:17;89:8;91:22,24; 104:19;117:11;120:1; 129:3;138:22;157:22; 189:11;210:4;217:16; 218:10;220:3;228:22; 231:8;234:5;237:25; 239:16;243:4;253:18; 260:8;267:6,7;271:7; 277:2;281:5;303:23,24 <b>issues (20)</b> 11:6,13;19:17;29:3, 24;31:11,13;45:13; 51:1;55:20;70:8;93:2; 156:25;159:24;183:10; 184:10;220:2;227:10; 233:4;281:17 <b>It's (328)</b> 4:8;7:8,10;9:4,23; 11:9;12:14,18;14:2; 16:21;19:24;20:25; 23:13;24:24;25:10; 26:6,8,22;31:7,9,17,19, 21;33:18,20;34:7;35:2; 36:2,23;37:9;38:18,19; 39:19;40:6,16,20,25; 41:13;42:14,23,24,25; 43:1,4;44:20;45:2,9, 11;46:2,3;48:12;49:23; 51:21;52:14;54:11,14; 57:9;61:5;62:2,2,3; 64:20;65:18,18;67:10; 68:19,23;73:21;79:22; 80:6,7,8;81:9,23; 82:15;83:11,11,11; 85:12,15;86:1,16; 88:11;91:2,9,23,24,24; 97:13;98:5,25;99:15, 16;101:12;102:15; 103:13,20;104:2,3,3,4, 16,17;110:10,11,14; 111:1;112:15,15,25;
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114:19;115:13,14,19; 116:7,8;117:1,3,13; 119:11,12,15;123:9,11; 125:19,19;126:2,3; 127:9;128:20,22,25; 129:1,2;132:20; 133:12,16;137:4; 138:1,21,22;139:15; 140:13,14,23;142:5; 143:9,13;144:7;145:2, 11,23;146:6;147:18; 148:12;150:11;154:1, 6,13,14;155:5;160:12; 162:2,24;166:11,21; 168:14;169:13;170:13; 171:3;172:4,15; 173:23;178:23;180:11, 21;181:4;183:7;184:7; 185:10,11;186:21; 188:18;189:21;190:21; 192:20,20;194:2; 195:8,23,24;196:2,11, 15;198:7;204:6; 205:14,24;206:19; 207:15,15,21,22; 210:11;213:2;214:21; 215:3;216:11,12,15,21; 217:6,24;220:1,2; 221:23;224:10;225:18; 226:13,13;227:19; 228:8;231:7;234:10; 236:4;238:12,13; 239:3,16;241:4; 242:19,25;243:10,10, 11,14;244:17;245:10, 22;248:3,8;253:5,5,6; 255:9;257:2,5;258:3; 259:9;262:7;263:14; 265:19,21;266:20,23; 267:7,14;268:9,10,25, 25;269:5,5,6,19; 271:13,13,16,21;272:9, 16;273:8,25,25;276:5; 277:18;278:13,17,18, 20,21,23;279:1,7,8,19, 20;280:14,16,18,24,24, 25;281:13,16,16,19; 282:5,10,15,19;283:4, 12,13,17;284:21,22,22; 285:11;287:20;288:25; 289:10;290:2,3,6,10, 16;292:1,25;293:10; 294:11,12,12;295:16; 300:15;304:3;306:10 <b>item (6)</b> 32:8;41:1;64:3; 283:10;304:10,10 <b>items (3)</b> 20:7;131:9;183:24	45:6 <b>Jane (4)</b> 93:19;94:4,14,20 <b>January (7)</b> 44:19;83:20,23;84:4, 11;292:2,7 <b>Jennifer (2)</b> 197:9,19 <b>J-E-N-N-I-F-E-R (1)</b> 197:19 <b>Jeremy (1)</b> 16:14 <b>job (7)</b> 8:3;168:3;231:4,4; 233:17;268:16;297:19 <b>Jody (6)</b> 4:20;22:11;46:24; 65:14;139:11;295:16 <b>John (1)</b> 115:21 <b>join (10)</b> 131:19;254:17; 255:14,15,17;257:15; 259:10,11,19;268:5 <b>joins (1)</b> 76:15 <b>joint (1)</b> 37:8 <b>judge (1)</b> 201:4 <b>judgment (1)</b> 161:24 <b>judicial (1)</b> 9:24 <b>July (4)</b> 222:12;223:5,6; 226:6 <b>jump (2)</b> 28:18;230:6 <b>June (3)</b> 44:9,22;184:18 <b>jurisdiction (1)</b> 226:14 <b>justification (3)</b> 63:3;98:17;272:6 <b>justify (1)</b> 182:2 <b>justifying (1)</b> 239:8	71:25;202:9 <b>kept (1)</b> 55:9 <b>key (4)</b> 136:25;230:1,16; 260:8 <b>keyed (1)</b> 231:6 <b>kids (8)</b> 33:11;56:8;61:3; 108:5;187:19;278:20; 280:21,22 <b>kind (48)</b> 8:23;18:13;19:20; 24:11;37:8,10;45:24; 47:7;49:21;53:1;55:22; 56:25;66:25;70:15; 72:22;94:19;110:17; 154:13;165:14;181:15, 15;182:3;183:7; 192:10;196:13;198:13; 199:10;200:6;210:8, 24;219:21;232:17; 237:5,12;239:3,8; 249:11;272:3,7,7; 283:11;287:15;292:1; 293:6,16;294:19; 296:4,6 <b>kinds (3)</b> 53:15;97:6;220:16 <b>KLINE (377)</b> 4:19,20;5:7;6:18,19, 24;7:9,15;8:17;10:3, 10,16,23,25;11:11; 13:13,14,21,24;14:4, 10,13,21;15:3,5,10,17, 19,22;16:5,7;17:11; 20:14,19;21:4,6,9;22:4, 6,12;23:3,7,12,14,18, 20;25:14;26:3,6,13,14, 16,24;27:21,23;28:2,7, 22;30:22,25;31:4,17, 21,23;32:2;34:12,17; 35:2,5,11;36:22,25; 37:8,17;38:1,14;39:4,6, 17,21;40:1,6,12,25; 41:13;42:3,5,8;44:1,5, 7,11,20;45:1;46:8,18; 47:3;49:25;50:11; 51:25;52:25;53:18,22, 25;54:14,19;55:17; 56:17;57:6,15,18; 58:20;59:7,8,13;60:10; 65:12,15,18,22;66:6,8; 67:2,9,12,21,25;68:2,7, 16;69:1,12,16,19,24; 70:12,14;71:9;72:1,3, 18,19;73:8;74:2,15; 76:7;78:2,19;80:20,23; 81:1,8,11;83:7,16,19; 84:5,7,10,16;85:12; 86:16;87:9;88:1;90:17; 91:4;92:1,4,17,21;93:8,	12;95:15;96:17,20; 102:22;103:9,17; 104:13,20;105:5,6,16, 20;106:10,12;108:2, 11;110:12,14,23;113:2, 6;114:4,8,11,15,24; 115:2,9,19;116:3,23; 118:1,2;120:7,9;127:9, 11;128:18;134:4; 136:6;137:22,24; 138:1;139:13;141:4; 143:1,17,20;146:10,11, 18,20;147:22;150:15; 153:17;155:23;156:14; 157:21;160:12,24; 161:5,8,16,18,19,21; 162:17;164:15;165:19; 167:10;179:11;183:6; 184:6,13;185:4,14; 187:7,10;189:9;190:1; 194:4;197:2,6,14,16; 198:2,6,8,11;201:20; 202:12,17,21,25; 203:15,18,22;204:20; 205:3,6,9;206:12,15, 18;207:22;208:20; 209:1,8;210:13; 211:21,24;212:17; 213:9;215:9,24; 217:17;219:12;221:4; 222:18,22,25;223:2; 229:9,12,15;233:13; 234:9,19;236:24; 238:2,12;240:13,19; 246:24;247:7,24; 248:2,3,6,8,10;249:3,8, 11,19;250:4,11,18,20; 251:1,2;257:4,9; 260:23;261:2,6,12; 262:2,6,11,15,24; 266:12,21;267:12; 272:12,16;273:1,5,12, 15,17;274:10;285:17; 286:9;292:20;293:22, 23;294:2,5,11,17; 297:8;298:2,5,9,12,15, 18,23;299:1,2,15,17, 23,25;300:15,21; 301:1;304:13,19,22,24; 305:7,8 <b>Kline's (4)</b> 6:17;14:24;17:18; 297:15 <b>knew (5)</b> 202:10;222:1; 271:11,12;287:13 <b>knowledge (1)</b> 267:25 <b>known (4)</b> 4:8,9;142:18;230:5 <b>knows (1)</b> 270:18 <b>KUBIT (12)</b>	250:19;251:4,8,8,12, 15,17,22;252:1;266:6; 274:16,17 <b>K-U-B-I-T (1)</b> 251:12
<b>L</b>				
<b>labeled (5)</b> 21:19,20;46:9;54:14; 153:18				
<b>labored (1)</b> 235:5				
<b>lack (6)</b> 12:1;56:8,22;152:9; 199:3;283:24				
<b>lacking (1)</b> 40:21				
<b>lady (1)</b> 249:11				
<b>Lakelands (1)</b> 71:25				
<b>land (66)</b> 4:5;14:17;18:10,15; 19:5;21:14;22:5,9,9, 19;26:17,17;27:3;28:3, 10;30:2;31:8;32:2; 35:19;51:2,5,8;56:15; 69:3,25;70:17,25;71:6; 72:4,16;76:6;91:13; 95:24;96:2;98:25; 100:8,9;103:19; 104:15;106:7;139:15; 146:25;150:12;156:16; 159:7;160:5;162:10; 175:25;182:18;187:25; 200:11,25;201:16; 203:1,13;205:24,25,25; 208:9,17;217:23; 238:24;239:16;252:5; 267:15;296:15				
<b>landscape (3)</b> 70:25;149:20;165:8				
<b>landscaped (2)</b> 152:18;153:11				
<b>landscaping (3)</b> 81:24;154:3;155:9				
<b>lane (13)</b> 51:3,4;52:5,5;61:4; 64:17;144:22,23; 265:20;275:2,5; 289:22;290:4				
<b>lanes (16)</b> 18:10;24:19;61:20; 123:12;170:2,3,4,7,11, 12,13,13,14,16;194:19; 289:12				
<b>language (34)</b> 29:23;39:5;42:5; 91:5,17;110:18,19; 112:24;113:2;114:6, 15;121:5,9;204:7,8,9; 205:11,13;206:1;				



208:6,11;209:9,22; 212:22;214:22;220:10; 228:9;229:7;230:12; 233:7,14;235:4; 238:20;244:18 <b>large (15)</b> 20:11;22:12;81:16; 126:20;132:11;143:22; 144:12,13;149:19; 180:8;221:3;237:14; 252:23;277:5;301:6 <b>largely (3)</b> 56:11,11;115:7 <b>larger (10)</b> 31:9;33:3;81:23; 126:23;130:4;131:20; 180:4;220:23;258:24; 302:6 <b>largest (5)</b> 42:24,25;74:25;75:2; 252:3 <b>laser (2)</b> 105:15;193:25 <b>last (19)</b> 18:5;23:8;30:15; 71:15;74:25;88:12,12, 13;89:15;113:13; 132:18;151:20;155:18; 173:6;201:8;231:8; 236:7;251:11;299:15 <b>late (1)</b> 5:3 <b>later (15)</b> 58:17,23;66:18; 77:11;84:23;86:23; 94:4;99:11;138:14; 146:7;175:3;237:1; 238:2;246:12;258:5 <b>LATR (1)</b> 292:8 <b>law (4)</b> 4:20;114:9;305:25; 306:2 <b>lawn (3)</b> 131:14;155:4;186:23 <b>lawns (1)</b> 188:8 <b>lay (1)</b> 28:1 <b>laying (1)</b> 106:20 <b>layout (2)</b> 120:23;139:16 <b>lead (4)</b> 23:23;24:9;62:10; 227:1 <b>leading (5)</b> 17:13;39:18,19;40:3; 60:19 <b>leads (1)</b> 220:6 <b>learn (1)</b> 199:18	<b>least (21)</b> 53:13;98:8;100:11; 101:15,17;109:7; 115:5;116:4;147:3,24; 148:1;150:5,10; 155:18;233:21;249:22; 277:23;289:23;291:8, 10,11 <b>leave (9)</b> 53:1;74:3;93:24; 136:7;138:5;187:7; 188:23;246:14;261:2 <b>leaves (1)</b> 180:5 <b>Leaving (1)</b> 26:2 <b>leery (1)</b> 49:13 <b>left (13)</b> 89:21;95:17,18; 122:4,5;141:14;163:1; 164:9;265:20;275:11; 283:11;298:1,2 <b>legacy (1)</b> 52:15 <b>legend (2)</b> 75:13;76:13 <b>legitimate (4)</b> 104:23;266:20,24; 273:7 <b>Leisure (6)</b> 32:23;63:21,22; 66:21;112:25;114:18 <b>length (2)</b> 123:16;202:18 <b>lengthwise (1)</b> 140:13 <b>less (23)</b> 9:2;27:5;78:11;80:7, 8;104:23;105:1; 108:16;113:8;133:25; 134:24;147:11,12; 149:22;157:9,12; 158:13,14;188:3; 232:11;267:14;294:9; 304:16 <b>Let's (31)</b> 5:12;7:19;14:2;16:8; 31:15;34:10,21;44:2; 47:6;48:18;53:1;56:19; 65:4;86:20;93:6,11; 102:24;105:3;106:2; 142:24;158:17;167:25; 181:2,3;195:7;210:22; 246:13;261:7;274:19; 299:1,4 <b>lets (1)</b> 226:16 <b>letter (36)</b> 6:6,7,7;9:18;11:9,20, 23,25;12:7,8,9,23,23; 13:5;34:1,4,5,5,7,18, 24;35:13;36:1,2;88:2,	7,21;91:18,20;131:5; 214:13,18;235:1; 245:25;265:6;282:13 <b>letters (4)</b> 6:9;14:16;56:2; 230:25 <b>letting (3)</b> 251:3,24,25 <b>level (17)</b> 33:17;56:13,13; 81:25;140:14;185:20, 21;190:8;192:10,13,14, 14,17,17,19;201:10; 256:17 <b>levels (5)</b> 186:1,2;190:7; 191:21,22 <b>liaison (1)</b> 199:8 <b>liber (1)</b> 79:13 <b>liberal (1)</b> 114:11 <b>libraries (1)</b> 52:21 <b>Library (3)</b> 115:14;116:1;299:18 <b>lies (1)</b> 210:15 <b>life (6)</b> 32:10;43:6;55:23; 259:8;289:11;290:7 <b>lifestyle (4)</b> 32:21;33:23;52:13, 17 <b>lifestyles (1)</b> 29:12 <b>light (16)</b> 11:18;153:6;187:6; 189:10,10,17;289:10, 11;290:20,24,25;291:2, 14,16,18;301:24 <b>lighter (1)</b> 96:13 <b>lighting (1)</b> 189:14 <b>lights (1)</b> 189:15 <b>likelihood (1)</b> 104:21 <b>likely (4)</b> 64:13;97:8;104:4,25 <b>likes (2)</b> 35:22;36:4 <b>limit (9)</b> 61:24,25;62:4,5; 110:22;115:6;182:18; 183:2;282:6 <b>limitation (1)</b> 111:21 <b>limited (8)</b> 29:20;36:3;89:24; 91:6;123:6;215:1,5;	254:3 <b>limits (1)</b> 168:5 <b>line (31)</b> 76:24;77:8;79:10; 80:1,2;82:1,4,18;102:7, 11;124:19;125:2; 130:9;140:7;143:10; 147:17;149:1,10,11; 152:16,22;153:4; 163:4,23;165:14,18; 175:17;223:17;266:24; 296:22;297:3 <b>lines (8)</b> 26:20;100:12; 124:21;130:11;152:13; 175:5,6;207:23 <b>link (3)</b> 9:19;73:6;124:24 <b>links (1)</b> 114:6 <b>liquid (1)</b> 79:14 <b>list (12)</b> 20:7,15;63:7,24; 127:9;173:15,20; 236:13;238:7;247:5,8; 280:19 <b>listed (5)</b> 10:8;134:23;189:6; 247:3;285:10 <b>listen (1)</b> 305:11 <b>listened (1)</b> 303:2 <b>listening (3)</b> 117:23;222:2;305:2 <b>listing (2)</b> 20:16;285:7 <b>lists (1)</b> 174:12 <b>literally (2)</b> 279:2;291:21 <b>little (63)</b> 8:13;9:2;24:24; 39:17;45:9;46:14;49:8, 13;69:5;73:1;81:3; 86:20;90:6;93:6;99:7, 21;107:2,23;116:8; 123:3;126:16;128:12; 129:19;131:4;135:23; 136:14;137:9,13; 138:14;140:1;147:3,7, 20;148:6;152:11; 154:20;158:7;188:3, 12;214:20,20;217:18; 219:24;220:22;225:9; 236:19,21;249:15; 251:3;259:15,22; 266:13;269:23;272:9, 10;276:14,16;283:22; 288:19;290:9;294:22; 298:9;299:24	<b>livability (3)</b> 32:11,17,19 <b>livable (2)</b> 40:23;41:2 <b>live (19)</b> 5:20;28:16;41:6; 48:4;55:4;56:7;108:9; 110:25;111:17;118:15; 196:19;226:1;254:1; 261:15;268:17;275:2; 288:14,14;289:20 <b>lived (1)</b> 275:2 <b>lives (3)</b> 52:14;193:2;238:15 <b>living (10)</b> 33:2,17;47:20;48:2; 108:5;111:1;118:3; 125:25;192:18;269:7 <b>LLC (4)</b> 10:7,8;16:20,24 <b>LLC'' (1)</b> 17:5 <b>LMA (1)</b> 4:3 <b>local (7)</b> 4:4;124:10;183:1; 233:17;252:16;254:22; 292:8 <b>located (10)</b> 4:10;65:25;73:7; 122:8,23,25;127:1; 216:6;220:24;221:15 <b>location (6)</b> 121:7;176:4,9;210:8; 213:6;235:8 <b>locations (1)</b> 291:6 <b>locations'' (1)</b> 29:14 <b>lock (1)</b> 283:15 <b>locked (1)</b> 131:2 <b>logic (3)</b> 98:23,24;99:20 <b>logically (1)</b> 98:24 <b>long (21)</b> 8:4;15:7;39:22;40:3, 3;57:9;71:11;89:21; 105:20;110:15;200:7; 202:22;218:9;230:4; 236:4;249:21,25; 260:12;289:7;304:13, 14 <b>longer (7)</b> 18:7,18;19:16;51:17; 233:1;249:16;292:14 <b>longitudinally (1)</b> 79:2 <b>look (44)</b> 18:22;27:2;31:24,25;
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34:15;47:8,10;48:22; 49:11;51:17;52:12,16; 57:24;69:23;70:5;92:2; 93:4;105:24;107:7; 112:21;117:7;131:13; 138:6;196:10;206:3; 213:14;216:20;221:9; 223:14;229:25;240:25; 250:15;257:11;260:23; 262:10,17;263:4; 270:23,25;272:14; 275:10;284:18;289:16; 302:10 <b>looked (8)</b> 50:21;106:20; 107:11;121:5;136:16; 143:6;219:24;295:8 <b>looking (44)</b> 21:10;26:6;28:4,9; 30:1;43:11,17;50:6; 51:8;57:12;70:11; 106:24;113:2,4;115:2; 136:7;142:14;143:17; 149:18;154:18,19,21; 155:1;156:19;163:4; 164:24,25,25;180:2; 207:19,20;215:2; 216:25;224:6,22; 231:1;235:22;252:21; 253:25;275:9,13; 277:20;289:24;296:4 <b>looks (8)</b> 87:21;100:12; 101:20;103:20;190:12; 217:14;246:9;272:21 <b>loop (1)</b> 53:20 <b>loops (1)</b> 53:18 <b>loose (2)</b> 258:1;266:13 <b>loosely (1)</b> 258:3 <b>loss (3)</b> 11:15;184:10;188:10 <b>lost (3)</b> 39:22;116:1;193:23 <b>lot (31)</b> 15:6;17:24;28:15; 29:9;31:5;121:19; 129:25;154:16;157:9; 160:6;178:22;181:5; 187:10;188:5;204:5; 209:25,25;230:9; 232:10,16;237:4,17; 254:5;263:11;264:4,8; 280:15;281:2;294:8,8, 9 <b>lots (23)</b> 89:5;100:13,14; 106:23;121:19;124:18; 125:19,20,22;126:4; 148:7;186:2;187:24;	255:25;293:8;296:10, 11,13,16,17,18,21; 297:6 <b>loud (1)</b> 187:19 <b>low (7)</b> 161:6;165:2;205:17; 208:12;214:14;269:3,6 <b>lower (11)</b> 79:5;143:20;157:18; 158:12;164:6,22; 167:11;174:1;206:2; 209:17,24 <b>low-income (1)</b> 253:3 <b>lunch (2)</b> 13:21;161:12 <b>luncheon (1)</b> 161:13  <b>M</b>  <b>M-83 (21)</b> 61:17;76:21;82:9; 89:15;96:5;97:24; 101:3;103:19;144:3,4, 16;145:6,12,12,14; 167:14;168:19,22; 169:3,12;195:1 <b>ma'am (8)</b> 94:18;116:12; 117:22;142:2;144:24; 189:24;251:6;300:1 <b>magnificent (1)</b> 243:5 <b>mailing (2)</b> 14:9,13 <b>main (7)</b> 81:15,16;104:18; 195:16;253:16,19; 265:22 <b>maintain (3)</b> 19:16;29:11;66:22 <b>maintenance (12)</b> 37:23,25;38:13,21; 39:2,10;131:9,14,16; 257:21,21;272:19 <b>major (11)</b> 27:6;32:12;129:8; 131:23;136:1;243:1; 267:1;282:14,15; 283:6,10 <b>majority (1)</b> 195:22 <b>makes (10)</b> 7:4;47:8;49:13; 102:20;114:1;181:20; 192:9;230:21;282:15; 304:3 <b>making (4)</b> 212:24;218:15; 225:14;281:19 <b>man (1)</b>	18:5 <b>manage (1)</b> 256:21 <b>managed (1)</b> 66:22 <b>management (9)</b> 80:18;152:17;153:2, 21;188:22,24;189:1; 256:20,23 <b>mandated (1)</b> 200:4 <b>mandates (1)</b> 226:20 <b>mandatory (1)</b> 87:6 <b>manual (1)</b> 191:23 <b>manuals (1)</b> 125:18 <b>many (28)</b> 29:25;109:18; 145:21;171:4;192:11, 12;198:4,25;199:2; 200:21;207:8;219:19; 224:18,18,19,22;225:1, 4;227:1;230:13; 252:22;253:16;259:15; 264:19,19;273:24; 283:14;297:25 <b>map (27)</b> 4:4,8;20:21;21:17, 20,21;24:24;26:20; 54:13;85:14;95:19; 98:4;99:15;136:25; 142:14,19,23,25;143:3; 159:12;206:9;208:7; 240:25;252:16;254:22; 275:8;280:1 <b>maps (7)</b> 23:3,15;142:12,16; 275:7;300:14;303:5 <b>March (1)</b> 226:7 <b>mark (5)</b> 34:21;44:2;102:10, 24,25 <b>marked (11)</b> 34:25;44:15;83:24; 84:14;103:4,15; 125:14;180:16;205:1; 222:19;299:13 <b>market (5)</b> 115:19,21;133:5,6,9 <b>marking (2)</b> 82:2;206:24 <b>markings (1)</b> 180:18 <b>marks (1)</b> 200:10 <b>Martin (1)</b> 4:13 <b>Mary (4)</b> 93:19;94:4,14,20	<b>Maryland (10)</b> 4:8,10;17:17;68:21; 119:2;125:17;166:16, 20;197:21;252:10 <b>massaged (1)</b> 107:23 <b>master (157)</b> 11:14;19:8,20;25:18; 27:2;28:20;29:9,17,18, 23,24;30:18;33:21; 43:19;56:10;64:20; 73:18;75:6;76:10,19, 20;77:4,7,12,18;78:4, 12,14;80:10;82:8;87:6, 10;98:22;100:3;101:2; 122:1;123:11;136:14, 14,19;139:5;140:21, 22;141:1;145:11; 150:23;158:24;159:3, 14,16,23;160:4,14,16, 22;161:25;162:1; 167:19,20,21;168:5,6, 17,20;169:2,18; 176:12;178:20;183:11; 197:23;199:25;200:21, 22,22,23,24;201:5,9, 10,11,14;202:15,19,25; 203:5,11,19;204:3,9, 14,18;205:23;206:9; 207:5,8;210:5;212:25; 213:10;214:4,10,21,22; 215:2,13,13,15,19,20; 216:12,15;217:8; 218:2,7;219:16;220:5, 18;222:4;227:4,11,14, 23,24;228:1,5,11,18, 23,25;229:1,5,7,14,17; 230:13,15;231:6,10,23; 234:6,25;235:2,24; 238:18;245:2;252:6; 276:24;283:18;284:4; 287:11,13;288:1,2; 295:8,14;296:5,6; 303:10 <b>master's (1)</b> 201:22 <b>match (4)</b> 79:3;140:9,12,15 <b>material (3)</b> 15:6;145:3;187:12 <b>materials (2)</b> 190:19;300:3 <b>matter (6)</b> 36:6;112:15;141:18; 183:13;283:5;287:11 <b>matters (4)</b> 10:2;13:13;14:20,23 <b>maximum (7)</b> 77:21;123:6;139:11; 151:5,13;157:8,16 <b>May (47)</b> 6:12;16:4;30:3; 34:19,23;35:9;37:2;	42:3;47:14;48:15; 66:11;68:14;71:14; 91:6;92:21;93:5;94:14; 113:10,15,17,20;115:7, 18;120:5;141:8;146:9; 154:20;163:8;174:1; 190:24;194:24;197:13; 213:7;233:8;237:23; 251:21;257:16;259:14; 260:7;265:6;266:25; 274:23;298:9;300:8; 301:10;302:16;305:1 <b>maybe (27)</b> 17:12;23:23;31:11, 11;40:13;53:1,14;81:6, 8;99:23;110:18; 113:21,24;143:15; 156:16;161:5;175:25; 179:23;180:6;186:10; 188:2;189:3;219:12; 234:22;243:6;267:23; 281:18 <b>McMansion (1)</b> 30:16 <b>McMansions (2)</b> 30:15;32:16 <b>Meadow (7)</b> 67:1;275:2,5;286:22; 289:22;290:4;295:25 <b>Meadows (13)</b> 5:15,21;82:13; 135:18;164:9,16; 171:22;172:2;173:14, 19;275:2;278:10; 295:20 <b>mean (83)</b> 7:2;8:3;12:23;20:16; 32:25;33:6;35:25; 36:24;45:9,11,12; 50:14;53:5,14;61:7; 69:17;89:20;98:5;99:1; 101:7;104:14;109:6, 17;111:15;112:23; 113:25;114:4;117:11, 15,18;130:8;140:16; 142:17,22;146:18; 154:25;156:23;163:8; 165:17;178:5,5;191:4; 212:19;216:17;220:1; 225:6;236:12,17; 237:15,19;238:10; 239:16;240:10;241:23; 242:17;243:3;244:23, 25;245:8;257:5; 258:23;259:14;261:15; 262:25;263:6;265:19, 21;266:23;271:4,25; 277:24;278:5;287:4; 288:5,8;289:18; 290:21;291:22;295:18; 301:22;302:2;304:7,18 <b>meaning (4)</b> 166:14,19;264:24;
--	--	---	--	---

267:18 <b>means (7)</b> 4:14;37:12;146:19; 178:5;215:10;229:11; 233:21 <b>meant (1)</b> 242:18 <b>measure (1)</b> 196:23 <b>measured (3)</b> 74:9;292:6,7 <b>measurement (1)</b> 292:24 <b>mechanism (4)</b> 108:8;109:6;116:9; 262:2 <b>median (2)</b> 92:13,16 <b>mediated (1)</b> 200:3 <b>mediation (1)</b> 200:3 <b>medical (4)</b> 52:21;134:11;136:9; 233:20 <b>meet (13)</b> 30:19;33:23;38:25; 85:2;118:3;124:3; 126:9;128:13;147:4, 10;156:8;182:10; 284:19 <b>meeting (15)</b> 28:11;119:6,6; 126:18,20,20;127:14; 144:19;237:15,21; 302:18;303:16;304:12, 18,19 <b>meets (2)</b> 82:25;92:15 <b>member (6)</b> 93:20;166:10; 201:24;202:1,1;249:18 <b>members (4)</b> 9:22;15:12;72:7; 255:7 <b>mention (9)</b> 9:21;11:19;45:25; 88:7;90:17;136:16; 160:3;173:15;232:2 <b>mentioned (24)</b> 11:21;21:14;53:5; 76:22;85:14;123:8; 131:15,21;135:2,5; 139:3,18;151:4;153:3; 162:3;173:17;176:11; 194:14;201:3;251:25; 252:14;257:2;268:14, 18 <b>mentioning (1)</b> 113:22 <b>merely (1)</b> 251:4 <b>mess (1)</b>	291:17 <b>met (2)</b> 12:9;218:10 <b>metes (1)</b> 79:6 <b>method (1)</b> 39:10 <b>methodologies (1)</b> 192:1 <b>methodology (1)</b> 66:23 <b>metro (2)</b> 223:21,22 <b>Mews (1)</b> 115:11 <b>microcosm (1)</b> 200:18 <b>mid (1)</b> 5:3 <b>mid-1970's (1)</b> 202:14 <b>mid-afternoon (1)</b> 7:16 <b>Mid-County (4)</b> 61:17;62:3;145:23; 282:4 <b>middle (5)</b> 62:4;140:11;147:25; 149:14,15 <b>might (21)</b> 70:6;103:11;106:12; 111:2;120:1;154:5; 179:23;192:2,3; 196:14;209:11;229:15; 232:2;234:4;237:6,7; 238:16;259:22;260:19; 305:7,22 <b>mile (16)</b> 27:5,6,8;53:22; 73:23;74:1,8,10,11,13, 22;135:7,13,21,23; 136:3 <b>miles (9)</b> 18:19;61:24;75:1; 171:1;183:1;282:6; 290:16;291:14,18 <b>Milestone (15)</b> 27:6;52:6,19,22; 53:5,9,12,17;58:3; 73:24,25;135:5,13; 233:18;289:7 <b>Mill (1)</b> 71:24 <b>Miller (2)</b> 4:20,20 <b>million (3)</b> 51:2;287:21;297:7 <b>mind (7)</b> 5:6;49:23;72:2; 91:19;220:8;304:16; 305:1 <b>minded (1)</b> 219:24	<b>mine (1)</b> 184:25 <b>mini (1)</b> 200:18 <b>minimize (1)</b> 140:15 <b>minimized (1)</b> 139:16 <b>minimum (5)</b> 152:21;158:4; 218:24;232:10,16 <b>minute (7)</b> 63:15;104:13;135:9, 9,10,10;189:24 <b>minutes (8)</b> 12:15;93:7;146:19; 196:25,25;250:1; 286:1;304:17 <b>minutia (1)</b> 122:8 <b>mirrored (1)</b> 98:1 <b>mirrors (1)</b> 100:2 <b>mischaracterized (1)</b> 108:7 <b>misinterpreted (1)</b> 279:11 <b>misleading (1)</b> 141:19 <b>misrepresented (1)</b> 160:14 <b>miss (2)</b> 31:17;67:9 <b>missed (2)</b> 74:4;286:8 <b>missing (1)</b> 139:18 <b>misunderstood (1)</b> 164:8 <b>mitigate (6)</b> 186:16;192:19,24; 193:1;195:11,19 <b>mitigated (5)</b> 190:7,18;191:12; 192:12;193:17 <b>mitigates (1)</b> 190:25 <b>mitigation (5)</b> 190:15,20,23;193:4; 196:7 <b>mix (7)</b> 110:3;116:25;229:7; 230:8,12,13;235:20 <b>mobility (1)</b> 292:10 <b>model (3)</b> 114:20,22;116:3 <b>moderate (1)</b> 185:21 <b>modifications (1)</b> 185:23 <b>modified (1)</b>	158:8 <b>moment (4)</b> 23:24;128:14; 199:22;218:23 <b>money (2)</b> 18:17;267:3 <b>monitor (1)</b> 201:10 <b>Monroe (1)</b> 4:21 <b>Montgomery (28)</b> 16:22;17:20;30:6; 43:18;46:9;47:1,48:7, 15;50:6;55:3,5;70:10, 21;71:15,17;111:8,12; 124:11;125:16;151:17; 185:21;197:25;200:16; 222:5;223:7;252:4; 267:16;277:6 <b>months (1)</b> 304:5 <b>monument (4)</b> 211:12,12;242:20,20 <b>monumental (8)</b> 211:3,8,9;241:18; 242:16,17,18;243:3 <b>more (90)</b> 23:15;28:9,19;29:24; 30:16;32:16;46:14; 48:3;49:13;53:14;54:9; 55:11;59:6,9;64:13; 71:22;80:15;81:9,10; 105:24,24;107:25; 111:2;113:20;114:2,2, 11,24;128:10;129:3; 131:1;133:25;136:15; 138:14,18;139:10; 148:22;149:14,16; 150:25;152:11;156:19, 19;159:25;171:3; 173:6;176:17,18; 178:22;182:14;183:17; 192:5,6,9;198:19; 200:24;207:8,10; 214:20,20;215:15; 217:9,10;218:6; 219:24;220:22;221:10; 224:19,24;225:6; 227:5;231:6,7,7; 255:10,25;256:12; 257:6;266:12;267:14; 273:12;283:4;293:5; 295:10,10;296:10,11; 301:14,17;302:2 <b>morning (19)</b> 4:19;7:19;13:15; 87:5,7,16,17;88:8,16, 17;90:7,15,19;222:2; 281:6;289:13;290:1,5; 307:1 <b>mornings (1)</b> 279:15 <b>mosquitoes (3)</b>	11:15;188:21;189:1 <b>most (29)</b> 21:4;33:4;51:11; 56:3,7;70:20;97:8,9, 11;99:2;126:23; 134:10;154:4,12; 155:6;170:4;171:23; 194:25;199:15;200:13; 208:19;209:23;212:10; 224:12,23;235:16; 240:18;283:13;286:11 <b>move (14)</b> 42:8;43:7,8;48:5,6,8, 8,14;50:5;72:24;84:1; 99:5;214:2;253:23 <b>moved (1)</b> 201:1 <b>movement (1)</b> 64:2 <b>moves (1)</b> 237:6 <b>Moving (5)</b> 18:19;50:3;210:4; 218:10;232:19 <b>mowers (1)</b> 186:23 <b>mowing (1)</b> 131:15 <b>MPDU's (1)</b> 228:20 <b>much (48)</b> 6:20;8:14;18:4; 29:24;30:10,14;32:13, 18;39:17;54:9,24;56:4; 66:21;94:8,9;117:20; 155:2;163:9;183:12; 192:6;196:16,22; 198:18;201:9;206:2; 217:6;219:14;221:24; 223:15,20;227:4; 230:21;236:8;245:1; 249:4,16;250:13; 254:8,10;256:12; 273:10;274:16,18; 285:23;293:7;302:5,5; 303:20 <b>muddle (1)</b> 206:21 <b>multi-family (11)</b> 221:25;223:16,18; 224:11,25;225:6; 226:3,22,24;253:2,5 <b>multiple (1)</b> 211:21 <b>music (1)</b> 187:19 <b>must (5)</b> 108:17;113:8,16; 117:17;262:2 <b>MXPD (1)</b> 70:24 <b>myriad (1)</b> 58:11
--	---	---	---	---

<b>myself (3)</b> 16:13;93:19;229:12	286:1;288:16	75:15;123:22;141:13; 185:6;193:6;195:9; 197:5;207:13;215:20; 217:16;220:6;252:19; 268:17;291:18	175:14;187:5;194:5; 16,20;195:9;196:3; 210:15,25;248:20; 258:15,18;283:1;290:3	171:1;179:14;183:15; 187:15;205:3,6;217:1; 220:14;224:11;247:7; 284:15;287:15;291:6; 298:19;306:11
<b>N</b>	<b>needed (4)</b> 30:16;145:5;199:6; 203:20	<b>nice (4)</b> 115:21;234:10; 289:6;296:20	<b>north- (1)</b> 101:15	<b>numbers (9)</b> 46:10,12;75:14,15; 125:11;131:22;145:21; 195:23;299:5
<b>N-1 (2)</b> 184:16;185:8	<b>needs (8)</b> 30:19;35:20;40:16; 68:3;220:16;236:2; 240:6;250:10	<b>night (1)</b> 260:16	<b>northeast (5)</b> 97:18;101:18; 115:12;158:1;195:10	<b>numerous (1)</b> 199:1
<b>naïve (2)</b> 276:14;283:21	<b>needs'' (1)</b> 30:8	<b>nine (5)</b> 29:10,17;284:12,16, 18	<b>northern (15)</b> 26:9,21;77:8;80:5; 86:17,25;98:10; 101:19,20;123:1; 130:19;135:24;140:13; 149:10;168:13	<b>O</b>
<b>name (22)</b> 4:13,19,5;14:6,2; 16:17,21;17:13,16; 68:18;79:25;94:19; 111:19;112:19;145:10; 197:7,18;251:7,8,11, 13,25;266:5	<b>neglected (1)</b> 302:3	<b>no's (1)</b> 15:16	<b>northern- (1)</b> 155:20	<b>oath (2)</b> 112:9,12
<b>names (1)</b> 4:23	<b>negotiating (2)</b> 199:19,20	<b>Nobody (3)</b> 9:21;39:20;96:21	<b>north-northwest (1)</b> 168:14	<b>object (3)</b> 46:1;67:2;246:24
<b>nap (1)</b> 286:8	<b>neighbor (1)</b> 285:19	<b>noise (43)</b> 11:14;184:10,17,18, 20,23,23;185:20,21,22; 186:1,6,10,17,19; 187:2,4;190:8,15,15, 16,21,23,25;191:6,7,9, 10,11,20,22;192:2,9, 10,11,17,19,24;193:14, 17;195:11,19;196:22	<b>north-south (1)</b> 100:16	<b>objected (1)</b> 39:20
<b>narrow (1)</b> 24:21	<b>neighborhood (27)</b> 32:8;73:3;76:12,13; 77:6,11,15,16,19;78:3, 7,10,15;82:13,14; 97:15;101:24;105:2; 106:17;151:6,6,8; 159:15;176:13;200:22; 268:17;282:12	<b>non- (4)</b> 221:22;225:9;227:2; 235:19	<b>northwest (4)</b> 24:16;25:11;82:17; 139:20	<b>objecting (1)</b> 248:3
<b>nasty (1)</b> 239:15	<b>neighborhoods (2)</b> 29:12;33:4	<b>nomenclature (2)</b> 232:12,14	<b>Nos (1)</b> 299:12	<b>Objection (7)</b> 60:10;67:17;91:19; 186:8,10;206:24; 250:17
<b>nation (1)</b> 41:2	<b>neighboring (2)</b> 89:17;205:20	<b>nonbinding (1)</b> 123:19	<b>notably (1)</b> 56:3	<b>objections (3)</b> 56:20;70:6;91:11
<b>National (4)</b> 119:2;125:17; 166:16,20	<b>Neither (1)</b> 48:7	<b>non- (4)</b> 221:22;225:9;227:2; 235:19	<b>notarized (2)</b> 13:22;14:3	<b>objective (5)</b> 32:7,9;215:16;230:1, 16
<b>native (3)</b> 138:17,18,19	<b>neotraditional (1)</b> 202:4	<b>non-binding (1)</b> 121:13	<b>notary (1)</b> 13:18	<b>objectives (2)</b> 30:20;235:3
<b>natural (10)</b> 79:17;126:15;127:3, 13;128:17;129:4,5; 149:3;185:10;247:10	<b>neotraditionalism (1)</b> 202:10	<b>non-compatible (1)</b> 196:19	<b>note (7)</b> 28:8;69:2;123:20,24; 133:3;218:1;272:12	<b>obligation (4)</b> 195:10,14,16,21
<b>nature (7)</b> 8:13;70:18;199:25; 210:21;220:12;263:5; 306:25	<b>nester (1)</b> 33:15	<b>none (2)</b> 108:10;259:23	<b>noted (5)</b> 80:6;150:2;160:8,17; 223:10	<b>Observation (2)</b> 135:17;215:12
<b>near (6)</b> 56:7,8;116:14; 253:25;281:2;290:6	<b>nesting (1)</b> 56:5	<b>nonprofit (1)</b> 295:12	<b>notes (6)</b> 77:18;121:11,12,14; 133:3;268:15	<b>obtaining (1)</b> 165:20
<b>nearby (5)</b> 252:8,8,24;253:24; 254:24	<b>net (3)</b> 107:15;123:8;179:23	<b>non-vertical (2)</b> 220:11;223:14	<b>notice (8)</b> 9:18;14:18,19;82:1; 97:17;153:6;183:25; 210:19	<b>obvious (4)</b> 208:3,8,19;245:10
<b>necessarily (2)</b> 18:16;176:5	<b>network (1)</b> 201:6	<b>normally (2)</b> 10:25;128:20	<b>noticeable (1)</b> 158:14	<b>obviously (7)</b> 7:3;38:6;49:8; 200:11;285:24;305:1; 306:17
<b>necessary (3)</b> 86:16;182:2;232:24	<b>neutrally (1)</b> 5:17	<b>north (80)</b> 21:21;22:18;24:22, 25;25:4,5,10;26:17,21; 65:11;66:1;73:7;76:11, 17,18;78:21,22,24; 79:3,4,9;81:4,5;82:9, 13;84:23;85:16,25; 86:17,25;87:4;89:3; 90:6;91:24;92:11,14, 19;96:5,8,9;99:24; 100:7;101:2;102:3; 103:19;107:5,8; 112:20;123:4,13; 124:13;129:9;134:18; 135:22;136:20,24; 139:20;140:10;148:2, 5,11;152:15,18; 155:18;168:7;170:7;	<b>noticed (3)</b> 10:6;15:22;253:9	<b>Occasionally (1)</b> 289:5
<b>need (46)</b> 5:5;8:4;11:2;13:17, 17;28:14,17;29:10; 30:5,7,18;32:16;40:21; 43:18;50:22;52:12; 54:23;55:9;65:12; 106:21;107:23;123:22; 126:9;140:7;165:23; 167:10;174:10;181:10, 13,14;182:3;189:16; 192:12;198:13;204:15; 205:9;207:4;221:22; 230:2,17;237:23; 255:25;263:13;267:16;	<b>new (35)</b> 12:18;32:12,14; 34:22;36:17;43:22; 45:7,19;53:11;85:21; 86:25;87:17;89:3,5; 102:14;125:12;130:16; 145:21,23;147:18; 182:12;186:17;202:3, 6;221:24;224:22; 226:16;277:3;291:25; 292:1,18,24;299:10; 300:11;305:16	<b>non- (4)</b> 221:22;225:9;227:2; 235:19	<b>number (65)</b> 4:3,25;5:8;20:25; 23:11,16;24:12;33:11; 34:11;40:4;42:9;53:4; 54:7,14;56:2;57:9; 58:5,24;62:15,16,18; 71:17,18;75:8,9;82:22; 83:11,12;107:14; 121:14,19;125:19; 126:10;127:2,17,21; 131:25;132:14;134:21; 135:4,18,20,21;136:4; 147:23;153:1,19; 157:13;167:11;170:16;	<b>occurs (2)</b> 255:23;295:22
	<b>newer (1)</b> 231:5			<b>occurs (2)</b> 70:4;263:11
	<b>newspapers (1)</b> 14:19			<b>off (31)</b> 29:9;50:19;53:21; 57:8;59:21;68:10;86:6, 11,13;88:8;89:4,5; 90:21;94:17;95:17,18; 105:25;122:24;123:2; 134:5;135:4;145:22; 197:4;205:6;206:24; 259:25;270:11;278:13; 280:19;281:16;299:18
	<b>next (23)</b> 35:12;45:7,20;47:20; 48:2,5,5;67:24;68:7;			<b>offend (1)</b> 272:13

<p><b>offer (6)</b> 34:18;72:3;120:13; 201:15;202:18;235:18</p> <p><b>offered (6)</b> 27:23;45:14;57:22; 70:1;180:1;235:1</p> <p><b>offering (4)</b> 27:25;28:6;69:4,24</p> <p><b>offers (1)</b> 227:20</p> <p><b>office (8)</b> 13:15;22:39;7;71:3; 262:17;286:10;299:22, 22</p> <p><b>officer (1)</b> 6:3</p> <p><b>offices (1)</b> 4:21</p> <p><b>official (1)</b> 199:9</p> <p><b>officially (2)</b> 49:24;119:23</p> <p><b>off-road (1)</b> 129:14</p> <p><b>offset (1)</b> 291:12</p> <p><b>off-site (9)</b> 60:19;66:1;91:24; 128:3,5;233:7;267:15, 18;283:14</p> <p><b>oft (1)</b> 204:13</p> <p><b>often (7)</b> 8:23;23:13;38:24; 121:5,6;253:22;290:6</p> <p><b>old (6)</b> 108:9;112:19;118:4; 187:14;219:23;280:25</p> <p><b>older (15)</b> 33:19,19;42:6,12; 50:3,5;61:6;62:14,17; 115:17;147:5;220:15; 226:17;269:1;283:12</p> <p><b>ombudsman (4)</b> 198:21;199:23; 239:14;240:15</p> <p><b>ominous (1)</b> 266:13</p> <p><b>on- (2)</b> 64:3;291:6</p> <p><b>once (18)</b> 46:19;47:1,21;85:19; 109:11;119:16;165:22; 166:11;188:7;200:2; 208:5;210:11;216:5; 229:8;232:12;263:7, 11;301:13</p> <p><b>one (172)</b> 6:7;7:9;9:21;13:16; 17:17;20:6;21:4;29:25; 31:9;32:20;33:17;37:4, 4,20;38:22;42:14;43:9; 45:12;47:18,21,24;</p>	<p>57:16,25;58:5;60:17; 63:15;65:3;70:8;74:7, 25;75:1;77:10;81:20; 87:24;90:20;100:17; 17;102:23;103:12; 104:1;105:23,24; 106:16,19;109:25; 110:8;111:13,24; 121:6;123:12;124:12, 21;126:23;129:9,9; 131:6,6,22;132:1; 133:1,2,3;136:16; 138:16,16;141:13,13, 13,14;143:4,8,9,13,17; 145:20;152:8,10,24; 153:14,21;158:16; 160:16;162:23,24,25; 163:2;166:22;170:18; 171:7;172:2;174:12; 179:14;180:7;182:14; 183:24;184:13;185:6; 187:18;190:15,23; 191:25;194:15;196:12; 197:20;202:10;203:25; 206:4,5;207:12; 211:25;213:24,25; 214:1,24;216:12; 218:1;219:3;220:2; 222:24;223:1,2; 225:15;228:10;236:7; 237:3,14,21;238:16,25; 240:14;241:1,3,4,6; 242:17,17;246:7; 248:2;252:8,8,14,19; 253:4,9;256:18,24; 258:17,18;259:21,21; 273:12,20,21;274:6; 275:12;276:23;278:17; 279:18;282:5;285:4, 18;288:14,15;291:3, 17;292:15;293:5; 296:13;297:3;299:15; 302:6;306:9</p> <p><b>one- (2)</b> 296:12,20</p> <p><b>one-mile (1)</b> 53:20</p> <p><b>one-quarter (2)</b> 74:8,10</p> <p><b>ones (3)</b> 174:11;247:16;252:9</p> <p><b>ongoing (1)</b> 104:24</p> <p><b>online (5)</b> 300:2,4,7,9,10</p> <p><b>only (43)</b> 8:11;12:15;26:16; 51:9;52:4;61:9;80:6; 85:2;90:22;99:16; 104:2;108:8;111:13; 114:22;115:16;125:23; 156:4;160:15;166:23; 200:6;206:13;212:12;</p>	<p>213:11;215:9;216:9; 218:5,25;235:18; 240:8;242:9,17; 243:11,12;246:21; 249:21;256:5;268:21, 22;270:2;272:6; 278:12;286:1;293:19</p> <p><b>on-site (17)</b> 12:1;124:12;128:1, 14;129:13;130:2; 134:24;174:2,3;182:9; 189:17;232:18;233:9; 235:10;247:9,12; 285:12</p> <p><b>onto (11)</b> 84:1;89:21;189:18; 201:1;217:16;218:10; 228:19;262:22;281:8; 290:4,12</p> <p><b>open (13)</b> 56:14;73:5;79:22; 82:16;119:6;121:18; 139:19;149:14;154:20, 21;190:12;219:24; 273:13</p> <p><b>opening (6)</b> 7:4;8:22,24;14:24; 15:3,13</p> <p><b>operating (2)</b> 10:12;16:20</p> <p><b>operation (1)</b> 37:9</p> <p><b>operations (4)</b> 16:21;17:21;18:7; 58:11</p> <p><b>opine (1)</b> 302:3</p> <p><b>opinion (23)</b> 27:25;28:1;30:11,15; 51:1;91:23;150:25; 160:18;161:23;162:9, 14;177:2,16;183:18; 235:1;240:16;298:20; 299:8;301:7,10,11; 303:7;306:3</p> <p><b>opinions (1)</b> 221:21</p> <p><b>opponents (2)</b> 95:10;152:10</p> <p><b>opportunities (8)</b> 54:10;56:12;57:1; 132:5;134:21,22; 226:18;235:21</p> <p><b>opportunity (23)</b> 7:20;8:18,20;9:13; 12:19;13:4;32:20; 47:10;48:22;49:11; 52:16;58:13;60:12,15; 63:10;70:2;119:25; 120:3,4;131:13; 132:23;141:22;146:16</p> <p><b>opposed (2)</b> 111:2;224:11</p>	<p><b>opposite (1)</b> 291:11</p> <p><b>opposition (24)</b> 5:17,18,22,24;6:5; 7:5;8:25;11:7,12;12:3, 5;14:23;15:13;19:14, 18;20:16;21:13;47:9; 72:8;84:6;102:18; 157:1;183:25;186:9</p> <p><b>optimum (1)</b> 233:11</p> <p><b>option (6)</b> 36:9,25;58:6;131:19; 132:24;133:7</p> <p><b>options (2)</b> 28:10;177:11</p> <p><b>oral (3)</b> 9:13,14,25</p> <p><b>orally (1)</b> 8:12</p> <p><b>orange (3)</b> 74:21;77:4;124:21</p> <p><b>Orchard (4)</b> 40:9;89:18;90:14; 98:15</p> <p><b>order (15)</b> 6:17;24:3;70:16; 72:22;97:6,10;140:18; 174:10;217:20;236:3, 3;239:15,17;251:3; 263:22</p> <p><b>orderly (1)</b> 110:1</p> <p><b>ordinance (18)</b> 4:4;14:7;19:6;20:3; 108:23;109:2;110:14, 16,19;114:7,16;189:16, 22;200:17;227:16; 232:11;233:15;272:21</p> <p><b>ordinarily (1)</b> 196:10</p> <p><b>organization (2)</b> 257:21;295:13</p> <p><b>organized (1)</b> 139:16</p> <p><b>orient (1)</b> 24:11</p> <p><b>orientate (2)</b> 79:2;136:24</p> <p><b>orientated (1)</b> 79:18</p> <p><b>orientation (1)</b> 238:18</p> <p><b>oriented (4)</b> 104:25;223:21,22; 224:13</p> <p><b>original (3)</b> 20:25;183:17;287:19</p> <p><b>originally (5)</b> 115:13;116:15,16; 145:8;176:17</p> <p><b>others (6)</b> 16:16;138:12;178:9;</p>	<p>228:6;250:7;269:10</p> <p><b>otherwise (5)</b> 9:4;181:15;268:16; 276:25;277:22</p> <p><b>ought (5)</b> 40:14;219:24; 228:21;302:6;305:11</p> <p><b>ours (2)</b> 38:7;257:15</p> <p><b>ourselves (1)</b> 14:18</p> <p><b>out (79)</b> 6:17;7:18,20;9:17; 14:17,18;16:19;20:13; 21:12;24:3;32:15;36:8; 37:10;44:18;56:11; 88:15,16;89:11;90:23; 94:3;106:20;109:8; 114:18;115:24;118:15; 120:4;128:19;151:19; 155:1;157:25;175:1; 180:21;181:15;182:4; 186:21;188:12;189:19; 201:21;203:19;212:4, 21;217:6,14;229:4,10; 230:23;235:20;237:20, 20;249:12,13;251:3; 255:12;256:12;257:10; 258:4;259:20,24; 263:7;270:9,19,19,23; 271:2;286:9;290:3,4,4, 6,13;291:13,13;292:3; 296:1,12;297:16; 299:19;301:2;304:22</p> <p><b>outdoor (5)</b> 132:2,5;187:22; 190:21,22</p> <p><b>outer (1)</b> 299:22</p> <p><b>outfall (3)</b> 175:8,12,14</p> <p><b>outlined (2)</b> 218:9;235:14</p> <p><b>outlines (1)</b> 121:24</p> <p><b>outside (11)</b> 45:14;48:8;97:22; 120:19;127:6;187:19; 190:25;191:21;192:3; 264:1;299:3</p> <p><b>outward (1)</b> 30:7</p> <p><b>over (48)</b> 13:4,21;48:5;64:11, 23;65:25;72:21,24; 76:15;87:2;105:16; 107:2;108:8,18; 113:10;114:17;115:2; 116:9,17;118:5; 128:12,13;137:9; 140:8;141:1;144:3,16; 147:4,18;148:1; 149:15,15,21;164:1;</p>
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187:14;193:7,11; 223:14;232:5;252:5; 253:10,21;262:20; 269:22;276:7;280:7, 22;304:24 <b>overall (11)</b> 35:23;110:1;131:8, 16,20;132:13,22; 133:13;139:4;140:20; 254:19 <b>overlap (2)</b> 129:18;189:17 <b>overlook (1)</b> 133:3 <b>overlooking (1)</b> 162:14 <b>overpass (3)</b> 60:23;64:10;279:13 <b>oversaw (1)</b> 200:22 <b>oversee (1)</b> 230:12 <b>overturned (1)</b> 277:7 <b>overwhelming (2)</b> 42:20,22 <b>overwhelmingly (2)</b> 41:19,22 <b>own (11)</b> 9:1;16:14;38:20; 62:24;118:4,20; 199:20;200:17,17; 297:1;306:23 <b>owned (5)</b> 4:7;17:19;132:17; 181:22;293:12 <b>owner (11)</b> 10:9,14;11:2;15:25; 16:25;30:1;50:21; 178:24;220:20;267:12, 14 <b>owners (9)</b> 10:7;14:17;16:13; 17:18;99:25;118:21; 266:10;270:15;298:24 <b>ownership (7)</b> 10:20,22;16:10,12, 13;39:9;116:8 <b>owns (3)</b> 104:11,15,19	79:2;81:4;139:3,5,5; 151:4,6;158:23,25; 159:14;160:17,17; 176:12,15;185:17; 204:14;205:23,24; 206:22,22;207:3,14,15, 18;208:18;209:9,20; 210:10;212:25;215:19; 216:5,15;223:2;229:8, 11,14,17,17,25;244:19; 276:11;284:12,16,18 <b>pages (9)</b> 12:15;160:16;204:3, 14,18,22;207:8,12; 222:18 <b>paid (2)</b> 230:9;266:21 <b>paint (1)</b> 182:4 <b>painted (2)</b> 180:15;279:10 <b>PAMR (3)</b> 291:25;292:9,11 <b>panes (2)</b> 191:4,14 <b>paper (1)</b> 229:10 <b>paperwork (2)</b> 31:7;215:25 <b>parable (1)</b> 74:6 <b>paragraph (7)</b> 37:17;89:13;90:13; 185:18,24;209:20; 284:24 <b>parameters (1)</b> 256:5 <b>parcel (12)</b> 4:8;56:14;86:1,8; 90:25;155:20;207:20; 208:10;209:17;217:22; 218:24;232:14 <b>parcels (5)</b> 159:5;218:5,25; 232:4,11 <b>Pardon (1)</b> 164:5 <b>parent (1)</b> 28:15 <b>parents (5)</b> 56:7;253:22,23,24; 254:1 <b>Park (107)</b> 41:8,14;46:11;47:18, 24;52:24;54:2,6,9,12, 19;58:3;59:1;64:6,11, 14;73:5;75:7,8,9;76:3, 3;77:2;82:12;83:14; 92:15;96:9,10,11; 107:18;119:3;121:10; 124:25;125:17;126:8; 128:6,12;132:11,16,17, 17,19,21;139:22;	165:11,24;166:17,20; 171:16,21,22,24,25,25; 172:9,23,24;173:8,10, 14;174:5;176:19; 178:18;180:10,10,14, 22,24;181:6,22;182:7, 11;183:16,19,20; 235:10;252:23;278:9, 12,12,14,15,16,21; 279:4,5,5,9,13;280:7,7, 11,19,21,21,24,24,25; 281:14;283:5,7,9; 289:6,6;296:15,19,20 <b>parking (4)</b> 122:20;123:7;124:2; 181:5 <b>Parks (4)</b> 24:12;75:25;132:15; 134:17 <b>Parkway (13)</b> 65:2,13,16;85:21; 89:14,17;91:6;92:6; 143:7,10,14;252:10; 254:13 <b>Parkway/M-83 (1)</b> 89:23 <b>Parkway'' (2)</b> 265:9,12 <b>part (76)</b> 12:10;22:11;25:6,7; 33:25;35:16,21;36:11, 14;37:23;39:13;49:9; 64:21;75:6;80:9,24; 82:12,19,24;83:2; 90:24;91:3;93:2,4; 96:2,20;98:6,20; 100:23;107:3;112:12; 113:13;121:12;123:4; 128:20;133:14,15,18; 144:3,4,6;145:6,8; 148:24;149:10;151:20; 159:9;160:16;169:6, 11;170:8;173:15; 178:16;189:22;204:19; 210:1;222:24;223:1; 245:18,24;246:1,1; 253:8;259:6;261:21; 262:6;263:18;264:7, 13;267:10,23;285:5; 304:2,3,4;305:1 <b>partial (2)</b> 128:8;173:7 <b>partially (1)</b> 181:6 <b>participants (1)</b> 68:4 <b>participate (1)</b> 122:6 <b>participating (2)</b> 9:18;94:10 <b>particular (19)</b> 75:4;97:17;136:22; 176:4,23;189:22;	213:5;215:13;227:17, 22;228:5;229:5; 231:11;252:16;253:11; 254:8,13;274:13; 288:13 <b>particularly (26)</b> 89:9;90:20;104:10; 105:19;130:25;131:22; 136:17,23,25;137:15; 138:8;149:19;151:16; 152:4;155:10;159:13, 20;162:11;177:19; 183:16;186:20;190:21; 199:5;200:2;219:22; 221:24 <b>parties (4)</b> 4:17;8:22;9:18;70:3 <b>Partly (1)</b> 22:7 <b>partnered (1)</b> 254:10 <b>partnership (1)</b> 267:20 <b>parts (2)</b> 118:13;272:17 <b>party (1)</b> 9:14 <b>passive (1)</b> 54:9 <b>past (8)</b> 6:20;99:5;125:6; 250:13;253:10,11,21; 275:3 <b>pastoral (8)</b> 11:15;18:17;19:15, 16,25;184:11;187:24; 188:10 <b>path (4)</b> 126:14;129:14; 279:13;289:6 <b>paths (1)</b> 60:18 <b>patio (2)</b> 190:22,24 <b>paved (2)</b> 288:19,25 <b>paving (1)</b> 169:9 <b>pay (2)</b> 215:14;268:17 <b>paying (1)</b> 267:15 <b>PD (6)</b> 38:16;177:21,23; 179:3,4,5 <b>pedestrian (10)</b> 64:2;126:13;127:13; 128:9;129:25;130:1, 12;155:25;247:9,10 <b>pedestrians (1)</b> 130:7 <b>pending (2)</b> 9:23;248:16	<b>people (60)</b> 5:9,10;6:15;7:6; 18:13,21;29:12;42:1, 19;43:12;46:25;49:11; 50:4;58:6;62:19;108:8; 111:18;115:16;117:13; 118:20,20;144:18,18; 146:16;182:11;187:14; 192:3,11;196:19; 198:25;201:5;224:18; 230:24;231:1;237:15, 17,17;239:13,21,22; 240:6;250:13;253:18, 19;258:13,19;259:6, 13;261:15,16,19,20; 262:21;287:9,18,24; 291:12;295:8;296:3; 301:1 <b>people's (2)</b> 105:22;196:6 <b>per (37)</b> 19:2;25:18;73:22; 75:5;122:20;126:2; 131:1;136:5;139:7,9; 151:7;157:6;159:1,16; 160:4,7;169:2;176:16, 16;177:24,25;178:17; 179:10;191:1;205:18; 206:4,5,20;208:7,13, 21,22;209:10;212:7; 213:2,8;242:4 <b>percent (48)</b> 18:10;31:11;41:6; 42:14,18,23,23;43:2,5, 6;45:8,20;46:25;48:3, 6;62:14,21,22,23,24; 63:11;79:23;107:15; 110:5;128:9,11;133:7, 23;139:19;140:3; 149:24;150:2,4,5; 157:8,10,13,13;163:8, 9,16;173:8;221:15; 225:11;226:1;293:20; 294:10;295:11 <b>percentage (2)</b> 42:12;46:24 <b>percentages (1)</b> 63:1 <b>perfect (1)</b> 37:9 <b>performing (1)</b> 52:20 <b>perhaps (8)</b> 28:24;38:20;66:10; 93:5;99:7;102:10; 109:17;236:20 <b>perimeter (3)</b> 105:12;137:15; 149:18 <b>period (2)</b> 14:8;200:12 <b>perked (1)</b> 296:12
<b>P</b>				
<b>P-429 (1)</b> 4:8 <b>package (3)</b> 33:3;63:23;248:21 <b>page (64)</b> 17:4;29:10,17;30:4; 31:23;32:8;34:12,18; 35:19;41:5,18,19; 47:18,24;57:9;58:4; 73:14;77:12,18;78:12;				

<b>permanent (6)</b> 108:17;113:9,11,15; 117:24;118:2	64:12;66:17;91:14; 93:21;227:17;229:12; 253:25	18,23,25;229:5,7,14, 17;230:10,16;231:8,11, 23;234:6,25;235:24; 238:19,20,21,24;239:1; 245:2;252:6;276:24; 283:18;284:5;287:11, 13,20;288:1,2;292:17; 293:20,21,24;295:8,14; 296:5,6,17;303:10	304:5,12,15;305:9,10, 12,15;306:8,10,16,19, 21	1,1;149:15;153:12; 154:15;156:11;157:1, 15;168:23;173:7; 174:25;203:19;205:19; 213:12;216:17;218:1, 15;219:22,25;220:6; 223:12,12;224:17; 225:13;228:6;236:14; 238:7;239:4;242:2; 255:10,14,19,20; 259:24;264:25;268:1, 9;271:18;283:3,15; 285:9;287:21;290:13; 305:8
<b>permit (3)</b> 200:18;232:3,4	<b>placed (3)</b> 122:3;152:23;275:22	<b>plan'' (2)</b> 205:25;228:18	<b>plans (28)</b> 10:2;23:25;24:2; 37:22;47:19;48:1; 55:21;106:14;129:1; 168:18;169:9;194:18; 200:21,22,22,23,24; 201:11,16;202:15; 215:13,19;227:14; 228:5;230:13;231:6; 248:13,16	<b>pointed (1)</b> 241:19
<b>permitted (4)</b> 9:22;95:8,10;147:1	<b>places (4)</b> 51:15;75:14,21; 167:25	<b>plan's (3)</b> 218:2;229:1;235:3	<b>plans'' (1)</b> 185:23	<b>pointer (4)</b> 105:15;193:24,25; 275:23
<b>Permitting (2)</b> 109:8;182:7	<b>plain (4)</b> 58:15;244:20; 287:15;293:10	<b>planned (34)</b> 4:6;28:12;29:8;33:1, 13;35:22;40:20;50:23; 54:24;57:4,7,23;60:23; 61:25;63:20;64:20; 108:14,16;113:8,20; 115:24;133:9;134:9; 141:3;191:11;193:1; 223:15;224:25;267:20; 285:3;290:20,24; 291:2,3	<b>plant (3)</b> 152:19;188:5;297:1	<b>pointing (3)</b> 22:4,11;74:24
<b>perpetual (8)</b> 37:22,25;38:12,21; 39:2,10;257:21;272:19	<b>plan (269)</b> 11:14;19:8,20;22:3; 25:18,20;27:3;28:20; 29:9,18,18,20,23,24; 30:4,12,18,18,21;32:7; 33:21;42:8;43:19;48:5, 6,8,8,14;50:5;52:10; 56:10;64:22;71:18; 73:19;75:6;76:10,19, 20;77:5,7,12,18;78:4, 12,14;80:10,17,22; 82:8;83:4,17,19,23; 84:5,13,21;85:3;87:7, 10;92:11;98:22;100:3; 101:2;106:4,7,9; 107:12,17,22,24; 109:20,25;110:17; 114:13;119:17;120:22, 25;121:1,7,8,11,19,20, 20,24;122:1,6,11; 123:11,21,22,25;124:4; 126:11;127:2;128:19, 21;129:3;131:2;133:2; 134:13,16;136:14,19; 138:21,25;139:5,23; 140:21,22;141:2; 145:11;147:13;150:3, 18,21,22,23,23,24; 152:25;155:17;158:24; 159:3,14,17,23;160:5, 14,16,22;161:25; 162:1;164:13;165:8,8, 23;166:1,2;167:19,20, 21;168:5,6,17,21; 169:2,8,18;171:14; 172:11;176:12;178:20; 179:21;181:23,23; 183:11,18;186:14; 189:13,14,19;191:17; 199:1,25;200:3;201:3, 5,9,11,14;202:19; 203:19,24;204:3,9,13, 14,18,25;205:16,23,24; 206:1,9;207:5,5,8,8; 210:5,10,23,23;212:5, 25;213:10;214:4,10,12, 14,21,22;215:3,4,10, 13,15,20;216:12,13,15; 217:8,22;218:7;219:3, 16,23;220:5,6,18; 221:25;222:4;227:5, 11,23,24;228:1,12,17,	<b>plan'' (2)</b> 205:25;228:18	<b>plant (3)</b> 152:19;188:5;297:1	<b>points (32)</b> 12:3,6,17;13:11; 58:24,25;126:2,8,10, 13,15;127:17,21,25; 128:1,4,10,12,13; 129:25;147:20;155:25; 170:24,25;171:4,5,10; 173:25;211:21;218:11; 225:14;285:4
<b>person (5)</b> 38:14,15;111:13; 166:22;182:24		<b>planner (4)</b> 58:12;100:9;182:22; 200:11	<b>planting (1)</b> 152:25	<b>poled (1)</b> 42:10
<b>perspective (6)</b> 138:6,7;192:11; 225:2;240:15;256:23		<b>Planning (156)</b> 11:9;12:7,8,9,23; 13:5,11;19:21;24:2; 38:11;41:8,14;44:25; 45:19;46:11;47:18,24; 69:4,25;70:18,25,25; 71:5,6;72:4,17;73:19; 76:25;80:16,21;83:15, 20;84:3,12,21;87:14; 90:1,91:10;92:15; 97:23;98:2,25;100:9; 101:3,7;107:18;119:3, 4,6,16;121:11;122:5; 125:17;126:8;132:18, 20;133:20;134:13; 135:2;136:22;139:22; 151:1;159:18;160:1; 165:11,25;166:8,17,20; 168:4;171:16;172:9, 13;176:19;178:19; 181:23;182:8;183:16, 19,20,22;191:8,19,20; 197:23;200:14,16,17; 201:2,10,12,22;202:25; 203:1,5,11,14;204:1; 205:21;211:1;212:10, 11;214:11,13;215:4, 17;216:9;221:6;222:5, 8;229:21;230:2,17; 234:7,12,17,23;235:7; 242:5;244:11,13,17,25; 245:13,14,17,25; 276:12;277:7,24; 278:1;280:19;301:18, 25;302:13,14,17,18,24; 303:6,12,16,21,25;	<b>planted (1)</b> 165:5	<b>policies (4)</b> 24:1;27:3;55:22; 220:8
<b>pertinent (1)</b> 305:21			<b>playing (1)</b> 187:19	<b>policy (8)</b> 19:6;220:16;221:1; 227:5,19;231:6;292:9, 13
<b>pests (2)</b> 11:16;188:21			<b>plays (1)</b> 90:3	<b>polled (2)</b> 221:15;225:11
<b>petition (1)</b> 102:17			<b>please (22)</b> 4:18;5:11;11:5; 15:18;16:2;68:12,17; 101:13;103:3;112:3,6; 141:12;162:24;163:3; 176:1;197:8,11,17; 251:7,19;274:21; 301:18	<b>pollution (3)</b> 11:18;187:6;189:10
<b>pharmacies (1)</b> 134:22			<b>pleasure (1)</b> 18:17	<b>pond (1)</b> 154:13
<b>pharmacy (2)</b> 135:15,19			<b>plenty (3)</b> 247:6;278:5;299:3	<b>ponds (2)</b> 153:9;188:22
<b>phase (4)</b> 138:16;184:17,19; 186:13			<b>plowing (1)</b> 131:14	<b>pool (7)</b> 65:11,25;66:2;132:2, 6;252:24;273:21
<b>Phoenix (1)</b> 184:18			<b>plurality (2)</b> 42:25;43:1	<b>popular (1)</b> 235:16
<b>phonetic (1)</b> 161:22			<b>plus (2)</b> 180:4;276:11	<b>populate (1)</b> 235:21
<b>photo (4)</b> 81:3;82:2;96:1; 103:14			<b>pm (4)</b> 161:13;250:23; 260:16;307:3	<b>populated (1)</b> 216:22
<b>photograph (2)</b> 53:3;97:3			<b>PO (1)</b> 17:17	<b>population (10)</b> 28:14;32:22;41:6; 44:8;46:7;47:13;55:3; 226:8,11;269:1
<b>phrase (1)</b> 110:24			<b>point (72)</b> 20:12;21:12;22:8,25; 28:10;43:9;54:12; 58:18,19,22;64:17; 80:2;88:3;89:3,4; 91:15,16;92:13,16; 104:20;105:21;123:12; 124:19;125:19;126:3; 130:17;141:24;145:1,	<b>portion (21)</b> 16:16;26:20;32:21; 48:13;64:7,10;79:12,
<b>phrased (2)</b> 11:24;189:23				
<b>physical (2)</b> 29:13;32:10				
<b>physically (4)</b> 82:3;104:17;287:5,6				
<b>pick (4)</b> 13:14;21:1,2;53:4				
<b>picnic (2)</b> 278:14,18				
<b>picture (1)</b> 73:2				
<b>piece (5)</b> 29:4;139:19;229:10; 258:22,25				
<b>pinch (1)</b> 147:20				
<b>pipeline (5)</b> 222:12;223:2,4; 225:4,15				
<b>place (7)</b>				

21;82:16;86:5;98:8,10; 99:22;120:12;127:20; 153:15;158:23;170:15; 215:2,20;248:13 <b>portions (3)</b> 140:19,20;244:14 <b>position (3)</b> 12:18;201:13;305:18 <b>possesses (1)</b> 63:25 <b>possibility (2)</b> 37:14;288:4 <b>possible (7)</b> 139:17;147:6;260:9, 25;269:15;272:16; 293:19 <b>possibly (4)</b> 158:10;177:11; 195:15;305:18 <b>post- (1)</b> 122:9 <b>posted (4)</b> 13:16,19;14:7; 298:18 <b>posting (3)</b> 13:15;298:16;299:6 <b>potential (6)</b> 11:14,15,16,18; 186:6;188:20 <b>potentially (3)</b> 257:23;262:21,21 <b>Potomac (2)</b> 115:11,14 <b>practical (3)</b> 18:15;36:6;112:15 <b>Practically (2)</b> 149:22;168:19 <b>Prathertown (2)</b> 116:14;117:5 <b>PRC (54)</b> 4:6;29:20;66:17,20; 105:10;108:14;113:3, 4;118:24;124:5; 128:21;133:4,18; 134:3,8,23;136:5; 146:24;147:10;152:1; 156:7,8;157:6,12,17; 159:1;162:5,11;176:2, 23;178:17;179:8,9; 204:12;217:19;218:4, 18,22,24;219:4; 226:20;232:1,1,7,12, 14,18,19;233:8,22; 235:7;277:3;284:6,20 <b>PRC's (2)</b> 29:18,19 <b>preamble (1)</b> 244:8 <b>precise (1)</b> 121:7 <b>predominant (1)</b> 73:21 <b>prefer (2)</b>	62:25;63:5 <b>preferable (2)</b> 30:13;58:6 <b>preference (21)</b> 41:9,20,22;42:20; 43:13;47:17,24;50:4,8, 24;62:17,19,20;221:5, 7,11,14,22;224:19,20; 225:12 <b>preferences (1)</b> 225:22 <b>preferred (5)</b> 42:12;62:14,24; 294:2,4 <b>prehearing (1)</b> 96:20 <b>preliminary (13)</b> 10:2;13:13;14:20,23; 80:17;84:20;123:22; 133:20;165:23;169:8; 181:23;184:19;296:17 <b>premature (1)</b> 249:15 <b>prepared (2)</b> 38:14;292:22 <b>prerogative (1)</b> 255:16 <b>presence (1)</b> 36:14 <b>present (10)</b> 63:9;117:10;120:3,5, 17,17,18;128:20,24; 140:18 <b>presentation (8)</b> 7:9,16;72:22;120:14, 20;159:19;305:2; 306:17 <b>presented (9)</b> 64:1;92:25;94:4; 225:22;238:5;303:9; 304:19;305:17;306:14 <b>presenting (1)</b> 7:5 <b>presently (2)</b> 22:2;89:19 <b>presents (1)</b> 7:5 <b>preservation (3)</b> 51:13,15,23 <b>presumably (2)</b> 188:3;264:13 <b>presume (2)</b> 186:19;195:18 <b>presumptively (1)</b> 193:14 <b>pretty (13)</b> 8:14;18:4;30:14; 32:13;56:1;183:12; 186:22;207:22;216:21; 229:22;233:16;273:10; 302:5 <b>prevail (1)</b> 208:13	<b>prevailed (1)</b> 209:11 <b>prevails (1)</b> 209:10 <b>previous (3)</b> 72:5;81:10;229:18 <b>previously (15)</b> 13:16;69:3;70:9; 72:25;76:22;85:14; 135:5;139:18;151:4; 157:22;169:21;176:11; 201:3;224:13;225:25 <b>price (1)</b> 296:20 <b>primarily (13)</b> 75:24;76:14;78:7; 84:22,23;88:12;98:2; 101:1;151:4;155:4; 184:20;189:15;199:20 <b>primary (5)</b> 241:8,16;265:7,10, 12 <b>printed (3)</b> 23:11,13;44:18 <b>printout (5)</b> 44:14,23,23;47:11; 49:21 <b>prior (9)</b> 7:5;20:7;70:4;71:16; 72:15;159:11;162:2; 198:20;295:14 <b>privacy (1)</b> 272:1 <b>Private (5)</b> 43:3,4;150:10,11; 271:16 <b>privy (1)</b> 264:2 <b>Probable (2)</b> 178:8;294:9 <b>probably (24)</b> 5:3;6:25,25;33:3; 37:8;39:21;65:12; 103:9;112:21;151:21; 161:6;186:21;200:15; 202:14;206:18;211:24; 231:5;234:16;237:15; 245:7;250:16;261:4; 298:3;299:20 <b>probative (1)</b> 9:4 <b>problem (13)</b> 7:11;45:22,24; 110:15;111:3;114:2,4; 115:7;199:13;269:17; 287:17;288:16;291:11 <b>problematic (4)</b> 45:10;256:15,22; 282:11 <b>problems (2)</b> 7:24;11:17 <b>procedure (1)</b> 7:3	<b>proceed (13)</b> 12:24;14:24;15:17; 16:4;35:9;68:14;70:12; 93:5;95:14;146:9; 197:13;251:21;274:23 <b>proceeding (1)</b> 9:24 <b>proceedings (4)</b> 8:13;9:7;14:19; 142:8 <b>proceeds (3)</b> 8:14,15;122:24 <b>process (17)</b> 55:8;70:4;88:14; 91:10;92:6;118:25; 119:1,9,12;122:6; 165:24;200:17;201:9; 214:24;230:2,17; 253:10 <b>processes (3)</b> 183:8;201:13,18 <b>produce (6)</b> 99:23;192:16;195:8; 207:9;277:19;300:17 <b>produced (3)</b> 9:25;12:9;192:2 <b>product (9)</b> 32:22,24;33:5,7,18; 55:4;56:4,9;63:18 <b>professional (1)</b> 161:24 <b>professionally (1)</b> 160:25 <b>proficient (1)</b> 256:20 <b>program (2)</b> 132:19;172:5 <b>programmed (4)</b> 126:21;132:9;170:8; 172:6 <b>programming (1)</b> 57:1 <b>progress (1)</b> 87:21 <b>prohibited (1)</b> 51:16 <b>project (18)</b> 56:12;115:15; 196:15;223:17;252:16, 17;253:2,3,21;254:3; 267:2,10;268:23; 270:7,7;288:6,9; 293:17 <b>projected (2)</b> 196:1,3 <b>projects (3)</b> 71:23;195:15;254:11 <b>prominent (1)</b> 32:18 <b>promise (1)</b> 287:24 <b>promised (2)</b> 269:18;274:20	<b>promote (1)</b> 32:9 <b>proper (2)</b> 34:17;243:10 <b>properties (12)</b> 29:21;52:15;73:19; 87:4;97:11;101:18; 107:9;189:18;201:14; 232:8,8;233:1 <b>property (192)</b> 4:7,9,9,5;15,21; 11:20;13:19;15:25; 16:10,12,15;17:15,19, 19,25,25;20:8,10,10, 11,22;21:13,19,20; 22:12,15,16,19,20; 24:5,13,16,18;25:11, 20,21,22,23;26:4,7,9,9; 29:9;30:1,8,35:18; 37:23;38:13,22;50:21; 51:3,11,15,19;52:4,23, 23;53:3,17,23;54:4,16, 18,22;56:22;61:21; 62:4;63:24,25;66:1; 71:24;74:23;76:23,24; 78:17;79:11,12,15,18, 19,22;80:1,4,6,81:14; 82:4,10,18;85:18,20, 21;86:14;91:8,24; 96:12;97:8;98:6,19; 99:7,25;100:5,12; 101:9;104:16,19; 108:14;109:11;118:20, 21;121:18,25;123:17; 130:19;135:6,9; 140:10;143:15;144:18; 149:1,4,7,10;152:3,13, 16,22;153:4;156:18; 168:10;170:2,5;175:8, 15;176:2;177:18; 178:23;180:12;182:3; 183:25;184:4;194:6,7, 16,17;195:23;205:19; 206:2;207:6;214:8; 216:6;218:3,21; 220:20;232:7;241:13; 248:14;254:8,22; 258:18,20;261:21; 262:22;263:3,10; 266:10,11,16;268:3; 270:15;275:10;279:17, 21;281:15;282:13; 283:23;284:19;285:6; 287:1;288:15;289:20; 290:13;293:13;294:3, 24,24;295:1,5,7,9; 298:19,21,24 <b>proposal (18)</b> 23:25;55:21;89:23; 90:3;91:5;106:2,5,23; 126:12,17;128:11; 161:24;176:18;183:17; 204:11;235:2;254:9;
---	--	--	--	--



301:9 <b>propose (7)</b> 83:4;122:18;139:8; 164:10;181:23;185:23; 254:7 <b>proposed (50)</b> 6:4,5;64:22;67:1; 78:8;82:8;89:5,18; 90:25;92:12,12;96:4,4, 5;106:6;107:6,18; 124:21;125:4,22; 126:16;138:15;149:2; 150:8,11,21;151:9; 153:2;155:24;158:25; 159:3;164:11,12,13; 167:14;175:8;176:23; 188:22;192:14;217:22; 228:16;236:15;239:7; 253:7;262:23;264:14; 288:5,8;291:6;296:7 <b>proposes (2)</b> 205:16;238:21 <b>proposing (17)</b> 4:11;124:23,24; 126:24;128:13;137:9, 10;146:25;157:17; 179:20;214:12;221:12; 246:21;253:12,13; 280:10;295:20 <b>proprietary (1)</b> 272:1 <b>prospect (1)</b> 254:25 <b>protect (6)</b> 38:4,5,9,10;139:17; 196:13 <b>protection (2)</b> 80:12,14 <b>prove (3)</b> 45:14;225:16,19 <b>proved (1)</b> 171:13 <b>provide (29)</b> 55:2,22;57:2;58:18; 85:3;123:12;126:9; 131:1;133:5;134:8; 138:9;151:13;159:6; 176:3;177:19;198:2; 215:17;220:11;230:3, 18;235:21;237:5,12; 260:20;264:2,6,12; 270:22;277:21 <b>provided (16)</b> 128:4;133:6;137:20, 23;157:5;174:19; 232:18;233:2;246:22; 260:6;263:21,23,24,25; 276:11;283:22 <b>provides (6)</b> 123:15;126:19; 177:10;190:20;214:14, 16 <b>providing (11)</b>	37:24;91:13;126:22; 127:21;128:1,9; 134:10;159:24;188:15; 235:13;272:22 <b>provision (11)</b> 146:24;147:2;150:8, 10;226:10;228:8; 233:23;235:19;293:19; 301:8,11 <b>provisions (2)</b> 113:16;264:1 <b>proximate (2)</b> 223:22;224:13 <b>proximity (2)</b> 27:13;52:6 <b>public (33)</b> 4:2;38:4;55:1; 119:11;123:20;124:9, 10;150:8,13;162:15; 166:5,6,7,11;174:23, 24,25;189:15;196:18; 220:7,16;227:5; 240:17;257:10,17; 270:24;271:4,7,14,17, 21;272:20;297:5 <b>publication (3)</b> 41:1;44:5;46:11 <b>publish (1)</b> 14:19 <b>published (1)</b> 80:23 <b>pull (2)</b> 89:11;286:6 <b>purchased (2)</b> 17:22,22 <b>purely (1)</b> 174:17 <b>purports (3)</b> 141:15;163:3,4 <b>purpose (10)</b> 134:6,7,8;136:8; 162:7;217:25;226:15; 233:7;235:11;284:20 <b>purposes (9)</b> 39:12;103:12; 151:10;162:1;168:18; 235:15;272:20;292:16, 17 <b>push (2)</b> 176:14,17 <b>pushed (1)</b> 147:18 <b>put (29)</b> 20:20;24:5;53:1; 55:10;66:3;99:14; 101:13;102:22;103:18; 111:10;138:19;141:11; 145:4;162:23;184:24; 191:4,14;196:12; 208:4;247:1;248:6; 271:20;273:9;280:11; 294:10;297:3;298:19; 299:17,21	<b>puts (1)</b> 300:9 <b>putting (2)</b> 206:24;279:18  <b>Q</b> <b>quadrant (1)</b> 115:12 <b>qualifications (9)</b> 69:7,14;70:3,6,7,13; 72:6,9,14 <b>qualified (8)</b> 27:17;28:15;69:3,8; 70:17,21,23;197:23 <b>qualifies (1)</b> 236:13 <b>qualify (1)</b> 83:9 <b>qualifying (2)</b> 28:5;56:1 <b>quality (9)</b> 80:17,22;83:17,22; 84:4;107:16;139:23; 152:11;187:12 <b>quantify (1)</b> 26:17 <b>quarter (3)</b> 140:7;269:19;297:7 <b>quasi- (1)</b> 9:23 <b>quasi-public (1)</b> 39:12 <b>questionable (1)</b> 46:3 <b>quick (7)</b> 66:13;145:20; 158:16,20;160:24; 206:3;286:16 <b>quickly (4)</b> 63:24;71:10;161:9; 260:25 <b>quiet (1)</b> 186:22 <b>quieter (2)</b> 187:14,20 <b>quite (15)</b> 5:1;199:24;203:15; 210:5;214:7;218:14; 235:6;245:10;252:8; 275:7,8;289:7;290:6, 10;306:16 <b>quote (10)</b> 29:10;30:7;45:3,6; 47:12;50:10;205:13, 18;214:14;235:2 <b>quoted (2)</b> 45:10;56:21 <b>quoting (1)</b> 44:24  <b>R</b>	<b>R-200 (12)</b> 65:25;73:21;85:25; 148:11,12,14,22;187:5; 295:1,5,9;296:9 <b>racial (1)</b> 226:2 <b>radius (1)</b> 52:7 <b>raft (1)</b> 72:20 <b>rain (2)</b> 154:16;155:6 <b>Raise (13)</b> 5:11;14:23;16:1; 68:12;112:2,5;142:14; 156:25;192:17;197:11; 237:25;251:18;274:21 <b>raised (20)</b> 11:6,13,22;12:3,6, 17;13:11;17:3;56:20; 86:11;91:20;95:21; 120:8;152:10;157:1; 183:24;189:7,12; 256:24;274:11 <b>raises (1)</b> 220:7 <b>raising (4)</b> 90:4,4;186:9;189:5 <b>ran (1)</b> 229:9 <b>range (13)</b> 71:23;73:21;122:18, 20;123:6;148:2;159:2; 176:15;179:25;206:3, 5;208:16,17 <b>ranges (3)</b> 73:20;152:21;209:25 <b>rapidly (1)</b> 268:15 <b>rapidly'' (1)</b> 44:8 <b>rather (10)</b> 30:7;101:22;120:19; 222:2;225:11;289:5; 297:21;299:18;301:6; 302:23 <b>rationale (2)</b> 104:1;114:1 <b>RDT (10)</b> 21:20;22:3,9;98:3; 99:22;104:4,7;147:14; 158:4;194:10 <b>re (2)</b> 47:12,12 <b>RE-2 (21)</b> 4:5;22:1;85:15,16; 118:23;149:4,5;152:5; 157:7,16,16;159:12; 160:5,6;187:5;207:6; 208:8,14,21;209:4; 231:18 <b>reabsorbed (1)</b> 85:25	<b>reach (2)</b> 192:10;239:11 <b>react (2)</b> 260:9,12 <b>reaction (2)</b> 187:13;238:11 <b>read (14)</b> 11:12;12:16,16;13:4; 24:24;32:14;37:11; 91:20;108:19;117:24; 122:13;123:21;190:6; 206:10 <b>reading (16)</b> 11:7;29:15;32:7; 37:15;40:24;43:24; 47:22,23;89:12; 108:20;121:12;134:7; 276:16;279:11;283:21; 302:11 <b>reads (1)</b> 205:13 <b>ready (2)</b> 84:16,18 <b>real (5)</b> 63:24;71:10;111:7; 177:22;283:2 <b>realistic (6)</b> 176:1,9;178:2,5,5; 180:7 <b>realistically (2)</b> 176:4;280:20 <b>reality (1)</b> 18:15 <b>realize (4)</b> 11:8;19:1;152:10; 262:7 <b>realized (2)</b> 200:1,9 <b>really (46)</b> 19:24;35:21;48:19; 55:1,7,24;56:2;60:11; 63:6;128:21;138:21; 142:9;144:24;155:2; 163:7,11,12;178:2; 179:25;200:1;204:4; 213:19;220:1;224:21; 235:19;237:7,9,23; 258:14;264:21;272:6; 277:21;278:21;283:1, 21;285:5;291:16,17; 293:6,15,15;294:13,13; 302:13;303:7;306:13 <b>realm (1)</b> 257:10 <b>realtors (2)</b> 56:3,4 <b>rear (5)</b> 148:15;149:5,5,16; 152:5 <b>reason (16)</b> 6:24;17:3;22:23; 29:19;89:23;91:5; 98:19;99:19,21;
---	--	--	--	--

102:20;114:12;121:22; 154:1;213:7;219:3; 302:14 <b>reasonable (2)</b> 178:9;272:5 <b>reasons (3)</b> 29:9;157:4;278:4 <b>rebuttal (1)</b> 298:3 <b>rec (2)</b> 123:24;252:24 <b>recall (6)</b> 34:22;40:2;67:11; 96:15;109:18;173:23 <b>receive (2)</b> 9:11,11 <b>received (3)</b> 173:9;230:25;276:12 <b>recent (1)</b> 198:19 <b>recently (4)</b> 51:11;70:20;71:22; 132:18 <b>recess (5)</b> 12:14;13:1;93:9; 161:13;250:23 <b>recipe (1)</b> 30:15 <b>reclassification (1)</b> 4:5 <b>recognized (2)</b> 127:21;214:11 <b>recommend (3)</b> 186:13;218:8;277:15 <b>recommendation (13)</b> 4:15;11:14;119:7,10; 135:3;208:9;219:15; 220:18;234:16;277:9, 11,19;283:17 <b>recommendations (5)</b> 204:12;227:15; 276:17;283:25;284:5 <b>recommended (18)</b> 51:19,21;87:10; 141:1;183:21,22; 191:21;219:4;276:20, 21;277:12,16,22;284:3, 22,23;295:9;306:9 <b>recommends (1)</b> 231:18 <b>reconciling (1)</b> 201:2 <b>reconsider (5)</b> 301:24;305:6,12,15, 23 <b>reconvene (1)</b> 297:25 <b>record (61)</b> 4:18,19;9:25;10:17, 20;11:5;12:10;20:21; 22:24,25;24:6;31:1,13; 38:1;39:13,22;41:10; 43:25;44:12;46:20;	49:11;50:19;53:21; 59:21;68:10;80:24; 83:21;94:17;105:13, 25;119:24;121:20; 134:5;161:17;168:9; 204:15,19;205:8; 230:25;245:18,24; 246:1,1;251:1;257:1,3; 270:11;271:4,7,14,16, 17,21;288:12;291:1; 292:24;299:5;304:3,4; 306:14,19 <b>recorded (1)</b> 262:4 <b>recreation (18)</b> 75:18;124:2,3,7; 125:11,16,18;126:9,24; 128:13;131:1,21; 132:5;135:12;173:10; 174:17,18;226:18 <b>recreational (24)</b> 12:1;39:11;52:24; 54:6,19;56:22;57:2; 58:24,25;59:1;60:19; 75:9;126:6;127:19,22; 128:22;134:11;170:19; 171:21,24;173:14; 235:12,16;272:20 <b>red (1)</b> 130:11 <b>redact (1)</b> 272:16 <b>redeveloped (2)</b> 104:5,21 <b>redevelopment (1)</b> 105:1 <b>redirect (11)</b> 67:19;183:4,5; 189:25;197:1;249:2; 272:11,12;273:16; 294:16;297:14 <b>reduce (2)</b> 218:23;238:22 <b>reduced (3)</b> 176:21;191:24;232:9 <b>refer (1)</b> 167:10 <b>reference (4)</b> 34:18;57:11;219:19; 239:5 <b>referenced (1)</b> 284:2 <b>references (1)</b> 219:20 <b>referencing (4)</b> 40:5;65:15;111:3; 142:6 <b>referral (1)</b> 87:6 <b>referred (2)</b> 10:6;204:13 <b>referring (14)</b> 31:6,7;47:17;57:16;	77:23;89:8;128:17; 186:5;210:11;212:5,6; 213:5;242:3;284:8 <b>refers (3)</b> 122:15;209:24; 242:19 <b>reflect (1)</b> 105:14 <b>reflected (2)</b> 160:5;220:17 <b>reflection (1)</b> 105:24 <b>reflects (4)</b> 49:4;159:12;214:22; 288:12 <b>reforestation (3)</b> 84:23;85:2;152:19 <b>reforested (4)</b> 107:3;129:6;137:10; 138:9 <b>reforesting (1)</b> 138:9 <b>regard (7)</b> 10:19;20:6,12;51:9; 78:24;114:21;246:25 <b>regarding (16)</b> 9:22;11:10;38:21; 70:12;72:8;109:22; 125:11;140:22,25; 151:1;199:5,5;203:4; 228:24;257:1;267:23 <b>regardless (1)</b> 192:20 <b>region” (1)</b> 48:9 <b>Regional (7)</b> 75:8;77:2;82:12; 124:25;128:6;132:16; 195:16 <b>regular (3)</b> 66:19;111:24;243:10 <b>regulated (2)</b> 113:16;127:7 <b>regulation (1)</b> 111:10 <b>regulations (5)</b> 111:12;127:16; 151:10;185:22;189:16 <b>regulatory (3)</b> 116:9;151:18;162:4 <b>reinforce (3)</b> 205:15;210:17;214:4 <b>reinforces (1)</b> 235:17 <b>reiterate (2)</b> 164:21;220:21 <b>reiterates (1)</b> 207:25 <b>reiterating (1)</b> 218:11 <b>related (3)</b> 60:15;109:22;201:3 <b>relation (1)</b>	157:15 <b>relationship (5)</b> 106:25;128:15; 132:12,22;136:17 <b>relative (3)</b> 16:10;113:10,14 <b>relatively (3)</b> 62:3;140:3;306:11 <b>relevancy (1)</b> 220:7 <b>relevant (3)</b> 70:21;104:14;117:10 <b>reliable (1)</b> 9:4 <b>reliance (2)</b> 160:11,13 <b>rely (1)</b> 285:11 <b>remain (5)</b> 13:18;46:25;85:23; 86:2;226:17 <b>remainder (1)</b> 187:24 <b>remained (1)</b> 209:12 <b>remaining (1)</b> 67:5 <b>remanded (1)</b> 301:21 <b>remarks (2)</b> 50:18;161:22 <b>remember (5)</b> 111:19;112:19; 206:19;238:2;303:22 <b>remembering (2)</b> 56:18;232:12 <b>remind (1)</b> 218:16 <b>reminded (1)</b> 25:18 <b>removed (1)</b> 86:5 <b>rendering (1)</b> 106:5 <b>renovations” (1)</b> 32:12 <b>rent (6)</b> 42:18;43:5,7;62:25; 118:4;253:6 <b>rental (2)</b> 269:4,6 <b>renters (1)</b> 117:25 <b>reoriented (1)</b> 78:20 <b>Rephrase (1)</b> 156:21 <b>replacing (1)</b> 292:11 <b>report (29)</b> 4:15;9:12,17,19; 12:8;17:4;31:9;32:2; 40:22;41:2;76:6;95:25;	96:2,18;119:4,9; 140:23;158:23;159:11; 184:23;219:20;244:11, 13;276:11;284:9,16; 301:7,16;302:12 <b>reported (1)</b> 302:20 <b>reporter (6)</b> 7:25;8:11;9:6;68:5; 250:14;269:22 <b>Reporting (1)</b> 303:3 <b>reports (3)</b> 10:3;31:14;293:4 <b>represent (1)</b> 163:16 <b>representation (1)</b> 154:2 <b>representative (2)</b> 163:7;199:16 <b>represented (1)</b> 160:15 <b>represents (1)</b> 185:20 <b>request (10)</b> 9:13,14,16;93:13; 162:4;234:24,24; 253:19;276:18,19 <b>requested (3)</b> 235:16;277:3;283:19 <b>requesting (4)</b> 4:4;177:7,9;305:5 <b>require (1)</b> 127:17 <b>required (25)</b> 13:10;14:6,7,8; 37:20,22;58:25;82:23; 122:22;126:3;130:19; 134:12;147:12;166:1; 192:18;196:12;227:18; 228:15,15;232:9; 245:22,25;248:18; 270:25;285:10 <b>requirement (13)</b> 110:14;118:3; 122:20;147:16,25; 149:21;150:1;152:4,7; 157:12;232:15;235:11, 17 <b>requirements (9)</b> 39:23;85:2;105:10; 124:5;162:12;174:9; 182:10;217:25;232:17 <b>requires (7)</b> 127:25;138:17; 227:23;228:11;272:2, 3;287:12 <b>requiring (2)</b> 228:5;233:2 <b>re-review (1)</b> 301:9 <b>re-sales (1)</b> 287:25
---	---	--	---	--

<p><b>research (2)</b> 187:11;222:5</p> <p><b>reserve (4)</b> 11:24;20:8;21:14; 47:6</p> <p><b>reshuffled (1)</b> 106:1</p> <p><b>reside (2)</b> 113:10,15</p> <p><b>reside'' (1)</b> 113:11</p> <p><b>residence (9)</b> 42:9,13;48:4,7,14, 15;50:5,6;164:16</p> <p><b>resident (6)</b> 5:15;33:20;58:10; 113:15;275:1;278:10</p> <p><b>residential (38)</b> 20:9;30:14;51:2; 73:20;79:8,9;82:13,14; 96:8;99:4;104:22; 107:8;108:15;124:12; 139:6,8;147:1;159:2; 185:22;187:3;188:13, 14,19;189:21;191:22; 194:8;205:17;206:4, 20;208:8,12,17,18; 209:12;231:13,14,19, 20</p> <p><b>residents (36)</b> 30:19;33:23;36:15; 42:6,9;48:3,6,14; 54:11;89:20;108:15, 17;113:9,15;117:24; 118:2;125:25;131:17; 134:12;136:5,10; 147:5;151:14;182:12, 13;200:1;220:15; 226:12;253:17,22; 254:5,24;255:6; 264:14;273:24;274:3</p> <p><b>resistance (2)</b> 226:2,24</p> <p><b>resolution (8)</b> 83:17,20,23;84:3,6, 12;299:8,9</p> <p><b>resolutions (1)</b> 80:23</p> <p><b>resource (2)</b> 79:17;185:10</p> <p><b>respect (6)</b> 140:7;159:5;208:9; 227:2;256:13;261:18</p> <p><b>responded (1)</b> 11:8</p> <p><b>respondents (1)</b> 42:2</p> <p><b>response (3)</b> 19:25;272:17;284:19</p> <p><b>responsibilities (1)</b> 131:16</p> <p><b>responsibility (5)</b> 170:9;210:8;248:15;</p>	<p>287:18,23</p> <p><b>responsible (2)</b> 24:8;252:9</p> <p><b>rest (5)</b> 98:14;121:14; 153:24;173:24;258:15</p> <p><b>restate (1)</b> 276:22</p> <p><b>restaurant (1)</b> 59:3</p> <p><b>restaurants (2)</b> 53:14;135:16</p> <p><b>restrict (1)</b> 91:12</p> <p><b>restricted (8)</b> 66:21;106:22; 108:17;110:13;111:14; 113:9;220:12;221:19</p> <p><b>restriction (10)</b> 66:24;112:22,24; 113:1,21;114:5; 117:12,14,16;131:10</p> <p><b>restrictions (3)</b> 40:8;112:22;199:3</p> <p><b>result (7)</b> 67:19;115:5;188:21; 191:22;196:14;246:3; 297:15</p> <p><b>resulted (3)</b> 177:1,14;209:23</p> <p><b>results (1)</b> 90:1</p> <p><b>resume (16)</b> 15:23;69:2,11,16,23, 25;70:11;72:14;93:11; 95:17;161:15;198:3; 201:21;202:13;203:10; 205:7</p> <p><b>resumes (2)</b> 4:24;69:5</p> <p><b>retail (8)</b> 18:3;27:6;134:11; 136:2,9;233:17; 252:21;259:16</p> <p><b>retention (1)</b> 203:20</p> <p><b>rethink (1)</b> 305:11</p> <p><b>retire (2)</b> 47:19;48:1</p> <p><b>retired (1)</b> 47:1</p> <p><b>retirees (1)</b> 50:2</p> <p><b>retirement (17)</b> 4:6;28:12;29:8; 32:19;33:1,13;35:22; 40:20;50:23;54:24; 63:20;108:15,16; 113:8,20;134:9;293:17</p> <p><b>return (3)</b> 120:14,20;161:9</p> <p><b>returning (2)</b></p>	<p>49:23;72:2</p> <p><b>revamped (1)</b> 200:4</p> <p><b>reverse (2)</b> 70:15;164:25</p> <p><b>reversed (1)</b> 81:6</p> <p><b>review (23)</b> 19:22;91:9;92:6; 107:12,22;119:16,17; 121:8,19;122:6,10,11; 123:21,22;138:21; 166:7,12;173:6; 200:17;292:9,10,18; 301:15</p> <p><b>reviewed (9)</b> 83:14;92:14;119:3; 171:15;276:10;287:11, 13;288:1;291:24</p> <p><b>reviewing (3)</b> 37:21;288:2;304:6</p> <p><b>revised (1)</b> 88:15</p> <p><b>revision (1)</b> 215:3</p> <p><b>revisiting (1)</b> 75:16</p> <p><b>revolve (1)</b> 19:5</p> <p><b>rezone (3)</b> 97:7;119:12,20</p> <p><b>rezoned (7)</b> 109:11;115:23; 116:20,22;119:13; 121:25;176:4</p> <p><b>rezoning (21)</b> 35:8;38:3;97:9,12, 15;117:22;121:23; 122:4,7,10,10;165:20; 176:9,10;177:7; 191:19;217:22;234:24; 239:10;292:12,16</p> <p><b>rezonings (1)</b> 176:1</p> <p><b>R-I-C- (1)</b> 94:24</p> <p><b>R-I-C-H (1)</b> 94:22</p> <p><b>R-I-C-K (1)</b> 95:1</p> <p><b>ride (5)</b> 52:22;74:21,24;75:1; 135:11</p> <p><b>ridership (5)</b> 239:17,19,20,23; 240:8</p> <p><b>Ridge (85)</b> 4:10;54:5,19;75:8; 76:3;77:1;79:6,7,18,19, 25;80:1,1;81:5;82:12, 14;89:18;90:6,16,17; 91:12;92:12;96:4,10; 97:24;98:10,11,18;</p>	<p>99:24,25;101:2,21; 107:3,5;124:25;125:4, 6,7;128:6;129:15; 132:16;137:14,17; 138:5,7;140:1;145:11, 13,18;147:14;158:9,12, 14;164:21,23;167:15, 15,17,18,19,20;168:3, 3,8,19;169:4,7,10,12; 170:2;171:21,23; 173:9,24;175:5; 184:20;190:9;191:3; 192:18;194:18;241:21; 281:25;282:2;291:3; 302:7</p> <p><b>ridges (1)</b> 80:3</p> <p><b>right (364)</b> 5:12,19,23;6:18; 7:12,17;8:5;9:8;10:1, 18,18;12:21;13:3,12, 23;15:9,12,16,25;16:1, 1,4,23;17:2,10;21:17; 22:9,11,23;23:13,19; 24:23;25:3,4,4,7,13; 26:5,8;27:24;28:5,7; 29:2;31:24;34:21,23; 35:9;37:19;38:11; 39:25;40:11,17;44:5, 10,18,18,20;45:1,25; 47:25;48:10,19;49:6, 22;50:9;52:23;53:8; 54:5,19,20;55:10,12; 57:15;59:7,15;60:14, 20,24;61:14;63:12; 64:19;67:8,16,22; 68:11,12,14;69:17,20, 21;72:1,7,13;73:16; 75:12,13;76:1,4;79:7, 19;83:6,22;84:3,18; 85:10;86:20;87:21,22; 88:14,15,15,16,16; 91:4;92:8;93:5,11; 94:1,7,16,18,24;95:5, 14;98:13;99:14; 100:15;101:15,25; 102:5,10,11,13,16,21; 103:25;104:7;105:3; 107:25;108:22;112:3, 5,8,14;114:10,14; 118:6;121:16,22; 122:11;126:25;127:1; 128:7,16;129:11,17,24; 130:23;131:3;133:1, 10;134:19;135:20; 137:7;138:3;139:1; 141:6,17;142:24,24; 143:3;144:1;145:5,7, 19;146:9,15;148:23; 154:11,19;156:10,13; 157:20;158:19;159:21; 160:23;161:5,7,10,15; 164:15,25;167:5,13,15;</p>	<p>172:25;174:23;175:20; 177:8;179:16,20; 180:11,20;181:1; 182:23;185:4,9,16; 186:15,18;187:23; 188:4,18,18,18,20; 189:5,8,20,23;190:2,3; 191:13;192:8;193:6,9; 194:9,13,18;195:5,24; 196:25;197:3,4,10,11, 13;198:10,15;202:7; 203:3,17,21;204:17; 205:9,10;206:8,15,17, 17,18;208:2;209:8; 212:16;213:23;214:19; 216:2;218:20;219:2; 225:24;227:7;229:13; 231:5,15;234:3;237:6, 25;238:5,14;239:2,18; 240:1,12,21;241:7; 242:16;244:4;245:12, 15;248:5,5,23,25; 249:4,10,19,19;250:6, 21,25;251:6,16,18,21; 252:18;255:2;256:15, 21;257:20,25;258:2; 260:2;261:1,23;262:8; 265:1,23,24;267:19; 269:9,13,23;270:1; 271:12,13,23;272:11, 15;273:5,11,20;274:9, 15,15,19,21,23;275:1, 9,13,19,20,21,23; 276:5,6,9;278:3;279:6; 280:12,14;281:9; 282:3;283:5;284:25; 285:21,24;286:11; 287:2;289:16,18,19; 290:18;293:9;294:15; 296:2,25;297:18; 298:17;299:1,4; 302:22;305:13;306:24</p> <p><b>right-hand (3)</b> 74:4;143:20;167:11</p> <p><b>right-of- (2)</b> 147:17;169:15</p> <p><b>right-of-way (16)</b> 79:13;123:12,20; 144:10;147:18;149:11, 12;150:9;153:4; 169:19,20,24;175:15; 267:5,9;270:3</p> <p><b>right-of-ways (1)</b> 150:12</p> <p><b>rights (1)</b> 272:1</p> <p><b>R-I-K (2)</b> 94:24,24</p> <p><b>rings (2)</b> 116:11;135:9</p> <p><b>rink (1)</b> 280:23</p> <p><b>River (1)</b></p>
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115:12 <b>Road (250)</b> 4:10;11:17;18:11; 24:18;26:3,13;27:4,5; 51:3,4,5,7;52:5,5;54:5; 15,19;62:1,6;64:11,12, 16,17,18,23;65:9,10; 66:3,7;73:3,7,13,18,23, 25;75:8;76:3,9,11,11, 13,15,15;77:2,5,18; 78:10;79:6,8,8,18,19, 25;80:1,10;81:5;82:11, 12;84:24;85:9,21;87:5; 88:16;89:4,14,15; 90:10,21;92:12;96:4, 10,10;97:24;98:10,12, 18;99:24,25;101:2,21, 21;102:3;107:1,3,5; 115:12,12;116:15; 123:1,11,13,14,17,20; 124:10,13,20,20,22,23, 25;125:4,6,6,7,7,10; 128:6;129:10,15; 130:17,17,19;132:16; 137:14,17;138:5,7,7; 139:3,23;140:1,8; 143:22;144:12,13; 145:11,12,13,15,15,16, 17,18,21,21,23;146:1; 147:14,19;149:9,17; 150:9;151:6;153:4; 158:9,12,14;159:22; 164:21,23;167:14,15, 15,17,18,19,20;168:3, 3,8,10,19,22;169:2,4,7, 9,10,12,14,23;170:3,6, 14,15;171:15,21,24; 173:9,24;175:5,6; 176:13;180:9,15; 181:10,12;182:5; 184:20;190:9;191:3,9, 10;192:18,21;194:5,18, 19;195:16,21,22; 196:18,22;205:24; 210:4,7,9,12;212:15; 213:11,18;214:9,20; 216:5,11,21;217:5; 229:23;231:2;241:20, 21;242:6;247:16; 248:12;254:13;267:5, 10,16,18;278:11,11,23; 279:11;280:3,6,6; 281:5,7,8,16,16,20,25; 282:2;289:1;290:5,12; 291:3;302:7 <b>Road” (1)</b> 89:22 <b>roads (23)</b> 18:9;52:11;60:25; 61:11;124:9,10,11,12, 14;130:14;149:25; 150:7,7,10,11,12,13; 157:14;196:17;206:13;	242:15;270:4,15 <b>roadway (5)</b> 11:17;104:18; 185:20;265:20;267:18 <b>roadways (3)</b> 130:12;151:17;199:6 <b>Robert (2)</b> 6:2;16:14 <b>robust (1)</b> 210:25 <b>Rockville (3)</b> 4:22;222:11;223:9 <b>Rodgers (5)</b> 68:20;185:11; 198:20;201:7;303:3 <b>role (4)</b> 198:19,20;199:8; 217:19 <b>roller (1)</b> 280:23 <b>Rollin (4)</b> 44:24;45:16;47:11; 49:18 <b>rolling (1)</b> 79:22 <b>Ron (4)</b> 5:14;6:8;274:25; 290:8 <b>Rood (8)</b> 80:15,18;82:21; 84:22;138:13;152:10, 14;188:2 <b>rooftops (1)</b> 18:2 <b>room (11)</b> 45:14;126:20,20; 180:4,8;216:18; 236:17;237:11,15,21; 273:22 <b>rooms (10)</b> 126:18,20;127:14; 179:18,24;180:2,8; 236:18;237:10;238:9 <b>rough (1)</b> 255:10 <b>roughly (6)</b> 73:6;87:2;107:1; 126:19;179:15;282:10 <b>round (1)</b> 230:23 <b>rounded (1)</b> 123:9 <b>rounds (1)</b> 235:20 <b>Route (48)</b> 11:23;18:9;24:8,19, 20,21;35:18;73:7,9,12, 13;79:6;84:25;86:24; 88:24;89:10,16,19,21; 123:16;125:5,10; 126:14;136:20;141:15, 19;145:18;150:13; 163:4,21,23,24;164:1,	2,7;169:19;175:5; 184:20;186:1;211:2,5; 248:14;279:16;281:8; 288:18;289:2,16,23 <b>routes (1)</b> 130:12 <b>row (2)</b> 5:12;18:5 <b>RTD (1)</b> 21:14 <b>rule (1)</b> 7:14 <b>rules (6)</b> 9:5;95:6;108:24; 110:21;115:6;255:8 <b>run (9)</b> 12:2;16:19;40:9; 89:18;90:14;99:24; 249:13;257:23;306:12 <b>running (1)</b> 90:10 <b>run-off (1)</b> 154:16 <b>runs (1)</b> 37:6 <b>rural (9)</b> 98:3;159:2;206:4,20; 208:7,17,18;209:11,12 <b>rush (1)</b> 291:20 <b>Russel (28)</b> 29:23;77:11;136:15; 139:10;151:1;159:9, 24;197:6,9,9,10,17,19, 22;198:12;201:21; 202:18;203:24;204:1; 213:9;215:25;219:21; 236:25;240:20;246:25; 249:5,6;304:23 <b>R-U-S-S-E-L (1)</b> 197:19 <b>Russel’s (2)</b> 198:3;205:7	<b>sample (1)</b> 221:8 <b>Sandy (1)</b> 6:8 <b>satellite (1)</b> 36:10 <b>satisfied (1)</b> 235:10 <b>satisfies (1)</b> 55:21 <b>satisfy (3)</b> 39:23;67:13;285:10 <b>Saturday (1)</b> 186:24 <b>save (2)</b> 83:4;141:25 <b>saw (12)</b> 6:6,6,9;17:3;34:10, 22;44:20;105:16; 142:19;213:24,24; 277:20 <b>saying (40)</b> 19:1;24:4;25:16; 26:10;45:19;48:12; 53:22;56:21;83:8; 87:10;91:16;92:22; 111:11;112:15;118:19, 23;122:17;140:25; 153:13;160:10;169:14, 15;173:13;206:25; 209:5;211:11;213:10; 219:7;226:25;228:4; 234:14;241:7;256:4; 258:22,24;265:12; 270:2;287:12,19; 288:12 <b>scale (3)</b> 158:8;163:20,21 <b>scattered (1)</b> 16:22 <b>scenario (1)</b> 306:2 <b>scenery (4)</b> 11:15;184:11; 187:25;188:11 <b>schedule (2)</b> 6:14;269:20 <b>scheduled (2)</b> 7:7;250:15 <b>schematic (1)</b> 172:11 <b>scheme (1)</b> 38:5 <b>school (4)</b> 131:25;132:1,4; 252:21 <b>schools (1)</b> 75:25 <b>scope (4)</b> 8:19;37:1;67:3; 120:16 <b>scraggly (1)</b> 290:14	<b>screening (7)</b> 12:2;85:4;122:3; 138:22;152:9;156:5; 160:19 <b>se (1)</b> 19:2 <b>Seaboard (1)</b> 79:13 <b>seat (4)</b> 6:11;94:14;197:4; 294:19 <b>second (32)</b> 17:20;20:24;22:7; 27:15;30:23;35:13; 46:17;47:21,21;65:3; 74:11,12,18,19;84:2; 89:12;106:6,6;108:3; 124:5;132:6;141:12, 12;153:1,21;184:25; 185:24;195:8;202:20; 222:15;250:8,15 <b>Secondly (2)</b> 58:9;277:2 <b>section (19)</b> 23:22;31:5,10;32:8; 44:1;55:19;108:19; 113:21;124:8;137:17; 150:20;158:6;165:6; 185:8;186:5;213:10; 280:16;281:2,21 <b>sections (4)</b> 114:25;136:25; 137:22;140:6 <b>sector (3)</b> 71:18;150:23;228:18 <b>seeing (1)</b> 301:9 <b>seeking (2)</b> 118:23;272:6 <b>seem (3)</b> 140:19;158:21;228:6 <b>seemed (3)</b> 238:6;276:22;277:6 <b>seems (13)</b> 75:13;92:18;99:17; 104:22;129:3,25; 153:23;191:5,5; 223:13;236:15;264:8; 303:13 <b>segment (1)</b> 55:3 <b>segue (1)</b> 124:7 <b>select (1)</b> 72:21 <b>selectively (1)</b> 37:3 <b>sell (2)</b> 56:5;111:20 <b>send (10)</b> 9:17;14:18;298:5; 301:14,15,17,18,23,23; 305:15
		<b>S</b>		
		<b>safe (2)</b> 156:1;215:16 <b>safest (1)</b> 299:20 <b>safety (1)</b> 151:13 <b>same (32)</b> 4:24;12:4;35:19; 46:12;66:21,23;77:8; 79:18;96:1;97:4;113:1; 116:7;123:13;124:14; 134:1;135:11;140:11; 145:24,25;146:1; 183:10,12;187:15; 207:3;209:13;229:12, 17;242:22;243:7; 259:6;274:7;306:16		

<b>sending (2)</b> 306:6,7	136:10;182:7;199:14; 226:10,19;228:9;	<b>shift (1)</b> 137:16	281:18;288:19,19,21, 22,23;289:2;299:18	106:22,23;115:25; 122:18;125:20,22;
<b>Seneca (12)</b> 75:7;76:2;96:11; 132:17,21;135:18; 171:21;172:2,23,24; 173:14,19	232:17,17,25;233:2,7, 9,12,19,20,20,23; 235:12;237:5,21; 246:22;256:18;263:21, 22,24;285:2	<b>shifts (1)</b> 210:24	<b>sides (4)</b> 140:12,15;152:3; 180:20	133:4,10;146:25; 157:4,5;159:15; 162:12;185:19,25; 187:4;220:12;221:11; 222:14;223:18;224:12; 225:1,5;226:1;227:2,6; 256:16;293:9,20,25
<b>senior (17)</b> 31:10;43:7;46:6; 47:12;55:20;116:16; 221:17,19;226:8,16; 253:2,14;268:14,18,22, 25;269:3	<b>serving (1)</b> 146:17	<b>shocked (1)</b> 283:22	<b>sidewalk (5)</b> 62:12;130:13,16,18; 289:10	<b>sit (2)</b> 281:1,1
<b>senior's (1)</b> 278:15	<b>session (3)</b> 119:11,11;303:25	<b>shop (1)</b> 58:13	<b>sidewalks (5)</b> 58:3,3;60:18;124:22; 130:2	<b>site (143)</b> 21:23;52:9,11;57:5, 8,23;58:1,2,16;59:1; 64:4;70:25;73:4,6,10, 11;74:9;75:19;76:10, 24;77:24;78:8,9,16; 79:5,7;80:6,11,12,14; 81:3;82:15;85:15; 86:16,24;89:2,3;90:6; 92:14,19;95:21,21; 96:3;98:7,10;100:25; 101:18;104:17,18; 106:2;107:7,12,22; 116:6;119:17;121:8, 19,20;122:6,11,16; 123:4,21,25;124:3; 126:11;128:21;129:3, 19,23;131:1,2,8,8,12, 25;132:4,12;134:18; 135:2,23;136:24,24; 137:5,5,17;138:21,25; 139:18;140:1,5; 152:25;155:17;157:9; 159:3;164:22;165:8; 166:1,2;168:11,12,23; 171:14;173:9;175:7; 179:21;181:12,23; 186:14;187:5;188:7; 189:13,19;191:17; 196:1;199:1,19;201:3; 206:25;208:4;209:15, 16,19;210:3;212:6; 215:6;217:21;218:9; 219:5;228:25;229:2; 230:23;231:12;233:2, 22;236:5;246:22; 276:7;285:9;286:24; 291:3,7;292:17
<b>seniors (19)</b> 30:5;45:7,20;50:7; 117:6;118:14;125:23; 126:4,6,24;127:20; 131:14;221:13;223:13; 224:18;225:11;227:6; 253:3;269:6	<b>sessions (1)</b> 58:13	<b>Shopping (11)</b> 27:6;53:5,13;73:24; 134:21;135:5,14,25; 235:9;278:4,6	<b>sideways (2)</b> 121:12;138:5	
<b>sense (13)</b> 8:14;27:10;28:15; 47:8;81:10;102:20; 108:4;116:21;179:25; 182:8;239:6;279:18; 282:15	<b>set (13)</b> 5:4;19:6;38:1;58:13; 93:2;98:21;126:8; 152:1;158:12;161:24; 219:12;250:8;263:13	<b>Shops (1)</b> 135:18	<b>sign (9)</b> 241:23,25;242:18, 19,20,20;262:22; 287:12,25	
<b>sent (3)</b> 14:17;34:6;56:2	<b>setback (21)</b> 148:7,9,13;149:5,6,8, 11,12,16;152:5,13,16; 155:19;156:7;158:3,3, 5,11,13;162:12;199:3	<b>short (5)</b> 20:7,15;52:22;135:3; 235:8	<b>signal (1)</b> 130:22	
<b>sentence (6)</b> 37:11,17;89:22; 92:23;187:24;230:16	<b>setbacks (13)</b> 99:12;105:10;107:8; 147:10,11,13;151:23; 152:1;156:4,9;157:18; 160:19;214:16	<b>shorter (1)</b> 135:24	<b>signalized (2)</b> 125:4,7	
<b>sentences (1)</b> 278:2	<b>seven (3)</b> 43:5;73:22;75:4	<b>shot (1)</b> 161:10	<b>signed (9)</b> 13:18;102:17;183:1; 255:13;257:4,5; 287:10,15;298:16	
<b>separate (13)</b> 91:1,2,22,23;131:7; 133:17,17;141:4; 216:12;232:5;259:7; 267:6,7	<b>several (6)</b> 80:3,3;115:22; 159:10;165:21;252:20	<b>shouldn't (3)</b> 9:11;99:6;245:7	<b>significance (2)</b> 224:15,17	
<b>separately (2)</b> 78:2;204:18	<b>sewer (23)</b> 51:19;52:9,11; 174:24,25;175:8,11,12, 14,17;209:14,19,21,23; 210:2;284:23;295:12, 23;296:10,22,23;297:1, 4	<b>show (16)</b> 22:24;23:4;46:16; 65:23;76:13;141:14; 143:13;147:12,16,20; 260:11;266:22;272:18; 279:23;288:3,3	<b>significant (6)</b> 27:12;48:13;59:2; 101:8;196:2,23	
<b>separates (2)</b> 26:7;75:10	<b>sewered (2)</b> 209:16;210:3	<b>showed (3)</b> 137:17;229:19;280:1	<b>significantly (3)</b> 58:25;100:10;159:4	
<b>septic (3)</b> 27:10;51:16,18	<b>Shady (1)</b> 89:15	<b>showing (19)</b> 26:6;39:2,9;42:19; 73:3;74:5;76:23;82:3; 106:3,14;123:25; 125:23;141:11;153:8; 163:25;164:4,6; 290:10;298:23	<b>signify (1)</b> 153:7	
<b>septic'' (1)</b> 209:24	<b>Shall (6)</b> 95:14;120:20; 161:11,15;249:7; 260:16	<b>shown (11)</b> 53:19;92:10;98:3; 204:11;208:17;210:12, 22;216:23;235:6; 262:7;294:5	<b>signs (4)</b> 13:17,18;211:15; 298:18	
<b>series (7)</b> 78:16;100:20; 122:14;123:19;124:14; 126:13;169:8	<b>shape (2)</b> 6:14;221:1	<b>shows (29)</b> 53:22;64:2;78:18; 79:5,20;82:2;84:22,23; 85:14;90:7;96:3,4,7,9; 132:22;136:23;159:12; 181:3;206:20;207:4,5; 208:7;214:3;220:14; 222:6,12;241:1,4; 296:6	<b>silent (2)</b> 96:18;233:5	
<b>serve (7)</b> 65:25;136:10; 268:25;273:24;274:3, 9;275:19	<b>shaping (1)</b> 226:7	<b>side (42)</b> 5:2;9:14;75:13;79:7; 87:17;102:3;104:7; 127:25;130:9,19,20; 140:13;146:1,2; 149:13;155:10;158:1; 163:1;169:2,3,4;170:6; 173:16;180:22,24; 181:20;192:18;195:1, 1,203:25;217:6; 241:20;273:25;279:21;	<b>silly (1)</b> 110:17	<b>site's (1)</b> 235:8
<b>serves (1)</b> 254:23	<b>share (3)</b> 16:15;131:20;260:24		<b>Silver (1)</b> 50:7	<b>sits (2)</b> 30:8;85:18
<b>service (2)</b> 256:17;284:23	<b>shared (1)</b> 272:24		<b>similar (5)</b> 8:24;136:10;154:2; 156:17;159:18	<b>sitting (1)</b> 4:15
<b>services (33)</b> 37:4;43:3,5;53:11; 109:8;134:11;135:16;	<b>she's (6)</b> 198:4;202:20; 249:13,17,17,20		<b>simple (3)</b> 15:6;240:14;294:12	<b>situated (1)</b> 211:5
	<b>shed (1)</b> 19:20		<b>simpler (1)</b> 18:14	<b>situation (2)</b> 8:24;292:25
	<b>sheet (2)</b> 174:19;185:8		<b>simply (5)</b> 27:10;56:8,12; 220:16;297:6	<b>situations (1)</b> 256:13
			<b>single (1)</b> 64:17	<b>six (19)</b> 7:10;18:9;24:19;
			<b>single- (9)</b> 4:11;42:12,18;133:4; 162:12;177:19;187:2; 224:20;294:8	
			<b>single-family (43)</b> 27:9;33:10,24;41:7, 22;42:15,21;43:7,13; 62:24,25;63:3,5;	

43:7;51:3;52:5;61:4; 90:20;131:22;132:11; 135:18,20;144:22; 170:4,11,12,13,13,14 <b>six-foot (1)</b> 190:24 <b>six-lane (2)</b> 27:4;60:22 <b>size (18)</b> 55:10;59:20;123:24; 133:19;167:14;169:24; 171:14,16;209:25,25; 211:12;218:24;232:16; 236:16;237:8,10; 274:7,9 <b>skating (1)</b> 280:23 <b>skeptical (1)</b> 108:4 <b>Skip (2)</b> 244:7;279:4 <b>slide (1)</b> 249:14 <b>slightly (1)</b> 186:2 <b>slim (1)</b> 85:17 <b>sliver (1)</b> 85:17 <b>slope (1)</b> 158:9 <b>slopes (3)</b> 79:22;140:12;155:15 <b>small (11)</b> 32:21;82:15,16; 126:20;139:19;166:21; 215:2;218:10;237:11, 11;238:8 <b>smaller (8)</b> 30:13;55:11;81:20; 140:14;180:2,8; 207:21;233:8 <b>smart (7)</b> 27:3,11;51:2,5; 55:10,10;223:21 <b>smarter (1)</b> 301:2 <b>snap (1)</b> 119:12 <b>snapshots (1)</b> 46:10 <b>sneak (1)</b> 251:25 <b>snow (1)</b> 131:14 <b>Snowden (17)</b> 65:1,10,13,15;85:21; 89:14,17,23;91:5;92:6; 143:7,10,14;252:10; 254:13;265:9,11 <b>snuck (1)</b> 229:16 <b>soccer (5)</b>	132:19;172:6; 173:19,24;278:16 <b>socialization (1)</b> 226:18 <b>softball (1)</b> 278:17 <b>soil (1)</b> 154:15 <b>sold (4)</b> 21:15;66:18;282:25; 296:18 <b>solid (1)</b> 291:19 <b>solve (1)</b> 111:2 <b>solver (1)</b> 199:13 <b>somebody (9)</b> 12:6;16:19;49:9; 110:25;114:17;193:2; 300:9;303:19;304:3 <b>somehow (3)</b> 19:15;92:19,19 <b>someone (2)</b> 92:21;109:3 <b>someplace (1)</b> 194:3 <b>somewhat (4)</b> 97:13;174:1,13; 204:8 <b>somewhere (2)</b> 46:12;293:14 <b>sons (1)</b> 298:24 <b>soon (1)</b> 260:8 <b>sorry (37)</b> 23:21;27:22;29:15; 39:24;41:12;65:14; 73:10;112:4,10,18; 113:12;116:23;127:12; 133:14;141:13;143:9; 160:13;161:16;163:1; 166:18;167:24;173:2; 3;187:1;207:16,21; 218:13;222:16;266:4; 276:21;277:16;280:2; 281:24;288:7,21; 293:10;294:11 <b>sort (9)</b> 17:13;26:7;55:18; 182:1,2;220:13; 233:25;266:13;296:14 <b>sorts (1)</b> 202:10 <b>sound (3)</b> 196:5,5,13 <b>soundproofing (1)</b> 192:1 <b>sounds (2)</b> 57:15;266:13 <b>source (1)</b> 253:20	<b>south (66)</b> 26:18;48:9;53:6; 54:4,15,15,17;64:7; 73:12,15,18,20,24; 74:24;75:5;76:14;79:8; 81:5;82:11;89:3;92:14; 96:10,10;101:16; 102:7,8;106:25;107:1, 4;122:16,24;123:14; 124:14;125:6;129:9, 14;134:18;135:4,20; 140:6,10;145:13; 148:25;149:1,10,17; 152:15;153:22;167:17; 168:21,24;169:13; 170:3;194:21;195:2; 212:14;214:9;243:12, 13;280:4;281:10,11; 282:16;283:8,9;289:1 <b>southeast (1)</b> 214:7 <b>Southeastern (2)</b> 137:2,4 <b>southern (18)</b> 22:15;64:7;74:16,19; 76:23;77:2,6,6;79:10, 12,21;122:16;130:9; 140:6;149:7;153:15; 211:25;212:5 <b>southwest (7)</b> 54:17;64:8,10;73:15, 17,20;129:10 <b>Southwestern (1)</b> 137:3 <b>sp (1)</b> 161:22 <b>space (12)</b> 59:6;62:9;73:6; 121:18;131:24;150:6; 154:20,21;155:2; 157:5,6;190:12 <b>spaces (2)</b> 122:20;247:11 <b>span (1)</b> 200:20 <b>speak (10)</b> 6:5;7:25;100:6; 105:9;138:14;184:3; 188:2,24;251:24; 289:15 <b>speaking (8)</b> 80:19;97:20;98:10; 140:21;149:23;227:14; 248:12;252:15 <b>speaks (2)</b> 108:14;159:14 <b>special (18)</b> 23:4,10;80:12,14; 97:14;109:6,9;115:15; 116:5,25;117:2; 179:11;183:9;184:7; 203:20;210:7;298:20; 299:8	<b>species (1)</b> 138:17 <b>specific (19)</b> 33:2;85:6;106:24; 109:1;119:21;131:9, 11;166:3,3;189:14; 214:5;220:22;228:9; 229:20,22;257:12; 263:24;266:12;275:4 <b>specifically (20)</b> 11:21;29:10;30:5; 33:18;71:15;73:4; 90:17;106:21;109:12; 136:21;140:21;141:5; 159:7;204:13,15; 218:8;219:4;231:18; 284:8;303:22 <b>specifics (2)</b> 86:24;166:2 <b>specified (3)</b> 109:4;110:3;121:2 <b>specifies (2)</b> 110:12;231:11 <b>specify (2)</b> 108:24;121:3 <b>specifying (2)</b> 115:6;121:24 <b>specs (1)</b> 18:3 <b>speculate (1)</b> 178:12 <b>speculating (1)</b> 178:16 <b>speech (1)</b> 163:14 <b>speed (10)</b> 61:23,25;62:4,5; 182:17;183:2;278:24; 279:1;281:5;282:5 <b>speeds (1)</b> 280:17 <b>spell (4)</b> 68:17;197:17; 202:11;251:10 <b>spelled (3)</b> 68:19,22;94:21 <b>spend (3)</b> 286:11;297:2,5 <b>spending (1)</b> 219:14 <b>spent (3)</b> 200:12;303:20;304:5 <b>split (3)</b> 77:9;232:7;282:20 <b>splitting (1)</b> 282:12 <b>spoken (1)</b> 18:24 <b>spot (1)</b> 147:25 <b>spread (1)</b> 285:9 <b>Spring (2)</b>	50:7;188:4 <b>square (16)</b> 59:24;60:7,9;124:1; 126:19;179:16,23,24, 24;180:3,4,5;273:23; 275:18,21;276:2 <b>SR (4)</b> 31:5,5,10;44:1 <b>SR's (1)</b> 220:24 <b>SR-1 (1)</b> 55:19 <b>SR-2 (1)</b> 46:9 <b>SR-5 (4)</b> 41:13;50:10;221:2, 22 <b>SR-7 (4)</b> 41:1;57:14,17; 225:25 <b>stabilized (1)</b> 188:8 <b>staff (84)</b> 10:6;11:7,8;12:8,19, 22;17:4;96:15,17; 105:14;118:11;119:2; 122:5;136:22;140:19, 20,23;157:2;158:23, 24;159:11;160:3; 166:10,11,12,14,14,15, 19,19,21;171:16; 176:19,21;183:16,20, 21,23;189:7,7;191:23; 194:1;195:25;203:25; 204:6;219:14,20; 222:8;244:13,18,25; 245:14,18;276:12,16; 277:22;283:17,19,25; 284:3,3,5,9,16;285:11; 301:7,8,14,15,17,19, 24;302:2,9,12;303:12; 304:7,8,9;305:6,9,11; 306:8,9 <b>staff's (2)</b> 236:13;244:11 <b>stage (4)</b> 30:20;33:23;117:21, 22 <b>staged (1)</b> 110:1 <b>stages (1)</b> 32:9 <b>stagnant (1)</b> 115:22 <b>stand (9)</b> 79:17;80:8;143:15; 167:25;180:25;181:16; 202:2;208:24;289:16 <b>stand-alone (1)</b> 131:7 <b>standard (5)</b> 111:24;124:11; 139:15;184:8;219:17
---	---	---	---	--

<b>standards (16)</b> 105:11;121:15; 131:2;146:13;147:10; 150:14,17;151:10,17, 18;162:5;236:14; 272:18;292:14,18; 306:23	225:21 <b>status (4)</b> 43:23;86:4;116:1; 173:5 <b>statute (2)</b> 227:16;257:22 <b>stay (8)</b> 16:19;55:5;56:6; 81:13;226:12;231:2; 269:21,22 <b>stays (1)</b> 103:1 <b>steadfast (1)</b> 301:11 <b>steep (1)</b> 279:16 <b>steeper (1)</b> 79:24 <b>steer (1)</b> 201:17 <b>stems (1)</b> 204:9 <b>steps (4)</b> 33:16;123:22; 165:19,21 <b>stereotyping (1)</b> 187:20 <b>still (25)</b> 22:19;43:4;91:18; 117:1;118:5;165:7; 174:2;175:22;176:13; 179:8;183:19,20; 188:14;216:9,16; 232:18;237:16;238:13; 243:1,4,10,10;296:4, 10;299:5 <b>stone (2)</b> 116:21;263:14 <b>stop (3)</b> 18:25;146:17;271:24 <b>stopped (2)</b> 279:2;290:2 <b>storage (4)</b> 81:15,17,25;175:4 <b>store (4)</b> 53:14;135:14,19; 136:2 <b>stores (2)</b> 52:21,22 <b>storm (1)</b> 154:7 <b>stormwater (10)</b> 80:17;152:17;153:2, 9,20,22;165:9;188:22, 24;189:1 <b>stream (4)</b> 75:10;76:17;175:12; 273:25 <b>Street (47)</b> 4:21;20:10;21:14; 24:4,6,7;25:16;34:2,8, 19;35:7,17;52:23;54:5; 56:25;59:2;66:3;87:20,	22;88:11;100:5;124:8, 12;131:5,19;132:25; 175:4;180:11,20; 189:15;193:18,23,24; 195:2;251:9,16;252:1, 3;253:17;255:18; 258:18,21;265:6; 270:14;273:6;282:13; 296:25 <b>streets (3)</b> 137:18;182:25;183:1 <b>strengthens (1)</b> 214:8 <b>stresses (1)</b> 156:7 <b>stretch (1)</b> 289:7 <b>strict (1)</b> 228:11 <b>strictly (1)</b> 19:5 <b>strip (1)</b> 279:10 <b>strong (6)</b> 209:16;229:6,6; 231:4;252:15;276:25 <b>stronger (1)</b> 230:21 <b>strongly (7)</b> 204:10;208:10; 239:15;240:6;254:18, 21;294:13 <b>struck (4)</b> 115:23;236:19; 302:11;303:2 <b>structure (1)</b> 259:22 <b>structures (1)</b> 104:22 <b>stubbed (1)</b> 181:17 <b>studied (1)</b> 216:13 <b>studies (2)</b> 42:20;145:12 <b>study (5)</b> 41:20;145:14; 184:19;186:13;193:15 <b>stuff (2)</b> 53:15;263:7 <b>style (4)</b> 36:17;40:20;145:25; 146:1 <b>styles (1)</b> 33:22 <b>sub- (1)</b> 229:21 <b>sub-area (4)</b> 210:12;216:11,12; 231:2 <b>sub-areas (1)</b> 229:19 <b>subcategory (1)</b>	203:13 <b>subdivision (9)</b> 5:21;89:13;111:20; 112:19;165:12,23; 282:18,21;292:17 <b>subdivisions (1)</b> 209:23 <b>subject (56)</b> 8:16;20:22;21:13,23; 28:1;37:5;52:1;53:3, 23;54:16;57:5,8;66:5; 73:6,10,11;75:18; 76:10,24;77:24;78:8; 85:15;86:19,24;89:2; 96:3;100:5,25;104:16, 17,18;107:22;119:15; 121:8,18,20;122:9; 123:21;126:12;131:8; 132:12;152:3;159:3; 168:10,12,23;170:2,5; 197:23;205:19;215:6; 216:6;238:13;248:14; 286:24;298:21 <b>subjective (1)</b> 186:19 <b>submissions (1)</b> 11:13 <b>submit (5)</b> 9:20;13:24;119:25; 165:12;204:2 <b>submitted (12)</b> 4:24;10:4;14:10; 15:23;20:24;36:5;38:2, 24;69:1;96:20;107:24; 166:11 <b>Subparagraph (1)</b> 151:9 <b>Subsection (1)</b> 155:24 <b>subsequent (3)</b> 87:14;123:23;201:12 <b>subsequently (3)</b> 107:21;113:17; 151:19 <b>subsidized (1)</b> 43:8 <b>substance (2)</b> 142:9,21 <b>substantial (9)</b> 46:11;50:22;107:23, 25;151:3;159:23; 161:25;165:4;218:22 <b>substantially (6)</b> 103:20;150:22; 228:17;234:24,25; 295:21 <b>subtly (1)</b> 210:24 <b>Suburban (2)</b> 53:9;187:15 <b>success (1)</b> 236:3 <b>successful (3)</b>	41:3;114:20;165:20 <b>sufficient (1)</b> 285:8 <b>suggest (4)</b> 91:4,6;114:19; 225:17 <b>suggested (3)</b> 226:11,15;239:9 <b>suggesting (4)</b> 190:8;242:12; 261:20;266:21 <b>suggestion (1)</b> 240:3 <b>suggests (1)</b> 209:10 <b>Suite (2)</b> 68:20;197:20 <b>summarize (2)</b> 193:19;202:13 <b>summarizes (1)</b> 105:8 <b>summary (5)</b> 133:13,18;184:22; 185:7,15 <b>summer (1)</b> 88:12 <b>supplement (2)</b> 115:10;237:1 <b>supplied (1)</b> 127:20 <b>supply (2)</b> 173:16,25 <b>support (14)</b> 5:17;34:7;35:8;36:1; 50:22;56:3;131:16; 134:21;249:14;252:15, 16;254:8,21;273:7 <b>supported (2)</b> 30:3;41:7 <b>supporting (1)</b> 267:2 <b>suppose (1)</b> 228:21 <b>supposed (7)</b> 38:9;65:11;101:7; 145:24,25;225:8;256:1 <b>sure (57)</b> 5:1;10:11;14:4; 30:24;31:15,23;32:1; 34:11;35:12,16,19; 44:19,23;63:16;67:12; 68:1,2;69:23;90:3; 102:25;109:5,9,13; 112:24;117:11;120:2; 121:25;142:14;150:20; 152:9;156:22;172:15; 177:3;178:4,11; 211:20;218:14;236:22; 237:7,7;241:1;248:1; 249:20;250:7;251:8; 253:4;264:1,15;265:4; 269:18,19;284:11; 288:11;292:3;294:21;
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298:11;302:1 <b>surface (1)</b> 245:11 <b>surmised (1)</b> 15:5 <b>surprised (2)</b> 98:7;198:12 <b>surrounding (41)</b> 77:23;85:16;95:19, 22;96:7,16,18;97:1,4,6, 10,16,19;98:8,20,21, 25;99:8;101:6,9,11,14; 102:8,14,21;103:2,3, 13;105:9;147:16; 151:25;157:24;160:20; 162:10,13;189:18; 214:17;217:23;278:19; 302:4,6 <b>survey (20)</b> 41:9,10,20;42:2,11, 15;43:15;45:25;47:18, 24;50:4,24;62:18,20; 63:14;221:5,7,22; 224:19;225:25 <b>surveyed (2)</b> 221:10;224:20 <b>surveys (1)</b> 43:16 <b>survive (1)</b> 236:3 <b>susceptible (1)</b> 225:18 <b>suspect (1)</b> 195:24 <b>sustain (1)</b> 67:16 <b>sustainable (4)</b> 28:3;51:13,14,22 <b>swear (4)</b> 93:24;112:1;246:12, 16 <b>swore (1)</b> 286:15 <b>sworn (9)</b> 8:15;11:10;16:3; 68:13;112:7;197:12; 251:20;274:22;304:4 <b>synergies (1)</b> 254:11 <b>system (22)</b> 58:8,18,19,22; 125:19;126:3,13,14; 129:12,13,25;130:1; 170:24,25;171:3; 175:9;235:14;238:21; 247:9,10,10;292:6 <b>systems (2)</b> 58:2;155:25	177:12;194:2 <b>tables (3)</b> 110:4,4,9 <b>tabs (2)</b> 184:25;185:2 <b>tail (1)</b> 268:21 <b>tailored (1)</b> 38:17 <b>talk (23)</b> 35:13;73:1;86:24; 87:23;90:14;106:2; 123:19;124:4;128:22; 134:15;136:13;143:16; 152:11;153:19;157:24; 181:18;231:25;247:14; 249:13;282:21;285:5; 294:22;301:1 <b>talked (17)</b> 62:7,13;63:23;88:21; 106:21;132:15;179:14; 187:10;196:7;228:22; 267:21;278:4,6;279:9, 24;282:24;297:16 <b>talking (57)</b> 22:5,25;23:24;31:16; 34:5,11;36:20,22;37:7; 54:2;62:16;69:14; 71:12;75:17;77:22; 86:12;87:19;88:3; 90:15;102:1,16; 115:11;117:21;119:22; 120:21;139:6,10; 142:25;143:23;145:22; 154:24;191:6,7,11; 192:25;193:3,6,7; 198:19;204:4;206:16; 213:6,11;216:3; 236:17;237:13;239:6; 258:20;261:19;278:23, 24;279:14,17,22; 283:7;286:20;304:11 <b>talks (10)</b> 131:6;136:19;151:5, 7;176:12,15;184:23; 185:24;201:21;213:1 <b>taller (1)</b> 179:6 <b>tangent (1)</b> 6:4 <b>tank (4)</b> 4:9;81:15,17;194:7 <b>tanks (2)</b> 22:13;81:19 <b>Target (2)</b> 135:15;141:5 <b>tax (1)</b> 4:8 <b>taxes (1)</b> 268:17 <b>TDR (1)</b> 73:21 <b>technical (35)</b>	10:6;11:7,8;12:8,19, 22;17:3;31:1;32:3; 35:6;96:15;119:2; 122:5;140:19,20,23; 157:2;158:23,24; 160:4;166:14,15,19; 171:16;184:15;191:23; 195:25;218:10;219:8, 11;236:13;285:10; 302:2;306:8,9 <b>technically (1)</b> 292:5 <b>Technology (1)</b> 222:5 <b>teens (1)</b> 125:24 <b>Teeter (1)</b> 136:1 <b>telling (2)</b> 28:21;219:2 <b>tenant (1)</b> 16:12 <b>tender (1)</b> 201:7 <b>tends (1)</b> 225:16 <b>tennis (2)</b> 54:10;278:18 <b>tenth (1)</b> 35:6 <b>tenure (2)</b> 239:14;253:21 <b>term (4)</b> 32:24;33:5;36:20; 266:13 <b>terminology (1)</b> 262:20 <b>terms (19)</b> 18:24;35:14;48:11; 56:25;117:21;127:17, 21;156:4;200:15; 217:19;219:18;233:11; 234:4;237:22;239:10; 243:3,5;255:11;305:25 <b>tertiary (3)</b> 124:10;150:9;182:25 <b>testified (13)</b> 58:17;70:24;71:17, 20,22;72:15;151:11; 226:9;234:16;246:25; 248:2;282:5;291:15 <b>testifies (1)</b> 182:22 <b>testify (23)</b> 6:8;24:15;38:4,19, 20;46:5;60:5,12;63:6, 10;82:22;95:11;103:2; 173:22;189:1;243:22; 246:13;247:1,4; 269:12;282:8;289:14; 292:22 <b>testifying (5)</b> 8:6;71:16;84:22;	246:10;249:14 <b>testimony (38)</b> 6:17;8:25;15:14; 51:25;62:13;71:8; 77:10;80:15;95:17; 99:11,13;112:9,12; 114:23;120:13;145:3; 146:7;151:1;153:10; 154:9;161:20;162:2; 196:9;203:2;243:24; 246:17;249:5,22,24,25; 250:3,8;266:15; 269:18;274:24;276:24; 283:2;298:3 <b>textual (5)</b> 109:19,21;120:24; 121:3;133:15 <b>Thanks (1)</b> 171:9 <b>that's (250)</b> 4:6;7:9,13;8:1;10:4, 11;12:9;13:5;14:5,15; 17:7;19:8;22:2,2,4,4; 23:1,16;25:2,6,7; 26:22;28:4;29:4,5; 30:14;34:23;35:8,25; 36:2;39:17,21;41:14; 43:22,25;45:2,7,20,24; 47:9;48:10,19;49:21; 51:4;53:20;57:16; 61:13;70:3;74:8,12,12; 75:1,1;82:17;83:1; 87:20;88:7,10;90:3,7, 9;91:21;92:3;93:4; 94:21;96:3,25;97:14; 98:7;99:24;101:15; 103:12;104:4,7,14,16, 19,24;108:22;109:1; 111:24;113:22;117:10, 14;119:19;121:1; 122:10;123:4,17,25; 126:8;127:3,16; 133:11;135:7,19; 136:3;141:13,17,19; 142:7,9;145:24; 147:18,23,24;148:10; 149:11;150:18;153:23, 25;156:20,23;160:7; 162:24;163:10,11,11; 164:3;165:10,17; 166:1,2,7;169:21; 170:21;178:10;180:3, 4,5,14;182:12,20; 184:13;185:5;186:4; 187:12,17,19,21;189:6; 190:17;191:11,13; 193:5,8,9,9;204:7,22; 205:9;207:13;208:18; 211:14,15;212:12; 213:20;214:22;215:20; 219:3,23,25;221:17; 224:12;229:23;233:11; 234:6;236:9,22;237:2,	2;238:7;239:11,21; 241:1,21;242:2,4; 243:1;244:1,13,16; 245:11;246:5,16; 247:3;248:1,23; 250:19,20;253:4,6; 255:12,13,15,15,16; 256:2,8;259:5;260:2,2; 261:8;263:19;264:9; 265:23;267:6,10,12,13; 268:21,22;269:11; 270:6,6,8,9,15;271:17, 20;272:6,20,21;274:2, 6,12;275:9,20;278:25; 281:20;284:1,24; 285:3,11;286:5;289:1, 7,14;290:13;292:20; 294:4,5,13;295:15; 298:25;299:9;302:4,8; 303:7;304:25 <b>theirs (1)</b> 38:7 <b>theme (1)</b> 32:13 <b>Theodore (4)</b> 4:3;10:7;16:14;17:5 <b>theoretically (2)</b> 109:7;117:18 <b>theory (1)</b> 104:6 <b>therapeutic (1)</b> 53:11 <b>there's (86)</b> 21:20;37:22;49:17, 18;51:1;53:12,13; 58:18,22;62:12;63:18, 20;68:24;79:11;83:12; 85:18;87:19;100:14, 14,16,20;106:21; 122:23;134:20;136:4; 139:19;143:10;147:2; 153:14,19;154:1,14,16, 18;175:5,12;176:5,13; 180:19;184:17;190:12, 14;193:12;204:5; 208:8,16;209:11,21,22; 211:19,21;215:1; 216:18;219:7;228:9; 231:17;237:16;241:22; 243:4;249:11;256:6; 264:1;266:17;268:6,8; 271:4;273:21;279:10, 16;281:1;282:7;283:1, 2,15;289:7,10;290:14, 17,18,19,24;293:14; 296:4,5;305:24;306:20 <b>therefore (4)</b> 104:25;156:19; 181:12;233:1 <b>thereof (1)</b> 134:12 <b>they'd (4)</b> 267:23;268:12;
<b>T</b>				
<b>table (5)</b> 6:11;133:3;176:18;				



301:24;305:11 <b>they'll (2)</b> 174:1;183:1 <b>They're (31)</b> 10:8,14;16:18;84:10; 92:24;109:17;111:10; 124:17;133:8;153:18; 154:13,21,25;177:7,9; 206:11;224:22;228:15; 253:25;258:14,22,24; 259:14;279:14,17; 285:5;291:11,12; 294:10;304:4;305:8 <b>they've (8)</b> 36:5;236:10;279:24; 283:19;285:9;288:1; 305:16;306:3 <b>thinking (2)</b> 35:21;195:14 <b>third (13)</b> 26:9,21,22,22;37:17; 73:3;74:20,23;79:10; 86:25;89:12;123:1; 273:3 <b>thirds (1)</b> 31:11 <b>Thompson (2)</b> 16:13;17:16 <b>though (11)</b> 23:8;36:3;157:11; 183:8;188:17;213:21; 236:4;238:6,23; 263:17;297:19 <b>thought (19)</b> 77:23;87:24;88:4,21; 116:7;141:23;185:5; 191:14;210:2;218:19; 219:10;229:5;232:2; 240:3;276:25;279:12; 295:23;303:12;304:24 <b>thousands (1)</b> 18:2 <b>three (32)</b> 12:23;15:16;26:19; 41:18,19;52:21;53:14; 90:20;107:14;110:4; 122:13;126:17;127:14; 129:8;132:3;152:6; 158:23,25;160:24; 177:3;179:18,24; 194:15,16;232:5; 236:17;237:10;247:10; 273:7;275:3;290:5; 298:2 <b>three-mile (1)</b> 52:6 <b>three-quarters (3)</b> 74:22;122:15;281:12 <b>throughout (4)</b> 18:23;235:14; 239:16;276:17 <b>thumb (1)</b> 7:14	<b>Thursday (1)</b> 260:16 <b>thus (1)</b> 306:7 <b>tier (3)</b> 51:15,16;117:20 <b>titled (1)</b> 188:4 <b>timely (1)</b> 150:18 <b>times (8)</b> 18:14;140:17;152:6; 224:10,23,24;249:12; 257:2 <b>title (1)</b> 57:12 <b>titled (5)</b> 24:12;31:1,5;41:1; 44:7 <b>TOD (1)</b> 226:24 <b>today (37)</b> 4:22;5:3,11;6:15; 37:2;71:12;106:13,15; 146:7;162:3;200:9; 203:2;233:15;244:10, 12;249:12,22;250:8, 10;251:24;261:2; 262:2;267:2;269:19; 276:12,24;278:8; 282:24;283:2;285:25; 287:24;288:2;295:21; 296:5;298:7,13;300:16 <b>together (3)</b> 35:20;58:15;84:10 <b>token (1)</b> 12:4 <b>told (2)</b> 226:21;303:19 <b>Tom (2)</b> 15:20;17:16 <b>tomorrow (2)</b> 261:4;268:16 <b>tonight (1)</b> 261:3 <b>took (10)</b> 23:21;26:20;54:21; 78:6;90:2;106:24; 107:1,7;215:13;229:6 <b>tool (1)</b> 183:13 <b>top (9)</b> 21:21;26:21;44:20; 81:4;121:12;154:23; 165:6;199:9;265:25 <b>topo (1)</b> 163:25 <b>topography (1)</b> 79:20 <b>total (6)</b> 78:11;123:9;133:13; 192:23;259:7;281:19 <b>totally (4)</b>	163:10;258:14,14; 290:11 <b>totals (1)</b> 223:17 <b>tots (1)</b> 125:25 <b>touch (1)</b> 215:6 <b>tough (1)</b> 178:10 <b>towards (6)</b> 51:10;56:1;163:5; 165:1;168:13;224:20 <b>tower (8)</b> 81:15,21,22;96:11; 170:6;175:4;194:6,7 <b>towers (1)</b> 20:11 <b>Town (10)</b> 52:7,20;71:18,24; 199:2;200:5;201:6; 210:19;230:6;233:19 <b>town'' (1)</b> 210:19 <b>townhomes (1)</b> 256:16 <b>townhouse (6)</b> 221:12;224:21; 293:16,19;294:8,8 <b>townhouses (9)</b> 125:20;133:8;262:3; 293:7,8,10,15,25; 294:10 <b>TPAR (3)</b> 291:25;292:4,11 <b>track (2)</b> 118:6;124:4 <b>tracks (1)</b> 114:16 <b>trade (1)</b> 167:25 <b>tradition (1)</b> 210:18 <b>traditional (2)</b> 18:5,6 <b>traffic (56)</b> 11:16,17;18:3,21,22; 86:18,23;89:12;99:23; 100:6,7;102:1;143:23; 144:11;145:24;146:7; 186:6;190:17;191:23; 192:6,17,21,22,22; 193:13,16;194:21,24; 195:6,9;196:1,13,14, 16,22,24;278:23,25; 282:16,20;288:16; 289:10,11,14,14;290:1, 18,23,24;291:2,19; 292:6,7,14,22;293:1 <b>trail (19)</b> 58:2,7;124:23,24; 125:3;128:9;129:15, 19,23;130:5,6,20;	131:24;181:5,6,9,11, 18;235:14 <b>trails (12)</b> 36:16;58:5;62:9,9; 126:22;246:23;247:15, 15,17;252:25;259:16; 282:21 <b>transcript (1)</b> 9:7 <b>transfer (1)</b> 98:3 <b>transit (13)</b> 223:22;224:13,13; 236:2,2;238:18,20,21, 23;239:9,17;240:7,8 <b>transit-dependent (1)</b> 238:25 <b>transition (21)</b> 76:9,12;107:4;159:6, 21;205:12,15,25; 210:6;213:11,12,18,20; 214:3,4,12,15;216:5, 19,21;293:16 <b>transitions (3)</b> 205:20;212:10,13 <b>transit-oriented (2)</b> 223:20;236:1 <b>translate (1)</b> 209:5 <b>translating (1)</b> 208:21 <b>transmission (1)</b> 79:14 <b>transportation (6)</b> 27:9;91:10;182:21; 200:23;282:8;292:9 <b>travel (1)</b> 136:20 <b>traveling (1)</b> 194:5 <b>travels (2)</b> 76:17;175:9 <b>traverse (1)</b> 80:4 <b>tree (2)</b> 138:17;190:11 <b>trees (13)</b> 82:22;83:11,12; 138:11;165:14;166:3; 180:25;181:4,7,16; 279:19;290:14,14 <b>tremendous (2)</b> 27:8;30:9 <b>trends (1)</b> 221:9 <b>triple (1)</b> 191:4 <b>triple-glazed (1)</b> 190:18 <b>trips (2)</b> 194:24,25 <b>trouble (1)</b> 295:18	<b>true (8)</b> 49:21;79:25;137:6; 204:6;212:25;243:12; 247:14;263:17 <b>truly (2)</b> 28:16;286:9 <b>truth (2)</b> 45:14;141:18 <b>try (13)</b> 8:3;33:16;56:19; 199:17;203:24;204:2; 221:1;237:19,20; 260:10;266:1;278:12; 305:9 <b>trying (22)</b> 18:23;104:20;138:6; 144:18,25;179:25; 182:4;184:24;201:4; 209:3;212:4,21;214:3; 219:25;220:11;224:18; 244:3,6;271:20; 288:11;291:13;293:13 <b>tunnel (1)</b> 60:23 <b>turn (13)</b> 66:12;89:21;118:15; 120:18;136:23;229:11; 274:19;281:10,11; 282:18;290:8,12,12 <b>turned (4)</b> 78:22;79:1;138:5; 286:13 <b>turning (1)</b> 281:8 <b>turns (3)</b> 148:25;167:16; 265:20 <b>two (82)</b> 7:9;12:15;14:19; 20:10;22:12;30:9;31:8, 11;35:14;43:16;51:15, 16;62:2;74:7;81:18; 90:20;107:2;110:2,9; 122:20;126:20;132:2; 135:9;136:25;137:9; 138:8;139:6;141:10; 149:6;151:7;153:1,9, 14,19;159:15;160:4, 16;172:6;173:18,23; 176:16;180:2,8; 190:14;194:15,19; 205:18;206:19;207:10, 22;208:6,12;209:10; 212:7;213:2,8;220:1; 222:13,18,18,23; 224:10,23,24;232:8; 236:18;237:11;242:3; 252:19;258:16,19; 259:21;265:20;269:16; 272:23;276:22;291:18; 292:7;296:3;301:20; 304:23,24 <b>two-acre (7)</b>
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27:9;30:14;51:2,18; 160:6;293:16;297:6 <b>two-acres (1)</b> 287:21 <b>type (23)</b> 32:13;33:12;34:3; 35:24;41:21;43:11; 50:15;55:2,4;56:4; 83:11;125:20;127:22; 133:8;134:9;155:15; 180:16;187:21;198:22; 216:4;256:19;294:9; 296:14 <b>types (13)</b> 9:3,3;29:11;33:22; 110:3;190:14;215:17, 19;230:3,19;256:18; 263:5;264:2 <b>typical (3)</b> 124:10;215:15,19 <b>typically (8)</b> 33:11,14;155:12; 187:20;190:22;193:22; 208:15;282:6	236:20 <b>underneath (1)</b> 75:21 <b>underscore (1)</b> 221:22 <b>under-served (1)</b> 55:2 <b>Understood (2)</b> 19:23;26:12 <b>undertook (1)</b> 41:8 <b>underway (1)</b> 215:1 <b>unexpected (1)</b> 295:19 <b>unfortunately (3)</b> 63:4;115:20;254:2 <b>unheard (1)</b> 306:10 <b>unique (8)</b> 32:20;40:20;148:7; 210:8,20;231:9; 240:15;263:5 <b>unit (15)</b> 122:8,21;133:9; 139:4;160:7;208:25; 209:1,2;215:18; 216:22;230:11;252:14; 256:18,19;263:5 <b>units (88)</b> 30:13;73:22;75:5; 77:13,21;78:8,11,12, 15;87:2;99:4;111:24; 115:14,25;117:1; 122:2,19;123:6;126:3; 133:4,7,8,13,24;139:7, 8,9;148:8;151:5,7; 156:19;159:1,16,21; 160:4;176:13,14,16,16; 177:24,25;178:17,22; 179:9;183:17;186:6, 17;193:12;194:11,11; 204:11;205:18;206:19; 208:7,13,21,22;209:10; 212:7;213:2,8;215:15; 216:8,8,10,17,18,22; 217:9,10;224:25; 226:3;229:20,22; 239:19,23;240:11; 242:4;252:19,20; 253:12;256:22;263:15; 268:18,25;276:3; 293:20,25 <b>University (3)</b> 44:6,7;71:13 <b>unless (14)</b> 31:24;68:3;93:3; 227:16,16;246:14; 250:15;272:2,2; 297:19;300:9;304:3; 305:16;306:1 <b>unmarked (1)</b> 64:18	<b>unreal (1)</b> 290:16 <b>unrestricted (1)</b> 114:25 <b>unsure (1)</b> 189:20 <b>Unterberg (43)</b> 24:13,17;25:2;56:23; 68:8,11,17,19;72:3; 74:3;78:20;88:3;92:5; 93:1,5;95:16;102:22; 103:18;105:7;108:3; 120:9;122:12;128:18; 146:12,21;161:20,23; 162:17,24;210:22; 214:6;216:1;217:2; 235:13;247:19,22; 248:7,10,12;275:20,23; 276:3;280:1 <b>U-N-T-E-R-B-E-R-G (2)</b> 68:19,23 <b>Unterberg's (2)</b> 69:2;120:20 <b>unusual (9)</b> 38:19;96:19;129:2; 196:11,15;229:6; 292:5;306:8,11 <b>up (145)</b> 4:11;6:14;7:25;12:5; 13:14;17:13;18:22; 20:7,20;26:6;42:10; 43:12;44:20;52:10; 53:4;55:18;58:13; 65:13,19,25;70:8; 78:10,22,25;79:3,4; 81:24;86:25;89:1; 94:15;96:2;98:15; 99:15,24;100:11; 101:13,19,20;102:22; 107:15;109:13;110:5; 111:16;112:20,21,21; 114:15;115:21;119:7, 9;122:17;123:9;128:8; 129:20;133:7,23; 137:14;138:21;140:1, 5,9,12,15;141:11; 147:20;149:14;152:1, 6;154:5,7,17,19;155:7; 157:25;158:9;159:22; 160:25;161:19;162:23; 164:25;173:7;174:11; 176:13;178:17;181:3, 7;183:9,11;185:6; 186:12;191:18;193:10; 194:19,24;195:25; 196:12,16;207:23; 208:22;210:5,10; 211:12;215:25;216:7; 219:12;234:16;247:15; 248:6,20;260:12; 266:22;272:25;273:13; 278:20;279:15;281:6, 12,22,23;283:16;	286:12;288:15;289:8, 9,9,20;290:2,5,8,9,10, 13,19,25;291:17,18; 292:6;293:8,19; 295:22;298:9;301:16, 22;304:16;305:1 <b>upcounty (6)</b> 220:12;225:10; 227:3;254:4;268:21,23 <b>update (1)</b> 87:19 <b>updated (2)</b> 10:4;23:15 <b>upgrade (1)</b> 155:10 <b>upgraded (1)</b> 190:18 <b>uphill (3)</b> 155:10;165:2;290:14 <b>upon (1)</b> 210:8 <b>upper (3)</b> 74:4;80:5;159:2 <b>upset (2)</b> 293:7,15 <b>Urbanism (2)</b> 202:3,6 <b>urged (1)</b> 214:10 <b>use (59)</b> 16:21;19:5;21:4; 27:3;28:10;30:2,31:9; 32:2;51:2,5,11,16; 66:2;69:4;70:17;72:4, 16;76:6;95:24;96:2; 100:24;101:1;104:2, 15;105:11,20;106:7; 110:3;131:21;147:1; 150:22;157:4;160:5; 175:25;183:13,13; 187:25;193:25;194:7, 8;200:25;201:16; 203:1,14;205:24,25,25; 208:9,17;228:17,21,25; 229:2;231:11,18; 232:4;238:24;239:16; 269:11 <b>used (11)</b> 21:15;22:10;32:24; 38:16;39:11;58:11,14; 63:2;105:23;274:4; 292:13 <b>useful (3)</b> 185:23;190:22; 274:12 <b>user (1)</b> 28:3 <b>uses (13)</b> 51:8;98:16;131:9; 146:25;156:16;162:9, 10,13;173:4,8,10; 217:23;232:25 <b>using (3)</b>	36:19;64:6;274:8 <b>usual (2)</b> 7:14;9:5 <b>usually (10)</b> 7:3,6,12;9:17;78:24; 119:4;120:11;122:3; 190:17;286:12 <b>utilities (1)</b> 254:14 <b>utility (1)</b> 254:14 <b>utilize (1)</b> 218:24
<b>U</b>		<b>V</b>		
<b>ultimate (2)</b> 177:6;240:17 <b>Ultimately (5)</b> 92:4;177:9;259:9,15; 291:25 <b>unaffordable (1)</b> 30:16 <b>unanimous (1)</b> 302:12 <b>unanimously (1)</b> 305:19 <b>unbuilt (4)</b> 222:14;223:17,18; 224:3 <b>uncomfortable (1)</b> 46:15 <b>under (42)</b> 49:22;51:18;58:17; 70:24;112:9,12;116:5; 126:7;132:8;133:11, 16;135:19;139:9; 150:1;160:9;179:2,3,9; 184:15,16,16;205:14; 208:17;210:10,24; 216:4;221:25;223:15, 16;224:25;225:10,25; 228:16;232:4;236:13; 247:9;273:21;291:24, 25,25;292:11,15 <b>under-addressed (1)</b> 254:23 <b>Underberg (1)</b> 68:23 <b>underlying (2)</b> 51:17;66:23 <b>undermines (1)</b>	<b>valley (4)</b> 75:10;76:17;175:13; 273:25 <b>value (1)</b> 46:3 <b>values (3)</b> 11:20;183:25;184:4 <b>variations (1)</b> 201:2 <b>varies (2)</b> 169:18,20 <b>varieties (2)</b> 138:18,19 <b>variety (8)</b> 135:16;204:5; 215:17;230:3,18; 233:4;235:21;279:25 <b>various (2)</b> 168:20;291:6 <b>vary (1)</b> 158:10 <b>vast (1)</b> 195:22 <b>vegetable (1)</b> 127:6 <b>vegetation (1)</b> 139:17 <b>vehicular (1)</b> 52:4 <b>venture (1)</b> 114:20 <b>verified (1)</b> 126:11 <b>verify (2)</b> 10:16;13:17 <b>verifying (2)</b> 13:18;298:18 <b>version (5)</b> 95:25;102:10;106:8, 15;147:21 <b>versions (1)</b> 137:23 <b>versus (3)</b> 159:13;186:21; 223:18 <b>vertical (6)</b> 158:8;163:20;			

221:23;225:10;227:3; 235:20 <b>via (2)</b> 89:21;230:11 <b>viability (2)</b> 19:21;236:6 <b>viable (3)</b> 18:7,18;19:16 <b>Vibration (1)</b> 184:18 <b>vice-president (1)</b> 252:1 <b>vicinity (2)</b> 20:21;21:20 <b>view (11)</b> 19:20,25;69:22; 141:11,15;163:3,4; 164:13;167:23;243:10; 287:22 <b>viewed (3)</b> 201:5;221:16;235:15 <b>viewing (1)</b> 18:17 <b>views (2)</b> 19:15,16 <b>Village (104)</b> 24:10,14,16,24;25:6, 8,17;33:25;34:3,20; 35:23;36:10,12,16,17, 18,23;37:1,6,13,24; 38:6;52:18;58:2;62:9, 10,11;71:17;75:17,18, 24;87:1,2;89:19;90:14; 96:8;128:15;129:20, 23;131:20;132:2,4,6, 10,13,23;135:22,25,25; 168:7,15,16,18;169:9, 22;170:9;175:10,13, 16;211:4,10,13,17,24; 212:3,18;213:18; 233:18;241:5,8,17; 242:1,12;247:16,18; 248:15;252:7,11,12,13, 18,23;253:3,13,17,20, 25;258:23;259:1,2; 262:12;263:6,11,14,23, 25;264:4;265:8,10,13; 266:10;267:24;268:2; 273:19 <b>violation (1)</b> 116:6 <b>violations (6)</b> 115:7;199:2,3;200:2, 3;230:7 <b>Virtually (1)</b> 30:17 <b>virtue (1)</b> 157:23 <b>visible (1)</b> 275:9 <b>vision (8)</b> 177:18;178:19,23; 199:11,25;200:1;	201:4;229:21 <b>visit-ability (2)</b> 32:11,17 <b>visual (1)</b> 210:16 <b>voice (2)</b> 252:15;297:17 <b>voir (2)</b> 69:5;70:3 <b>volume (3)</b> 195:22;196:1;278:24 <b>volumes (2)</b> 31:8;192:21 <b>vote (2)</b> 301:7;302:12 <b>voted (3)</b> 29:22;51:12;183:19  <b>W</b>  <b>wait (4)</b> 14:2;66:10;104:13; 229:8 <b>waiting (1)</b> 104:4 <b>waive (1)</b> 15:5 <b>walk (21)</b> 52:22;72:22;74:8,10, 11,13,20;83:4;85:5; 95:19;120:22;124:2; 135:9;150:19;181:19; 193:22;288:18;289:8, 9;291:21,21 <b>walked (1)</b> 134:16 <b>walking (9)</b> 58:5;130:6;135:1; 235:10;278:9;279:7, 13;282:21;289:5 <b>walks (1)</b> 54:11 <b>walkway (4)</b> 288:19,22,23,25 <b>Walkways (2)</b> 124:8,22 <b>wall (1)</b> 196:13 <b>Wal-Mart (2)</b> 53:12;135:15 <b>wander (1)</b> 31:20 <b>wants (1)</b> 237:4 <b>warm (1)</b> 286:13 <b>warmed (1)</b> 94:15 <b>warranted (1)</b> 177:3 <b>warrants (1)</b> 133:10 <b>wasn't (7)</b>	29:22;102:19; 219:23;220:4;276:23; 287:13;295:1 <b>water (41)</b> 4:9;20:11;22:13; 51:19;52:9,11;80:17, 22;81:14,15,17,18; 83:17,22;84:4;96:11; 107:16;139:23;154:5, 7,14;170:5;174:24,25; 175:3,3,4,5,6,6;194:6, 6,7;284:23;295:12; 296:22,23,25;297:4,5,5 <b>waters (1)</b> 206:21 <b>Watkins (1)</b> 71:24 <b>way (57)</b> 8:14;11:24;22:24; 23:1;31:11,12;35:6; 66:21;73:13;79:18; 98:24;101:19;110:24; 114:19;116:17;118:15; 123:17;129:20;141:7; 143:14,15,22;144:2; 147:18;160:12;161:22; 164:1,24;169:16; 193:17;201:11,17; 203:16;213:23;215:6; 219:13;220:4;225:7, 17;230:13;242:7; 256:7;270:1;271:20; 274:8;278:15,21; 281:12;282:17;288:20; 290:9,10;292:12; 294:2;301:2;304:2; 306:10 <b>ways (10)</b> 60:23;64:23;65:10; 80:3;191:24,25;274:5, 5;292:7;301:20 <b>We'd (2)</b> 161:19;296:13 <b>we'll (40)</b> 5:5,6;7:19;10:13; 12:24;21:4;31:23; 34:12;66:10;67:16; 68:5,7;70:11;78:2; 102:13;103:1;106:19; 124:1;137:19;143:1, 12;145:1;146:20; 161:12;189:23;192:15; 196:23,24;207:12; 215:22;237:1,20; 238:2;250:18,21; 297:1;298:3;299:6,10; 300:22 <b>we're (80)</b> 15:7;17:20;18:4,22, 23;22:24;34:11;35:19; 37:7;47:1;53:22;61:3; 66:2;76:23;84:19; 102:1,10;106:14;	111:22,24;118:11; 124:24;126:24;128:11, 12;129:18;137:9; 139:6,7;146:25;147:3; 148:1,2;157:8,18; 158:17;161:17;164:6; 165:20;176:16;179:20; 181:8;188:3,14;203:2, 23;206:16;213:10; 217:9;220:11;221:11; 229:23;235:13;237:6, 19,22;250:16,25;252:4, 6,9,21;253:1,13;254:3, 8,25;256:1;263:6; 267:14;268:22;273:20; 275:8;279:3,4;285:24; 291:22,22;295:20; 299:5 <b>we've (43)</b> 17:19,24;52:13; 72:25;79:1;92:7,10; 105:8;106:1,16; 120:19;132:15;147:15; 153:5;156:18;157:22; 158:1;159:10;173:9; 176:20;183:14,17; 217:23;218:9;228:22; 233:16;250:12;252:4, 12;253:9;254:10,12, 15;256:12,14;259:10, 17;275:7;276:24; 282:25;283:2;297:1; 299:2 <b>wear (1)</b> 232:12 <b>website (4)</b> 44:14,22;47:11; 49:20 <b>Wednesday (1)</b> 261:7 <b>Wegmans (2)</b> 53:11;135:19 <b>weight (1)</b> 49:22 <b>welcome (4)</b> 58:12;262:17;286:4; 297:23 <b>welcoming (1)</b> 34:2 <b>well-integrated (1)</b> 58:7 <b>weren't (2)</b> 112:20;198:15 <b>Wes (1)</b> 100:5 <b>west (43)</b> 73:10,11;75:10; 76:11,16;79:7,9,19; 80:2;82:12;84:24; 85:16;88:17;96:5,9; 101:3;104:6;107:8; 129:9;137:6;140:2,10; 141:11;145:18;146:2,	3;156:17;157:23; 163:5;167:19;168:7; 169:4,7,10;175:13; 187:5;193:5;242:5; 248:20;275:10;276:6; 286:23,25 <b>Westbrook (1)</b> 115:21 <b>western (8)</b> 80:5;82:18;137:19; 149:1;152:4,16; 155:21;175:16 <b>What- (1)</b> 218:15 <b>what's (32)</b> 35:5;40:2;41:11; 45:15;48:19;53:8,16; 54:23;59:20;77:15,15; 81:12;98:17;142:22; 148:10,13;156:17; 166:2;169:17,20; 179:25;186:20;192:23; 212:17;224:15;225:15; 227:13;253:7;263:25; 275:4;285:10;294:5 <b>whenever (2)</b> 253:18,18 <b>Whereas (1)</b> 303:6 <b>Whereupon (5)</b> 13:1;93:9;161:13; 250:23;307:3 <b>wherever (1)</b> 95:17 <b>Whichever (1)</b> 133:25 <b>white (4)</b> 81:12,16;124:18; 153:1 <b>Who's (2)</b> 41:24;282:8 <b>whole (14)</b> 52:14;79:2;104:6; 118:25;132:8;145:14; 156:3;157:9;165:24; 174:19;234:5;295:19; 303:24;304:13 <b>wholesale (1)</b> 215:3 <b>wide (4)</b> 29:11;71:23;215:17; 226:9 <b>widened (5)</b> 18:9;24:19;170:4; 194:20;290:9 <b>widening (10)</b> 24:8;35:17;123:16; 125:5;169:20;170:4; 194:19,21;195:1; 248:14 <b>width (2)</b> 150:11;169:23 <b>wife (1)</b>
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275:3 <b>Wightman (1)</b> 116:15 <b>William (3)</b> 5:20;46:21;286:17 <b>WILLS (77)</b> 5:14,14,18;6:8,12, 14;7:8,22;8:3,10;13:3, 8;15:2;49:17;61:14,16; 63:2,8,11,13,15,17; 64:9,25;65:4,5;72:11; 145:20;146:5,8; 154:12,25;158:16,19, 21;161:4;175:21,24; 177:4,6,9;178:1,7,13, 25;179:13;182:23; 183:3;203:7;248:25; 249:1,21;250:1,5; 265:24,25;266:3,7,12, 14;267:17;269:8,13,18, 21;274:19,21,25; 285:22,23;297:13; 301:5,6;302:11,19,23; 303:19 <b>windows (3)</b> 190:16,18;191:25 <b>Windridge (5)</b> 10:7,8;16:9,20,24 <b>Wisdom (1)</b> 198:18 <b>wish (14)</b> 5:11;6:18;7:4;13:12; 14:23;15:13;46:1;72:8; 120:10,13,17;250:7; 255:14,15 <b>within (64)</b> 8:19;9:10,12;28:19; 33:3,21;34:1,3;37:14; 41:20;48:5,7,9,15; 50:15;52:6,19,19; 55:25;57:10;58:2,4,6; 62:18;66:24;78:14; 88:12;91:8;105:11; 121:25;125:24;132:4; 135:1,3,6,11,13,21; 136:3,8;139:4,7; 159:16;175:10,15; 200:16;213:10,12; 215:16;216:6;217:5; 226:12,13,13;233:20; 235:4,8,10;263:25; 278:6,7,9;284:21,22 <b>without (8)</b> 71:10;227:25; 233:22;239:19,19; 281:1;301:22;306:4 <b>witness (536)</b> 8:17;10:10;15:17,19, 24;16:3,18;17:1,6,8; 19:3,7,11,14,23;20:1,4, 6,17;21:18,22,25; 22:17,22;23:2,9;25:2,6, 9,12,23,25;26:2,11;	27:1,16,17,19,22;28:9, 23;29:2,7,17;32:6; 33:1,7,10;34:7,9; 35:10;36:4,4,6;38:12; 40:18;41:5,12,16,18; 42:1,14,17,24;43:2,11, 16;44:4,6,17;45:4; 46:4;47:5,14,16,23; 48:1,12,20;50:1,12,14, 18,20;51:8,22;52:3; 53:20;54:21;57:7,12, 21,25;59:5,24;60:6,25; 62:23;64:24;66:5;67:7, 24;68:6,7,13,24;69:9, 24;70:2,12;71:2,7,21; 72:8;73:17;75:4,16,23; 76:2,5;77:17,21,25; 78:3,6,14;79:1;80:14; 81:2,9,18,21,23;82:4,7, 21;83:3;84:1,19;85:5, 8,11,13;86:1,4,8,14,22; 88:19,25;89:9;90:5,11, 13,19;91:2,23;92:9; 95:24;96:24;97:2,20, 22;98:1,9,14,21;99:3, 10;100:2,13,18,22; 101:23;102:2,12; 103:6,8,10;106:1,19; 107:13,21;108:13,21, 25;109:15,21,25; 110:9;112:7;120:16, 21;121:10,17;122:13; 124:17;125:10,16; 126:7;127:5,13,18,23; 128:2,5,8;129:5,8,13, 18,22;130:1,4,9,13,16, 25;131:4;133:12,16,22, 24;134:1,3,6,20;137:3, 5,8;138:4,13,24;139:2; 141:4,17;143:8,12,25; 144:5,7,10,14,21; 145:10,17;146:3,6,23; 148:5,12,15,18,21,24; 153:8,14;154:1,6,9,24; 155:3,9,14;156:7,12; 157:3;159:9;160:3,15, 22;164:17;165:21; 166:15;167:18,24; 168:3,12,16;169:1; 170:1;172:24;173:17, 23;174:3,5;177:16; 178:16;179:5,9; 182:25;183:21;184:3, 7,12,15;185:1,7,10,15, 17;186:7,12,16,19; 187:2,17;188:2,12,17, 23;189:3,13;190:14; 191:9;192:20;193:3,7, 22;194:2,5,10,14; 195:6,13,18;196:2; 197:5,12;202:3,6,8,23; 203:4,12;204:24; 205:11;206:8,11,13,19;	207:1,3,10,15,17,20, 25;208:3,6,16,25; 209:6,9;211:9,14,19, 23;212:9,14,21;213:14, 16,19,24;214:19;215:1, 7,12;216:20;217:4,12, 14,16,18;218:13,16,18, 21;219:6,9;220:1; 222:8,10,16,21;223:5, 7,9,12,24;224:2,4,7,10, 17;225:8,24;227:7,9, 19,24;228:3,7,13; 229:3,18;230:20; 231:13,16,20,22,25; 232:21,23;234:4,18,22; 236:9,22;237:1,14; 238:15;239:3,12,19; 240:2,5,10;241:22; 242:21;243:6;244:14, 22,24;245:3,6,9,12,15, 23;251:1,20,23; 256:12;257:5,11,19,25; 258:3;262:5,25; 264:15;266:20,24; 267:1,13;269:2,5; 271:3,9,19;272:8,11; 273:9;274:12,22; 275:1,5,8,14,16,18,21, 25;276:5,8,10,21; 277:10,13,16,20;278:1, 3,25;279:7,23;280:2,5, 10,13;281:8,11,15,24; 282:2,4,9;283:9;284:7, 10,12,15,18,24;285:1, 13,15;286:18,22,25; 287:3,5,8;288:7,10,13, 23,25;289:3,5,19,22; 290:23;291:4,8,10,16; 292:22,22;293:2,5; 294:4,7;297:16 <b>witness' (1)</b> 72:13 <b>witnesses (20)</b> 4:23;5:10;7:5;8:7,15, 25;11:6;12:5;38:22; 46:5;47:9;60:4;67:4, 11;95:9;247:1;250:5; 298:1;304:4;306:15 <b>won't (9)</b> 22:25;57:8;81:13; 108:4;111:18;118:4; 188:8;300:7,10 <b>wonder (3)</b> 140:17;249:13;265:5 <b>wondered (1)</b> 105:17 <b>wondering (3)</b> 66:2;213:4;266:15 <b>wooded (1)</b> 180:22 <b>woods (1)</b> 289:8 <b>word (5)</b>	131:6,6;178:4;208:4; 239:15 <b>worded (1)</b> 38:25 <b>words (12)</b> 171:21;180:24; 182:3;191:5,16;232:9; 256:7;260:7;261:19; 264:8;270:4;300:25 <b>work (19)</b> 7:20;24:1;35:20; 38:7;79:10;82:4;105:2; 111:18;124:19;155:15; 167:8;181:13,14; 182:11;215:4;254:14; 256:11;263:16;282:16 <b>worked (10)</b> 52:10;99:11;112:25; 254:12;256:12,14; 259:20,24;263:7;270:7 <b>working (14)</b> 18:14;35:16;121:10; 140:4;176:11,19,21; 181:9,24;182:7; 183:14;237:16;252:12; 270:7 <b>works (6)</b> 28:19;72:20,23; 109:6;181:11;292:12 <b>World (6)</b> 32:23;63:21,22; 66:22;112:25;114:18 <b>worry (1)</b> 243:8 <b>worst (2)</b> 192:23;257:12 <b>worth (4)</b> 36:2;46:2;289:11; 290:6 <b>wouldn't (19)</b> 33:15;49:23;67:9; 91:7;98:23,24;99:24; 100:9;101:25;104:1; 115:8;142:18;240:10; 250:16;268:16;285:20; 296:11;297:4;305:2 <b>Wow (1)</b> 298:25 <b>wrap (4)</b> 55:18;160:25; 161:19;186:12 <b>wrestling (1)</b> 160:2 <b>write (2)</b> 4:15;118:7 <b>writers (1)</b> 213:4 <b>writing (11)</b> 200:23;202:14; 244:20;255:6,9;257:7, 13,15;265:16,17; 268:15 <b>written (8)</b>	36:1;94:3;96:1; 116:21;255:7,13; 258:3;303:10 <b>wrong (6)</b> 81:8;175:25;186:10, 11;219:13;248:4 <b>wrote (3)</b> 62:15;200:21;245:18 <b>WSSC (10)</b> 20:11;22:12,15,20; 52:10;81:14,19;96:11; 194:6,7 <hr/> <p style="text-align: center;"><b>Y</b></p> <hr/> <b>yard (5)</b> 148:15;149:5,18; 152:5;195:19 <b>yards (2)</b> 149:5;188:8 <b>Yeager (2)</b> 85:18;267:13 <b>year (8)</b> 88:12;89:16;109:7; 132:18;200:10;204:22; 283:12;292:7 <b>years (43)</b> 17:24;23:8;24:4; 42:6;43:19;45:7,20; 48:2,5;55:8;71:14,15; 108:9,17;111:8; 112:18;113:9;115:16, 22;117:13;118:4; 183:15;187:14;198:4, 17;199:21,21;200:10, 12,20;201:8;218:3; 219:23;231:8;252:5, 13,20;253:10,11; 275:3;280:25;287:16; 296:3 <b>years'' (1)</b> 47:20 <b>yellow (8)</b> 20:22;21:24;22:2; 75:23;85:15;87:1;96:9; 131:22 <b>yield (3)</b> 133:4,13,18 <b>you'd (5)</b> 188:14;208:22; 216:16;246:5;262:3 <b>you'll (26)</b> 31:25;60:12;77:10; 80:9,15;82:7;99:11; 106:15;107:6;126:3; 135:8;141:22;146:7; 153:9;180:18;195:23; 206:3;210:21;215:10; 216:21;222:13;223:17; 224:7;243:22;298:19; 300:21 <b>You're (80)</b> 8:6;13:10;22:1,5;
--	---	---	---	--

28;4,5;31;15;37;15; 43;24;58;21;65;15; 69;14;71;12;77;22; 86;12;87;10;88;2; 91;17;95;2;97;20; 99;23;101;8;102;16; 108;19;112;14;117;21; 119;22;120;2;127;20; 24;128;17;143;17; 144;24;25;145;22; 148;19;153;13;154;24; 160;10;161;3,3,5; 163;25;164;25;167;10; 169;14;178;11;180;6; 185;4;186;5;187;18; 190;25;191;7;192;25; 193;3,7;200;14;209;5; 211;11,11;218;15; 222;25;231;5;236;17; 237;12,16;238;3,4; 246;10;270;25;276;6; 280;13,14;283;7; 286;3,20;287;21; 290;12;296;23;297;1	25;231;12;232;1,1,3,7; 235;7;280;14;284;6 <b>zone'' (1)</b> 284;20 <b>zoned (16)</b> 20;8;30;14;85;15,17, 24;99;22;104;7; 108;14;116;16;188;13, 18,19;194;10;295;1,5; 296;15 <b>zones (16)</b> 139;15;147;11; 156;8;176;6,25;177;5, 13,17,21,23,24;183;8; 187;5;219;22;228;4,11 <b>zoning (70)</b> 4;4;9;23;14;7;16;11; 19;6;20;3,21;21;19; 23;3,15;36;8;38;16; 39;8;70;24;71;3,24,25, 25;73;20;84;1;85;11, 14,16;86;1,9;95;19,20, 22;98;4;106;16; 108;22;109;2;110;14, 19;114;7,16;118;18, 22;128;20;138;21; 149;19;159;13;160;6, 8,9;165;21,22;176;3; 189;22;200;16,17; 207;4;208;1;209;12; 212;25;227;16;231;12; 232;6,11;233;14; 272;21;273;8;277;3; 283;18;292;16;295;9, 23;296;9;303;5,10 <b>ZTA (3)</b> 232;7,16,20 <b>ZTA-0618 (1)</b> 232;24 <b>ZTA-0627 (1)</b> 233;6	221;8 <b>1,300 (2)</b> 273;23;274;1 <b>1,400 (4)</b> 124;1;126;19; 179;15,22 <b>1.82 (1)</b> 170;25 <b>1/18/2000 (1)</b> 299;9 <b>1:30 (1)</b> 146;16 <b>1:34 (1)</b> 161;13 <b>10 (26)</b> 9;10,12;23;8;47;20; 48;2,5;55;8;93;7; 123;5;135;9,10; 158;10;177;24;178;17; 179;9;180;3,3;231;8; 236;18,18;237;11,11; 252;13;253;11;294;9; 304;17 <b>100 (8)</b> 18;10;122;19;126;3; 180;3;253;3,12; 268;18,25 <b>10-15 (1)</b> 149;8 <b>104 (1)</b> 263;15 <b>109-foot (2)</b> 149;11;153;3 <b>10-minute (4)</b> 74;11,13,20,25 <b>11 (4)</b> 24;4;43;5;48;6; 185;17 <b>11:00 (1)</b> 12;25 <b>11:44 (1)</b> 93;9 <b>12/20 (1)</b> 284;16 <b>12:00 (1)</b> 93;7 <b>120 (4)</b> 144;9,11,19;169;13 <b>120-feet (1)</b> 169;15 <b>120-foot (2)</b> 123;11;144;10 <b>13 (4)</b> 40;6;43;3;44;19; 126;2 <b>130 (1)</b> 122;19 <b>13c (1)</b> 40;7 <b>140 (21)</b> 4;11;78;8,15;89;5; 106;23;125;22;126;4; 131;9,17;133;13;	139;8;193;12;204;11; 216;8;239;23;240;10; 256;22;287;19,20; 293;20,25 <b>14-393 (1)</b> 299;9 <b>149 (1)</b> 17;17 <b>15 (2)</b> 32;8;146;19 <b>150 (2)</b> 186;23;218;5 <b>150-foot (1)</b> 169;19 <b>16 (1)</b> 295;11 <b>18 (5)</b> 18;19;34;24;128;13; 218;3;219;23 <b>18.2 (4)</b> 126;4,7;127;16,25 <b>18th (5)</b> 5;4;34;19;265;7; 307;2,2 <b>18-year-old (3)</b> 214;22;220;18;235;4 <b>19 (1)</b> 43;2 <b>19- (1)</b> 276;10 <b>19,000'' (1)</b> 48;16 <b>19,400 (2)</b> 48;6;50;4 <b>1960's (3)</b> 32;23;63;19,21 <b>1970's (1)</b> 17;20 <b>1983 (1)</b> 71;14 <b>19847 (2)</b> 68;20;197;20 <b>1988 (1)</b> 113;17 <b>1994 (19)</b> 201;5;204;13,24,25; 209;15;210;3;218;3, 19,25;220;4;227;10; 232;3,13;234;25; 235;25;252;6;295;14, 22;296;1 <b>1st (1)</b> 292;7	159;2 <b>2.576 (1)</b> 159;1 <b>2.6 (2)</b> 139;9;176;16 <b>2:15 (1)</b> 161;11 <b>20 (9)</b> 18;19;43;19;45;7,20; 133;7,23;148;8; 250;22;293;20 <b>20,000 (1)</b> 48;13 <b>200 (4)</b> 68;20;148;1;180;5; 197;20 <b>2001.02 (1)</b> 124;11 <b>2002 (3)</b> 70;22;232;7,16 <b>2004-2005 (1)</b> 71;22 <b>2005 (1)</b> 41;8 <b>2006 (4)</b> 198;22;200;6; 232;19,23 <b>2007 (2)</b> 29;22;233;6 <b>2009 (1)</b> 14;14 <b>200-B (1)</b> 4;21 <b>2010 (3)</b> 43;21,22;139;23 <b>2011 (3)</b> 30;3;44;9,22 <b>2012 (10)</b> 34;19,24;51;12; 88;13;184;18;222;12; 223;5,6;226;7;265;7 <b>2013 (6)</b> 44;19;83;23;84;4,11; 200;9;292;2 <b>2-05 (1)</b> 232;7 <b>20874 (2)</b> 68;21;197;21 <b>20th (1)</b> 80;16 <b>21 (2)</b> 275;19,19 <b>21,000 (1)</b> 224;8 <b>21,373 (1)</b> 223;19 <b>21710 (1)</b> 17;17 <b>21721 (1)</b> 289;22 <b>21732 (1)</b> 275;5 <b>21901 (1)</b>
<b>you've (24)</b> 13;4;24;1;31;8; 72;20;78;20;81;6; 99;20;109;11;152;12; 195;18;198;14;201;22; 202;14;211;4;228;23; 244;12;262;14;265;2; 272;4;278;13;291;12, 13;296;8;298;6 <b>young (2)</b> 249;11;281;2 <b>younger (5)</b> 50;7;109;4;221;13; 225;11;280;22				
<b>Z</b>				
<b>zone (94)</b> 4;5,6,6;20;9;22;1,3; 27;2;28;12,14;29;20; 51;17,18;54;25;66;20, 20,24;85;25;97;12; 98;3;105;10;108;13; 112;24;113;4;115;24; 117;12,17;118;23,24; 121;15,15;122;1,4; 124;6;128;21;134;7,8, 13,23;136;5;146;13, 24;147;10;148;6,14; 149;19;151;11;152;1, 2;156;8;157;6,7,16,17; 158;4;159;1;162;5; 176;23,23;177;7; 178;17,18;179;3,3; 183;13;204;12;208;15; 209;4;217;19,20,20,25; 218;4,4,8,18,22,25; 219;4,16,19,20,23; 220;3;226;20;227;23,	<b>0</b> <b>0.4 (1)</b> 80;8 <b>0.48 (1)</b> 80;7 <b>0205 (1)</b> 232;21 <b>1</b> <b>1 (1)</b> 292;2 <b>1,000 (13)</b> 77;13,21;78;11; 139;4;151;5;176;13, 14;179;24,24;216;7, 16;229;24;252;19 <b>1,100 (1)</b> 180;5 <b>1,200 (1)</b>	<b>12/20 (1)</b> 284;16 <b>12:00 (1)</b> 93;7 <b>120 (4)</b> 144;9,11,19;169;13 <b>120-feet (1)</b> 169;15 <b>120-foot (2)</b> 123;11;144;10 <b>13 (4)</b> 40;6;43;3;44;19; 126;2 <b>130 (1)</b> 122;19 <b>13c (1)</b> 40;7 <b>140 (21)</b> 4;11;78;8,15;89;5; 106;23;125;22;126;4; 131;9,17;133;13;	<b>2</b> <b>2 (2)</b> 44;22;262;15 <b>2,700 (2)</b> 87;2;252;14 <b>2.15 (2)</b> 30;20;32;8 <b>2.5 (1)</b>	

4:10 <b>22 (9)</b> 13:16;14:10;150:10; 276:1;286:18,20,22; 290:17;291:11 <b>23 (4)</b> 275:3;276:3,4,5 <b>240 (1)</b> 287:20 <b>25 (10)</b> 71:15;123:6;147:3; 157:8,12;164:1;183:1; 232:8,10;233:1 <b>25-acre (2)</b> 232:18;233:22 <b>26 (2)</b> 200:12,20 <b>27 (76)</b> 11:23;18:9;24:8,19, 20,21;35:18;73:7,9,10, 11,12,13;76:11,20; 79:6,84:25;86:6,10,24; 88:18,21;89:2,6,10,16; 90:11,23;100:7; 103:20;104:7;123:16; 125:10;126:14;130:21; 136:20;141:15,19; 144:16;145:13,18,25; 146:3;150:13;158:1; 159:20;163:5,21,23,24; 164:1,2,7;165:1; 167:18;169:13,14,17, 18,19;175:5;184:18, 21;186:1;211:2,5; 248:14,19;252:10; 279:16;281:8;288:18; 289:2,2,16,23 <b>27'' (2)</b> 88:24;89:19 <b>270 (2)</b> 73:14;201:6 <b>28 (8)</b> 107:15;110:5;133:7, 24;149:24;150:4; 157:10,13 <b>29 (1)</b> 128:4 <b>2nd (1)</b> 44:9	90:22;91:8;92:13;96:5; 125:4;126:14;129:14; 130:10;139:21;149:10; 153:22;170:7;175:9, 10,15;183:2;184:21; 194:21;195:1;196:3; 241:21;248:20;282:1; 291:2,3 <b>32b (1)</b> 35:3 <b>34 (9)</b> 42:14,23;62:14,21, 22,23;63:11;96:2; 210:12 <b>34a (2)</b> 32:3;96:3 <b>34b (13)</b> 31:1,21;32:4;34:18; 40:25;41:11,13;46:13; 50:10;55:19;57:18; 262:6,13 <b>34c (1)</b> 78:17 <b>34d (1)</b> 79:16 <b>34e (2)</b> 81:3;181:4 <b>34f (6)</b> 20:25;21:5,10;26:6; 85:13;95:18 <b>34g (4)</b> 92:11;106:4,19; 147:24 <b>34k (2)</b> 124:8;248:7 <b>34l (7)</b> 53:2;54:7;72:25; 73:5;74:5;134:17; 248:12 <b>34m (2)</b> 143:21;167:13 <b>34N (1)</b> 97:3 <b>34o (3)</b> 95:24;96:23;101:13 <b>34q (5)</b> 76:6;210:14;217:2,4; 275:16 <b>35 (15)</b> 122:18;123:6,6; 124:1;126:18;128:8, 11;148:15;149:6,16; 152:4,6;157:17;173:7; 179:15 <b>355 (5)</b> 73:13;76:15;89:22; 170:14;290:3 <b>37.31 (1)</b> 128:1 <b>38 (3)</b> 207:14,15,16 <b>38.9 (1)</b> 122:17	<b>39 (5)</b> 185:25;186:2;229:8, 17,25 <b>4</b> <b>4 (1)</b> 262:15 <b>4.55 (1)</b> 171:10 <b>4:00 (1)</b> 250:22 <b>4:13 (1)</b> 250:23 <b>40 (20)</b> 17:24;77:12,18; 78:12;111:8;124:1; 126:18;138:1;139:3,5; 151:5;160:17;176:12; 179:15;200:10;215:20; 216:5,15;282:5,6 <b>400 (1)</b> 60:8 <b>40a (2)</b> 138:4;214:2 <b>40b (1)</b> 136:22 <b>40-foot (1)</b> 149:17 <b>40-mile (1)</b> 282:10 <b>41b (2)</b> 106:6,9 <b>41c (1)</b> 84:20 <b>44l (1)</b> 24:12 <b>45 (4)</b> 111:8;290:16,18; 291:14 <b>45-50 (1)</b> 61:24 <b>46 (2)</b> 140:23;284:14 <b>47 (1)</b> 128:12 <b>49 (1)</b> 41:6 <b>49.4 (3)</b> 107:16;110:6;123:8 <b>5</b> <b>5 (5)</b> 127:2;208:22;209:6, 7,8 <b>5:00 (2)</b> 250:12;269:19 <b>5:30 (1)</b> 307:3 <b>50 (29)</b> 31:11;33:19;61:5; 83:10;108:8,17;	111:13,14;113:9; 115:2;117:13;118:4,5; 147:5,16,17,25;149:12; 150:2;157:16;158:4; 187:14;220:15;226:1; 235:17;283:10,12; 290:16,19 <b>50.05 (2)</b> 40:22;57:13 <b>50.4 (1)</b> 123:9 <b>50.5 (1)</b> 41:2 <b>50-foot (1)</b> 150:9 <b>50-plus (1)</b> 41:6 <b>50-year-old (1)</b> 226:16 <b>51 (3)</b> 88:23;89:13;91:18 <b>53 (2)</b> 140:24;284:13 <b>54 (7)</b> 13:7;73:6;79:5; 123:9;139:8;147:4; 214:18 <b>54.349 (1)</b> 4:5 <b>54-acre (1)</b> 56:14 <b>55 (13)</b> 4:25;33:19;42:6,12; 50:3,4,8;62:14,17; 115:16;221:8,13; 223:14 <b>55a (3)</b> 69:2,14;72:14 <b>55b (1)</b> 198:7 <b>55-plus (3)</b> 41:8;47:17,23 <b>57C-7.44 (1)</b> 108:21 <b>58 (1)</b> 48:3 <b>59 (1)</b> 280:25 <b>59C-7 (1)</b> 146:24 <b>59C-7.41 (1)</b> 134:7 <b>59C-7.43 (1)</b> 147:2 <b>59C-7.47 (1)</b> 147:4 <b>59D-1 (1)</b> 150:17 <b>59D-1.61 (2)</b> 150:20;272:18 <b>59D-1.61a (1)</b> 228:16 <b>59D-1.6de (1)</b>	39:24 <b>6</b> <b>6 (1)</b> 53:4 <b>6:00 (2)</b> 290:1,2 <b>60 (6)</b> 34:23,25;35:8;37:16, 18;186:1 <b>61 (6)</b> 44:13,15;47:9;48:18; 49:7,15 <b>62 (5)</b> 58:4;83:23,24;84:3,8 <b>63 (2)</b> 84:9,14 <b>64 (4)</b> 50:8;102:25;103:4; 221:13 <b>65 (3)</b> 103:13,15;186:3 <b>66 (7)</b> 125:13,14;126:6; 170:21;247:7,8;285:8 <b>67 (3)</b> 204:21;205:1,4 <b>67a (1)</b> 207:12 <b>67b (1)</b> 207:13 <b>67c (3)</b> 215:22;216:15; 229:19 <b>67d (3)</b> 229:15,16,17 <b>68 (3)</b> 222:17,19;223:3 <b>69 (1)</b> 299:7 <b>69-72 (1)</b> 299:12 <b>7</b> <b>7 (6)</b> 20:20,25;54:7,14; 75:9;76:3 <b>7.44 (1)</b> 147:5 <b>70 (6)</b> 147:24;148:1,3; 158:5;185:20;299:7 <b>71 (3)</b> 41:6;225:25;299:9 <b>71,600 (1)</b> 42:9 <b>72 (2)</b> 150:5;299:11 <b>73 (1)</b> 45:7 <b>75 (20)</b>
<b>3</b> <b>3 (1)</b> 262:15 <b>30 (9)</b> 71:14;180:4,4; 221:15;225:11;252:5; 253:10;289:23;290:19 <b>300 (2)</b> 149:15;180:5 <b>305 (32)</b> 24:15;85:20;86:25; 87:7;88:19,20;89:4;				

<p>45:20;139:5;148:7,7, 21;151:7;159:14; 160:17;176:15;204:14, 14,14,22;205:12; 207:12;209:9,20; 210:10;212:25;244:19</p> <p><b>750 (16)</b> 29:21;108:16;113:8, 20;114:24;134:24; 147:12;149:22,22; 150:1;219:1;232:4,9, 10,11,15</p> <p><b>750-acre (1)</b> 232:19</p> <p><b>76 (1)</b> 205:24</p> <p><b>77 (5)</b> 204:14,22;205:23; 207:12;208:18</p> <p><b>79 (1)</b> 112:18</p>	<b>99 (1)</b> 139:19			
<b>8</b>				
<p><b>8 (7)</b> 55:19;83:20,23;84:4, 11;140:22;158:22</p> <p><b>8,430 (3)</b> 223:18;224:7,9</p> <p><b>80 (3)</b> 291:8,10,11</p> <p><b>806 (1)</b> 70:22</p> <p><b>80-foot (1)</b> 148:2</p> <p><b>85 (2)</b> 46:25,25</p> <p><b>85,000 (2)</b> 45:7,19</p> <p><b>860 (1)</b> 216:11</p>				
<b>9</b>				
<p><b>9 (2)</b> 75:8;76:2</p> <p><b>9:00 (1)</b> 260:16</p> <p><b>9:30 (2)</b> 297:25;307:1</p> <p><b>9:47 (1)</b> 13:1</p> <p><b>90 (2)</b> 149:7;152:22</p> <p><b>900 (2)</b> 180:4,4</p> <p><b>969 (4)</b> 78:11;216:10,24; 229:23</p> <p><b>97 (4)</b> 206:22;207:3,15,18</p> <p><b>98,400 (1)</b> 48:3</p>				

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS  
MONTGOMERY COUNTY, MARYLAND

- - - - -X  
:  
Petition of Theodore Butz, et al.:  
Applicant :  
: Local Map Amendment G-881  
21901 Ridge Road, Germantown :  
:  
:  
- - - - -X

A hearing in the above-entitled matter was held on  
  
January 18, 2013, commencing at 9:34 a.m. at the Office of  
  
Zoning and Administrative Hearings, 100 Maryland Avenue,  
  
Rita Davidson Memorial Hearing Room, Rockville, Maryland  
  
20850 before:

Martin Grossman

Hearing Examiner



Page 2

A P P E A R A N C E S

For the Applicant:

Jody Kline, Esq.  
Miller, Miller & Canby  
200-B Monroe Street  
Rockville, Maryland

Gary Unterberg, Expert, Land Use Planning  
Wes Guckert, Expert, Traffic  
Dusty Rood, Expert, Environmental Planning  
Frank G. Bossong, IV, P.E., Expert, Civil Engineering

For the Opposition:

Mary Jane Goodrick  
William Hancock, Individual

C O N T E N T S

Witness:	Direct	Cross	Redirect	Recross
Wes Guckert	17	--	62	--
By Mr. Hancock	--	38	--	63
By Ms. Goodrick	--	52	--	65
Dusty Rood	69	--	88	--
By Mr. Hancock	--	83/87	--	--
By Ms. Goodrick	--	86	--	--
Frank B. Bossong	90	--	129	--
By Mr. Hancock	--	120	--	--
By Ms. Goodrick	--	127	--	--
Gary Unterberg	136	--	--	--
By Ms. Goodrick	--	166	--	--

Page 4

P R O C E E D I N G S

1 MR. GROSSMAN: This is the resumption of the

2 public hearing on the application of Theodore H. Butz, et

3 al., LMA Number G-881, for a local map amendment to the

4 zoning ordinance requesting reclassification of a 54.349

5 acre parcel from the RE-2 zone to the PRC zone.

6 The property is owned by the applicants and is

7 known as Parcel P-429 on Maryland tax map FV-122, also known

8 as the Butz property, or the Water Tank Farm Property

9 located at 21901 Ridge Road in Germantown, Maryland.

10 The applicants are proposing up to 140 age-

11 restricted single-family homes and a community center. The

12 hearing was begun on January 14, 2013, but could not be

13 completed on that date as specified in the public notice at

14 the initiation of this hearing. It will be resumed today on

15 January 18, 2013.

16 My name is Martin Grossman. I'm the hearing

17 examiner, which means I will take evidence and write a

18 report and recommendation to the Council sitting as District

19 Council. And the Council will make the final decision in

20 the case. Will the parties identify themselves for the

21 record, please?

22 MR. KLINE: Good morning. For the record, my name

23 is Jody Kline. I'm an attorney with the law firm of Miller,

24 Miller and Canby with offices at 200-B Monroe Street in

25

Page 3

Statement:

William Hancock 171

Mary Jane Goodrick 173

E X H I B I T S

Exhibit No.	Marked/Received
1-88 Premarked	-- 187
89 Ltr. w/Forest Conservation Plan and Water Quality Plan	11 187
90 State Highway Admin. Ltr.	27 187
91 Excerpt re Trip Generation	91 187
92 Tiers Map	113 187
93 Revised Version Exhibit No. 66	150 187

Page 5

1 Rockville. We have scheduled to call three witnesses this

2 morning, Mr. Grossman.

3 MR. GROSSMAN: All right. For the record, sir?

4 MR. HANCOCK: William Hancock. Resident of Brink

5 Meadow, adjoining property.

6 MR. GROSSMAN: Ms. Goodrick?

7 MS. GOODRICK: I'm Mary Jane Goodrick, and I'm

8 representing the Greater Goshen Civic Association.

9 MR. GROSSMAN: All right. And Mr. Kline, who are

10 your three witnesses today?

11 MR. KLINE: That would be Mr. Wes Guckert, Mr.

12 Dusty Rood, R-O-O-D, and Mr. Frank Bossong, B-O-S-S-O-N-G.

13 You have resumes in the file for all three of the gentlemen.

14 MR. GROSSMAN: Okay. Before we proceed, I have a

15 couple of preliminary matters. Once again, I remind the

16 applicant, but I also will be happy to receive copies,

17 electronic copies of anything they file from the opposition.

18 But the applicant, represented by counsel, is required to

19 file electronic copies, as well as hard copies of their

20 filings.

21 The second thing is, on January 15, 2013, I sent

22 and e-mail to Mr. Kline with copies to all the opposition at

23 this point. And I put a copy in the record. I raised four

24 points in the e-mail. And they are, the first was a

25 technical error on the development plan, and I misnamed it a

<p style="text-align: right;">Page 6</p> <p>1 schematic development plan. And I asked that that be 2 correct.</p> <p>3 I asked that Mr. Kline have a witness here today 4 to explain precisely how his point totals were arrived at 5 for the amenities. I also asked that he have a witness 6 address the points made by Scott Whipple in Attachment 1 to 7 the Staff Report regarding potential impact on historic 8 setting. And I asked if the applicant was interested in 9 putting forth an alternative plan with a little less 10 density.</p> <p>11 Mr. Kline since has filed a response to that last 12 point indicating that the applicant would not be putting 13 forth an additional plan. They wish to go forward with the 14 development plan they have.</p> <p>15 Also, on January 16th, I sent an e-mail to 16 Technical Staff, with copies to the parties, and a copy is 17 in the record. And I asked a number of questions. I asked 18 whether technical staff agreed with my observations about 19 the applicant's proposed surrounding area, and I asked if 20 technical staff would give me some information about the 21 proposed, Exhibit 56, the proposed point count for the 22 amenities.</p> <p>23 And I asked if the additional binding textual 24 element regarding ensuring that there would be, that the 25 homeowners association would enforce the age-restriction was</p>	<p style="text-align: right;">Page 8</p> <p>1 was discussed, and referenced some points in that 2 discussion, which he thought we should pay attention to.</p> <p>3 I have not listened to that disk because in this 4 situation, although I think that it would be appropriate to 5 hear from, hear what some of the Planning Board members 6 said, given the brief letter that we got from the Planning 7 Board in Exhibit 54, I felt the opposition did not have the 8 opportunity to review this and to comment on it, which they 9 should have the opportunity to do.</p> <p>10 So what I was going to suggest, Mr. Kline, is that 11 if you wish to have the Planning Board discussion in the 12 record, or portions of it, that you submit a transcript of 13 that discussion with, and copies to the opposition. And I 14 will give them time to respond and comment on any portions 15 of it that you wish to highlight, or any portions that they 16 wish to highlight. I think that's the only fair way to go 17 about this. Does that seem like a fair procedure to you?</p> <p>18 MR. KLINE: That's fine with me.</p> <p>19 MR. GROSSMAN: The opposition?</p> <p>20 MS. GOODRICK: Yes.</p> <p>21 MR. GROSSMAN: Okay. All right. I think the 22 easiest thing would be to provide them and me with not just 23 the hard copy transcript, but a disk of the transcript as 24 well, hopefully in Word format.</p> <p>25 MR. KLINE: I'll reserve the right to do that at</p>
<p style="text-align: right;">Page 7</p> <p>1 something that would have to go back to the Planning Board. 2 Technical Staff responded to that e-mail, and their response 3 is also in the record, and indicated that they agreed that 4 the surrounding area should be as I suggested it, that is, 5 should include properties to the east of Ridge Road.</p> <p>6 Secondly, they gave me information on how the 7 point totals were arrived at, although they are still up in 8 the air, the question of which figures they used to define 9 the amenities point count.</p> <p>10 Specifically two of the questions that I believe 11 are still up in the air is which factor, age factor, do they 12 use. The manual that technical staff has to compute these 13 points indicates an age categories of seniors of 65-plus, 14 and adults range up to that age. And here, of course, the 15 community is restricted not to 65-plus, but to 50-plus. So 16 there's a question of which factor to use. The Technical 17 Staff said they would check to see what was done in Leisure 18 World, and would get back to me on that point.</p> <p>19 The second issue I raised was whether or not the 20 point count for individual community space rooms was an 21 appropriate way to count that. And they will get back to me 22 on that point as well. All right. Let's see if there is 23 anything else here.</p> <p>24 Oh yes. Also, Mr. Kline provided a disk with the 25 recording of the Planning Board session at which this case</p>	<p style="text-align: right;">Page 9</p> <p>1 all, because I sort of made it available because questions 2 had come up. As long as everybody notes the duration of the 3 hearing which seemed to be in question, that was one of the 4 things I wanted to get through. So we'll let you know how 5 we're going to handle that.</p> <p>6 MR. GROSSMAN: Okay. Ms. Goodrick?</p> <p>7 MS. GOODRICK: But we, yes, we would appreciate a 8 transcript of --</p> <p>9 MR. GROSSMAN: Right. Ordinarily, as I mentioned 10 at, I think, the last hearing, the proceedings before the 11 Planning Board are not usually in the record here, in part 12 because they don't have evidence under cross-examination and 13 that sort of thing.</p> <p>14 But if any part seeks to introduce proceedings 15 before the Planning Board, then we look at the question of 16 what's appropriate to admit and what's not. I think in this 17 case when you just have a voice recording of it, which is 18 what was submitted to me, I presume, on the disk. I presume 19 the disk did not have a transcript, but was just a voice 20 recording?</p> <p>21 MR. KLINE: It does not. Correct.</p> <p>22 MR. GROSSMAN: Then it's very difficult for 23 anybody to make their objections or make their comments or 24 point to other portions of it that they wish to have viewed. 25 And so if anybody wants the Planning Board discussion in the</p>

<p style="text-align: right;">Page 10</p> <p>1 record, as apparently Mr. Kline suggested he would, then I 2 think the way to do it is by transcript and by reference to 3 specific transcript pages that he thinks are particularly 4 relevant. 5 And then you would have the opportunity, I would 6 say 10 days, to come back with any portions that you think 7 are relevant, or any objections to what Mr. Kline has 8 proposed. 9 MS. GOODRICK: Yes, thank you. 10 MR. GROSSMAN: Okay. All right. Any other 11 preliminary matters? 12 MR. KLINE: One procedural matter, Mr. Grossman. 13 Exhibit 62 and 63 were put in the record on Monday were 14 copies of the Planning Board's resolution on forest 15 conservation plans -- 16 MR. GROSSMAN: Yes. 17 MR. KLINE: -- and the water quality plan. In 18 yesterday's mail I received a transmittal from Park and 19 Planning of corrected resolutions -- 20 MR. GROSSMAN: Okay. 21 MR. KLINE: -- which in both cases say, "The 22 correction of this resolution is only to assert the 23 applicant's name in the heading of the resolution," in both 24 cases. 25 MR. GROSSMAN: Okay.</p>	<p style="text-align: right;">Page 12</p> <p>1 MR. KLINE: Preliminary. 2 MR. GROSSMAN: Preliminary forest conservation 3 plan. And 89(b) is the corrected Planning Board resolution 4 approving the water quality plan. 5 MR. KLINE: Preliminary also. 6 MR. GROSSMAN: Okay. The preliminary water 7 quality plan. All right. Mr. Kline, would you specify what 8 these additional three witnesses will testify to? 9 MR. KLINE: Mr. Guckert will be basically 10 qualified as a traffic engineer and transportation planner. 11 Mr. Rood, I have to dig my notes up here and get you an 12 exact title of what we want to certify him as. I had 13 written an expert in the field of environmental science. 14 You're actually going to be? 15 MR. ROOD: Why don't you go with environmental 16 planning and water quality and forest conservation. 17 MR. KLINE: Environmental planning, water quality, 18 and forest conservation. And Mr. Bossong in the area of 19 civil engineering, and will address public facilities, other 20 than transportation facilities. 21 MR. GROSSMAN: All right. 22 MR. KLINE: Okay. One last thing, Mr. Grossman. 23 MR. GROSSMAN: Yes, sir. 24 MR. KLINE: Mr. Hancock asked me a question before 25 the hearing started. I gave him an answer, what I thought</p>
<p style="text-align: right;">Page 11</p> <p>1 MR. KLINE: I submitted a copy, or I'm sorry, I 2 only had one copy, and I gave it to Ms. Goodrick and Mr. -- 3 MS. GOODRICK: Hancock. 4 MR. GROSSMAN: Goodrick and Mr. Hancock. 5 MR. KLINE: I'm tired already. Yes. So I'd ask 6 that that be made an exhibit in the record. 7 MR. GROSSMAN: Okay. 8 MS. GOODRICK: Excuse me? 9 MR. GROSSMAN: Yes. 10 MS. GOODRICK: Can I ask another question? 11 MR. GROSSMAN: Yes. 12 MS. GOODRICK: And that is, the witnesses, I would 13 be just interested in the subject areas of the witnesses 14 that are being called. 15 MR. GROSSMAN: Okay. We'll get to that in one 16 second. 17 MS. GOODRICK: Okay. 18 MR. GROSSMAN: Let me just -- okay. So Exhibit 89 19 is Mr. Kline's letter of January 17, 2013, conveying 89(a) 20 which is the corrected resolution adopting the, approving 21 the forest conservation plan, (a), corrected Planning Board 22 resolution approving, they approved the preliminary forest 23 conservation plan or a final? 24 (Exhibit No. 89 was marked 25 for identification.)</p>	<p style="text-align: right;">Page 13</p> <p>1 was going to happen, and I don't always know how it will 2 flow. So maybe he will have an opportunity to ask the 3 question of you now, and maybe you can answer now, so I 4 didn't mislead him. 5 MR. GROSSMAN: Mr. Hancock. 6 MR. HANCOCK: I was just asking about the two 7 letters, the one we got yesterday from Elm Street, and one 8 from Miller, Miller and Canby, if they were going to be made 9 a part of the record, and if so, would we have an 10 opportunity to comment on them. 11 MR. GROSSMAN: I don't know of these letters. 12 What letters are we talking about? 13 MR. KLINE: They were submissions to your office, 14 and I'm trying to find you the exact one. It was actually 15 sent to you, e-mail. 16 MR. GROSSMAN: When was this? 17 MR. KLINE: Yesterday afternoon. 18 MR. GROSSMAN: Okay. 19 MR. KLINE: It would be Exhibit No. 78. 20 MR. GROSSMAN: Okay. 21 MR. KLINE: No. I'm going to take that back, Mr. 22 Grossman. 23 MR. GROSSMAN: Okay. 24 MR. KLINE: I guess it's 83. 25 MR. GROSSMAN: All right. So that was your</p>

<p style="text-align: right;">Page 14</p> <p>1 letter, you hand delivered two letters to me. One was the  2 letter in 83 stating why you declined to provide an  3 alternative development plan for the proposed community, and  4 the other was a letter which enclosed the MP-4, this audio  5 version of the Planning Board session.  6 MR. KLINE: Right.  7 MR. GROSSMAN: Was there some other --  8 MR. HANCOCK: It was a letter from Elm Street.  9 MR. GROSSMAN: I don't think I received anything  10 from Elm Street.  11 MR. KLINE: It was in the bundled material.  12 MR. GROSSMAN: I know we had, we had a letter from  13 Elm Street that's in the record.  14 MR. KLINE: No, this is a subsequent letter. It's  15 listed as Exhibit No. 80(c).  16 MR. GROSSMAN: Okay. Let's see.  17 MR. HANCOCK: It's dated the 16th.  18 MR. GROSSMAN: Okay. Okay. Yes. Date received,  19 January 16, 2013. Oh, that was a filing that was made by I  20 guess Mr. Orobona of your office brought them in. But in  21 any event, there's a letter from Elm Street to me that  22 outlines agreement with the applicant regarding local map  23 amendment.  24 MR. KLINE: Okay.  25 MR. GROSSMAN: And when you say, will be made part</p>	<p style="text-align: right;">Page 16</p> <p>1 MR. KLINE: We would not object to him testifying  2 again, on that subject.  3 MR. GROSSMAN: Sure. Okay. Any other preliminary  4 matters? Ms. Goodrick.  5 MS. GOODRICK: Similar to what Mr. Hancock  6 requested --  7 MR. GROSSMAN: Yes.  8 MS. GOODRICK: -- Elm Street sent the letter in  9 that had to do with an agreement between the Elm Street and  10 the Butz property.  11 MR. GROSSMAN: Yes.  12 MS. GOODRICK: And we would like to discuss that.  13 So do we need to say that to you now?  14 MR. GROSSMAN: No. I mean, you have not  15 testified.  16 MS. GOODRICK: No, I have not.  17 MR. GROSSMAN: And you will certainly, when it's  18 your opportunity to testify, you can say whatever it is that  19 you want about that, anything that's relevant to this case,  20 and not too cumulative --  21 MS. GOODRICK: No.  22 MR. GROSSMAN: -- you will be permitted to testify  23 on.  24 MS. GOODRICK: And then they will respond?  25 MR. GROSSMAN: They can. They don't have to.</p>
<p style="text-align: right;">Page 15</p> <p>1 of the record, we have a two-step process for what's in the  2 record. The first step is, it's submitted, identified, and  3 then at the end of the proceeding usually I ask the question  4 whether or not the applicant wishes to have the exhibits  5 admitted into evidence, to which they always say yes.  6 And then I ask if there is any objection. And  7 then the opposition has an opportunity to object or to  8 submit their own exhibits when they appear. And then we  9 rule on what is appropriate to be admitted and what would be  10 excluded.  11 Generally, in land use cases almost everything is  12 admitted, and then it's treated according to its weight.  13 But there may be, there are occasions in which something is  14 so inherently unreliable or whatever, that it should not be  15 admitted. So did you have something to say about these  16 exhibits, Mr. Hancock?  17 MR. HANCOCK: Yes. It was just, it was comment on  18 what they were saying. I don't know if that's appropriate  19 to do that here or if it should be submitted in writing.  20 MR. GROSSMAN: Well, you are certainly welcome to  21 submit something in writing, but you can definitely, when  22 you have an opportunity to testify today, you can certainly  23 comment.  24 MR. KLINE: Well, he has testified before.  25 MR. GROSSMAN: Right.</p>	<p style="text-align: right;">Page 17</p> <p>1 They have a right, they have a right after you put on your  2 case to put on rebuttal evidence if they have any and they  3 wish to. And it's also an opportunity to argue about the  4 significance of something if they wish to argue about it,  5 and we'll let you respond to any argument they make.  6 MS. GOODRICK: Okay.  7 MR. GROSSMAN: All right.  8 MS. GOODRICK: Thank you.  9 MR. GROSSMAN: We try to be fair to all sides.  10 Everybody gets to be heard.  11 MS. GOODRICK: Right. Thank you.  12 MR. GROSSMAN: Okay. All right. Any other  13 preliminary matters?  14 MS. GOODRICK: No, sir.  15 MR. GROSSMAN: All right. Then your next witness,  16 Mr. Kline?  17 MR. KLINE: Mr. Guckert. We'd like to call Mr.  18 Wes Guckert as our next witness, please.  19 MR. GROSSMAN: All right. Mr. Guckert, would you  20 raise your right hand, please?  21 (Witness sworn.)  22 MR. GROSSMAN: All right. You may proceed.  23 DIRECT EXAMINATION  24 BY MR. KLINE:  25 Q Good morning, Mr. Guckert. Would you please state</p>

<p style="text-align: right;">Page 18</p> <p>1 and spell your name and give us your business address?</p> <p>2 A Certainly. For the record, my name is Wes</p> <p>3 Guckert, G-U-C-K-E-R-T. Business address is 9900 Franklin</p> <p>4 Square Drive, Baltimore, 21236. I am employed by the</p> <p>5 Traffic Group, Incorporated.</p> <p>6 Q And your profession, Mr. Guckert?</p> <p>7 A I'm a traffic and transportation planner.</p> <p>8 Q Have you ever qualified as an expert in those</p> <p>9 fields before this hearing examiner or this Office of Zoning</p> <p>10 and Administrative Hearings?</p> <p>11 A Dozens of times.</p> <p>12 MR. KLINE: Mr. Grossman, Exhibit No. 55(e) is Mr.</p> <p>13 Guckert's resume. And based on his previous qualification</p> <p>14 and as explained in the resume, years of experience, I'd</p> <p>15 like to offer him as an expert in the field of traffic</p> <p>16 engineering and transportation planning.</p> <p>17 MR. GROSSMAN: All right. Mr. Hancock or Ms.</p> <p>18 Goodrick, do you have any questions regarding this witness'</p> <p>19 qualifications?</p> <p>20 MR. HANCOCK: No.</p> <p>21 MS. GOODRICK: No, I do not.</p> <p>22 MR. GROSSMAN: All right. Based on Mr. Guckert's</p> <p>23 long experience of testifying as an expert in transportation</p> <p>24 planning and traffic engineering, I accept him as an expert</p> <p>25 as such.</p>	<p style="text-align: right;">Page 20</p> <p>1 which, Mr. Grossman, as I think you are aware, background</p> <p>2 developments are approved developments that have not yet</p> <p>3 been constructed. And those developments were basically</p> <p>4 Clarksburg Town Center, Clarksburg Village, Greenway</p> <p>5 Village, and Goddard School.</p> <p>6 We followed the standard guidelines and the LATR</p> <p>7 guidelines, which is local area transportation review. We</p> <p>8 determined, using Montgomery County trip generation rates,</p> <p>9 the amount of traffic that would be generated by the four</p> <p>10 developments, assigned that traffic to the study</p> <p>11 intersections. And then went about to determine the amount</p> <p>12 of traffic that would be generated by the subject property.</p> <p>13 We utilized the institute of transportation</p> <p>14 engineers trip generation formula for senior adult housing,</p> <p>15 determined on page 21 of my report, that the 140 senior</p> <p>16 units would generate about 30 morning peak hour trips, and</p> <p>17 about 38 evening peak hour trips.</p> <p>18 That traffic was then assigned, again, to the road</p> <p>19 network, as shown on page 82, with about 85 percent of the</p> <p>20 traffic proceeding to and from the south along Route 27.</p> <p>21 The rest of it spread throughout north on 27, Brink Road,</p> <p>22 and Snowden Farm Parkway.</p> <p>23 MR. GROSSMAN: But before you go into the</p> <p>24 specifics of any findings, I have before me three exhibits</p> <p>25 relating to traffic. Exhibit No. 20, which you mentioned,</p>
<p style="text-align: right;">Page 19</p> <p>1 MR. KLINE: Thank you.</p> <p>2 BY MR. KLINE:</p> <p>3 Q Mr. Guckert, Exhibit No. 20 in the record of the</p> <p>4 case is a local area transportation review prepared by you</p> <p>5 and your firm related to this project. Would you please</p> <p>6 describe the methodology of the report and then your</p> <p>7 findings and conclusions?</p> <p>8 A Certainly. Exhibit No. 20 was prepared under</p> <p>9 basically the auspices or scoping agreement with the</p> <p>10 Maryland National Capital Park and Planning transportation</p> <p>11 staff. We submitted a scope agreement telling them what the</p> <p>12 study would need to cover. They came back and said, you</p> <p>13 need to look at these intersections, following these</p> <p>14 particular guidelines.</p> <p>15 MR. GROSSMAN: And what intersections did they</p> <p>16 tell you to look at?</p> <p>17 THE WITNESS: They told us to examine two</p> <p>18 intersections, and that would be both locations along, along</p> <p>19 Route 27 at both Brink Road and at Skylark Road. And that</p> <p>20 is shown on page 12, Exhibit 5, my Exhibit 5 contained</p> <p>21 within Exhibit No. 20.</p> <p>22 MR. GROSSMAN: Okay.</p> <p>23 THE WITNESS: Following, following the</p> <p>24 identification of the intersections requested by staff, they</p> <p>25 also provided us with a list of background developments,</p>	<p style="text-align: right;">Page 21</p> <p>1 Exhibit No. 31(a), and Exhibit No. 38(a).</p> <p>2 THE WITNESS: What is the title of the other two</p> <p>3 exhibits? Do you know?</p> <p>4 MR. GROSSMAN: Exhibit No. 31(a) is also called,</p> <p>5 traffic impact study. And it's dated April 2009.</p> <p>6 MR. KLINE: You know what --</p> <p>7 MR. GROSSMAN: But it says, updated July of 2009.</p> <p>8 And then Exhibit No. 38(a) is dated July 20, 2012.</p> <p>9 MR. KLINE: Mr. Grossman --</p> <p>10 MR. GROSSMAN: Yes.</p> <p>11 MR. KLINE: -- I gave you the wrong reference</p> <p>12 number. Let us say that there was a traffic study prepared</p> <p>13 in 2009 by a previous traffic engineer. And that's Exhibit</p> <p>14 No. 20, and Exhibit No. 31 and 31(a). And that is</p> <p>15 superseded by Exhibit No. 38(a) --</p> <p>16 MR. GROSSMAN: Okay.</p> <p>17 MR. KLINE: -- which is the traffic study Mr.</p> <p>18 Guckert's been talking about.</p> <p>19 MR. GROSSMAN: Okay.</p> <p>20 MR. KLINE: I stand corrected.</p> <p>21 MR. GROSSMAN: Okay. So that is Exhibit No.</p> <p>22 38(a). And I also noticed that the original traffic</p> <p>23 studies, 20 and 31(a) call the property Orchard Run, I</p> <p>24 think.</p> <p>25 MR. KLINE: It was a marketing name that we were</p>

<p style="text-align: right;">Page 22</p> <p>1 using at the time.</p> <p>2 MR. GROSSMAN: Okay. But right now, the name at</p> <p>3 this point is, Courts at Clarksburg Village, is that</p> <p>4 correct?</p> <p>5 MR. KLINE: If it's liked enough to get developed,</p> <p>6 yes, sir.</p> <p>7 MR. GROSSMAN: Yes. Okay.</p> <p>8 THE WITNESS: And so all of my references, for the</p> <p>9 record, all of my references where I said Exhibit 20, should</p> <p>10 be changed to Exhibit No. 38(a).</p> <p>11 MR. GROSSMAN: I understand. Okay. So now to the</p> <p>12 substance of what you were saying. 80 percent of the</p> <p>13 traffic was --</p> <p>14 THE WITNESS: So we assigned 85 percent of the</p> <p>15 traffic to and from the south along Route 27. That was</p> <p>16 found to be acceptable to all the agencies. We determined</p> <p>17 the total peak hour traffic, then we undertook standard</p> <p>18 critical lane volume analysis using the procedures set forth</p> <p>19 in the guidelines, found that the intersections, site access</p> <p>20 at Route 27 and Snowden Farm Parkway, which is A-305, Brink</p> <p>21 Road, and Skylark Road, would all fall within the acceptable</p> <p>22 standards determined by the Planning Commission staff.</p> <p>23 MR. GROSSMAN: And what is that standard for those</p> <p>24 intersections?</p> <p>25 THE WITNESS: That standard is 1,425.</p>	<p style="text-align: right;">Page 24</p> <p>1 Then the applicant's expert does a study to</p> <p>2 determine how many, what the number of trips would be that</p> <p>3 would be generated by this proposed development. And then</p> <p>4 he assigns those trips in particular directions and</p> <p>5 determines what would be the impact, how many critical lane</p> <p>6 movements would be going on through the particular</p> <p>7 intersection as a result of this project.</p> <p>8 He adds to that the existing background traffic.</p> <p>9 And he adds to that the proposed projects that are already</p> <p>10 in, have been approved and are in the process. And he comes</p> <p>11 up with a total critical lane volume that is expected to be</p> <p>12 imposed on those intersections by those factors.</p> <p>13 And that's what Mr. Guckert just testified would</p> <p>14 be less than the maximum critical lane volume assigned by</p> <p>15 the County to these intersections. Did I summarize that</p> <p>16 fairly, Mr. Guckert?</p> <p>17 THE WITNESS: Yes, sir. I was going to, whether</p> <p>18 we need to swear you in or not, I don't know. Yes, sir.</p> <p>19 You did an excellent job.</p> <p>20 MR. GROSSMAN: I've been sworn at by a lot of</p> <p>21 people.</p> <p>22 THE WITNESS: Excellent job. Thank you.</p> <p>23 MR. GROSSMAN: All right.</p> <p>24 MS. GOODRICK: Excuse me. So is 1,425 an</p> <p>25 individual vehicle or motorcycle, is it the total volume?</p>
<p style="text-align: right;">Page 23</p> <p>1 MR. GROSSMAN: Okay.</p> <p>2 THE WITNESS: And that standard is outlined on</p> <p>3 page seven of the staff report that is dated December 20,</p> <p>4 2012. And I would, is there an exhibit number for this</p> <p>5 staff report?</p> <p>6 MR. KLINE: There is. It looks like it's number</p> <p>7 53.</p> <p>8 MR. GROSSMAN: Yes.</p> <p>9 THE WITNESS: Okay. So on page seven of Exhibit</p> <p>10 No. 53, Mr. Grossman, under the title, local area</p> <p>11 transportation review and policy area mobility review, the</p> <p>12 third line indicates that the critical lane volume standard</p> <p>13 is 1,425.</p> <p>14 MR. GROSSMAN: Right. I just want to make sure</p> <p>15 that Mr. Hancock and Ms. Goodrick understand what this</p> <p>16 analysis is, what this local area transportation review</p> <p>17 analysis is.</p> <p>18 Essentially, the technical staff tells the</p> <p>19 applicant which intersections they want to have studied.</p> <p>20 That's considered the scope of the review. Each</p> <p>21 intersection, each area in the County has a specification of</p> <p>22 what the expected maximum traffic volume would be, or at</p> <p>23 least what they call a critical lane volume standard for</p> <p>24 that area. And the standard for this area, for those</p> <p>25 intersections, is 1,425 critical lane movements.</p>	<p style="text-align: right;">Page 25</p> <p>1 Is that what the 1,425 is?</p> <p>2 MR. GROSSMAN: No. It's actually a fairly</p> <p>3 complicated little technique in which they develop which</p> <p>4 movements through the intersection are considered critical</p> <p>5 lane movements. So it's not precisely just how many. Mr.</p> <p>6 Guckert could explain it better than I can.</p> <p>7 MR. HANCOCK: Is there a time period assigned to</p> <p>8 that?</p> <p>9 THE WITNESS: It's the peak one hour, the peak</p> <p>10 commuting hour in the morning, peak commuting hour in the</p> <p>11 evening. And indeed, it's a mathematical calculation based</p> <p>12 upon the number of left turns versus right turns versus</p> <p>13 throughs versus the number of lanes.</p> <p>14 MR. HANCOCK: And that's determined at 1,425 per</p> <p>15 intersection?</p> <p>16 THE WITNESS: As being the threshold without</p> <p>17 needing improvements.</p> <p>18 MR. HANCOCK: What is the 30 trips? How does that</p> <p>19 work?</p> <p>20 THE WITNESS: The 30 trips is the amount of</p> <p>21 traffic that's spread out over the three access points.</p> <p>22 MR. HANCOCK: In other words --</p> <p>23 MR. KLINE: Well, how about if we do the cross-</p> <p>24 examination at a later time, sir?</p> <p>25 MR. GROSSMAN: I think that's fair. I wanted them</p>

<p style="text-align: right;">Page 26</p> <p>1 to understand --</p> <p>2 MR. KLINE: Okay</p> <p>3 MR. GROSSMAN: -- what the testimony was. But I</p> <p>4 think that's fair.</p> <p>5 MS. GOODRICK: Yes. Thank you.</p> <p>6 MR. GROSSMAN: All right.</p> <p>7 BY MR. KLINE:</p> <p>8 Q Mr. Guckert, in your opinion, do there need to be</p> <p>9 any network improvements before we have occupancy and</p> <p>10 traffic generation from the proposed units?</p> <p>11 A Absolutely not. In fact, Mr. Grossman, the</p> <p>12 Planning Staff concurred with my methodology, the analysis,</p> <p>13 the calculations. The State Highway Administration did the</p> <p>14 same, concurred with my report and my findings.</p> <p>15 MR. GROSSMAN: Is there a letter in the file from</p> <p>16 the State Highway Administration?</p> <p>17 MR. KLINE: I believe it would be an attachment to</p> <p>18 the staff report. If you want to give me a second, I can</p> <p>19 look that up. That would be the normal way Park and</p> <p>20 Planning would handle it.</p> <p>21 MR. GROSSMAN: I don't recall it off the top of my</p> <p>22 head. That's why.</p> <p>23 MR. KLINE: Let's do it the easy way. Mr. Guckert</p> <p>24 came well prepared and has a copy of it.</p> <p>25 MR. GROSSMAN: All right.</p>	<p style="text-align: right;">Page 28</p> <p>1 for identification.)</p> <p>2 BY MR. KLINE:</p> <p>3 Q Is it your conclusion, then, Mr. Guckert, that the</p> <p>4 surrounding transportation network is adequate to handle the</p> <p>5 traffic that would be generated by the proposed development?</p> <p>6 A Absolutely.</p> <p>7 Q Would you address the issue of the successor for</p> <p>8 PAMR. Does TPAR have anything to do with this, with a</p> <p>9 little bit of explanation what those two words mean for the</p> <p>10 folks sitting here?</p> <p>11 A Sure. PAMR is an acronym for Policy Area Mobility</p> <p>12 Review, which was a process that the planning staff and the</p> <p>13 County Council used for several years as a step one of a</p> <p>14 two-step process. PAMR, step one, local area review, or the</p> <p>15 traffic study, step two.</p> <p>16 PAMR has now been superseded by another acronym</p> <p>17 called TPAR, Transportation Policy Area Review. TPAR has</p> <p>18 now become simply an additional tax as it related to money</p> <p>19 that developers or home builders need to pay to the County.</p> <p>20 And in this particular area, while the rules are</p> <p>21 still being tightened up, it's likely that the TPAR tax for</p> <p>22 this project will be on a per unit basis at a rate of about</p> <p>23 25 percent of the other tax, called a transportation impact</p> <p>24 tax.</p> <p>25 So there's a transportation impact tax, and there</p>
<p style="text-align: right;">Page 27</p> <p>1 MR. KLINE: So after showing it to Mr. Hancock and</p> <p>2 Ms. Goodrick, we'll submit it in the record.</p> <p>3 (Discussion off the record.)</p> <p>4 THE WITNESS: While Mr. Hancock is looking at it,</p> <p>5 this letter was submitted to Ms. Kamen of Staff, and I,</p> <p>6 quite frankly, do not remember seeing it inside of Exhibit</p> <p>7 No. 53.</p> <p>8 MR. GROSSMAN: No, I'm looking at it on page 19 of</p> <p>9 the staff report, is a list of the attachments, and I don't</p> <p>10 see that one. She attached everything else in the world,</p> <p>11 but not that one.</p> <p>12 THE WITNESS: But we have it here.</p> <p>13 MR. GROSSMAN: Okay.</p> <p>14 THE WITNESS: So we have complete agreement by</p> <p>15 both of the agencies.</p> <p>16 MS. GOODRICK: Is it possible that maybe staff can</p> <p>17 make a copy of this? In other words, or give me two minutes</p> <p>18 to write something down? One minute?</p> <p>19 MR. GROSSMAN: Sure. Sure.</p> <p>20 MS. GOODRICK: Okay. Sorry. Okay. I'm finished.</p> <p>21 MR. GROSSMAN: We'll call that Exhibit No. 90.</p> <p>22 Thank you. And that's September 13, 2012, letter from State</p> <p>23 Highway Administration concurring in traffic study</p> <p>24 conclusions. Okay. Mr. Kline.</p> <p>25 (Exhibit No. 90 was marked</p>	<p style="text-align: right;">Page 29</p> <p>1 would be a TPAR tax. TPAR would be an additional 25 percent</p> <p>2 of the transportation tax.</p> <p>3 Q And give us an order of magnitude. What does that</p> <p>4 mean? \$1,000, \$5,000?</p> <p>5 A It will be in the range of about \$1,000 a unit,</p> <p>6 \$600 to \$1,000 additional per unit.</p> <p>7 Q All right. Thank you.</p> <p>8 MR. GROSSMAN: Additional beyond the</p> <p>9 transportation --</p> <p>10 THE WITNESS: Yes, sir.</p> <p>11 MR. GROSSMAN: Explain what PAMR is, because</p> <p>12 actually, if I understand the way the statute is written,</p> <p>13 PAMR is what applies to the rezoning, even though TPAR may</p> <p>14 be what applies to your later transportation and public</p> <p>15 facilities review, because PAMR is what was in place at the</p> <p>16 time the zoning application was filed.</p> <p>17 THE WITNESS: Certainly. You'll see in both the</p> <p>18 staff report, which is Exhibit No. 53, and the recent State</p> <p>19 Highway Administration letter, plus in, also listed in</p> <p>20 Exhibit No. 38(a), there will be for PAMR, for this area,</p> <p>21 for this type of project, there will be a lump sum tax that</p> <p>22 would have to be paid for purposes of zoning.</p> <p>23 It will not apply when we get to subdivision when</p> <p>24 adequate public facilities are actually tested. But for</p> <p>25 purposes of zoning, it's about a \$46,000 tax overall for the</p>

<p style="text-align: right;">Page 30</p> <p>1 project.</p> <p>2 MR. GROSSMAN: All right. And explain how that</p> <p>3 was arrived?</p> <p>4 THE WITNESS: If you'll give me one second, here.</p> <p>5 It's arrived by first looking at the amount of traffic that</p> <p>6 is generated. And here, the Courts at Clarksburg, is in the</p> <p>7 Clarksburg policy area. And for fiscal year 2012, 10</p> <p>8 percent of the trips must be mitigated or have a fee paid in</p> <p>9 lieu. And on page 25 --</p> <p>10 MR. GROSSMAN: That's 20 percent of new trips?</p> <p>11 THE WITNESS: Correct. Page --</p> <p>12 MR. KLINE: 10 percent.</p> <p>13 THE WITNESS: I'm sorry, 10 percent of new trips.</p> <p>14 MR. GROSSMAN: Okay.</p> <p>15 MR. HANCOCK: Page 25 of Exhibit No. 38(a), Mr.</p> <p>16 Grossman, has a two sentence description. 10 percent of all</p> <p>17 the trips, and a, when those trips are less than 30, the</p> <p>18 resulting trip is less than 30, in this case, 38 trips for</p> <p>19 us in the evening peak hour. And if you look on page 26, we</p> <p>20 result 10 percent require is four. And then you multiply</p> <p>21 four times \$11,700, so that the resulting PAMR payment,</p> <p>22 mitigation payment, is \$46,800. And that's on page 26 of</p> <p>23 Exhibit No. 38.</p> <p>24 MR. GROSSMAN: I'm sorry. What's the page</p> <p>25 reference again?</p>	<p style="text-align: right;">Page 32</p> <p>1 transportation impact tax come from?</p> <p>2 THE WITNESS: That comes from the County Council.</p> <p>3 They decide how much money they want each policy area or</p> <p>4 each type of development to pay.</p> <p>5 MR. GROSSMAN: So, is that generated by the number</p> <p>6 of trips, that particular tax?</p> <p>7 THE WITNESS: No, sir. No, sir.</p> <p>8 MR. GROSSMAN: How is that calculated?</p> <p>9 THE WITNESS: You'll have to ask the Council, but</p> <p>10 they determine what they wanted each type of land use to</p> <p>11 pay.</p> <p>12 MR. GROSSMAN: All right.</p> <p>13 THE WITNESS: I do not believe it's a mathematical</p> <p>14 rational calculation, though.</p> <p>15 MR. GROSSMAN: Okay. In fairness to the</p> <p>16 witnesses, this is just going into effect January 1 of this</p> <p>17 year. So I don't know that there are any projects yet that</p> <p>18 have been analyzed under it.</p> <p>19 THE WITNESS: Under TPAR?</p> <p>20 MR. GROSSMAN: Yes.</p> <p>21 THE WITNESS: I do not believe so, either, because</p> <p>22 the payments are made at the time of building permit.</p> <p>23 MR. GROSSMAN: All right. Okay. All right, Mr.</p> <p>24 Kline.</p> <p>25 BY MR. KLINE:</p>
<p style="text-align: right;">Page 31</p> <p>1 THE WITNESS: Page 26, Exhibit 38(a) --</p> <p>2 MR. GROSSMAN: Okay.</p> <p>3 THE WITNESS: -- describes the PAMR payment and</p> <p>4 how it was arrived.</p> <p>5 MR. GROSSMAN: Okay. So essentially, PAMR takes</p> <p>6 the number of new trips that will be generated and</p> <p>7 multiplies it times a factor, which in this case is 10</p> <p>8 percent.</p> <p>9 THE WITNESS: Yes.</p> <p>10 MR. GROSSMAN: And then multiplies the result</p> <p>11 times, it's \$11,700?</p> <p>12 THE WITNESS: \$11,700.</p> <p>13 MR. GROSSMAN: Which is the figure used to</p> <p>14 determine the amount of the tax or the payment that would be</p> <p>15 required of the applicant to compensate the County for the</p> <p>16 new trips that would be generated.</p> <p>17 THE WITNESS: That's correct.</p> <p>18 MR. GROSSMAN: Okay. And TPAR you said is really</p> <p>19 just a tax. How does TPAR work?</p> <p>20 THE WITNESS: TPAR is a tax that the County</p> <p>21 Council has established. And it's, the last iteration was</p> <p>22 to take the transportation impact tax times a factor of 25</p> <p>23 percent, and that becomes an additional tax. The TPAR tax,</p> <p>24 additional tax, replaced PAMR.</p> <p>25 MR. GROSSMAN: Okay. And where does the</p>	<p style="text-align: right;">Page 33</p> <p>1 Q Mr. Guckert, we've posted up here on one of the</p> <p>2 easels Exhibit No. 34(g) which is an illustrative plan of</p> <p>3 the proposed Courts of Clarksburg Development. you have</p> <p>4 worked with Rodgers and Associates in laying out the</p> <p>5 circulation system, both pedestrian and vehicular, and</p> <p>6 bicycle for this community?</p> <p>7 A Yes, sir.</p> <p>8 Q Okay. In your professional opinion, are those</p> <p>9 circulation systems safe, adequate and efficient, given the</p> <p>10 transportation network shown?</p> <p>11 A Absolutely safe and adequate and efficient. And</p> <p>12 what's important, Mr. Grossman, is that as you are aware by</p> <p>13 now, and I'm referring again to Exhibit No. 34(g), as you</p> <p>14 are aware, there are three points, basically two points of</p> <p>15 access for the southern portion of Exhibit No. 34(g). And</p> <p>16 that's south of A-305 and north of Brink Road.</p> <p>17 And when you take and you start to look at how the</p> <p>18 property is distributed, it really is almost set up in</p> <p>19 thirds, with the top third north of A-305, exiting on --</p> <p>20 excuse me, yes, the top third north of 305, exiting onto</p> <p>21 305.</p> <p>22 The middle half of the project will likely exit</p> <p>23 onto A-305. the southern half of the project likely exiting</p> <p>24 out, for the most part, existing out onto Brink Road. And</p> <p>25 as I stated earlier, with about 40 peak hour trips, you'll</p>



<p style="text-align: right;">Page 34</p> <p>1 have, Mr. Grossman, about one car every four to five minutes  2 coming out each of the third of the entrances. So one car  3 every four to five minutes. A really, really small impact.  4 And therefore my statement about the efficiency of the  5 overall operation the way this has been designed.  6 MR. GROSSMAN: All right.  7 MR. KLINE: No further questions of Mr. Guckert.  8 MR. GROSSMAN: Before I open this to cross-  9 examination, let me just ask Mr. Guckert, there was some  10 testimony yesterday concerning the safety of the traffic on  11 Brink Road, or the safety of crossing Brink Road on the  12 southern end of the project in order to get to the park  13 across the street. Can you address that issue? Is there a  14 safety issue regarding traffic on --  15 THE WITNESS: I cannot address the safety issue  16 that was discussed, but the testimony was not about our  17 access point. The testimony was about coming, for whatever  18 reason, from the adjoining neighborhood to cross into the  19 park.  20 MR. GROSSMAN: No. Well, I mean, the testimony  21 was addressing the suggestion that was made that there would  22 be an exit from the community in which, and a crosswalk  23 established at that exit point on the southern end where  24 people could then cross directly to the park directly south  25 of Brink Road. That was --</p>	<p style="text-align: right;">Page 36</p> <p>1 point to the project, crossing Brink Road, would be a safe  2 crossing point for pedestrians?  3 THE WITNESS: Yes, sir. Otherwise, otherwise the  4 Department of Transportation would never allow the entrance  5 to be built.  6 MR. GROSSMAN: Well, is that a car, an auto -- is  7 that entrance on the southern end an automobile entrance?  8 THE WITNESS: Yes.  9 MR. GROSSMAN: Okay. But I'm talking about the  10 pedestrian traffic at the crosswalk.  11 THE WITNESS: I understand. But the sight  12 distance that's required by the Department of Transportation  13 is not just for cars. It's for pedestrians as well. You've  14 got to be able to see cars that are exiting from the  15 driveway, whether they are cars or people, crossing Brink  16 Road, have got to be able to see oncoming vehicles.  17 MR. GROSSMAN: Okay. So is it your opinion that  18 there would be no safety issue in establishing a crosswalk  19 at that point to give residents of the proposed project  20 access to the park south of Brink Road?  21 THE WITNESS: It is my testimony and opinion.  22 MR. GROSSMAN: All right.  23 BY MR. KLINE:  24 Q Mr. Guckert, does the proximity of that driveway  25 and that crossing which is what the real issue is, to the</p>
<p style="text-align: right;">Page 35</p> <p>1 THE WITNESS: I disagree with you, but I'll  2 address your question.  3 MR. GROSSMAN: All right.  4 THE WITNESS: Okay. In our opinion, the access  5 and the sight distance at this location would be  6 satisfactory.  7 MR. GROSSMAN: When you say, at this location,  8 what location?  9 THE WITNESS: I'm sorry. At the access point to  10 the project shown on Exhibit No. 34(g), access point onto  11 Brink Road, in our opinion, would be safe and satisfactory.  12 MR. GROSSMAN: Okay.  13 BY MR. KLINE:  14 Q And that would be because why?  15 A That would be because of the amount of traffic,  16 number one, on the road, there's enough gaps. Number one.  17 And number two, there is sight distance that's satisfactory  18 at this location.  19 MR. GROSSMAN: No, my sense was that the sight  20 distance they were talking about is based in part upon the  21 hilly nature of the area, as described by the witness, and  22 the fact that they said traffic would be coming, I guess  23 from the east, would be a concern. I'm not sure about that.  24 But are you saying that in your opinion that a crosswalk  25 between the southern, located around the southern access</p>	<p style="text-align: right;">Page 37</p> <p>1 intersection of 27 and Brink Road, which is signalized, does  2 that help create the gaps you mentioned in terms of the  3 opportunities to cross?  4 A Well, indeed, it does, because as vehicles,  5 because vehicles that are westbound, and Mr. Grossman  6 indicated, some of them, if they're coming westbound across  7 Route 27, will be regulated by the traffic signal  8 themselves. Left turns will be regulated by the traffic  9 signals. So it's not as if it's a mid-block crossing of  10 Route 27 where traffic is moving constantly on a regular  11 basis.  12 Q You were here yesterday when you heard the  13 testimony, I think it would be of Mr. Wills, and maybe Mr.  14 Hancock as well, that there is some backup on Brink from the  15 intersection. Does that actually facilitate the pedestrian  16 movement across the road?  17 A Well, are you talking about in the eastbound  18 direction?  19 Q Yes, going eastbound?  20 A I don't know that that helps or hurts. But the  21 fact is, cars are, you know, if they are stopped at the  22 signal, they're going to be queued because that's what  23 signals do. They alternate the right-of-way.  24 Q Thank you.  25 MR. GROSSMAN: All right. Cross-examination, Mr.</p>

<p style="text-align: right;">Page 38</p> <p>1 Hancock?</p> <p>2 CROSS-EXAMINATION</p> <p>3 BY MR. HANCOCK:</p> <p>4 Q I mentioned some of these numbers, but did your,</p> <p>5 do you or your firm actually do any traffic studies on Brink</p> <p>6 Road, 27, or M-83?</p> <p>7 A Do you mean traffic counts?</p> <p>8 Q Yes.</p> <p>9 A Yes, sir.</p> <p>10 Q Okay. That was, you didn't do that? That was</p> <p>11 provided by the County?</p> <p>12 A No, sir. The County requires us to do that.</p> <p>13 Q Okay. So you did the ones on 27 and, well, you</p> <p>14 couldn't do M-83?</p> <p>15 A Correct.</p> <p>16 Q But on 27 and on Brink Road you've done the car</p> <p>17 counts?</p> <p>18 A Correct.</p> <p>19 Q And it's your testimony that the line of sight is</p> <p>20 sufficient to cross the street?</p> <p>21 A At the proposed new entrance, yes.</p> <p>22 Q I'm not sure --</p> <p>23 MR. GROSSMAN: Proposed new southern entrance?</p> <p>24 THE WITNESS: Yes, sir.</p> <p>25 MR. HANCOCK: I'm not sure. Can I argue with</p>	<p style="text-align: right;">Page 40</p> <p>1 questions that are posed. One is whether or not it's going</p> <p>2 to be, whether the road is going to be expanded to four</p> <p>3 lanes, or is it currently four lanes. Is the road, is Brink</p> <p>4 Road at this point currently four lanes or two lanes?</p> <p>5 MR. HANCOCK: It's currently two lanes at that</p> <p>6 point.</p> <p>7 MR. GROSSMAN: Hold on, Mr. Hancock. Let's get</p> <p>8 what the experts --</p> <p>9 THE WITNESS: Two lanes.</p> <p>10 MR. GROSSMAN: Okay. At the point of the intended</p> <p>11 entry?</p> <p>12 THE WITNESS: Correct.</p> <p>13 MR. GROSSMAN: Okay. And do you know, Mr.</p> <p>14 Guckert, whether or not it will be expanded to four lanes?</p> <p>15 THE WITNESS: I'm not aware that it's going to be,</p> <p>16 but it could be.</p> <p>17 MR. GROSSMAN: Okay.</p> <p>18 THE WITNESS: So I'm not aware, personally.</p> <p>19 MR. GROSSMAN: Okay. And what's the speed limit</p> <p>20 at that point?</p> <p>21 THE WITNESS: You know, this road would typically</p> <p>22 carry a 30 mile per hour speed limit. I'm not sure exactly</p> <p>23 the posted speed. I know the posted speed on 27 --</p> <p>24 MR. HANCOCK: Posted 35.</p> <p>25 MR. GROSSMAN: All right. Well, he has to answer</p>
<p style="text-align: right;">Page 39</p> <p>1 that?</p> <p>2 MR. GROSSMAN: You can't exactly argue, but you</p> <p>3 can ask more questions about the point, if you wish. You</p> <p>4 can certainly argue about it when you testify.</p> <p>5 BY MR. HANCOCK:</p> <p>6 Q The point, all right. What do you consider an</p> <p>7 adequate distance, if I were standing there and I want to</p> <p>8 cross the street, how many car lengths would you consider to</p> <p>9 be adequate before I can safely cross?</p> <p>10 A How many cars? What we would -- it's two</p> <p>11 different ways to look at it. One, you typically want to</p> <p>12 have about a five second interval as a pedestrian to cross.</p> <p>13 People will walk at various speeds, at three and a half,</p> <p>14 four feet per second.</p> <p>15 Q It's four lanes at that point.</p> <p>16 A A good rule of thumb would be that -- four lanes</p> <p>17 on Brink Road?</p> <p>18 Q Yes. That's to be extended. Isn't the four lanes</p> <p>19 on Brink Road to be extended to the outlet from the</p> <p>20 subdivision? That's my understanding it was.</p> <p>21 A To the best of my knowledge, no.</p> <p>22 MR. KLINE: We probably need a little help to</p> <p>23 answer that question. Can he ask the engineer, so he can</p> <p>24 answer the question at this point in time?</p> <p>25 MR. GROSSMAN: Well, I guess there are two</p>	<p style="text-align: right;">Page 41</p> <p>1 because --</p> <p>2 MR. HANCOCK: I'm sorry.</p> <p>3 MR. GROSSMAN: -- you're not the witness right</p> <p>4 now.</p> <p>5 THE WITNESS: So I would have expected it to be</p> <p>6 posted around 30 miles an hour.</p> <p>7 MR. GROSSMAN: Okay. What about the speed limit</p> <p>8 on Ridge Road?</p> <p>9 THE WITNESS: 40 miles an hour north of Brink, and</p> <p>10 I think it's 45 miles an hour south of Brink.</p> <p>11 MR. GROSSMAN: Okay. All right. Do you want to</p> <p>12 continue your cross-examination, Mr. Hancock?</p> <p>13 BY MR. HANCOCK:</p> <p>14 Q Yes. A couple of other questions. I still don't</p> <p>15 quite understand the 1,425 and 30. Do I understand</p> <p>16 correctly that during rush hour, or prime time, as you call</p> <p>17 it, that there will only be 30 cars exiting this</p> <p>18 subdivision?</p> <p>19 A The staff, the State Highway Administration, and</p> <p>20 myself all concur that with this type of development there</p> <p>21 will be about 30 cars in the morning, maybe 40 cars in the</p> <p>22 evening peak one hour exiting the subdivision. That's</p> <p>23 correct.</p> <p>24 Q Are they basing that on a retirement community of</p> <p>25 age 50 where everybody is still working?</p>

<p style="text-align: right;">Page 42</p> <p>1 A It's based upon standard senior adult housing 2 developments. 3 Q At 65 or at 50? 4 A It's not age, it's not age-centric. 5 Q Senior housing is age-centric. 6 A No. You asked me a question whether or not mine 7 is based upon age-centric. And the answer is, no, it's not. 8 It's call senior housing, which is what the staff basically 9 says we need to use. Some of them are working, some of them 10 are not working. 11 At our age, at our age, you have a circumstance 12 where you're not always having to go in 9:00 to 5:00. That 13 you are able to telecommute or work from home, or you have 14 opportunities not to work, or you're semi-retired. So it's 15 a different, it's a different circumstance. So therefore -- 16 Q So they are -- 17 A -- and therefore, if I can finish, therefore the 18 amount of traffic generated from this project without 19 children is significantly different in the peak commuting 20 hour than a full development, such as in Clarksburg Village, 21 where there are children present and there are younger 22 people. 23 Q So what they are saying is that, at age 50 and 24 above, only 20 percent of those people are going in to work? 25 A That's not what I said.</p>	<p style="text-align: right;">Page 44</p> <p>1 manual? 2 THE WITNESS: You'll have to, as you know, it's 3 several thousand pages. 4 MR. GROSSMAN: I know, but I have a copy, so I 5 want to look it up. 6 THE WITNESS: It's ITE, ITE Land Use Code 251. 7 MR. GROSSMAN: Okay. Land Use Code 251. And you 8 use the term, at our age. What age are you talking about? 9 THE WITNESS: Folks that are 50 to 70. 10 MR. GROSSMAN: Okay. And I think Mr. Hancock is 11 raising an interesting point, and that is essentially 12 whether the source standard is appropriate to a 50-plus age 13 group, sort of the same question I was raising regarding 14 amenity measurements, whether or not the senior housing 15 standard at Land Use Code 251 is addressed to include this 16 type of community of 50-plusers or to address communities of 17 65-plusers, which would have fewer people leaving to go to 18 work in the peak hours, or coming back in the peak hours. 19 Do you know the answer to that question, whether that's -- 20 THE WITNESS: I do know the answer. The answer 21 is, the transportation engineering field does not change 22 their trip rates based upon whether you switch from 49 years 23 old to 50 years old, or from 59 to 60. There are a variety 24 of people that live in these types of communities, active- 25 adult communities.</p>
<p style="text-align: right;">Page 43</p> <p>1 Q That's what I'm trying to clarify. You say 2 there's 30 exits with 140 houses. I'm just trying to figure 3 out how many people are going to go to work at 150 houses. 4 I think 30 people out of 140 is a little bit low at age 50. 5 I'm just asking where you got that number? 6 A And I'll really re-explain. That number came from 7 national statistics that are used by the planning staff and 8 by State Highway Administration. Remember, not everyone 9 goes to work at the same hour. Okay. 10 The fact that we've got 40 trips for these units 11 in the peak one hour means you have other folks that are 12 coming and going in the hour before, other folks that are 13 coming and going in the hour after. We know that there's a 14 three-hour peak period. And this is the peak one hour 15 within that three hours. 16 Q On the 1,425 number -- 17 A Okay. 18 MR. GROSSMAN: Before you get to the 1,425, I just 19 want to follow-up a little bit on what you just asked for a 20 second. What specifically was the source of the senior 21 housing standard that you used? 22 THE WITNESS: The Institute of Transportation 23 Engineering. 24 MR. GROSSMAN: Okay. So this is from, do you have 25 a particular page reference or figure reference in the</p>	<p style="text-align: right;">Page 45</p> <p>1 We, our firm, have counted a number of them, and 2 found that these trip rates that are by ITE that we were 3 asked to use by the staff, are indeed accurate, because, and 4 I'll try to state it again. We're talking about a one-hour 5 out of a three or four-hour period when people come and go 6 to work. 7 So when people think or look at dwelling units, 8 they think that everybody is coming in and everybody is 9 going out in the peak one hour. But that's not what 10 happens. We don't, as a society, do not live that way. 11 Some people would leave before 6:00 in the morning. Some 12 people leave 6:00 to 7:00, 7:00 to 8:00, 8:00 to 9:00. Some 13 people will hang around until the complete rush hour is over 14 after 9:00 and then leave. Some will telecommute. 15 Our society in the way we travel and the way we 16 work has changed. And it's continuing to evolve. So when 17 we talk about peak hour, it's the heaviest one-hour out of 18 the three-hour commuting period. 19 MR. GROSSMAN: I understand. My question went to 20 whether or not the appropriate standard was being used. I 21 understand you were told to apply it, from what you 22 testified. 23 THE WITNESS: In my opinion -- 24 MR. GROSSMAN: And my question went as to whether 25 or not that particular model is correct. You've testified</p>

<p style="text-align: right;">Page 46</p> <p>1 that you believe it is, and that your experience in your  2 firm is that it is an accurate predictor of peak hour  3 traffic, or peak hour trips in communities such as this one.  4 THE WITNESS: Exactly.  5 MR. GROSSMAN: Okay. All right.  6 THE WITNESS: There's a 1,425 question out there.  7 MR. GROSSMAN: Yes. Mr. Hancock, you were asking  8 a question about the CLV of 1,425?  9 BY MR. HANCOCK:  10 Q I'd like a little bit more information on the  11 1,425. 1,425 for what, hour, day, minute?  12 A Critical lane volume.  13 Q Pardon?  14 A It's a, it is a mathematical summation that  15 government uses to set a standard metric for intersections  16 in different parts of the County. And it's computed, an  17 arithmetic computation that is included in the back of  18 Exhibit No. 38(a), for each of the intersections. And we  19 can go through, step-by-step, or provide you with the  20 calculations, or provide you with the processes, the detail  21 in the local area transportation review.  22 But basically, it's an arithmetic calculation  23 where you look at the number of vehicles in the one hour  24 that are through. You look at the number of opposing left  25 turns that are approaching those two vehicles. You examine</p>	<p style="text-align: right;">Page 48</p> <p>1 come across, either going east or going west?  2 A That's not a metric that is used for these types  3 of studies.  4 Q Okay. I misunderstood you then. I thought I  5 understood you to say, when you look at this, when you look  6 at all of the intersections that are effected, all of the  7 intersections that would affect 27 and Brink Road within a  8 reasonable distance, so you have intersection where the road  9 is going to come out from the subdivision, I would think  10 that you would look, it is my understanding that you look at  11 that in relation to how that's going to affect the  12 intersection at 27?  13 A I apologize. You did misunderstand. And we can  14 go back through this again if you want. But the counting,  15 certainly at this level of development, that is at the  16 zoning level, looks at the specific intersections that I've  17 gone through. I'm not going to go through them again unless  18 Mr. Grossman wants me to.  19 But we look at the critical lane volume standard  20 that is established by the County Council and the Planning  21 Commission at the effected intersections. In this case it's  22 at Route 27 and Brink, and further up at Skylark. And we  23 made projections for A-305.  24 MR. GROSSMAN: Essentially, they count the number  25 of movements in what they consider the critical lane through</p>
<p style="text-align: right;">Page 47</p> <p>1 the number of lanes, and you do that for all approaches of  2 an intersection.  3 And then you ultimately add up the heaviest  4 approach north-south, the heaviest approach east-west, and  5 that becomes your critical lane volume total. And then that  6 is measured against the standard for the policy area that  7 you're working in.  8 Q Does that, does that break down into revolutions  9 per hour of left turns, right turns, through, and so on? Is  10 there any relationship there?  11 A Revolutions?  12 Q Well, a car doing something.  13 A Yes, sure. Well, that's exactly what I just  14 talked about.  15 Q That's what I say, in other words you're saying  16 that essentially that intersection of 27 and Brink has 23  17 revolutions a minute?  18 A No, sir.  19 Q That's what I'm trying to arrive at.  20 A Well --  21 Q And I guess also, when you do these calculations,  22 do you actually look at the traffic pattern? For instance,  23 let me stay at 27 because you can't do anything at 83  24 because it doesn't exist. But at 27, do you figure out how  25 many cars are going to be backed up on Brink Road waiting to</p>	<p style="text-align: right;">Page 49</p> <p>1 that intersection to determine, in that period. And they  2 determine whether or not it is, it exceeds the County  3 standard for that intersection.  4 And I think you're asking about whether or not  5 there is any kind of queuing analysis or delay analysis  6 done. And I think the witness has said that it's not --  7 MR. HANCOCK: I'm actually trying to find out if  8 they look at the entire traffic situation or just a lane  9 count or an intersection count. There is really more to it  10 than that. But I'm trying to find out if that's considered  11 too.  12 MR. GROSSMAN: Mr. Guckert?  13 THE WITNESS: I'm not sure I really understand the  14 question. The fact is, we look at the number of lanes, and  15 we look at the volume, and test that against the metric that  16 the County Council and Zoning Commission have given us.  17 MR. GROSSMAN: There are other methodologies for  18 looking, for measuring traffic. This is the particular one  19 that the County has used for some period of time. It's been  20 criticized for a variety of reasons, especially when the  21 intersections are failing, there it creates issues as to  22 whether or not it's accurately measuring the volume for an  23 intersection.  24 Now, that may not be the case here. In any event,  25 it does not include what is called queuing analysis, to</p>

<p style="text-align: right;">Page 50</p> <p>1 determine the number of people queued up at an intersection.  2 It does measure the wait time for an intersection. That's  3 not part of this particular type of analysis, if that's what  4 you're asking.  5 MR. HANCOCK: Well, is that appropriate to do that  6 to see what's going to happen to the traffic?  7 MR. GROSSMAN: It can be done, but it is, in this  8 particular case and in general, it's not done unless there  9 are particular problems that are envisioned by the technical  10 staff.  11 When Mr. Guckert refers to staff, as he has  12 frequently done, he's referring to the technical staff of  13 the Maryland-National Capital Park and Planning Commission.  14 And they have a transportation planning staff as part of it.  15 And if they felt that there was a particular problem with  16 delays at the intersections that were being studied, they  17 might ask for additional queuing analysis, or delay  18 analysis. But they have not done that, I believe, in this  19 case.  20 THE WITNESS: You are 100 percent correct,  21 Mr. Grossman.  22 MR. GROSSMAN: That doesn't mean it doesn't exist.  23 They didn't find it, and that's not in the evidence here.  24 THE WITNESS: And we're dealing with overall  25 averages when we're looking at these types of analysis, not</p>	<p style="text-align: right;">Page 52</p> <p>1 Q I'm trying to put this in perspective. So for  2 senior, this senior adult living community, you provided  3 statistics for that. If it were not, a non-senior, I'm  4 trying to understand the 30 trips. If it were non-senior,  5 this number of houses, just a regular development, is there  6 a number that would be generated from that? What you said  7 was --  8 MR. GROSSMAN: Well, you've asked a question. Let  9 him answer.  10 MS. GOODRICK: Okay. Okay.  11 THE WITNESS: The answer would be that it would be  12 in the range of about two and a half times, two to two and a  13 half times more traffic.  14 BY MS. GOODRICK:  15 Q Okay.  16 MR. HANCOCK: That's more realistic, too.  17 BY MS. GOODRICK:  18 Q So I believe that you said something along the  19 lines of, but they aren't taking age into consideration. Is  20 that correct?  21 A No, I didn't -- that's out of context for what I  22 stated. What is it that you are asking? The answer is no,  23 that's not correct.  24 Q I'm trying to determine the difference between  25 this statistic that seemed to be generated separate,</p>
<p style="text-align: right;">Page 51</p> <p>1 situations where there is a problem for 15 minutes, or even  2 30 minutes, where queuing and delays would occur. Because  3 it's not that specific of a process that government wants to  4 look at, at this level.  5 It could be, and indeed, from time to time staff  6 or Montgomery County Transportation, Montgomery County  7 Department of Transportation or State Highway Administration  8 may ask for more sophisticated, more detailed analysis and  9 modeling. But because of the condition that exists here,  10 they did not ask for that, and do not feel it is  11 appropriate.  12 MR. GROSSMAN: Well, we don't know that. They  13 don't ask for it.  14 THE WITNESS: Excuse me?  15 MR. GROSSMAN: You stated what they felt was  16 appropriate. We know they didn't ask for it. We don't know  17 what they feel is appropriate.  18 THE WITNESS: Well, not --  19 MR. GROSSMAN: It's not in the case. At this  20 point they didn't ask for anything beyond this, apparently.  21 THE WITNESS: Okay.  22 MR. HANCOCK: Thank you.  23 MR. GROSSMAN: All right. Ms. Goodrick.  24 CROSS-EXAMINATION  25 BY MS. GOODRICK:</p>	<p style="text-align: right;">Page 53</p> <p>1 generated from the number of houses and the population. In  2 other words, the population that is going to live there, I  3 believe you are saying, is going to have fewer trips.  4 A Yes.  5 Q And so that is a general standard. And I think  6 Mr. Grossman was asking, and I'm not sure I got the answer,  7 so is that for people who are 50 and above or people who are  8 65 and above?  9 A It's for people that are in, that are above 50-55.  10 The standard is not completely age-determinate. That is to  11 say, we, as traffic engineers and transportation planners,  12 did not go and do a census to determine how many people are  13 50 versus 51 or 52, or 60 or 62? We, as a community of  14 traffic engineers and transportation planners, look at a  15 project that is active adult. Okay.  16 Active adult, which means, no children, which  17 means that you're not driving back and forth, to taking kids  18 back and forth in the morning at a particular time, where  19 there's a little more flexibility in active adult  20 communities as to when you travel, where you travel, and how  21 you travel.  22 And so what we did was we looked at active adult  23 communities, senior communities, senior active adult  24 communities, and that's the type of trip rates that we  25 applied here. We know that that is consistent with other</p>

<p style="text-align: right;">Page 54</p> <p>1 active adult communities that we've looked at ourselves,  2 personally, throughout the region. And these trip rates are  3 representative of active adult communities without children.  4 Q But the standard, what I thought you were saying  5 was the standard was set by the government in some way. In  6 other words, there is a number that is determined for that  7 type of community. Am I correct?  8 A Active adult communities.  9 Q Active adult. Okay. When was that standard set?  10 A The standard was set years ago.  11 Q That's what I was afraid of.  12 A And updated, and updated by the Institute of  13 Transportation Engineers within the last 12 to 24 months.  14 Q Okay. What, when you said this, you used the  15 number, I thought 31 and 40 another time, so I would like to  16 know, exits, I believe, within that peak hour period, is  17 that correct?  18 A Is what correct?  19 Q Are there, explain to me the 30 --  20 A Okay. Sure. What I said was, and for  21 clarification, is that there's about 30, 30-35 cars in the  22 morning peak one hour, and what I said was, 38 to 40 cars,  23 we're projecting, in the peak evening peak hour.  24 Q Okay. So, and does that mean throughout the  25 development? So are you talking about a specific</p>	<p style="text-align: right;">Page 56</p> <p>1 consideration, because it's just a master plan road right  2 now, not a funded road or a road that's imminent to be  3 built.  4 MR. KLINE: And that wasn't a discretionary  5 decision. You were not instructed to do that.  6 THE WITNESS: That's correct.  7 BY MS. GOODRICK:  8 Q What about the crosswalks? Not just the one that  9 is on the southern end, but there are to be other  10 crosswalks, I believe. Did you look at that?  11 A What do you mean, what about other crosswalks? Do  12 you want to know where they may be?  13 Q I'd like to know where they may be, and --  14 A Sure.  15 Q -- what roads they are crossing, and the safety of  16 those?  17 A That's a little premature because all of the  18 design details have not been completed at this level of  19 analysis and development. I would expect, and back again,  20 referring to Exhibit No. 34(g), that there will be  21 crosswalks on all three legs, current three legs of Ridge  22 Road at A-305, in order to provide crossing north-south and  23 east-west across Route 27 when the traffic signal is  24 installed.  25 I would also expect that the County would require</p>
<p style="text-align: right;">Page 55</p> <p>1 intersection, or is that throughout the development?  2 A For the total, for the total development, spread  3 out over the three access points.  4 Q Okay. And does that take into consideration --  5 okay. All right. I understand that. So when you were  6 determining this, M-83, do you know M-83?  7 A A-305, M-83, that's correct.  8 Q Yes. Okay. So that is on the master plan. And  9 that will intersection Route 27 right across from Snowden  10 Parkway, Snowden Farm Parkway. So did you take into  11 consideration the impact of the vehicles on that road?  12 A We took into consideration the impact of A-305 and  13 Route 27, not any additional traffic in the future on M-83,  14 because of its uncertainty in the County.  15 Q But were you asked to do that? In other words, M-  16 83 is on the master plan. And the County is moving forward  17 on determining whether that road will be built or not. And  18 that would have an absolutely huge impact.  19 A But by law we, there are guidelines by law that  20 the County Council has established for us. And by law, this  21 roadway, M-83 from 27 down to Brink Road, is not funded.  22 Even though it's on the master plan, there's lots of roads  23 on the master plan. That's why the staff, the Planning  24 Commission staff, why they do master plan, large master plan  25 transportation maps. So no, we did not take M-83 into</p>	<p style="text-align: right;">Page 57</p> <p>1 and we would like to have a crosswalk along A-305 at our  2 entrance, as well. And as we talked about earlier, we would  3 like to have, and would expect the County would approve a  4 crosswalk at our southern entrance along Brink Road.  5 MR. GROSSMAN: You should understand that the  6 Council, if this rezoning is approved by the Council,  7 they're not approving specifics such as crosswalks and that  8 sort of thing. That's all studied, if the rezoning is  9 approved, that would be studied at site plan review and  10 subdivision. It's a later part of the process.  11 MS. GOODRICK: Okay. Thank you. I'm looking at  12 the safety issue --  13 MR. GROSSMAN: I understand.  14 MS. GOODRICK: -- that he raised. And so if they  15 are saying that -- no, I can't. This is not a question.  16 BY MS. GOODRICK:  17 Q So it has been said that there will be crosswalks  18 there. So what about the safety of crossing Snowden Farm  19 Parkway? And I'd like you to comment on that now, which is  20 a very large road, and there is no light proposed, for  21 people in this community to cross in a crosswalk to cross a  22 busy road there.  23 I mean, you looked at Brink Road, you said. Did  24 you look at the safety of crossing at that intersection  25 there?</p>

<p style="text-align: right;">Page 58</p> <p>1 A And when you say intersection there, you're</p> <p>2 talking about on Exhibit 34(g), the access on the A-305 from</p> <p>3 the subject development?</p> <p>4 Q Yes.</p> <p>5 A Okay. And so this intersection will be designed</p> <p>6 with adequate site distance, when we get to that point. We</p> <p>7 know that the grades are such that we will have that. We</p> <p>8 also know that with the median, that allows individuals to</p> <p>9 make a two-step crossing. They can first cross to the</p> <p>10 median, wait in the median, and then cross the second time.</p> <p>11 We also expect that the Department of</p> <p>12 Transportation will advise us, require us, we will request</p> <p>13 that pedestrian crossing signs, and appropriate pedestrian</p> <p>14 crosswalks will be installed at this location.</p> <p>15 Q What is the width of the road there?</p> <p>16 A This road here is going to be, for sake of</p> <p>17 discussion, a two-lane road on each approach eastbound and</p> <p>18 westbound.</p> <p>19 MR. GROSSMAN: So this road here, you're talking</p> <p>20 about A-305?</p> <p>21 THE WITNESS: Yes.</p> <p>22 BY MS. GOODRICK:</p> <p>23 Q Yes. Which would be about 100 feet, is that</p> <p>24 correct?</p> <p>25 A No, it's going to be 24 feet, then a median, then</p>	<p style="text-align: right;">Page 60</p> <p>1 Q The question is, I'm talking about volume. I'm</p> <p>2 concerned about the volume of traffic there, given what is</p> <p>3 going on in --</p> <p>4 MR. GROSSMAN: So what's the question you're</p> <p>5 asking?</p> <p>6 BY MS. GOODRICK:</p> <p>7 Q The question is, I'm concerned about the safety of</p> <p>8 people crossing there with increased traffic, going down</p> <p>9 that --</p> <p>10 MR. GROSSMAN: But that's not a question. That's</p> <p>11 your concern. I'm asking you if you have a question of the</p> <p>12 witness.</p> <p>13 BY MS. GOODRICK:</p> <p>14 Q Well my question is, when they do this analysis,</p> <p>15 do they take into consideration the actual trips that are</p> <p>16 being taken from a highly populated area seeking to go</p> <p>17 south?</p> <p>18 MR. GROSSMAN: That's a question.</p> <p>19 THE WITNESS: And the answer is yes.</p> <p>20 MS. GOODRICK: Okay. Just a second.</p> <p>21 BY MS. GOODRICK:</p> <p>22 Q I still have one more question about age. And</p> <p>23 that has to do with, you said that, you were talking about</p> <p>24 folks who are between 50 and 70. So are you, what are you</p> <p>25 basing that on? What about, what about the 80 year olds and</p>
<p style="text-align: right;">Page 59</p> <p>1 another 24 feet. There's a difference between, I think</p> <p>2 you're referring to the right-of-way width, which is not the</p> <p>3 road width. It's much larger encompassing.</p> <p>4 Q Then can you anticipate, I mean, that is the</p> <p>5 feeder road from Clarksburg, and Clarksburg Village. And</p> <p>6 going north on 27 the entrance into Clarksburg Village.</p> <p>7 Excuse me?</p> <p>8 MR. KLINE: I'm sorry.</p> <p>9 BY MS. GOODRICK:</p> <p>10 Q And so there is going to be generated a great deal</p> <p>11 of traffic going across that intersection.</p> <p>12 A Well, I think the question is, how is that going</p> <p>13 to work? Exhibit 64 shows that A-305, that is just one of</p> <p>14 multiple locations that feed into the Clarksburg Village</p> <p>15 area. As you can see, there are multiple access points</p> <p>16 north of A-305. There are multiple access points along</p> <p>17 Brink Road. Excuse me, not along Brink Road, but along 355.</p> <p>18 So this is just, A-305 is just one of numerous access points</p> <p>19 into the Clarksburg Village areas.</p> <p>20 Q Well, not just Clarksburg Village, but Clarksburg</p> <p>21 itself. In other words, if you wanted to go north, up</p> <p>22 farther north to Clarksburg, that area north of there, then</p> <p>23 that is a feeder road. It is the --</p> <p>24 MR. GROSSMAN: So, what's the question?</p> <p>25 BY MS. GOODRICK:</p>	<p style="text-align: right;">Page 61</p> <p>1 the 90 year olds? What about the higher concentration of 50</p> <p>2 year olds? What is the reason for that?</p> <p>3 A Well, active adult communities, historically have</p> <p>4 been 50 to 70 or so. Some people start to move into,</p> <p>5 depending on their health condition which is, we're kind of</p> <p>6 getting beyond traffic engineering and transportation</p> <p>7 planning.</p> <p>8 But the active adult communities are typically 50</p> <p>9 to 70. And those are people that are, some are retired and</p> <p>10 some are semi-retired, most of which are without children,</p> <p>11 and many of which have an opportunity to determine when they</p> <p>12 go to work. So that's what I was talking about.</p> <p>13 Some people, when they're in the 70 to 80 range,</p> <p>14 start to move into other types of communities, where they</p> <p>15 are continuing care communities, where you have independent</p> <p>16 living. Then you can move to assisted living, and then to</p> <p>17 nursing, and then to hospice.</p> <p>18 So we're talking about a group of individuals that</p> <p>19 are without children, typically in the 50 to 70 year old</p> <p>20 range, that have options as it relates to when they go to</p> <p>21 work. I'm not saying they're not working. I'm just saying,</p> <p>22 they have options as to when they go to work.</p> <p>23 MS. GOODRICK: All right. That's all the</p> <p>24 questions I have now.</p> <p>25 MR. GROSSMAN: Okay. Any redirect?</p>

<p style="text-align: right;">Page 62</p> <p>1 REDIRECT EXAMINATION</p> <p>2 BY MR. KLINE:</p> <p>3 Q Mr. Guckert, I noticed in Exhibit B or Appendix B</p> <p>4 of your LATR study, you noted that the a.m. peak hour, at</p> <p>5 least for the intersection of Brink Road and Route 27, is,</p> <p>6 I'm on page four of Appendix B, is 6:45 to 7:45 in the</p> <p>7 morning?</p> <p>8 A Yes.</p> <p>9 Q So if I go to, want to be at my office at 9:00 in</p> <p>10 Bethesda, I'm not likely to be leaving the property during</p> <p>11 that peak hour, correct?</p> <p>12 A You -- say that -- rephrase it.</p> <p>13 Q Let me rephrase it again.</p> <p>14 A Please.</p> <p>15 Q Okay. There are, your projections are that 30 to</p> <p>16 40 vehicles will be leading the property during 6:45 to</p> <p>17 7:45?</p> <p>18 A Exactly.</p> <p>19 Q And so if I want to arrive at my office at 9:00,</p> <p>20 I'm probably departing after the 7:45, which is probably</p> <p>21 still within your range of peak hours, but on the shoulders,</p> <p>22 as you call them, when there is lesser volumes on the road?</p> <p>23 A That's correct.</p> <p>24 Q So there are still people leaving. It's just not</p> <p>25 during the period --</p>	<p style="text-align: right;">Page 64</p> <p>1 actual conditions. But you're complying with all local and</p> <p>2 federal regulations?</p> <p>3 A No, sir. I disagree with the question preceding</p> <p>4 the last statement.</p> <p>5 MR. GROSSMAN: Well, now that's confusing.</p> <p>6 MR. HANCOCK: Yeah.</p> <p>7 MR. GROSSMAN: So why don't you explain?</p> <p>8 MR. KLINE: Build this up for us. Tell them how</p> <p>9 you got the numbers, how you did the counts and where you</p> <p>10 have the background.</p> <p>11 MR. GROSSMAN: Well, let him answer the question,</p> <p>12 first. And his answer was confusing.</p> <p>13 THE WITNESS: Sorry.</p> <p>14 MR. GROSSMAN: So let him explain his answer.</p> <p>15 THE WITNESS: The answer was that we did take</p> <p>16 existing traffic into consideration, because that was step</p> <p>17 one, we conducted existing traffic counts. And then we</p> <p>18 built upon those existing counts.</p> <p>19 MR. KLINE: And step two of your building included</p> <p>20 what?</p> <p>21 THE WITNESS: Step two included looking at other</p> <p>22 approved but unbuilt subdivision, other developments,</p> <p>23 principally north and northwest of our site. We added</p> <p>24 traffic in from all of those developments that have been</p> <p>25 approved but not yet built. We assigned traffic to A-305,</p>
<p style="text-align: right;">Page 63</p> <p>1 A That's correct.</p> <p>2 Q -- of most traffic usage of transportation?</p> <p>3 A That's right.</p> <p>4 MR. KLINE: No further questions.</p> <p>5 THE WITNESS: And that's, and that's an important</p> <p>6 point, Mr. Grossman. If you look at what Mr. Kline was</p> <p>7 referring to, Appendix B, page four, upper right corner, the</p> <p>8 street peak, what's actually occurring out on the street</p> <p>9 today, the peak one hour between 6:30 and 9:30 in the</p> <p>10 morning is at 6:45 to 7:45.</p> <p>11 So it has a very early peak, that is, for people</p> <p>12 that are coming down from Damascus and from other points of</p> <p>13 the state are arriving at this intersection at between 6:45</p> <p>14 and 7:45. That's the traffic time, and we added our traffic</p> <p>15 to it. It's very early, very early in the morning where we</p> <p>16 added traffic from our community.</p> <p>17 MR. GROSSMAN: Okay. Any additional questions</p> <p>18 relating to that particular redirect question? Mr. Hancock?</p> <p>19 RECROSS-EXAMINATION</p> <p>20 BY MR. HANCOCK:</p> <p>21 Q I want to be sure I understand it. Basically,</p> <p>22 this traffic plan has been designed with all the County,</p> <p>23 State and Federal regulations, using their formulas in line,</p> <p>24 and that you've complied with that. But that really no</p> <p>25 consideration or very little consideration is given to the</p>	<p style="text-align: right;">Page 65</p> <p>1 then we added traffic in from the subject property to the</p> <p>2 intersections that we were asked to study. So we had</p> <p>3 existing traffic, future traffic, and site traffic.</p> <p>4 MR. KLINE: And the resulting conclusion was, the</p> <p>5 traffic did not generate --</p> <p>6 MR. GROSSMAN: Well, let your -- don't lead him as</p> <p>7 to a resulting conclusion.</p> <p>8 MR. KLINE: All right.</p> <p>9 MR. GROSSMAN: He can answer as to what is the</p> <p>10 resulting conclusion?</p> <p>11 MR. KLINE: Your report states that the numbers</p> <p>12 you ended up with did not exceed 1,425 critical lane</p> <p>13 movements in the peak hours?</p> <p>14 THE WITNESS: Correct.</p> <p>15 MR. GROSSMAN: All right. Ms. Goodrick?</p> <p>16 RECROSS-EXAMINATION</p> <p>17 BY MS. GOODRICK:</p> <p>18 Q Yes. What was the hour that you had for the</p> <p>19 evening peak hour?</p> <p>20 A They varied from intersection to intersection.</p> <p>21 It's always, we always look at the worst single hour, but at</p> <p>22 27 and Brink it was 4:45 to 5:45, was the peak one hour.</p> <p>23 Q Okay. And in your report, does your report have</p> <p>24 the existing traffic data in it?</p> <p>25 A Yes.</p>



<p style="text-align: right;">Page 66</p> <p>1 Q Okay.</p> <p>2 MR. GROSSMAN: And you're certainly welcome, it is</p> <p>3 in the file. You are welcome to look at it.</p> <p>4 BY MS. GOODRICK:</p> <p>5 Q Right. So can I have a copy of that? Can you --</p> <p>6 MR. GROSSMAN: We may have the, part of what you</p> <p>7 provided me electronically is a copy of the traffic report,</p> <p>8 electronically. And that would be easy, unless you have an</p> <p>9 extra copy here of the traffic report, the traffic analysis?</p> <p>10 That is Exhibit No. 38(a).</p> <p>11 BY MS. GOODRICK:</p> <p>12 Q I don't have to have it now, but how did you</p> <p>13 determine the existing traffic?</p> <p>14 A Are we going back to the original testimony?</p> <p>15 Q Well --</p> <p>16 MR. GROSSMAN: How did you determine --</p> <p>17 THE WITNESS: We conducted traffic counts.</p> <p>18 BY MS. GOODRICK:</p> <p>19 Q Okay. That's what I want to know. You have</p> <p>20 someone who sits at a corner with a clicker, or something</p> <p>21 like that.</p> <p>22 A Not necessarily.</p> <p>23 Q Or, you know, what is done?</p> <p>24 A We conduct existing traffic counts. Today we use</p> <p>25 video technology.</p>	<p style="text-align: right;">Page 68</p> <p>1 MR. KLINE: I believe Mr. Guckert did bring extra</p> <p>2 copies. Yes, sir.</p> <p>3 MR. GROSSMAN: Okay. I would ask Mr. Guckert to</p> <p>4 give Ms. Goodrick a copy of Exhibit 38(a).</p> <p>5 MS. GOODRICK: Thank you. Those are all the</p> <p>6 questions that I have.</p> <p>7 MR. GROSSMAN: Okay. All right. Thank you, Mr.</p> <p>8 Guckert. You can call your next witness, please.</p> <p>9 MS. GOODRICK: Mr. Rood.</p> <p>10 (Discussion off the record.)</p> <p>11 MR. GROSSMAN: Let the record reflect that Mr.</p> <p>12 Guckert has turned over a copy of Exhibit 38(a) to Ms.</p> <p>13 Goodrick. Okay.</p> <p>14 MR. KLINE: Mr. Grossman, could we have a second</p> <p>15 to put up some exhibits here?</p> <p>16 MR. GROSSMAN: Yes. Sure.</p> <p>17 MR. KLINE: While we're doing that, Mr. Guckert</p> <p>18 does have another commitment in another jurisdiction, so I'm</p> <p>19 going to release him unless there is some objection to that.</p> <p>20 MR. GROSSMAN: Any objection to that?</p> <p>21 MS. GOODRICK: There's no objection.</p> <p>22 MR. GROSSMAN: No objection. All right. Thank</p> <p>23 you, Mr. Guckert. I hope you're not going into a snow-</p> <p>24 covered jurisdiction. By the way, you should all be</p> <p>25 grateful that I arranged for no snow this morning.</p>
<p style="text-align: right;">Page 67</p> <p>1 Q Okay. And does it include, in your report, how</p> <p>2 many days you spent on this, or is that included in the</p> <p>3 report?</p> <p>4 A Yes. It is.</p> <p>5 Q You don't have to go into it, but I would like to</p> <p>6 see that.</p> <p>7 A Yes.</p> <p>8 Q And when that was done.</p> <p>9 A It's in the report in the file.</p> <p>10 Q Okay. Is it possible for us to be provided with</p> <p>11 that report? And we must have that report?</p> <p>12 A That's up to someone other than myself to make</p> <p>13 that decision.</p> <p>14 MR. GROSSMAN: Do you have an extra hard copy</p> <p>15 available, Mr. Kline?</p> <p>16 MR. KLINE: Well, that's why we basically post the</p> <p>17 property at the beginning of the process and tell the people</p> <p>18 when the hearing is, so they can come in and look at the</p> <p>19 file in advance, because to give her the traffic study,</p> <p>20 she'll as that the record be left open for a period of time</p> <p>21 to study it and comment. Then I'll have to go ahead and</p> <p>22 respond to it. So the answer is, I'm not inclined to do</p> <p>23 that. She should have done that before.</p> <p>24 MR. GROSSMAN: Do we have an extra copy of the</p> <p>25 plan? Do you have an extra copy of the traffic study?</p>	<p style="text-align: right;">Page 69</p> <p>1 MS. GOODRICK: Yes. Thank you.</p> <p>2 MR. GROSSMAN: I actually take credit for that,</p> <p>3 because I took home with me the contact information for all</p> <p>4 of you, so that in case there was a snowfall or something</p> <p>5 that would prevent us from being here, I could contact you.</p> <p>6 Now, had I not done that, I guarantee you we would have had</p> <p>7 20 inches of snow, and ice.</p> <p>8 MS. GOODRICK: Yes. Thank you.</p> <p>9 (Discussion off the record.)</p> <p>10 MR. GROSSMAN: All right. Sir, will you state</p> <p>11 your full name, please?</p> <p>12 MR. ROOD: Sure. Dusty Rood, R-O-O-D.</p> <p>13 MR. GROSSMAN: All right, Mr. Rood, would you</p> <p>14 raise your right hand, please?</p> <p>15 (Witness sworn.)</p> <p>16 MR. GROSSMAN: All right. You may proceed, Mr.</p> <p>17 Kline.</p> <p>18 DIRECT EXAMINATION</p> <p>19 BY MR. KLINE:</p> <p>20 Q Mr. Rood, would you please state and spell your</p> <p>21 name and give us your business address?</p> <p>22 A Sure. Dusty Rood, R-O-O-D. 19847 Century</p> <p>23 Boulevard, Suite 200, Germantown, 20874.</p> <p>24 MR. KLINE: Mr. Grossman, could I just speak to,</p> <p>25 take one?</p>

<p style="text-align: right;">Page 70</p> <p>1 MR. GROSSMAN: Sure. Sure.</p> <p>2 MR. KLINE: Thank you.</p> <p>3 BY MR. KLINE:</p> <p>4 Q Mr. Rood, have you ever qualified before as an</p> <p>5 expert in the fields of environmental planning, water</p> <p>6 quality, and forest conservation?</p> <p>7 A I have, and most recently on a case, zoning map</p> <p>8 amendment G-884, which was the Hanson property, before Mr.</p> <p>9 Grossman.</p> <p>10 MR. KLINE: Mr. Grossman, Mr. Rood's resume is in</p> <p>11 the record as Exhibit 55(c). And based on his previous</p> <p>12 qualification in the fields that I mentioned, and his</p> <p>13 experience, as described in that resume, I'd like to offer</p> <p>14 him as an expert in the field of environmental planning,</p> <p>15 water quality, and forest conservation.</p> <p>16 MR. GROSSMAN: All right. Any questions of this</p> <p>17 gentleman regarding his qualifications? Mr. Hancock?</p> <p>18 Ms. Goodrick?</p> <p>19 MS. GOODRICK: No.</p> <p>20 MR. GROSSMAN: All right. I don't recall, by the</p> <p>21 way, I recall you, Mr. Rood, but I don't recall precisely</p> <p>22 what you were qualified, how we, what the terminology used</p> <p>23 was for your prior testimony. But in any event, based on</p> <p>24 your resume and your testimony that you have qualified</p> <p>25 previously as an expert in environmental planning, water</p>	<p style="text-align: right;">Page 72</p> <p>1 protection of the Chesapeake Bay through the total maximum</p> <p>2 daily load and increased focus on the role of nutrients,</p> <p>3 specifically nitrogen and phosphorus, as well as sediments</p> <p>4 in the protection of the Chesapeake Bay, as well as local</p> <p>5 water resources in the area.</p> <p>6 And that certainly marries with the intent of the</p> <p>7 special protection area. So that's relevant to what we are</p> <p>8 doing, although not explicitly elaborated into regulation</p> <p>9 yet. Those are being developed. It has become increasingly</p> <p>10 public policy, at the Federal, State and increasingly local</p> <p>11 level too, to acknowledge and deal with that issue.</p> <p>12 So how do we address that? The water quality plan</p> <p>13 review process begins with a pre-application meeting at</p> <p>14 which time the applicant meets with various agencies,</p> <p>15 including the Department of Permitting Services, the</p> <p>16 Department of Environmental protection, and the Park and</p> <p>17 Planning Commission where the concept for the property is</p> <p>18 presented and feedback is given from those agencies</p> <p>19 regarding the purposes of the special protection area to</p> <p>20 advise the applicant.</p> <p>21 General water quality items are discussed and set</p> <p>22 forth at that meeting, which is then followed by an</p> <p>23 application which was made for a preliminary water quality</p> <p>24 plan.</p> <p>25 That preliminary water quality plan addresses and</p>
<p style="text-align: right;">Page 71</p> <p>1 quality, and forest conservation, I do accept you as an</p> <p>2 expert in those fields.</p> <p>3 BY MR. KLINE:</p> <p>4 Q Mr. Rood, I think early on in day one, Mr.</p> <p>5 Grossman asked if the property was in a special protection</p> <p>6 area, which raises the question of water quality. So what I</p> <p>7 would like you to do is address the water quality issues</p> <p>8 associated with this application and this property?</p> <p>9 A Sure. Let me start off by saying that as Mr.</p> <p>10 Unterberg testified previously, the property is within the</p> <p>11 Clarksburg special protection area, which is an overlay</p> <p>12 zone, applied to this part of the County for the explicit</p> <p>13 purposes of providing an additional level of water quality</p> <p>14 protection through the development review and construction</p> <p>15 process.</p> <p>16 Along with that requirement come specific</p> <p>17 requirements addressed through the Montgomery County</p> <p>18 environmental guidelines specific to water quality, specific</p> <p>19 to impervious surface reductions, and related to forest</p> <p>20 conservation.</p> <p>21 Q All right. Please continue at your pleasure.</p> <p>22 A Yes, sure. So, those are the two sort of local</p> <p>23 items which relate to water quality. The third area that</p> <p>24 relates to water quality which has gained some notoriety and</p> <p>25 some more significance in recent years relates to the</p>	<p style="text-align: right;">Page 73</p> <p>1 proposes the approaches that the applicant and the project</p> <p>2 will take to ensure the performance goals are met and the</p> <p>3 water quality objectives are achieved.</p> <p>4 So for this property, that water quality plan</p> <p>5 starts with understanding the existing conditions of the</p> <p>6 property, and then builds upon that through integration of</p> <p>7 BMP's and other measures, which I'll discuss.</p> <p>8 Q Could you define BMP's for us?</p> <p>9 A Yes, yes. Sorry. Best management practices. So,</p> <p>10 starting with the existing conditions at the property, I</p> <p>11 believe Mr. Unterberg previously testified, the property is</p> <p>12 almost entirely unforested. Excluding the right-of-way for</p> <p>13 A-305, there is approximately two-tenths of an acre of</p> <p>14 forest. The rest of the property is in a rotation of crops</p> <p>15 and agricultural use.</p> <p>16 The nature of that use presents a challenge to</p> <p>17 water quality, in and of itself, through the ongoing</p> <p>18 application of fertilizers and herbicides to manage the</p> <p>19 agriculture, as well as the cultivation, tilling, and</p> <p>20 seasonable tilling of the soil, and turning it over,</p> <p>21 exposing it to erosive forces.</p> <p>22 So that's kind of the baseline conditions that we</p> <p>23 build off of. And it creates an opportunity for us,</p> <p>24 frankly, to improve those conditions from a water quality</p> <p>25 standpoint.</p>

<p style="text-align: right;">Page 74</p> <p>1 So how do we do that? We really have a multi-</p> <p>2 faceted approach for addressing water quality on this</p> <p>3 property. The first component starts with the layout of the</p> <p>4 project and the integration of best management practices</p> <p>5 through a now mandated approach called environmental site</p> <p>6 design.</p> <p>7 And environmental site design seeks to create a</p> <p>8 hydrologic condition comparable to woods in good condition.</p> <p>9 It does that by decentralizing and distributing smaller best</p> <p>10 management practices throughout the property, which will</p> <p>11 ultimately reduce the amount of runoff, and really prevent</p> <p>12 runoff from accumulating in the first place.</p> <p>13 That runoff then filters naturally through mulch</p> <p>14 and other soil media. To the extent that it can infiltrate</p> <p>15 into the soil once it's been cleansed, it will. And then it</p> <p>16 will ultimately be absorbed by plants, the water and the</p> <p>17 nutrients will be absorbed by plants and other vegetation on</p> <p>18 the property.</p> <p>19 That's one component. As part of that design</p> <p>20 process, and as the environmental guidelines require, we are</p> <p>21 required to minimize our impervious surfaces to the extent</p> <p>22 that it's feasible for the project.</p> <p>23 This project does not have, is not subject to an</p> <p>24 impervious surfaces cap, as other places in the County are.</p> <p>25 So I wanted to clearly specify that. And through working</p>	<p style="text-align: right;">Page 76</p> <p>1 property. As I mentioned, excluding the right-of-way of A-</p> <p>2 305, the property only contains about two-tenths of an acre</p> <p>3 of forest in the northwest corner.</p> <p>4 Through the forest conservation plan, which</p> <p>5 Planning Staff also recommended approval of and the Planning</p> <p>6 Board approved, we will be adding approximately 7.2 acres of</p> <p>7 additional forest to the property, which is more than 35</p> <p>8 times the amount of existing forest there presently today.</p> <p>9 Exhibit No. 41(c), which is the preliminary forest</p> <p>10 conservation plan that the Planning Board eventually</p> <p>11 approved, shows those general locations that will be placed</p> <p>12 within a category one conservation easement, and it will be</p> <p>13 planted using native species as part of the development</p> <p>14 plan.</p> <p>15 I know some questions were asked earlier regarding</p> <p>16 what those species might, what those species might entail,</p> <p>17 as well as how the easement is protected. So I can talk</p> <p>18 about that.</p> <p>19 But generally what we attempted to do was, we</p> <p>20 located those planting areas and those forest areas and</p> <p>21 areas that we felt also complimented other plan objectives,</p> <p>22 such as transitioning the property, as well as providing</p> <p>23 some buffering to the adjacent properties to the west.</p> <p>24 The largest of those three planting areas at about</p> <p>25 2.8 acres is area B, which is along the western edge of the</p>
<p style="text-align: right;">Page 75</p> <p>1 with Park and Planning Commission staff, as well Department</p> <p>2 of Permitting Services staff, the Department of Permitting</p> <p>3 Services did approve the preliminary water quality plan, as</p> <p>4 well as Park and Planning staff also recommended approval.</p> <p>5 And the Planning Board subsequently approved the water</p> <p>6 quality plan. And Mr. Kline provided the updated</p> <p>7 resolution. I relayed that this morning.</p> <p>8 MR. GROSSMAN: Is there a copy of the Department</p> <p>9 of Permitting Services approval in the record? I can't</p> <p>10 recall.</p> <p>11 THE WITNESS: Yes. That is a part of the staff</p> <p>12 report, yes, which is Exhibit No. 53, and their --</p> <p>13 MR. GROSSMAN: It's an attachment.</p> <p>14 THE WITNESS: -- the Department of Permitting</p> <p>15 Services approval is Attachment 14.</p> <p>16 MR. GROSSMAN: Right.</p> <p>17 THE WITNESS: Of Exhibit 43, I'm sorry, 53.</p> <p>18 MR. KLINE: It's like Attachment 14?</p> <p>19 THE WITNESS: Attachment 14, correct, of Exhibit</p> <p>20 No. 53. So that's the first, there's multiple approaches in</p> <p>21 and of itself. But that's one element of the water quality</p> <p>22 protection approach.</p> <p>23 The other, the next measure which is employed to</p> <p>24 help protect water quality out here is through substantially</p> <p>25 increasing the amount of ultimate forest cover on the</p>	<p style="text-align: right;">Page 77</p> <p>1 property. All three of these planting areas, I envision,</p> <p>2 will probably be planted with a mix of evergreen and</p> <p>3 deciduous species.</p> <p>4 It would be appropriate within these areas to</p> <p>5 plant American hollies, eastern red cedar, perhaps white</p> <p>6 pine, as well as other deciduous species, to create a</p> <p>7 diverse forest community that will eventually succeed into a</p> <p>8 larger mature forest over time.</p> <p>9 That will be protected in perpetuity through a</p> <p>10 category one conservation easement, which is the most</p> <p>11 restrictive of easements that is entered into with the</p> <p>12 Planning Board, and then they enforce that easement to</p> <p>13 ensure that no encroachments are occurring. And they have</p> <p>14 an active program in doing that. And that has to be put in</p> <p>15 place prior to grading commencing on the property,</p> <p>16 basically.</p> <p>17 So forest conservation and increase forest cover</p> <p>18 is a key component of the water quality approach. Building</p> <p>19 on that, this property, which is proposed to be provided,</p> <p>20 sewer through the public sewer and not through private</p> <p>21 septic is another key way that would help to minimize the</p> <p>22 amount of nutrients, particularly nitrogen from entering the</p> <p>23 watershed.</p> <p>24 Homes that are built on private septic systems</p> <p>25 load as much as 10 times the amount of nitrogen into the</p>

<p style="text-align: right;">Page 78</p> <p>1 watershed as do public sewer facilities that treat them in a  2 centralized waste water treatment plant such as this one  3 would within the Seneca waste water treatment plan, which is  4 actually being upgraded to the most state-of-the-art project  5 presently, which is called, enhanced nitrogen removal  6 technology.</p> <p>7 So that's key. But by connecting into the public  8 water system, we would not be utilizing on-site wells which  9 would extract water from the local aquifer. So we will be  10 tapping into the public water system for providing water  11 service to the property.</p> <p>12 Another key element of water quality is how the  13 properties are maintained in the future. That's something  14 that we've talked about and thought about. Given the nature  15 of this use as an active-adult community, it will be  16 maintained by, the outside, the yards and the landscaped  17 facilities, will be maintained by a common landscape  18 contractor, as opposed to effectively 140 individuals taking  19 care of their lawn.</p> <p>20 As such, it's much easier to control not only the  21 aesthetic of the community, but also how the lawn is cared  22 for. In this case, as one of our goals, and one of our  23 measures to help protect, minimize nutrients, we will be  24 regulating through covenants the, how the lawns are  25 fertilized and cared for so as to restrict, so as to</p>	<p style="text-align: right;">Page 80</p> <p>1 THE WITNESS: But it could be, it could be moved,  2 relocated, reduced in size, reconfigured in such a way that  3 in my opinion would not conflict with the water quality  4 objectives of the --</p> <p>5 MR. GROSSMAN: Okay.</p> <p>6 THE WITNESS: The other thing that I guess I will  7 just mention real quick is with regard to forest  8 conservation and chapter 22(a). The property does have an  9 approved natural resource inventory that was approved by the  10 Park and Planning Commission staff. And that describes the  11 characteristics of the property, which I've talked about  12 previously.</p> <p>13 And that was followed up by an approved  14 preliminary forest conservation plan which proposes the  15 retention of all of the existing forest within the net track  16 area of the property, as well as proposes to meet the entire  17 forest conservation requirements of chapter 22(a) on site.  18 And that's supported by staff's recommendation and the  19 Planning Board approval.</p> <p>20 MR. GROSSMAN: Okay. Mr. Kline, anything further  21 of this witness?</p> <p>22 BY MR. KLINE:</p> <p>23 Q Were you finished, Mr. Rood? I had a feeling you  24 had some other words of wisdom you wanted to add.</p> <p>25 A No, I think that covers it, unless there is</p>
<p style="text-align: right;">Page 79</p> <p>1 restrict fertilization in order to prevent runoff of  2 nutrients.</p> <p>3 So all of those, all of those measures combined  4 will actually help to reduce the amount of nitrogen,  5 phosphorus, and sediment that's currently running off the  6 property significantly. Nitrogen will be reduced by at  7 least 18 percent, phosphorous and sediment by more than 50  8 percent from its existing condition, just simply by the  9 nature of the land uses and the combination of the practices  10 that are proposed for this.</p> <p>11 MR. GROSSMAN: Is it possible, by the way, to  12 change the location of the water treatment facility that's  13 currently located on the northwestern side of the property,  14 and have it, have some of that forestation along there?</p> <p>15 Because I think one of the complaints of the  16 adjacent community is that in that area it looks like there  17 is much less screening than would be provided by the  18 forestation that you have further to the south and western  19 side. And that seemingly would be, you know, might be  20 remedied. That issue might be remedied by changing the  21 location of that water treatment facility.</p> <p>22 THE WITNESS: I think probably Mr. Bossong is the  23 most appropriate person to talk about that storm water  24 management facility specifically.</p> <p>25 MR. GROSSMAN: All right.</p>	<p style="text-align: right;">Page 81</p> <p>1 something specifically that you would like me to?</p> <p>2 Q Sure. No, I'll just ask you a couple of summary  3 questions then. So is it your opinion that based on the  4 environmental testimony you have given that this plan, and  5 the measures you've described, contribute to satisfying  6 water quality goals of the master plan?</p> <p>7 A I do very much believe that through reducing the  8 amount of nitrogen, phosphorus and sediment through  9 substantially increasing the amount of forest cover. And as  10 the Department of Permitting Services and the Planning Board  11 have supported as well, I believe that it does achieve that.</p> <p>12 Q And in your opinion, is the forest conservation  13 plan that you talked about adequate to contribute to the  14 plan goal of creating a transition in the green belt, in the  15 separation between Germantown and Clarksburg?</p> <p>16 A I do think so. As I mentioned previously, the  17 area that's being placed into a category one easement, and  18 will be afforested, is entirely consistent through the  19 planting of evergreen, a mix of evergreen and deciduous  20 plants, is consistent with creating that transition.</p> <p>21 Q And the landscaping, or the forest conservation  22 plan you talked about, I guess along the west and on the  23 north would block, or at least create filtered views between  24 the existing residences and the new residences within the  25 community?</p>

<p style="text-align: right;">Page 82</p> <p>1 A Correct. That's correct. Although there are a  2 few trees and small shrubs that are there currently, that  3 will be built upon through the additional planting of trees,  4 shrubs, and evergreens which will mature over time and help  5 to filter and buffer that view.  6 MR. GROSSMAN: You're talking about in the area  7 that you are reforesting, right, the green area on that  8 exhibit?  9 THE WITNESS: The green area along the -- correct.  10 MR. GROSSMAN: Right. But as I say, not in the  11 area where you have the --  12 MR. KLINE: Where you mentioned the storm water  13 management facilities, yes. There we have what, a hedgerow,  14 and we're limited in what we can do to supplement the  15 hedgerow.  16 THE WITNESS: We are, you are unable to plant on,  17 basically, the embankment of a storm water facility.  18 However, you are not prevented from planting additional  19 trees on the uphill side of the storm water management  20 facility, or if the toe of your embankment is far enough  21 away from the edge of the property, you could plant trees  22 there as well, if you had room, if the facility was able to  23 be reconfigured in some way.  24 MR. GROSSMAN: All right.  25 BY MR. KLINE:</p>	<p style="text-align: right;">Page 84</p> <p>1 treatment facility?  2 MR. HANCOCK: Water treatment facility.  3 MR. GROSSMAN: Okay.  4 BY MR. HANCOCK:  5 Q The line of trees that is there now is a single  6 tree about every 15 feet. And they're mulberry. They're  7 junk trees, and, you know, there is no blocking of the view  8 or anything else. And we would really want to push for  9 something at least 35 feet wide, you know, everywhere you  10 can block that view.  11 I notice that's really the only part, except where  12 the gas line easement goes through, although the property,  13 the lower pond, that's actually, the topography of that is  14 on a hill, so the house to the left there sets up on a hill  15 and looks down into that pond. And that really should have  16 something there. But the problem there is --  17 MR. GROSSMAN: Well, you have to round this  18 into --  19 BY MR. HANCOCK:  20 Q -- that the reforestation is going to block the  21 street.  22 MR. GROSSMAN: You have to round this into a  23 question.  24 MR. HANCOCK: Yes.  25 MR. GROSSMAN: Is there a question of the witness?</p>
<p style="text-align: right;">Page 83</p> <p>1 Q And using your example and looking at Exhibit  2 41(c), so you were saying that if, for some reason, the  3 storm water management facilities could become narrower, we  4 would have an opportunity to plant along the property line,  5 would that still qualify as forest? Would it have enough  6 depth to qualify as forest? You could still plant, but  7 would it still be within a category one?  8 A It might be. It depends on how it was configured.  9 You would need at least a 50-foot wide area in order to  10 qualify for being placed in an easement and being an area.  11 But within a smaller area, you could still plant. It just  12 might not necessarily be within an easement or receive  13 forest conservation credit, per se.  14 MR. KLINE: All right. No further questions of  15 Mr. Rood.  16 MR. GROSSMAN: All right. Mr. Hancock.  17 CROSS-EXAMINATION  18 BY MR. HANCOCK:  19 Q In your expert opinion, is the lack of runoff from  20 this 54 acres going to affect the wells for the property to  21 the west?  22 A No, I don't think so.  23 Q I'm concerned about the strip where the upper pond  24 is.  25 MR. GROSSMAN: The upper pond meaning the water</p>	<p style="text-align: right;">Page 85</p> <p>1 BY MR. HANCOCK:  2 Q Can that be, can that lower pond also be moved  3 because with reforestation it's going to block the street?  4 A The lower pond, you mean along Brink Road?  5 Q Along Brink Road, yes.  6 A Can it be moved? Not significantly. It may be  7 minimally reconfigured with the final engineering as that  8 goes forward. But generally speaking, that is a lower part  9 of the property. And actually we're trying to honor natural  10 drainage divides and --  11 Q That's sort of the same problem with the pond, the  12 other one. It's the lowest part of the property. How deep  13 would that retention pond be?  14 A The depth of it?  15 Q Uh-huh.  16 A Well, it's a dry facility, so it's not going to  17 hold water for indefinite periods of time. I think Mr.  18 Bossong would probably have to testify to the engineering  19 design and with regard to the depth.  20 MR. HANCOCK: That's it.  21 MR. GROSSMAN: Ms. Goodrick, do you have any  22 questions of this witness?  23 CROSS-EXAMINATION  24 BY MS. GOODRICK:  25 Q Just one, and that is that, what, I guess ideally</p>

<p style="text-align: right;">Page 86</p> <p>1 you want to retain on the property all of the runoff, all of  2 the potential runoff. And so is there, do you, can you  3 quantify runoff that would go, for example, off the  4 property?  5 A All of the, all of the development that is  6 proposed on this property will be treated by, and managed  7 through on-site facilities being the best management  8 practices. So every, you know, basically every square foot  9 within this 54 acres that is proposed to be developed will  10 drain to a storm water management, best management practice.  11 So I guess 100 percent.  12 Q Okay.  13 MR. GROSSMAN: In other words, there will be no  14 storm water runoff from the site?  15 THE WITNESS: I wouldn't go so far as to say that,  16 because that exists in nature. And the nature of nature is  17 that water does runoff in the best conditions, which is  18 woods in good condition. That is that this project has been  19 designed to be similar to.  20 MR. GROSSMAN: So the amount of potential storm  21 water runoff from the property would not exceed that which  22 would runoff from woods in good condition?  23 THE WITNESS: That's correct.  24 MR. GROSSMAN: Okay.  25 BY MR. HANCOCK:</p>	<p style="text-align: right;">Page 88</p> <p>1 originally, and I forgot he was the expert on mosquitoes.  2 MR. GROSSMAN: Okay.  3 REDIRECT EXAMINATION  4 BY MR. KLINE:  5 Q How are we going to handle mosquitoes in the  6 property?  7 MR. GROSSMAN: Actually, I didn't bring it up. It  8 was one of the --  9 MR. KLINE: It was one of the inquiries by the  10 community.  11 MR. GROSSMAN: -- inquiries by the community.  12 MR. KLINE: Right. And you said, be sure to  13 address it. And I forgot he was the expert.  14 MR. GROSSMAN: Right.  15 THE WITNESS: Sure. Sure. Yes, I had forgotten  16 that that was asked earlier. Good question. So the  17 concern, I believe, that was raised, was that where there is  18 the potential for standing water, there is also potential to  19 breed mosquito larvae and proliferate mosquitoes.  20 I can say that in some cases, that already exists  21 out there today where we have, particularly more off-site  22 where you have small streams and drainage ways. I can say  23 that, a couple of things. First of all, the facilities that  24 will be, where water will be draining to, with these micro-  25 bio retention facilities are required to be maintained on a</p>
<p style="text-align: right;">Page 87</p> <p>1 Q The only place that you could have runoff from the  2 property, according to state law, is where your streets  3 connect, isn't that correct? You have to retain the other  4 water on the lots --  5 A Well --  6 Q -- by the individual systems for the individual  7 units, or by the pond areas.  8 A Well, there will be decentralized smaller scale  9 micro-bioretenment facilities and other best management  10 practices which will receive the runoff. Some of those are  11 adjacent to lots. Some of those are adjacent to or even  12 within road rights-of-way. Some of them are on separate  13 parcels. But all of those are designed so as to, so as to  14 minimize runoff and to control its location and discharge  15 points.  16 Q In this type of subdivision, you don't need a  17 catch facility for each house? You don't have to pipe your  18 downspouts from each individual unit into a retention pond  19 or retention spot on the property?  20 A No. In fact, we're trying to utilize over land  21 swales and divert that water as much as we can, so that we  22 can promote infiltration and water cleansing.  23 MR. GROSSMAN: Okay. Any redirect, Mr. Kline?  24 MR. KLINE: Only to ask a question that I forgot,  25 that you had brought up or that you had wanted to address</p>	<p style="text-align: right;">Page 89</p> <p>1 regular basis, and will be through the County's programs, as  2 well as, I think, to a certain extent they will also be  3 supplemented through the centrally maintained program.  4 That ongoing maintenance will help to ensure that  5 areas that are supposed to infiltrate water will continue to  6 infiltrate water, to prevent standing water which, you know,  7 is what creates the environment for breeding mosquitoes. So  8 that's through the ongoing maintenance of those facilities.  9 The environment really will not be present for the growth of  10 mosquito larvae.  11 MR. GROSSMAN: All right. Any cross-examination  12 just on the mosquito issue? Seeing none, all right. Thank  13 you, Mr. Kline. Thank you, Mr. Rood.  14 THE WITNESS: Thank you.  15 MR. GROSSMAN: Let's take a five-minute break.  16 We'll come back at 11:45.  17 (Whereupon, at 11:35 a.m., a brief recess was  18 taken.)  19 MR. GROSSMAN: All right. Your next witness?  20 Mr. Bossong.  21 MR. KLINE: We'll call as our next witness, Mr.  22 Frank Bossong.  23 MR. GROSSMAN: All right, Mr. Bossong, would you  24 raise your right hand please?  25 (Witness sworn.)</p>

<p style="text-align: right;">Page 90</p> <p>1 MR. GROSSMAN: All right. You may proceed.</p> <p>2 DIRECT EXAMINATION</p> <p>3 BY MR. KLINE:</p> <p>4 Q Mr. Bossong, would you please state and spell your</p> <p>5 name, and give us your business address?</p> <p>6 A Yes. For the record, my name is Frank G. Bossong.</p> <p>7 That's B-O-S-S-O-N-G. My work address is 19847 Century</p> <p>8 Boulevard, Suite 200, Germantown, Maryland 20874.</p> <p>9 Q And you're associated with the firm of Rodgers and</p> <p>10 Associates, actively involved in this case?</p> <p>11 A That is correct.</p> <p>12 Q And your profession is what, Mr. Bossong?</p> <p>13 A My education is civil engineering and surveying.</p> <p>14 Q And have you ever qualified as an expert in the</p> <p>15 field of civil engineering before Mr. Grossman or one of his</p> <p>16 colleagues or this Board or this hearing?</p> <p>17 A Several times before Mr. Grossman, and many in</p> <p>18 front of this Board.</p> <p>19 MR. KLINE: Mr. Grossman, Exhibit 55(d) in the</p> <p>20 record is Mr. Bossong's resume. And based on his previous</p> <p>21 qualification and his experience stated in that resume, I'd</p> <p>22 like to offer him as an expert in the field of civil</p> <p>23 engineering.</p> <p>24 MR. GROSSMAN: All right. Any questions related</p> <p>25 to Mr. Bossong's qualifications as a civil engineer?</p>	<p style="text-align: right;">Page 92</p> <p>1 Okay. All right. You may proceed with Mr. Bossong.</p> <p>2 BY MR. KLINE:</p> <p>3 Q Well, Mr. Bossong, I know you are going to address</p> <p>4 several things, but maybe kind of as a good segue from our</p> <p>5 previous discussion with storm water management, why don't</p> <p>6 we start with that subject?</p> <p>7 A Okay. You don't mind if I work from the easel.</p> <p>8 I'm trying not to duplicate some of the testimony by Mr.</p> <p>9 Rood. I'll try to go through this sort of quickly. First</p> <p>10 of all, in regards to storm water management for Montgomery</p> <p>11 County, we have to meet the requirements of Chapter 19.</p> <p>12 It's the County Code which basically sets the controls for</p> <p>13 water management.</p> <p>14 Recently, in the last several years, the State of</p> <p>15 Maryland has changed the way storm water management is</p> <p>16 implemented, designed, and then constructed. And what Mr.</p> <p>17 Rood mentioned earlier is the term ESD, environmental site</p> <p>18 design. That is the new, say level, or playing field that</p> <p>19 we're dealing with regarding storm water management.</p> <p>20 In this particular case, it was mentioned both by</p> <p>21 Mr. Unterberg and Mr. Rood, in developing the site, and --</p> <p>22 MR. GROSSMAN: Well, you're now referring to --</p> <p>23 THE WITNESS: I'm referring to Exhibit No. 34(s).</p> <p>24 MR. GROSSMAN: Okay.</p> <p>25 THE WITNESS: In using Exhibit No. 34(s) in</p>
<p style="text-align: right;">Page 91</p> <p>1 MS. GOODRICK: No.</p> <p>2 MR. GROSSMAN: All right. Based on Mr. Bossong's</p> <p>3 previous testimony as an expert in civil engineering, and</p> <p>4 his resume in the record, I accept him as an expert in civil</p> <p>5 engineering.</p> <p>6 And before you go on with Mr. Bossong, I should</p> <p>7 mention that I thought it would be useful to have in the</p> <p>8 record a copy of the page from the Institute of</p> <p>9 Transportation Engineers manual, trip generation, 8th</p> <p>10 edition, page 472, which describes the land use, 251, which</p> <p>11 Mr. Guckert used as the base for the trip generation</p> <p>12 standards, since it describes the senior adult</p> <p>13 housing/detached which was used as the model here.</p> <p>14 And I'm going to mark it as Exhibit No. 91. And I</p> <p>15 have copies for you, Mr. Kline, and for Mr. Hancock and Ms.</p> <p>16 Goodrick.</p> <p>17 (Exhibit No. 91 was marked</p> <p>18 for identification.)</p> <p>19 MS. GOODRICK: Thank you.</p> <p>20 MR. GROSSMAN: I should mention that there are</p> <p>21 numerous other pages in that publication which then describe</p> <p>22 how you, how many trips are generated and how they are</p> <p>23 generated. But this is the page that describes the</p> <p>24 particular land use, 251. It's 472 of ITE trip generation,</p> <p>25 8th edition, land use 251, senior adult housing/detached.</p>	<p style="text-align: right;">Page 93</p> <p>1 developing the layout, the lot layout, the road layout, and</p> <p>2 trying to minimize, what we try to do is minimize the amount</p> <p>3 of grading that has to take place in order to develop this</p> <p>4 project. And so we work very closely with the land</p> <p>5 planners, the landscape architects, environmentalists, and</p> <p>6 the civil engineers to do that.</p> <p>7 Now, what we've done here, and regarding</p> <p>8 specifically storm water management, this Exhibit No. 34(s)</p> <p>9 basically illustrates the different type of storm water</p> <p>10 management facilities that are being proposed on the</p> <p>11 project, going from the orange symbols, which you can see</p> <p>12 are scattered throughout the project, which we're calling</p> <p>13 bio retention facilities, to the lighter green areas, which</p> <p>14 are extended detention dry facilities, which I'll get into</p> <p>15 more detail about those in a minute, to the grass swales</p> <p>16 which help transport some of the water to infiltrate back</p> <p>17 into the ground, as do the other facilities I just</p> <p>18 mentioned.</p> <p>19 And then rooftop disconnect, basically, is</p> <p>20 allowing the lawn areas to receive the downspouts, per se,</p> <p>21 spread the water out, and then promulgating infiltration</p> <p>22 into the ground.</p> <p>23 In doing this type of design, essentially what</p> <p>24 we've done is created a network of facilities. And by doing</p> <p>25 this, we're maximizing the amount of recharge, ground water</p>

<p style="text-align: right;">Page 94</p> <p>1 recharge back into the ground.</p> <p>2 And in going back to what I mentioned, the ESD</p> <p>3 type measures that we are using, all of these will be</p> <p>4 designed using the ESD type bio filters, micro-bios, bio</p> <p>5 swales, and so forth like that. In doing that, we're able</p> <p>6 to meet the, what I'm going to call it is the full ESD</p> <p>7 requirements utilizing ESD measure.</p> <p>8 Because, in the way the County and the State has</p> <p>9 set up the storm water management regulations, they want you</p> <p>10 to utilize ESD measures up to a certain level. And then</p> <p>11 after that level, if you cannot continue with ESD measures,</p> <p>12 to use, I'm going to say, more conventional type measures,</p> <p>13 which you are probably used to throughout Montgomery County,</p> <p>14 is more typical of the storm water management ponds.</p> <p>15 We're trying to get away from storm water</p> <p>16 management ponds, central storm water management ponds</p> <p>17 today, and going with more of a smattering or a sprinkling</p> <p>18 of storm water management facilities throughout a project,</p> <p>19 to where it will be like existing conditions of trying to</p> <p>20 get the water into the ground.</p> <p>21 In this design that we were able to accomplish is,</p> <p>22 we were able to do 100 percent ESD through ESD measures. So</p> <p>23 essentially what that's going to do is, and in agreement</p> <p>24 with what Mr. Rood says, in doing that we're bringing the</p> <p>25 entire property back into what's called, or back to a level</p>	<p style="text-align: right;">Page 96</p> <p>1 the rooftop disconnect, using those three facilities alone,</p> <p>2 meets 100 percent of the storm water management requirement</p> <p>3 of Montgomery County's new laws in effect today per chapter</p> <p>4 19.</p> <p>5 Q So the green ones, is that that cautiousness? Or</p> <p>6 why are they being shown? Because, as you know from Mr.</p> <p>7 Hancock, they are of interest to him.</p> <p>8 MR. GROSSMAN: We're talking about the light green</p> <p>9 colored storm water facilities that are on the western end</p> <p>10 of the site.</p> <p>11 THE WITNESS: Which on this exhibit is designated</p> <p>12 extended detention.</p> <p>13 MR. GROSSMAN: Okay.</p> <p>14 THE WITNESS: And essentially we're showing two</p> <p>15 extended detention facilities on our storm water management.</p> <p>16 And what that is, is if going through the details of this,</p> <p>17 that we are for some reason unable to maximize as we've</p> <p>18 designed it today, there would be these areas designated for</p> <p>19 the additional storm water management that may be necessary</p> <p>20 but that could not be encompassed into the ESD's, still</p> <p>21 meeting the County requirement. We absolutely have to meet</p> <p>22 the minimum ESD County requirement, which we have to do, and</p> <p>23 then over that, these facilities would only be utilized for</p> <p>24 that.</p> <p>25 The other thing is, these facilities, and I know</p>
<p style="text-align: right;">Page 95</p> <p>1 of woods in good condition.</p> <p>2 So essentially, utilizing these techniques that we</p> <p>3 have proposed here, the runoff, if you want to say, will</p> <p>4 mimic this property as if it was completely forested in</p> <p>5 woods in good condition.</p> <p>6 So the bottom line is that the recharge is going</p> <p>7 to be greater into the ground water. The filtration will be</p> <p>8 better. And the amount of runoff will technically be less</p> <p>9 than what's happening today with the plantings and the</p> <p>10 farming operations.</p> <p>11 BY MR. KLINE:</p> <p>12 Q All right. If I can catch up with you here. So</p> <p>13 you hear Mr. Hancock's question earlier to Mr. Rood about,</p> <p>14 is this going to affect my well water.</p> <p>15 A No.</p> <p>16 Q And since you used the term infiltration and</p> <p>17 recharge a lot, you're confident that this will not hurt his</p> <p>18 well system at all?</p> <p>19 A Absolutely. Confident.</p> <p>20 Q All right. Then did I also understand you to say,</p> <p>21 Jody, if all we did were the orange features, that would</p> <p>22 satisfy the County requirements for storm water management?</p> <p>23 A That is correct. Basically, utilizing, I'm going</p> <p>24 to say, the orange facilities that are scatter throughout</p> <p>25 this exhibit, using the grass swales, the darker green, and</p>	<p style="text-align: right;">Page 97</p> <p>1 Mr. Hancock you mentioned to me some concern about water,</p> <p>2 you know, during heavy rains or whatever, that you get some</p> <p>3 water down in this area. These --</p> <p>4 MR. GROSSMAN: In this area --</p> <p>5 THE WITNESS: I'm sorry. Mr. Hancock --</p> <p>6 MR. GROSSMAN: -- immediately to the west of the</p> <p>7 northern --</p> <p>8 THE WITNESS: West of the property, just north of</p> <p>9 Mr. Hancock's house.</p> <p>10 MR. GROSSMAN: All right. So we're talking about</p> <p>11 just west of the upper green colored storm water management</p> <p>12 facility pond that you have depicted on the exhibit.</p> <p>13 THE WITNESS: Correct, Mr. Grossman.</p> <p>14 MR. GROSSMAN: Okay.</p> <p>15 MR. KLINE: Which is an out lot, rather than part</p> <p>16 of Mr. Hancock's property itself, right?</p> <p>17 THE WITNESS: That's my understanding.</p> <p>18 BY MR. KLINE:</p> <p>19 Q Okay. Go ahead.</p> <p>20 A So utilizing these facilities, if in fact we</p> <p>21 wanted to reduce the amount of water, surface water for,</p> <p>22 let's say large storms, we could even say a 100-year storm,</p> <p>23 that these facilities could be designed to limit the</p> <p>24 intensity of the water that would exit the property,</p> <p>25 especially in this area.</p>



<p style="text-align: right;">Page 98</p> <p>1 This is not a requirement of Montgomery County,  2 because we've already met the storm water management  3 requirements of Montgomery County through the ESD measure  4 throughout the entire site.  5 MR. GROSSMAN: And as I understand it the County  6 requirements are stricter than the State requirements, is  7 that correct? Or you've repeatedly referred to meeting the  8 Montgomery County requirements.  9 THE WITNESS: Right.  10 MR. GROSSMAN: Do the other, the facilities other  11 than these storm water retention ponds, the other facilities  12 meet the State requirements as well?  13 THE WITNESS: These would all, you were correct  14 in your first statement, Mr. Grossman. Montgomery County  15 storm water management general, the way it's written, is  16 stricter than the State. But I have to meet minimum of the  17 State. Then I have to go to the County level, and then  18 further level if, in fact, we see there is a need for that.  19 MR. GROSSMAN: What I was trying to ascertain is,  20 because there is an issue about screening along the western  21 side of this property, if those ponds were made smaller,  22 would that, so as to allow for a greater amount of screening  23 in those areas, would that affect whether you are meeting  24 all of your environmental site design requirements, both for  25 the State and the County?</p>	<p style="text-align: right;">Page 100</p> <p>1 falling --  2 MR. GROSSMAN: This one being the southern one?  3 THE WITNESS: The southern one, adjacent to Brink  4 Road, the topography is mostly falling directly towards  5 Brink Road. So the ground is actually rising to some degree  6 from Brink Road into the site. And then, so the water  7 actually goes towards Brink Road. So a little bit different  8 there as far as how this facility lays into the topography,  9 versus how the southern facility lays into the topography.  10 But going back to the original comment, is there  11 area here --  12 MR. GROSSMAN: Here being along the western --  13 THE WITNESS: Is there area here along the  14 property line, the western property line, where additional  15 plantings could be done? I believe there is. Plus, when we  16 design the storm water management facilities, we do  17 incorporate a landscape portion, or a landscape design into  18 the storm water management facilities.  19 Mr. Rood is absolutely correct. You cannot plant  20 vegetation on the dam of the facilities. But on the  21 upstream back sides, further away from the tow or the slope  22 of the facilities, landscaping can be planted.  23 My only concern is that when Mr. Rood was doing  24 his presentation, he was talking about regarding forest  25 conservation, and how we were meeting the forest</p>
<p style="text-align: right;">Page 99</p> <p>1 THE WITNESS: No, it would not.  2 MR. GROSSMAN: Okay.  3 THE WITNESS: In fact, in looking at this, there  4 is room here, again, this is preliminary design. It has  5 been approved by both Montgomery County Department of  6 Permitting Services. DEP also looked at it from the water  7 quality standpoint, and Park and Planning has also looked at  8 it from their environmental planning division as well.  9 There is some room that there potentially could be  10 screening here. One thing which has not been --  11 MR. GROSSMAN: Here being?  12 THE WITNESS: I'm sorry. West of the shown  13 extended detention facility, adjacent to Mr. Hancock's  14 property.  15 MR. GROSSMAN: That's the northern one. And what  16 about the southern one?  17 THE WITNESS: The southern one, again, similar,  18 same usage here, there could be areas of screening.  19 However, something a little bit different, the topography is  20 much different in the southern facility than it is in the  21 northern facility.  22 The northern facility that we just discussed is  23 basically in the low lying area of the site. It's flowing  24 down, flowing through Mr. Hancock's out lot, and continues  25 down into the stream valley. This one, the ground is mostly</p>	<p style="text-align: right;">Page 101</p> <p>1 conservation. We were not really talking about landscaping.  2 And there is going to be an abundance of landscaping  3 throughout the subdivision, through street trees and the  4 like, home landscaping, and so forth like that.  5 So even up in the area to the northern pond,  6 there's going to be street trees abutting the roadways,  7 which will create some, obviously, visible aesthetics, and  8 some screening as well, although not heavily screening, but  9 there will be street tree screening. You'll see vegetation.  10 MR. GROSSMAN: Right.  11 THE WITNESS: So, I mean, just quickly, if I can  12 use exhibit -- the same orientation, this is Exhibit No.  13 34(g). This is just basically a rendering of the project.  14 Again, the darker green areas, which is labeled as letter or  15 number 3 on the western side of the property, is where the  16 afforestation is taking place.  17 But you can see in the central area where the  18 development is little green circles, representing additional  19 proposed landscaping as the project goes forward. And this  20 will be detailed and reviewed at the subdivision stage, and  21 the site plan stage, through the next go round.  22 BY MR. KLINE:  23 Q I'm going to ask you to -- go ahead and get rid of  24 that, unless you're not finished with that.  25 A Okay.</p>

<p style="text-align: right;">Page 102</p> <p>1 Q So looking at 34(s), stated rather crudely, I 2 think what you're saying is, after this is all over, you 3 could sit down with Mr. Hancock and say, all right. What do 4 you want, more trees or more water protection, and work out 5 something? And you could scrape that entire green area and 6 basically give him more landscaping. But here you've kind 7 of done him a favor by trying to capture some of that water 8 at the site of this property today? 9 A Right. I mean, I understand there was a concern. 10 There's a difference between whether I consider it flooding 11 or not, but I know there was a concern there. This is a 12 logical place to put a facility, especially if we are, for 13 some reason, unable to meet the entire 100 percent ESD. 14 Q So I guess the more technical question is, we have 15 some flexibility in trying to address the adjacent property 16 owners' concerns? 17 A Yes. 18 Q Thank you. 19 A The other thing I wanted to mention regarding -- 20 MR. GROSSMAN: Before you leave that, one of the 21 things I was considering was, when the Council considers 22 this, whether or not they should consider putting in a 23 resolution, if they would decide to improve this, something 24 about increasing the screening in those areas. But if, in 25 fact, increasing the screening would create additional water</p>	<p style="text-align: right;">Page 104</p> <p>1 this property by the measures that we have incorporated. 2 MR. GROSSMAN: I understand that. I'm just trying 3 to figure out a way to balance all of that in what I say to 4 the Council. 5 MR. KLINE: It's a bit of a dilemma from our point 6 of view. 7 MR. GROSSMAN: Right. 8 MR. KLINE: But it is something that the applicant 9 clearly, it is to help Mr. Hancock, and try to work 10 something out later on. 11 MR. GROSSMAN: Well, we'll hear from Mr. Hancock 12 on the point in testimony, so we'll have some basis for what 13 to say to the Council. 14 THE WITNESS: Previous testimony, I think there 15 was a question to Mr. Rood about, what would the depths of 16 these facilities be. 17 MR. GROSSMAN: Yes. 18 THE WITNESS: Typically, these are extended 19 detention dry facilities. They would have anywhere from two 20 to four feet, depending on the amount of water that we want 21 to retain, and how large the facility is. If we want to 22 make it a little smaller, possibly because of the volume 23 requirements, the water may go a little deeper. If I spread 24 the facility out further, the water will be less deep. 25 So typically in these facilities, we're talking</p>
<p style="text-align: right;">Page 103</p> <p>1 problems for the neighbors, maybe that wouldn't be an artful 2 thing to do. So do you have any comments about that? 3 THE WITNESS: From a storm water management 4 standpoint -- 5 MR. GROSSMAN: Yes. 6 THE WITNESS: -- what we have shown here, and what 7 has been approved preliminarily, approved through the review 8 agencies, meets all of the storm water management 9 requirements. Right now, these green facilities are not a 10 requirement of Montgomery County to the applicant or to this 11 property. 12 Understanding that there was a, I had heard that 13 there was some concern about water down in this area, and 14 if, in fact, we cannot get in front of a design 100 percent 15 ESD through the scattered facilities, this would be a 16 logical place to put an additional facility, which could 17 take care of any differences we have from 100 percent, let's 18 say down to 90 percent using ESD measures, also to reduce 19 the amount of water that's coming off the property. 20 But as I said in my opening statement, sort of 21 opening is, we are basically, there's going to be less water 22 coming off of this site after this is developed than there 23 is today. So in putting all these facilities in, excluding 24 the green facilities, the extended retention facilities, my 25 professional opinion is, there will be less water exiting</p>	<p style="text-align: right;">Page 105</p> <p>1 about two to four feet of ponding. Over a 12-hour period, 2 and this goes back to just quickly the mosquito issue. I've 3 been designing these facilities since the late seventies, 4 and since storm water management basically started. The 5 way, we don't want standing water in these facilities for an 6 extended period of time. These facilities are designed to 7 drain down over a 12-hour period, therefore restricting the 8 standing water, possible mosquitoes, and so forth like that. 9 Also -- 10 MR. GROSSMAN: Drain down to the point where 11 they're dry? 12 THE WITNESS: They're dry again, correct. And 13 then, of course, as Mr. Rood said, they do have to be 14 maintained. These are grass facilities, so they have to be 15 mowed. Any trash that would get in there would be cleaned 16 out, and so forth. 17 MR. GROSSMAN: Do they have a drain at the bottom, 18 or they just evaporate? 19 THE WITNESS: Typically, the way these are 20 designed is, you'll have a slope in the facility where 21 sometimes you'll have a pilot channel, sometimes not, to a 22 controlled structure, which is at the low point of the 23 interior of the facilities which captures all the water. So 24 basically, it all drains to that point. And then any other 25 water would basically infiltrate, especially in Montgomery</p>

<p style="text-align: right;">Page 106</p> <p>1 County, the type of facilities. If you're in other  2 jurisdictions with coarse topography, you don't want that.  3 But that's a different --  4 MR. GROSSMAN: Well, I lost the last, if you're in  5 other counties, what was the rest of that sentence?  6 THE WITNESS: An example is, I guess I've gone a  7 little too far here. Up in Frederick County, you have a  8 soil which is coarse topography which causes sink holes.  9 You don't want the water to be infiltrated in the ground.  10 So basically, you put a liner in to stop it from  11 infiltrating. Not in Montgomery County.  12 MR. GROSSMAN: Okay.  13 THE WITNESS: Okay. So basically, for storm water  14 management we have a preliminary water quality approval,  15 preliminary storm water management concept approval. This  16 is the plan that was approved.  17 On sediment control, staying with chapter 19, just  18 want to also reiterate that, you know, we've worked with  19 these plans minimizing the amount of sediment and earth  20 moving. We've also agreed with the County agencies that the  21 sediment control measures during construction will be  22 designed at a capacity of 125 percent.  23 So instead of it being 100 percent, we're going at  24 25 percent additional storage in the sediment control  25 measures during the construction operations here. That's</p>	<p style="text-align: right;">Page 108</p> <p>1 which is approximately 2.1 miles away. Then you have, from  2 fire aspect, there are actually four fire/rescue facilities  3 within this area. I'll just go through them real quick.  4 You have, the furthest one away is the Hyattstown,  5 which is approximately five miles away from the property, or  6 5.9 miles away, I'm sorry. The Gateway, which is up along  7 270, just south of the Maryland 121 interchange, that's  8 approximately 2.3 miles away. You have the Germantown  9 station, which is 2.2 miles away.  10 And then you have a station, what the Montgomery  11 County designates as Station 34, which is 1.1 miles away,  12 down on 355 in, just in the intersection, sort of in the  13 area of 27, Father Hurley, and the 355 area.  14 BY MR. KLINE:  15 Q So are police and Fire and Rescue services  16 therefore deemed to be adequate to service this area?  17 A Yes, very much so.  18 Q How about sewer and water?  19 A Okay.  20 Q How are we going to serve the property -- well,  21 actually, I guess we ought to start with the history  22 probably, because it has some effect on the --  23 A Yes. I'll briefly go through the history of,  24 let's say, sewer, more sewer than water, on this property.  25 When the 1994 master plan was being adopted, and obviously</p>
<p style="text-align: right;">Page 107</p> <p>1 pretty much it for storm water management.  2 BY MR. KLINE:  3 Q If you've completed that, can you address the  4 adequacy of public facilities, other than transportation  5 covered by Mr. Guckert?  6 A Okay. I'll start with schools. Since this is an  7 age-restricted development, it is interpreted that there  8 will be no school children generated from this development.  9 So therefore there is no impact to the receiving schools.  10 And there is a letter from, or an e-mail from Bruce Christel  11 (phonetic sp.), from the schools, Montgomery County Public  12 Schools.  13 MR. GROSSMAN: That's attached to the Technical  14 Staff Report.  15 THE WITNESS: It was attached to the Staff Report.  16 I've made copies. It was Attachment Number 7 to the Park  17 and Planning Staff Report. So, I don't know, if it's  18 already an exhibit, I guess we don't need it.  19 MR. GROSSMAN: Yes. I don't need to make it an  20 exhibit.  21 THE WITNESS: But basically, Mr. Christel said,  22 there is no impact to the schools based on this type of  23 development. So as far as schools, there is no impact.  24 Regarding police, fire and rescue, from this site  25 the closest police station is the Germantown Police station,</p>	<p style="text-align: right;">Page 109</p> <p>1 when you go through a master plan process, it's several  2 years prior to that getting to the final adoption of the  3 master plan.  4 There were, I'm going to call it, capacity issues  5 and conveyance issues for this part of the County. I'm  6 going to say basically the Clarksburg, the southern  7 Clarksburg area from sewer. There was the Crystal Rock Pump  8 Station that had some capacity issues. The Seneca Waste  9 Treatment Plant had some capacity issues, and there was  10 really no conveyance way to bring sewer from this part of  11 the County to, let's say towards the west, towards the  12 Seneca Waste Water Treatment Plant.  13 So back in 1994, when this was adopted, since  14 those restrictions were there, that's one of the reason I  15 believe that this property was designated of RE-2, because  16 of those hindrances to public sewer.  17 Quickly, just to go through public water, then  18 I'll go back to the sewer, just to get that out of the way.  19 Public water for this property, there is existing 16 inch,  20 24 inch, 48 inch lines in Maryland Route 27. There is  21 existing 16 inch water in Brink Road today. So water access  22 capacity is not an issue at all for this property.  23 Now, going back to the sewer, that's 1994, the  24 master plan designated this property as RE-2, adjacent  25 property, but left the green ridge area as R-200, because</p>

<p style="text-align: right;">Page 110</p> <p>1 they knew that eventually, potentially, there could be sewer 2 service to this area. So they left that as R-200. 3 Then in 2001, the County Council approved or 4 adopted, amended the comprehensive water and sewer master 5 plan for development of stages two and three, which this 6 area of the County was what they designated as stage two and 7 three. 8 So in 2001 there became capacity at the treatment 9 plant, there became capacity at the pump station, the 10 Crystal Rock Pump Station, and there also became a 11 conveyance system just to the south of the Clarksburg 12 Village subdivision, which would allow this area of the 13 County to have sewer conveyance from the east to the west, 14 eventually making -- 15 Q And when you say sewer conveyance, it's a trunk 16 line of -- 17 A It's a trunk line. 18 Q -- of X dimension or X inches? 19 A That's correct. Yes. So that was also in place, 20 which basically, since there was now capacity at the 21 treatment plant, capacity at the, additional capacity at the 22 pump station, add a conveyance measure to collect this area, 23 they went ahead and changed. They amended it to open to 24 water or sewer service. 25 So then in March 27th, 2001, the County Council,</p>	<p style="text-align: right;">Page 112</p> <p>1 development shown here. 2 Q At the beginning of your discussion you were 3 talking about how the availability of sewer had an influence 4 on the zoning of the property to go from R-200 to RE-2. 5 Tell us about what's happened on a statewide level now that 6 draws into issue the question of the sewer category and the 7 development potential of the property? 8 A In 2012 Maryland legislature passed the Maryland 9 sustainable growth and agricultural preserve act of 2012, 10 which basically designated to, all across the entire State 11 of Maryland to the respective jurisdictions, to create a 12 tier level of sewer, let's say between public sewer and 13 septic fields. 14 As Mr. Rood discussed earlier, there's a concern 15 with the amount of nitrogen runoff going into the bay, and 16 deteriorating the bay, and so forth like that, which comes a 17 lot from septic fields, as you mentioned in that. 18 What the State wanted to try to do was basically 19 limit or restrict where septic fields could be, in lieu of 20 public sewer areas. So Montgomery County through Park and 21 Planning had to come up with these tier maps. And if I can, 22 this is a new exhibit. We have to put a -- 23 MR. KLINE: Gary, do we have a number on it? 24 MR. UNTERBERG: We do not. 25 THE WITNESS: This is a new exhibit.</p>
<p style="text-align: right;">Page 111</p> <p>1 actually on our property, changed the designation of sewer 2 category for the property that we're talking about today, to 3 W1-S3. 4 Q From? 5 A From a W6, basically W6-S6. And that was 6 predicated on a PIF, you know, private institutional 7 facility. 8 Q So we, what, we were going to build a church on 9 the property or something? 10 A That's correct. 11 Q Okay. 12 A At that time. So the County Council changed this 13 property to, at that time, W1-S3. In 2009, when this 14 application was submitted, we also submitted a request that 15 the category change not be tied strictly to a PIF. And then 16 moving on in July of 2011, the County Council actually 17 deferred action on the category request pending the outcome, 18 or pending what comes out of the rezoning of the property to 19 PRC. 20 So now as far as, when I say this capacity and so 21 forth, this is verified when we're going through the 22 process, there is a letter dated February 1st, 2012, that I 23 also believe is in the staff report of Park and Planning as 24 an attachment, from WSSC, indicating that yes, in fact, 25 water capacity and sewer capacity is available for the</p>	<p style="text-align: right;">Page 113</p> <p>1 MR. KLINE: Fine. This would be a new exhibit to 2 be placed in the record, Mr. Grossman. 3 MR. GROSSMAN: All right. This will be Exhibit 4 No. 92. 5 (Exhibit No. 92 was marked 6 for identification.) 7 THE WITNESS: Do you mind if I just write right on 8 it. 9 MR. GROSSMAN: Yes, please do. 10 THE WITNESS: That was Exhibit? 11 MR. GROSSMAN: 92. And we'll call it a tiers map. 12 THE WITNESS: Yes. 13 BY MR. KLINE: 14 Q And why don't you tell us what's on here. It 15 looks like this is like an excerpt from some publication of 16 Park and Planning or something. 17 A Yes. This is an excerpt out of the, Park and 18 Planning was the agency who had to initiate the tiers map, 19 the tiers through Montgomery County and which the Council 20 would approve. So this is the section of where our property 21 is, the subject property is located. 22 On the tier map, Exhibit No. 92, on the right hand 23 side of the exhibit is basically an aerial. And what is 24 shown on here is labeled site, with an arrow going to show 25 where our site it. What has been done is the tiers, our</p>

<p style="text-align: right;">Page 114</p> <p>1 property, I'm going to say the lighter blue shown on this  2 plan has been designated by the County Council and approved  3 subsequently as law now, but this is Tier Two.  4 Tier Two is basically, is says that these areas  5 are to be developed, if they are going to be developed, with  6 public sewer. And it shows that our property right here is  7 in that Tier Two area.  8 Q All right. Let me play that out a little bit. So  9 on the east side of 27 it's gray, on the archdiocese  10 property.  11 A Correct.  12 Q And that's part of tier --  13 A One.  14 Q -- one. Okay.  15 A The gray area, and the darker area is tier one.  16 Basically, Tier One, in simple terms is, where there is  17 existing public sewer today.  18 Q Okay.  19 A Tier Two is where public sewer is supposed to be.  20 Q Okay. And immediately to our west the sort of  21 yellow whole in the donut or something, which is presumably  22 the Brink Meadows subdivision, if I got that right --  23 A That is correct.  24 Q Okay. What does the yellow refer to?  25 A Basically, that reflects basically Tier Three.</p>	<p style="text-align: right;">Page 116</p> <p>1 doesn't fit into the proper tier that the Council has  2 mandated.  3 MR. GROSSMAN: You made an assumption there. Let  4 me hear the witness on that point. You assumed in your  5 question that if you had a one-acre lot that it would have  6 to have a septic system as opposed to public sewer. Is that  7 true?  8 BY MR. KLINE:  9 Q Was I wrong on that assumption?  10 A No.  11 MR. GROSSMAN: Why was he not wrong on that  12 assumption?  13 THE WITNESS: Because the tier two area, as  14 designated now through Park and Planning's mapping and  15 Council's approval of the map as part of the SRA, has  16 designated Tier Two areas as public sewer service areas.  17 MR. GROSSMAN: I understand, but his assumption  18 was that if you had a one-acre lot system, that it would  19 have to be a septic system, as opposed to a public sewer. I  20 don't understand the basis for that.  21 MR. KLINE: All right. Let me ask the question  22 this way.  23 BY MR. KLINE:  24 Q What is the public policy with regard to extending  25 public sewer to lots of one-acre or larger?</p>
<p style="text-align: right;">Page 115</p> <p>1 Q And that, basically, is in recognition of the fact  2 that it's developed with septic systems?  3 A Correct.  4 Q Okay. All right. I'd like you to go back and  5 stress again what Tier Two, the guidance to this property  6 is, Tier Two?  7 A I mean, the Council, when they approved this in, I  8 believe it was September of this year, and it was through  9 SRA-12-01, designated the project in question as Tier Two,  10 which means that property is intended to be public sewer.  11 And basically, the intention is to restrict private sewer,  12 basically septic fields, in the Tier Two areas.  13 So this is very interesting in that the Council  14 has, in a sense, made a decision by implementing the tier  15 maps for this subject property, as a public sewer property.  16 Q Take me back one step.  17 A Okay.  18 Q And just kind of explain how this would play out.  19 Were we to file a McMansion subdivision plan, as Mr. Butz  20 would have called it, on two-acre lots, or if we even used  21 the one-acre density that the staff suggests is maybe an  22 alternative we should consider, in either event we would  23 have to use septic system, what would happen to the plan  24 when it was submitted to the Planning Board?  25 A Most likely, it would be rejected because it</p>	<p style="text-align: right;">Page 117</p> <p>1 A I'm not sure I understand your specific question.  2 Q Okay. Is there not a public policy against  3 extending public sewer to lots one-acre or larger?  4 A That is correct.  5 MR. GROSSMAN: And what is that public policy? Is  6 that in written form somewhere?  7 THE WITNESS: Basically, lots -- the reason I am  8 hesitating there is that you could have one-acre, in  9 Montgomery County, you could have one-acre public sewer  10 subdivisions. They could possibly exist, especially if they  11 are in tier one. Well, they have to be, if they are in tier  12 one or two, too. If they are not in the proper tier, and  13 they are large lot with septic, the County is not going to  14 be favoring --  15 BY MR. KLINE:  16 Q So I think Mr. Grossman makes a good point. My  17 premise was a little bit -- it's driven more by the tiers  18 than it is by the potential to service the property based on  19 the one-acre or two-acre lots?  20 A Correct.  21 MR. GROSSMAN: Okay.  22 MR. KLINE: Okay.  23 THE WITNESS: So just going through this, I mean,  24 in my best opinion, and from what's been approved through  25 the County Council, this property is designated to have</p>

<p style="text-align: right;">Page 118</p> <p>1 public sewer, and be restricted from having private septic.  2 BY MR. KLINE:  3 Q Okay. The only thing I would say from that, then  4 is, how would we actually -- you talk about how you serve it  5 with water lines. You say we have capacity, we have  6 conveyance. How would we actually service the property with  7 sewer?  8 A On this plan, the lines that you see in red are  9 basically the proposed sewer lines.  10 MR. GROSSMAN: What exhibit are you looking at?  11 THE WITNESS: I'm looking at Exhibit No. 34(t).  12 MR. GROSSMAN: Okay.  13 THE WITNESS: On Exhibit No. 34(t), it basically  14 shows a preliminary water and sewer layout. WSSC has  15 reviewed this as part of their approval letter. What we're  16 doing is, we're going to be able to, by gravity, collect the  17 entire site, by gravity, to a sewer line that will be  18 proposed in Snowden Farm Parkway, that will go from, will  19 travel in Snowden Farm Parkway from east to west to the  20 proposed cul-de-sac. It's really kind of hard to see on  21 this, but to a proposed cul-de-sac in Clarksburg Village,  22 which that road is going to be called Castle Oak Court.  23 MR. GROSSMAN: What exhibit are you looking at?  24 THE WITNESS: I'm looking at Exhibit No. 34(q).  25 On 34(q), here is our, I'm pointing to what's called J-140</p>	<p style="text-align: right;">Page 120</p> <p>1 ground level photos you have, or should you have a witness  2 identify these ground level photos in the technical staff  3 report?  4 MR. KLINE: We could do that. I mean, certainly  5 everybody on the team has visited the property.  6 MR. GROSSMAN: Right. I didn't know. Were there  7 other photos I just didn't happen to see?  8 MR. KLINE: Not really.  9 MR. GROSSMAN: It's useful, I find, to have at  10 least a couple of photos at ground level of the site. And  11 were you planning to call back your land planner for  12 anything?  13 MR. KLINE: You had asked us to provide additional  14 testimony. So Mr. Unterberg will be testifying on the  15 recreational calculations.  16 MR. GROSSMAN: Well, the, I guess that he could  17 then identify the photograph --  18 MR. KLINE: Sure. Okay.  19 MR. GROSSMAN: -- on pages 2 and 3 of the Staff  20 Report. Okay. Cross-examination.  21 CROSS-EXAMINATION  22 BY MR. HANCOCK:  23 Q Can you get your chart on your water? Yeah.  24 Okay. On what we're calling the upper pond, or the northern  25 pond, I can't quite read through this area.</p>
<p style="text-align: right;">Page 119</p> <p>1 units. That's the subject property. Bisecting the subject  2 property is A-305.  3 The sewer line will collect both sides of our  4 project with A-305, take the sewer towards the west and  5 north to the first cul-de-sac in Clarksburg Village, which  6 is to the left hand side of what's designated A-80 units.  7 There's a small cul-de-sac to the west hand side of A-305.  8 That is where we will extend our sewer line to connect into  9 there, which eventually goes down into the existing trunk  10 line through the stream valley.  11 MR. GROSSMAN: Have you told the people in that  12 cul-de-sac you're sending them your sewerage?  13 THE WITNESS: There is nobody living in that cul-  14 de-sac today. So --  15 MR. GROSSMAN: I don't think you're getting a  16 thank you note is what my point.  17 THE WITNESS: No. It's a public line. So that's  18 how we'll be serving the project through public sewer is  19 conveyance.  20 MR. KLINE: Mr. Bossong, I didn't actually have  21 any more questions for you. Is there something that you  22 wanted to add? No. No further questions of Mr. Bossong.  23 MR. GROSSMAN: Before you go to cross-examination,  24 I noticed that the only ground level photos I saw in the  25 file were in the technical staff report. Are there other</p>	<p style="text-align: right;">Page 121</p> <p>1 MS. GOODRICK: It's upside down.  2 BY MR. HANCOCK:  3 Q It's upside down. Yeah. Can you give me the, can  4 you give me the topo reading at the south end of the pond,  5 and at the north?  6 A You mean the existing topography today?  7 Q Yes.  8 A You're basically at a --  9 Q No, at the south end, right at the bottom. Yes.  10 What's the topo there?  11 A The existing topography, as shown on Exhibit No.  12 34(s) at this location is approximately 578 above sea level.  13 Q And the top end?  14 A And the top --  15 MR. GROSSMAN: At this location being the  16 southern?  17 MR. HANCOCK: No, at the top end of the pond. The  18 northern --  19 MR. GROSSMAN: Yes, being the southern portion of  20 the pond, which is of the northern pond?  21 THE WITNESS: Right. And approximately at this,  22 at the northern end of the northern pond, existing  23 topography is shown here at 580.  24 BY MR. HANCOCK:  25 Q I don't understand. You say that there is only a</p>

<p style="text-align: right;">Page 122</p> <p>1 two-foot difference in the topo?</p> <p>2 A No.</p> <p>3 Q You said 578 and 580?</p> <p>4 A Right. From on this plan, there is no -- I think</p> <p>5 what's happening here, there is actually, call it a large</p> <p>6 swale, which comes like, this is sort of the swale area.</p> <p>7 This is the center of the swale.</p> <p>8 MR. GROSSMAN: All right. So the swale area</p> <p>9 you're talking about incorporates the entire pond.</p> <p>10 THE WITNESS: Correct.</p> <p>11 MR. GROSSMAN: Okay.</p> <p>12 THE WITNESS: So at both ends, because it's a bowl</p> <p>13 shape, those elevations are relatively the same on each end</p> <p>14 here, from existing topography standpoint.</p> <p>15 MR. HANCOCK: Okay. I mow it. I can barely get</p> <p>16 the mower uphill. I don't know how -- I'm confused.</p> <p>17 MR. GROSSMAN: I don't know if I can clear up that</p> <p>18 confusion.</p> <p>19 MR. HANCOCK: The rise, maybe, I can't really see.</p> <p>20 I don't want to block Mr. Grossman.</p> <p>21 MR. GROSSMAN: Mr. Kline can volunteer to come out</p> <p>22 and mow your --</p> <p>23 MR. HANCOCK: The grade, this is the low end --</p> <p>24 MR. KLINE: You're going to have to speak up, Mr.</p> <p>25 Hancock.</p>	<p style="text-align: right;">Page 124</p> <p>1 Q This land rises this way. This is low. This is</p> <p>2 coming up.</p> <p>3 A Correct.</p> <p>4 Q And this point, I, well, I don't see how it's</p> <p>5 going to work at three-feet in, I mean, three-feet deep.</p> <p>6 That was why I was concerned.</p> <p>7 A Okay.</p> <p>8 Q How can you make the pond three-feet deep when</p> <p>9 there's a lot more rise than what you are showing there.</p> <p>10 I'm confused.</p> <p>11 A Is that a question?</p> <p>12 MR. GROSSMAN: Yes. That's a question.</p> <p>13 THE WITNESS: Okay.</p> <p>14 MR. GROSSMAN: How can, is a question.</p> <p>15 THE WITNESS: Okay. What we would do, in the</p> <p>16 center of the swale or the bowl area, we would create a dam</p> <p>17 here. Okay.</p> <p>18 MR. KLINE: You're talking about on the west side</p> <p>19 of --</p> <p>20 THE WITNESS: On the west side of the green area,</p> <p>21 basically, as fill in across the bowl area. The water, what</p> <p>22 I was mentioning earlier, the two to four feet of depth,</p> <p>23 that is the storm water depth, the ponding depth of the</p> <p>24 water. The dam may be six or eight feet high. Okay. But</p> <p>25 the ponding depth is two to four.</p>
<p style="text-align: right;">Page 123</p> <p>1 MR. HANCOCK: -- oh 574.</p> <p>2 THE WITNESS: That's 574 there.</p> <p>3 MR. HANCOCK: 574.</p> <p>4 THE WITNESS: You asked me here.</p> <p>5 BY MR. HANCOCK:</p> <p>6 Q And when you're up in here, you're at 576. Is</p> <p>7 that 576? Or 578?</p> <p>8 A 578.</p> <p>9 Q Okay. I don't understand because there's at least</p> <p>10 a 20 foot rise from here to there.</p> <p>11 MR. GROSSMAN: From here being the southern end to</p> <p>12 the northern end of the pond?</p> <p>13 MR. HANCOCK: Yes. Yes, sir. I mean, I can</p> <p>14 barely even get my lawn mower up it.</p> <p>15 THE WITNESS: Well, I think what you're saying is,</p> <p>16 from the center line of the swale or the bowled area, two,</p> <p>17 four, six, eight, 10, 12, 14, 16, 18 feet. That's close to</p> <p>18 your 20 feet.</p> <p>19 MR. HANCOCK: I agree. Yeah.</p> <p>20 THE WITNESS: From down in here, up that hillside.</p> <p>21 MR. KLINE: So you're talking about the center --</p> <p>22 THE WITNESS: The center of the bowled area, the</p> <p>23 center of what I call the swale, the drainage area.</p> <p>24 MR. GROSSMAN: All right.</p> <p>25 BY MR. HANCOCK:</p>	<p style="text-align: right;">Page 125</p> <p>1 BY MR. HANCOCK:</p> <p>2 Q That's what I'm driving at.</p> <p>3 A Okay.</p> <p>4 Q In other words, on the bottom end, that rise to</p> <p>5 create the pond is going to be eight or nine feet above</p> <p>6 existing grade.</p> <p>7 A It could be, yes.</p> <p>8 Q That's what I'm after.</p> <p>9 A Yeah.</p> <p>10 Q That's why I couldn't understand you, you were</p> <p>11 saying four feet, and I thought you were talking four feet</p> <p>12 all the way. So there's going to be a mountain created back</p> <p>13 there.</p> <p>14 MR. GROSSMAN: Is that a problem in your mind,</p> <p>15 Mr. Hancock, or that might add to the screening?</p> <p>16 MR. HANCOCK: It's just visual. And I didn't</p> <p>17 realize that it wasn't required. If it's not required,</p> <p>18 don't do it.</p> <p>19 MR. GROSSMAN: Well, if that mountain, if that</p> <p>20 quote, mountain, is there, would it be grass covered?</p> <p>21 THE WITNESS: Yes.</p> <p>22 MR. GROSSMAN: Okay. So would that be a problem</p> <p>23 in your mind, to have something that was taller, grass</p> <p>24 covered, which would provide additional screening?</p> <p>25 MR. HANCOCK: It's just very unsightly. I mean --</p>

<p style="text-align: right;">Page 126</p> <p>1 MR. GROSSMAN: Well, that's what my question is.</p> <p>2 Is that really unsightly?</p> <p>3 MR. HANCOCK: The yard all runs downhill of that,</p> <p>4 and now all of the sudden, you go up seven or eight feet.</p> <p>5 You can't mow the side of that thing. They're very steep.</p> <p>6 You have to grass whip it to be able to cut it.</p> <p>7 MR. GROSSMAN: Well, it wouldn't be on your</p> <p>8 property.</p> <p>9 MR. HANCOCK: I'm sorry?</p> <p>10 MR. GROSSMAN: It wouldn't be on your property?</p> <p>11 MR. HANCOCK: I know, but I'm looking, it's right</p> <p>12 at the edge of the property. I'm looking at it all the</p> <p>13 time. So I was just curious --</p> <p>14 MR. GROSSMAN: Okay.</p> <p>15 MR. HANCOCK: -- as to how high that is going to</p> <p>16 be.</p> <p>17 THE WITNESS: It has not been final designed yet.</p> <p>18 and basically, it may, you know, depending on it, it may</p> <p>19 even be there. As far as your slope concern, Montgomery</p> <p>20 County does have requirements as far as how steep the dams</p> <p>21 have to be. So they have to be maintainable. So it's not</p> <p>22 a --</p> <p>23 MR. HANCOCK: See, I personally don't care how</p> <p>24 much water comes across. It just makes a nice green grass.</p> <p>25 So, from my point of view, you could eliminate that pond.</p>	<p style="text-align: right;">Page 128</p> <p>1 MR. GROSSMAN: Here being the northwest corner.</p> <p>2 THE WITNESS: -- the northwest portion of our, of</p> <p>3 the subject site, we're really not planning on grading it.</p> <p>4 We're planning on planting there. So it's going to be a</p> <p>5 forest. So depending on over and above what would naturally</p> <p>6 be infiltrated in a forest condition there possibly could be</p> <p>7 some runoff of some sort, especially, let's say, on a very</p> <p>8 intense storm. There is a lot of rainfall coming in a short</p> <p>9 period of time.</p> <p>10 So there still will be some runoff. But the</p> <p>11 bottom line is, the runoff, in my professional opinion, the</p> <p>12 runoff leaving this site is going to be less than what's</p> <p>13 leaving the site as we stand here today.</p> <p>14 MR. GROSSMAN: Okay.</p> <p>15 BY MS. GOODRICK:</p> <p>16 Q Okay. Well just then one other question. What</p> <p>17 about the runoff from roads that runs onto the property? Is</p> <p>18 that a part of your calculations?</p> <p>19 MR. GROSSMAN: Which roads?</p> <p>20 MS. GOODRICK: The roads that surround the</p> <p>21 property.</p> <p>22 MR. GROSSMAN: Okay.</p> <p>23 MS. GOODRICK: Not the internal roads.</p> <p>24 MR. GROSSMAN: Okay.</p> <p>25 MS. GOODRICK: He's talked about that. I'm</p>
<p style="text-align: right;">Page 127</p> <p>1 MR. GROSSMAN: Why don't we save that for your</p> <p>2 testimony. We can get your point of view on anything that's</p> <p>3 happened today. And do you have any other questions for</p> <p>4 this witness?</p> <p>5 MR. HANCOCK: No. That's was just it.</p> <p>6 MR. GROSSMAN: Ms. Goodrick, do you have any</p> <p>7 questions for this witness?</p> <p>8 CROSS-EXAMINATION</p> <p>9 BY MS. GOODRICK:</p> <p>10 Q I just have one. And that is that Mr. Rood said</p> <p>11 that all of the water, the storm water, is maintained within</p> <p>12 the site. Do you agree with that?</p> <p>13 A As far as the volume --</p> <p>14 MR. GROSSMAN: Well, that's not exactly what he</p> <p>15 said. He said that to the extent that a natural forest</p> <p>16 would retain the water. It will be equivalent to or better</p> <p>17 than, but equivalent to a natural forest retention of water.</p> <p>18 MS. GOODRICK: Okay.</p> <p>19 MR. GROSSMAN: It's not necessarily all the water.</p> <p>20 BY MS. GOODRICK:</p> <p>21 Q So there is runoff, or there would be runoff?</p> <p>22 A There will still be runoff.</p> <p>23 Q Okay.</p> <p>24 A A perfect example of that is, where Mr. Rood was</p> <p>25 saying this is going to be an afforested area here --</p>	<p style="text-align: right;">Page 129</p> <p>1 talking about the roads that surround the property, the big</p> <p>2 roads.</p> <p>3 THE WITNESS: All storm water management from any</p> <p>4 improvements has to, per State and local jurisdictions, has</p> <p>5 to be controlled by storm water management. So A-305 will</p> <p>6 be. The water on A-305 has to be contained and treated and</p> <p>7 put back in as if A-305 is forest in good condition. And</p> <p>8 basically, other improvements that are done to public roads,</p> <p>9 you know, whether it's interior residential roads or offsite</p> <p>10 roads.</p> <p>11 BY MS. GOODRICK:</p> <p>12 Q So then you are responsible for those roads as</p> <p>13 well, near the property?</p> <p>14 A Not if they're existing. If there's an</p> <p>15 improvement to them, then that has to be taken into</p> <p>16 consideration.</p> <p>17 MR. GROSSMAN: All right. Any redirect?</p> <p>18 MR. KLINE: Well, if you will allow me, you should</p> <p>19 never put a pen in the hand of an attorney, but can I just</p> <p>20 use, this is the only blank space I can find, Exhibit No.</p> <p>21 34(s).</p> <p>22 REDIRECT EXAMINATION</p> <p>23 BY MR. KLINE:</p> <p>24 Q So if I understand it, the green --</p> <p>25 MR. GROSSMAN: Well, before you write on it, tell</p>



<p style="text-align: right;">Page 130</p> <p>1 me what you are planning to write.</p> <p>2 MR. KLINE: Well, what I want to do, here's what I</p> <p>3 want to do. I want to try and do what I think is the</p> <p>4 graphic of what's actually going to happen. The green pond</p> <p>5 on the west side of the property essentially straddles the</p> <p>6 swale.</p> <p>7 MR. GROSSMAN: Yes.</p> <p>8 MR. KLINE: I heard the phrase mountain. I think</p> <p>9 if I drew the swale on here, in essence, what we're going to</p> <p>10 do is just going to fill in the swale, which is not creating</p> <p>11 a mountain. It's basically just creating a continuous</p> <p>12 pattern of grass across the property.</p> <p>13 MR. GROSSMAN: I understand, but I don't think you</p> <p>14 have to draw a picture.</p> <p>15 BY MR. KLINE:</p> <p>16 Q Fine. If I had drawn that, would that have been</p> <p>17 an accurate representation of what would be the west side of</p> <p>18 the retention facility?</p> <p>19 A Yes, it would.</p> <p>20 Q Thank you.</p> <p>21 MR. GROSSMAN: Any --</p> <p>22 MR. KLINE: No further questions.</p> <p>23 MR. GROSSMAN: Thank you. Any recross examination</p> <p>24 on that point alone?</p> <p>25 MS. GOODRICK: No.</p>	<p style="text-align: right;">Page 132</p> <p>1 THE WITNESS: Let me get two exhibits, our</p> <p>2 illustrative plan and our aerial photo. And you are looking</p> <p>3 at the Staff Report.</p> <p>4 MR. GROSSMAN: Yes. Exhibit No. 53, plus Exhibit</p> <p>5 No. 56.</p> <p>6 THE WITNESS: And Figure 1 is subject site looking</p> <p>7 north. Okay.</p> <p>8 MR. GROSSMAN: And does that appear, number one, I</p> <p>9 take it you didn't take that photo?</p> <p>10 THE WITNESS: I did not take these photos. These</p> <p>11 are technical staff, is my assumption.</p> <p>12 MR. GROSSMAN: But does that photo look like an</p> <p>13 accurate depiction of the site, looking north? And I'm not</p> <p>14 sure, they don't say from where.</p> <p>15 THE WITNESS: It looks like it's from somewhere in</p> <p>16 the middle of the site.</p> <p>17 MR. GROSSMAN: Okay.</p> <p>18 THE WITNESS: And this looks like if it wasn't</p> <p>19 this summer, it was the summer prior. And this is, it looks</p> <p>20 like soybeans to me, the crop that was on the property. But</p> <p>21 it looks like it's somewhere within the site looking north.</p> <p>22 MR. GROSSMAN: And you've visited the site.</p> <p>23 THE WITNESS: Yes. Yes.</p> <p>24 MR. GROSSMAN: And so does this look like a fairly</p> <p>25 accurate depiction of it?</p>
<p style="text-align: right;">Page 131</p> <p>1 MR. GROSSMAN: All right. Thank you, sir. All</p> <p>2 right. Then you wanted to call back Mr. --</p> <p>3 MR. KLINE: I have a feeling there's going to be a</p> <p>4 lot of stuff that's going to come up. I would just safe Mr.</p> <p>5 Unterberg for rebuttal and do the other issues that you had</p> <p>6 asked for as part of rebuttal.</p> <p>7 MR. GROSSMAN: Well, I actually prefer it in the</p> <p>8 case in chief.</p> <p>9 MR. KLINE: Okay. Do you want to just keep going,</p> <p>10 Mr. Grossman?</p> <p>11 MR. GROSSMAN: Yes. Yes.</p> <p>12 MR. KLINE: Okay. Mr. Unterberg.</p> <p>13 (Discussion off the record.)</p> <p>14 MR. GROSSMAN: Mr. Unterberg, you are still under</p> <p>15 oath. Do you understand that, sir?</p> <p>16 MR. UNTERBERG: I do.</p> <p>17 MR. GROSSMAN: All right.</p> <p>18 (Discussion off the record.)</p> <p>19 MR. GROSSMAN: Let's start out with identifying</p> <p>20 the photos because I'll forget. Page 2, let's say, first,</p> <p>21 of the technical staff report, there were two photos, land</p> <p>22 level photos. One is labeled Figure 1, subject site looking</p> <p>23 north.</p> <p>24 THE WITNESS: Bear with me for a second.</p> <p>25 MR. GROSSMAN: All right.</p>	<p style="text-align: right;">Page 133</p> <p>1 THE WITNESS: Yes. And from this aerial photo,</p> <p>2 even though this is more of a winter condition, it shows the</p> <p>3 agricultural feel.</p> <p>4 MR. GROSSMAN: The aerial photo you are referring</p> <p>5 to is Exhibit?</p> <p>6 THE WITNESS: It is Exhibit No. 34(e).</p> <p>7 MR. GROSSMAN: Okay.</p> <p>8 THE WITNESS: And this depicts the winter</p> <p>9 condition, which is an open farm field.</p> <p>10 MR. GROSSMAN: Right.</p> <p>11 THE WITNESS: But during the summer, when you</p> <p>12 travel by here, you see green crops.</p> <p>13 MR. GROSSMAN: Okay. Now, Figure 2, also on page</p> <p>14 2 of the Staff Report, the subject site looking northwest.</p> <p>15 THE WITNESS: And it looks like it's approximately</p> <p>16 the same location. And in the distance, I think you start</p> <p>17 to pick up the tree line on the western boundary.</p> <p>18 MR. GROSSMAN: Okay.</p> <p>19 THE WITNESS: Which you can see on the right hand</p> <p>20 side of that photo.</p> <p>21 MR. GROSSMAN: And then on page 3, there's Figure</p> <p>22 3 that says, Haus (phonetic sp.) farm, parens, Yaeger County</p> <p>23 Inn. Where is this?</p> <p>24 THE WITNESS: My assumption, the actual, the</p> <p>25 Yaeger, and I'm going to Exhibit No. 34(g) because on the</p>

<p style="text-align: right;">Page 134</p> <p>1 other exhibit we're off the page. The actual historic 2 house, there are some outbuildings on the edge of this 3 graph. The actual historic house is right were this 4 boundary line is. 5 MR. GROSSMAN: All right. And the Yaeger County 6 Inn is the historic house, you say? 7 THE WITNESS: The Yaeger property or the Haus 8 house is the historic resource that's mentioned. We'll be 9 taking about that in a moment. And my assumption, and the 10 house is way far in the background. My assumption is, it's 11 somewhere on the property, roughly where A-305 is going to 12 cross through. 13 MR. GROSSMAN: You're saying that the picture was 14 taken from -- 15 THE WITNESS: Taken. 16 MR. GROSSMAN: -- on kind of the north end of the 17 property, about where 305 crosses it, looking towards the 18 west-northwest where the Yaeger -- 19 THE WITNESS: Towards the west. 20 MR. GROSSMAN: -- country inn is? 21 THE WITNESS: Yes. And the house is in the 22 background, the kind of white farmhouse that is very small, 23 upper left hand corner. That's the Yaeger house from this 24 photo. 25 MR. GROSSMAN: And is this scene accurately</p>	<p style="text-align: right;">Page 136</p> <p>1 THE WITNESS: -- or introduced any for the record. 2 MR. GROSSMAN: All right. Now, Mr. Kline, I 3 return Mr. Unterberg to your tender care. 4 DIRECT EXAMINATION 5 BY MR. KLINE: 6 Q Well, I'm just going to use your two e-mails as 7 sort of a checklist, and maybe, since you were already 8 talking about the Yaeger farm or the Haus farm -- 9 MR. GROSSMAN: Right. 10 BY MR. KLINE: 11 Q -- why don't we go ahead and address that issue 12 where you've asked for you to critique Mr. Whipple's 13 comments? 14 A Okay. The e-mail refers to the technical staff 15 report, which is -- 16 MR. GROSSMAN: I didn't say critique. I said 17 address. You may critique it, but I used the term address. 18 BY MR. KLINE: 19 Q I hope he will be critical of it. 20 A I have two questions on it. The attachment one is 21 from the Technical Staff Report, and there's two pages. 22 This was written in September 17th, 2009, and it was to 23 Renee Miller from Scott Whipple, and it talks about the 24 house. 25 Go back to Exhibit No. 34(g), the country,</p>
<p style="text-align: right;">Page 135</p> <p>1 depicted in the photograph? 2 THE WITNESS: I believe so. 3 MR. GROSSMAN: Okay. Now, the fourth, Figure 4, 4 also on page 3 of the Staff Report says, Brink Road and 5 Ridge Road intersection. It doesn't say from which 6 direction that's taken. 7 THE WITNESS: Well, but I, I think I have it 8 figured out that you're on the site, which is north of Brink 9 Road, and you're actually looking back to the east to Ridge 10 Road, because you see the traffic signal in the background. 11 MR. GROSSMAN: Okay. So this is from the site, 12 southern end of the site, looking eastward towards the 13 intersection of Brink Road and Ridge Road. 14 THE WITNESS: Correct. 15 MR. GROSSMAN: And does that accurately depict 16 that scene? 17 THE WITNESS: Yes. 18 MR. GROSSMAN: All right. Okay. I think that 19 gives us some -- 20 THE WITNESS: Does that help? 21 MR. GROSSMAN: -- relevant photographs to identify 22 it. 23 THE WITNESS: Okay. And, yes, we have not taken 24 any other photographs -- 25 MR. GROSSMAN: Okay.</p>	<p style="text-align: right;">Page 137</p> <p>1 actually bear with me one moment. Let me grab another 2 graphic to show the whole property. 3 Q So you put up a copy of Exhibit No. 7, the 4 certified zoning vicinity map? 5 A It's 7. Also we've labeled it 34(f) which is 6 included in the land use report, which is on the tag on the 7 board. This shows the subject site in yellow. The Yaeger 8 property is shaded in the dark shading, which is also zoned 9 country inn. And the house, the historic house, sits in the 10 upper western, northwest corner. 11 MR. GROSSMAN: I'm sorry, what's the exhibit 12 number? 13 THE WITNESS: This is 34(f), but there is also a 14 duplicate for the stand alone graphic. 15 MR. GROSSMAN: Right. 16 MR. KLINE: Exhibit No. 7. 17 THE WITNESS: So we spoke earlier, I spoke earlier 18 in the week of the zoning. There is an existing entrance 19 road that comes off of Ridge Road. 20 MR. GROSSMAN: Right. 21 THE WITNESS: Travels back and travels back to the 22 house. I'll leave that up. On the western plan, which is 23 34(g), we show the driveway. The house itself is right on 24 the edge of the exhibit, actually right off the exhibit, 25 again, in the upper northwest corner of the property.</p>

<p style="text-align: right;">Page 138</p> <p>1 That property itself contains a stream valley,  2 which is also shown on this illustrative plan, which is the  3 drainage way that drains to the west. So we will reference  4 the property itself to where we're at.  5 Attachment one, which is from the technical staff  6 report, is two pages. It was written in September, on  7 September 17th, 2009, and to be critical of it, it is  8 incomplete, in my opinion. It just notifies that the  9 subject house is historic, and that there is, it has been  10 noted as historic and associated area and view shed and so  11 forth.  12 It does talk about density, to a certain extent.  13 But then also the second page, which is attachment two,  14 which I know you have a copy of, but just, it does show the  15 Butz property, G-881. It shows the Yaeger property. To the  16 east it's labeled Snowden Farm property, or Snowden Farm  17 Road, but fails to show A-305, Snowden Farm Parkway. This  18 document does not reflect A-305 master plan road. Again,  19 that was written in 2009.  20 MR. GROSSMAN: So you think attachment two is  21 actually attached to attachment one as opposed to the -- I  22 assumed that attachment two was the current map provided by  23 technical staff, the general location map and vicinity map.  24 THE WITNESS: Well, in either case, my question,  25 and why it's incomplete, it shows the future master plan</p>	<p style="text-align: right;">Page 140</p> <p>1 that this was approved back in December, and I don't know if  2 by adding --  3 MR. GROSSMAN: What was approved?  4 THE WITNESS: This went to mandatory referral, and  5 the Planning Board approved --  6 MR. GROSSMAN: What's the this? What's the  7 antecedent to the word, this?  8 THE WITNESS: This is item three, water quality  9 plan, forest conservation plan, and mandatory referral, MR-  10 2010814, Snowden Farm Parkway, A-305, from Morningstar Drive  11 to Ridge Road, Maryland 27.  12 MR. GROSSMAN: Well, I'm not reviewing A-305.  13 Maybe you misunderstood the point.  14 MR. KLINE: No. He's going to get there. We  15 understand what you are asking for. It will all be clear.  16 MR. GROSSMAN: All right.  17 THE WITNESS: In this report, which is in the  18 appendix, which is already entered in as an exhibit --  19 MR. KLINE: Let me pass one of these out to these  20 folks.  21 MS. GOODRICK: Yes. Do you have two?  22 MR. KLINE: I don't have two.  23 MS. GOODRICK: Okay.  24 THE WITNESS: The mandatory referral took into  25 account, again, the water quality, forest conservation and</p>
<p style="text-align: right;">Page 139</p> <p>1 road, Snowden Farm Road, which is M-83, to the east of Ridge  2 Road. It does not show master plan A-305, which travels  3 through the subject site and travels through the Yaeger  4 property.  5 MR. GROSSMAN: Right.  6 THE WITNESS: So it does not show this road.  7 MR. GROSSMAN: Right.  8 THE WITNESS: And this memo does not mention that  9 road back in 2009. Okay.  10 MR. GROSSMAN: So how does that affect your  11 analysis of the impact on the historic site?  12 THE WITNESS: Let's fast forward to 2010. This,  13 and what exhibit is our appendix?  14 MR. GROSSMAN: The fat appendix.  15 THE WITNESS: The fat appendix.  16 MR. GROSSMAN: That's 34(b), I think. Yes, 34(b).  17 THE WITNESS: That's fine. I'm right here. In  18 the appendix we included the staff report, but it's noted  19 under roads R-2, Snowden Farm Parkway, A-305, mandatory  20 referral memorandum, December 6, 2010.  21 MR. GROSSMAN: Let me find it.  22 THE WITNESS: Okay. I also have a copy of, which  23 I don't know if we need to make this another exhibit. I  24 took that report and added from printing out from Park and  25 Planning's website, the Planning Board agenda that notes</p>	<p style="text-align: right;">Page 141</p> <p>1 mandatory referral for the road, from Morningstar Drive,  2 which is north on Exhibit 34(g) south.  3 In particular, the historic resource is discussed.  4 And it talks about whether or not the driveway itself, which  5 goes from Ridge Road to new A-305, is of importance or not.  6 And that is not original to the plan. And in fact, this  7 plan reapproves the driveway location to the new 305.  8 It also discusses the setting, which is primarily  9 the house itself, on the northwest portion of the site.  10 Therefore --  11 MR. GROSSMAN: When you say the site, the  12 northwest?  13 THE WITNESS: The northwest corner of the Yaeger  14 property site.  15 MR. GROSSMAN: Okay.  16 THE WITNESS: Therefore, with A-305 being built  17 and going through the Butz property, and through the Yaeger  18 property, with the realignment and re-establishment of the  19 driveway, that has all been reviewed by Park and Planning  20 and signed off by Park and Planning.  21 BY MR. KLINE:  22 Q That meaning the limits of the environmental  23 setting associated with the historic resource?  24 A The limits and the impact of the construction of  25 A-305 for the mandatory approval in December of 2010.</p>

<p style="text-align: right;">Page 142</p> <p>1 Q All right. Hereto, before this all occurred,  2 basically, the affected area of the property, was the entire  3 property, with all the historic resource, so the  4 environmental setting was the entire property, was it not?  5 A Way back when.  6 Q Way back when. So A-305 they redrew it and  7 reduced it? And can you tell us the boundaries of the  8 environmental setting now?  9 A Well, it's roughly the house itself. It does even  10 mention the subsequent approvals, because the house was here  11 long before the Brink Meadows was built, and the houses that  12 are located adjacent to it, and/or the Morningstar or the  13 Green Ridge Acres neighborhood to the north, and the houses  14 that were built adjacent to that.  15 And to that context, the closest house which is in  16 the Green Ridge Acres neighborhood, is approximately 400  17 feet from the historic house that has been built and there  18 for many years. Our closest house proposed from the  19 northern portion of the property, north of 305, is over 800  20 feet to the historic resource.  21 MR. GROSSMAN: Right. Well, it's not just, you  22 don't just have a house, because you have 140 houses. So my  23 question, if, I take it from what Mr. Kline just asked you,  24 and your answer and your testimony here today is that, what  25 you're saying is that these observations by Mr. Whipple in</p>	<p style="text-align: right;">Page 144</p> <p>1 from the historic setting.  2 MR. GROSSMAN: Okay. You disagree with Mr.  3 Whipple.  4 THE WITNESS: I disagree with Mr. Whipple.  5 MR. GROSSMAN: Okay.  6 MR. KLINE: He's updating Mr. Whipple.  7 THE WITNESS: And Mr. Whipple, though I disagree,  8 it's dated and incomplete.  9 MR. GROSSMAN: All right. Mr. Whipple himself  10 says that this is not, this would not be a matter that would  11 go to the Historic Planning -- what is it?  12 MR. KLINE: HPC, Historic Preservation.  13 MR. GROSSMAN: Preservation. I couldn't think of  14 it, Historic Preservation Commission, because it's actually  15 outside of the setting. But in any event, he still found  16 that there would be an adverse impact. But you disagree  17 with him on that point for the reasons you stated.  18 THE WITNESS: Correct.  19 MR. GROSSMAN: Okay.  20 THE WITNESS: Yes.  21 BY MR. KLINE:  22 Q And I see in the material you have given us, Mr.  23 Unterberg, that there's a reference to how the property is  24 being used with a parking lot for 63 vehicles. Where is  25 that located?</p>
<p style="text-align: right;">Page 143</p> <p>1 attachment one, are no longer applicable because the  2 historic setting was cut back to just include the Yaeger  3 house as a result of the A-305 approval. Is that what you  4 are saying?  5 THE WITNESS: Correct. Because that memo was  6 written in 2009, and subsequently the mandatory referral  7 went forward in December of 2010.  8 MR. GROSSMAN: The mandatory referral for A-305?  9 THE WITNESS: For A-305 --  10 MR. GROSSMAN: All right.  11 THE WITNESS: -- which included the conversation  12 with the road which is not mentioned in the 2009 memo.  13 MR. GROSSMAN: Okay. And so as we sit here today,  14 you're telling me that the actual historic site is just the  15 house, and that the setting, the historic setting, it does  16 no longer include an of the remainder of the Yaeger  17 property, is what you're saying?  18 THE WITNESS: Correct. It does not include the  19 driveway. The remainder of the Yaeger property is primarily  20 the house and several of the outbuildings surrounding the  21 house.  22 MR. GROSSMAN: Okay. And your opinion as to  23 whether or not the proposed development has any impact on  24 the historic setting?  25 THE WITNESS: It does not. And we are far away</p>	<p style="text-align: right;">Page 145</p> <p>1 A Well, that's the other thing, because it's  2 mentioned several times that since it is zoned country inn,  3 it's my understanding right now that it is vacant. I don't  4 know if anyone is living there. I know Mr. Yaeger passed  5 away a few years ago. And whether or not, I think it's  6 vacant.  7 But it does have an approval that it can be used  8 for country inn. There is reference made to a 63-space  9 parking lot that has been approved that needs to be  10 accommodated also on this property. It talks about the  11 southwest corner, although the eastern part of the property  12 is primarily stream valley.  13 MR. GROSSMAN: Yes.  14 THE WITNESS: So the southwest corner must be west  15 of the house, that there's provision to, if this was  16 rehabilitated as a country inn, that there would be a 63-  17 space parking lot west of the house.  18 MR. GROSSMAN: Okay.  19 THE WITNESS: So it has been approved for an inn  20 per the zone.  21 MR. GROSSMAN: Okay. All right. Did you want to  22 go onto another point.  23 MR. KLINE: I was going to ask him to address the  24 recreational calculations. And I've got a feeling that's  25 going to take a while. So that's really, do you want to</p>

<p style="text-align: right;">Page 146</p> <p>1 consider taking a break now or let us get started on it?</p> <p>2 MR. GROSSMAN: I was hoping that we would not take</p> <p>3 a lunch break and just finish.</p> <p>4 MR. KLINE: Unfortunately, we're not going to</p> <p>5 finish before a lunch that most people would think is the</p> <p>6 lunch hour. I mean --</p> <p>7 MR. GROSSMAN: I can live off the fat of the land</p> <p>8 for a while, but I know that you skinny folks have more of a</p> <p>9 problem.</p> <p>10 MR. KLINE: Well, I'm glad to plus along with Mr.</p> <p>11 Unterberg, but I've got a feeling he's going to take more</p> <p>12 than 38 minutes, just on this subject alone. I think he'll</p> <p>13 be up there a bit longer himself.</p> <p>14 MR. GROSSMAN: What other topics are we having him</p> <p>15 cover?</p> <p>16 MR. KLINE: The only other one you asked for would</p> <p>17 be recreational, but we do have some proposed modifications</p> <p>18 plans that we wanted to discuss with you also.</p> <p>19 MR. GROSSMAN: Okay. Well, let's see if he can be</p> <p>20 succinct.</p> <p>21 MR. KLINE: Okay.</p> <p>22 MR. GROSSMAN: Epigrammatic, compendious</p> <p>23 sententious summary and concise. How is that, when</p> <p>24 addressing the amenities issue.</p> <p>25 BY MR. KLINE:</p>	<p style="text-align: right;">Page 148</p> <p>1 MR. GROSSMAN: Right.</p> <p>2 BY MR. KLINE:</p> <p>3 Q Are you ready, Mr. Unterberg?</p> <p>4 A Yes. To be succinct, I'm going to edit part of my</p> <p>5 testimony.</p> <p>6 Q Okay. What can I do, and do you have two copies?</p> <p>7 A Actually, why don't you give me that clip back?</p> <p>8 That is one copy. And this is the second copy. And this is</p> <p>9 a copy for Mr. Grossman.</p> <p>10 Q Will you be standing during this? Probably so,</p> <p>11 right?</p> <p>12 A I'll stand because of --</p> <p>13 Q So the question was, indicate precisely how the</p> <p>14 point totals for amenities were arrived at. And I would</p> <p>15 like to see the map. And factor in the dialogue that was</p> <p>16 going on between Park and Planning and the hearing examiner</p> <p>17 which everybody has copies of, so we understand how it's</p> <p>18 evolved, and the question of what's the proper category to</p> <p>19 use comes up in this?</p> <p>20 A Right.</p> <p>21 MR. GROSSMAN: Right. I understand how the</p> <p>22 process works. And also, as reflected in the e-mail, I</p> <p>23 recognizes that this is really a question for site plan</p> <p>24 review. However, I wanted to make sure that since we have</p> <p>25 an exhibit now, 66, which has some numbers in it, that the</p>
<p style="text-align: right;">Page 147</p> <p>1 Q So let me try, and I'll let you get organized,</p> <p>2 first of all. And do you have adequate copies we can pass</p> <p>3 out of anything you're going to --</p> <p>4 A I do. You keep going and I'll catch up as I</p> <p>5 get --</p> <p>6 Q Well, really, I'm going to phrase the question I'm</p> <p>7 going to ask you to get you started, based on Mr. Grossman's</p> <p>8 inquiry to either both Ms. Kamen or to us.</p> <p>9 MR. GROSSMAN: We also have gotten a response from</p> <p>10 Ms. Kamen on the point, which is in the record now. You all</p> <p>11 got copies of it by e-mail, which helped me understand a</p> <p>12 little bit better what their calculation, the calculation.</p> <p>13 She didn't answer the question fully yet about the point</p> <p>14 allocation for each individual room in a community center.</p> <p>15 And she also was going to check further on the</p> <p>16 question of what standard should be used when the term</p> <p>17 senior, as defined in the recreation manual that they use,</p> <p>18 does not comport with senior as it's used here, senior here</p> <p>19 being 50 plus, and senior there being 65 plus. And I'm not</p> <p>20 sure how that affects the numbering system. So she's going</p> <p>21 to get back to us on that.</p> <p>22 MR. KLINE: Well, what we should do, then, is</p> <p>23 probably submit to her very promptly whatever we give you</p> <p>24 today, so she has the benefit of what we are providing to</p> <p>25 you today.</p>	<p style="text-align: right;">Page 149</p> <p>1 numbers properly reflect the approved upon analysis by the</p> <p>2 staff. And the staff didn't address it directly, so I guess</p> <p>3 we need that clarification.</p> <p>4 THE WITNESS: Let me explain, and I guess this is</p> <p>5 all going to be a new exhibit that I just handed out.</p> <p>6 Because what we've done it, Exhibit No. 66 was a snapshot of</p> <p>7 what we were proposing as far as recreation on-site. Again,</p> <p>8 we meet recreation on-site and the number of points or point</p> <p>9 system meets it for the seniors. Okay.</p> <p>10 MR. GROSSMAN: Okay.</p> <p>11 THE WITNESS: What we did is we took a step back</p> <p>12 based on, well, all yesterday, based on the e-mails, and</p> <p>13 have come back with a more conservative tally of points.</p> <p>14 MR. GROSSMAN: Okay.</p> <p>15 THE WITNESS: And also clarifying, we had shown,</p> <p>16 we are still proposing three meeting rooms. And in the past</p> <p>17 we've had applications that have been approved and received</p> <p>18 credit for the multiple meeting rooms. Okay.</p> <p>19 What I have done is, this first one should be</p> <p>20 revised 117-13, and this is a more conservative analysis of</p> <p>21 the recreation facilities for seniors. Seniors in the</p> <p>22 recreation guidelines are defined as 65-plus, and they're</p> <p>23 also known as column D-5. Okay.</p> <p>24 MR. GROSSMAN: Okay. And this will be Exhibit No.</p> <p>25 93(a), the first page of what you've handed me, which is the</p>

<p style="text-align: right;">Page 150</p> <p>1 revised, the revised Exhibit No. 66, in fact. Is that</p> <p>2 correct?</p> <p>3 (Exhibit No. 93 was marked</p> <p>4 for identification.)</p> <p>5 THE WITNESS: Correct.</p> <p>6 MR. GROSSMAN: So revised --</p> <p>7 THE WITNESS: Or another version, a more</p> <p>8 conservative version of Exhibit No. 66 to demonstrate that</p> <p>9 we meet the need on-site.</p> <p>10 MR. GROSSMAN: So revised, or rather, more</p> <p>11 conservative recreational facilities calculation, I'll say,</p> <p>12 formerly 66. Okay.</p> <p>13 BY MR. KLINE:</p> <p>14 Q And when you say conservative, Mr. Unterberg,</p> <p>15 careful --</p> <p>16 A It looks like it's empty.</p> <p>17 Q I'll take care of that. When you say</p> <p>18 conservative, what were the changes that you made to Exhibit</p> <p>19 No. 66 to give you a different set of items?</p> <p>20 A If we go to category A on this exhibit, thank you.</p> <p>21 Category A of this exhibit has not changed. That speaks to</p> <p>22 the demand, which is for 140 single-family units. The</p> <p>23 demand, 15 years, is 18.2.</p> <p>24 Previously we had Exhibit No. 66, we had</p> <p>25 pedestrian system, bike system, natural areas, three indoor</p>	<p style="text-align: right;">Page 152</p> <p>1 THE WITNESS: And actually, before we get there,</p> <p>2 if we could also go to, I guess, page 42 out of the</p> <p>3 guidelines. I guess that would be 93(c).</p> <p>4 MR. GROSSMAN: Yes.</p> <p>5 THE WITNESS: There is a definition for indoor</p> <p>6 community space, and that would be page 42 out of the rec</p> <p>7 guidelines, which are now Exhibit 93(c). Definition of</p> <p>8 multipurpose facility serving the recreation needs of the</p> <p>9 community may include a multipurpose meeting room, game</p> <p>10 room, craft or club room, party room, pantry, restrooms,</p> <p>11 office. Area, must have a threshold of 1,200 square feet to</p> <p>12 accommodate a maximum of 200 dwelling units.</p> <p>13 Okay. We are proposing a clubhouse right now</p> <p>14 that's 1,400 square feet, for 140 dwelling units. So based</p> <p>15 on this definition, the size of our clubhouse, indoor</p> <p>16 meeting space, is adequate. Actually, it's more than</p> <p>17 adequate per this definition.</p> <p>18 MR. GROSSMAN: What was the overall size of the</p> <p>19 community center proposed?</p> <p>20 THE WITNESS: What we're proposing is 1,400 square</p> <p>21 feet, 35 by 40.</p> <p>22 MR. GROSSMAN: Okay.</p> <p>23 THE WITNESS: And this has a threshold of 1,250.</p> <p>24 Now, back to your age question. The categories are outlined</p> <p>25 in the rec guidelines. There's a D-1 tot category, zero to</p>
<p style="text-align: right;">Page 151</p> <p>1 community space, each for the three meeting rooms, and a</p> <p>2 community garden. And that supplied 37.31, which is over</p> <p>3 and above the 18.2 demand that is required.</p> <p>4 What we did is we went back and looked at the</p> <p>5 community space, and took a more -- indoor community space,</p> <p>6 took a more conservative approach. If we only took credit</p> <p>7 for an indoor community space. Also if we only took credit</p> <p>8 for a pedestrian system, a bike system. We are no longer</p> <p>9 taking any credit for a natural trail, particularly since we</p> <p>10 have not shown a specific trail that may go through some of</p> <p>11 the forest conservation areas. We took that off. So we've</p> <p>12 narrowed down the number of points to total up for our</p> <p>13 supply.</p> <p>14 And with that, with one indoor community space, we</p> <p>15 total 21.84 points which exceeds the 18.2 requirement. So</p> <p>16 being more conservative and not counting the three meeting</p> <p>17 rooms for the rec requirement, we still exceed the</p> <p>18 requirement, and we provide the supply points for recreation</p> <p>19 on-site per Park and Planning's guidelines.</p> <p>20 MR. GROSSMAN: And that makes the assumption that</p> <p>21 seniors, if seniors wasn't the right category, what would</p> <p>22 that property demand number be.</p> <p>23 THE WITNESS: Well, let's go to the next page.</p> <p>24 MR. GROSSMAN: Okay, 93(b) we'll call the next</p> <p>25 page.</p>	<p style="text-align: right;">Page 153</p> <p>1 four years old; D-2 children, five to 11 years; D-3, teens,</p> <p>2 12 to 17; adults 18 to 64; and then seniors 65 plus. We</p> <p>3 just talked about the D-5 or the seniors.</p> <p>4 What is now Exhibit 93(b), we added up the points</p> <p>5 based on this same supply proposal as in 93(a). Again, 140</p> <p>6 single-family units. The block, the grouping A shows us our</p> <p>7 math and our supply points that we would need, would be</p> <p>8 177.8 points for 140 units. And then with the same supply</p> <p>9 under B-1, pedestrian, bike, indoor community space, one</p> <p>10 indoor community space, community garden, we would have a</p> <p>11 supply for adults 18 to 64 of 195.58 points.</p> <p>12 MR. GROSSMAN: Okay.</p> <p>13 THE WITNESS: So these facilities, the facilities</p> <p>14 served both, and we're bridging the gap in the ages on the</p> <p>15 rec guidelines, but adults 18-64, and we're going to start</p> <p>16 at 50 to 64, we meet that requirement on-site. And then</p> <p>17 also as shown on 93(a), we meet the seniors 65 and above on</p> <p>18 site.</p> <p>19 MR. GROSSMAN: All right.</p> <p>20 THE WITNESS: Okay. So that's the short version</p> <p>21 of how we meet the recreation on-site, not only for adults</p> <p>22 and seniors, as depicted with the age, but with the</p> <p>23 amenities we've proposed.</p> <p>24 MR. GROSSMAN: Okay.</p> <p>25 THE WITNESS: Do you have anything else?</p>

<p style="text-align: right;">Page 154</p> <p>1 BY MR. KLINE:</p> <p>2 Q Lastly, could you put up a copy of the development</p> <p>3 plan? Mr. Unterberg, when time permits, it's your intention</p> <p>4 to submit a new copy of Exhibit No., what is that?</p> <p>5 A 41(b).</p> <p>6 Q 41(b), with a certification block properly</p> <p>7 reflecting the fact that this is a development plan, rather</p> <p>8 than a schematic development plan?</p> <p>9 A Correct. It apparently says schematic development</p> <p>10 plan. We need to remove the word schematic.</p> <p>11 Q And the applicant is prepared to add a binding</p> <p>12 element that will be restricted to residents of 50 years or</p> <p>13 older, or some language that I still need to create, Mr.</p> <p>14 Grossman, that will kind of track the definition of the PR</p> <p>15 zone in the zoning ordinance so we don't have to bother you</p> <p>16 for a development plan amendment.</p> <p>17 MR. GROSSMAN: Right.</p> <p>18 MR. KLINE: But we are binding ourselves to</p> <p>19 whatever is the applicable law at the time.</p> <p>20 MR. GROSSMAN: Right. The reason I raised the</p> <p>21 schematic, I figured since you had -- I would have just</p> <p>22 crossed it out when I was doing the certification. But</p> <p>23 since you had to revise the plan anyway --</p> <p>24 THE WITNESS: Yes, we grabbed the wrong one off</p> <p>25 the web.</p>	<p style="text-align: right;">Page 156</p> <p>1 MR. KLINE: Unfortunately, during our presentation</p> <p>2 the other day, apparently attached units, which we commonly</p> <p>3 know as townhouses, and the phrase townhouse came up.</p> <p>4 MR. GROSSMAN: Right.</p> <p>5 MR. KLINE: And that caused some concern on the</p> <p>6 part of Mr. Hancock and probably others.</p> <p>7 BY MR. KLINE:</p> <p>8 Q Can you describe, and why don't you first of all</p> <p>9 read what the what the labels are for A and B, which are the</p> <p>10 two sections in the plan, and what is meant by the</p> <p>11 definitions of the attached residential unit?</p> <p>12 A Okay. On the development plan --</p> <p>13 Q You're looking at Exhibit number what?</p> <p>14 A Exhibit No. 41(b), you just spoke, that was going</p> <p>15 to be revised to update a couple cleanup issues. Under box</p> <p>16 A, we describe the proposed land use, predominantly detached</p> <p>17 residential with attached residential up to 35 foot in half,</p> <p>18 approximately 38.1 acres. And then we have a</p> <p>19 detached/attached, 100 to 130 units, which is describing the</p> <p>20 totals for area A.</p> <p>21 Q Okay. And in B?</p> <p>22 A And B is predominantly detached residential, same</p> <p>23 language. It's 10 acres and then detached/attached 25 to 35</p> <p>24 units in area B.</p> <p>25 Q And what is meant by the phrase, attached</p>
<p style="text-align: right;">Page 155</p> <p>1 MR. KLINE: Not a problem.</p> <p>2 MR. GROSSMAN: Right.</p> <p>3 THE WITNESS: But, yes, we can get this.</p> <p>4 MR. GROSSMAN: And I did get a response back. I</p> <p>5 think I put it in the record also, from technical staff</p> <p>6 indicating that just to add this binding element we wouldn't</p> <p>7 have to send it all back to the Planning Board, at least</p> <p>8 that's what --</p> <p>9 MR. KLINE: We saw Ms. Kamen's memo, yes.</p> <p>10 MR. GROSSMAN: Okay. Because I figured that would</p> <p>11 save some time. We're required, under the zoning ordinance,</p> <p>12 to give the Planning Board a crack at any change in the</p> <p>13 development plan.</p> <p>14 MR. KLINE: Right.</p> <p>15 MR. GROSSMAN: But I figured this was not</p> <p>16 something that would probably require a complete, full, re-</p> <p>17 view. So I wanted to get that.</p> <p>18 MR. KLINE: Well, I'm not finished.</p> <p>19 MR. GROSSMAN: Yes.</p> <p>20 MR. KLINE: But I hope you still feel that way</p> <p>21 about it, because I'm going to ask Mr. Unterberg to, we</p> <p>22 probably gave Mr. Hancock a start, unnecessarily so. So I'd</p> <p>23 like Mr. Unterberg, when he's organized here, to basically</p> <p>24 talk about the attached units on the plan.</p> <p>25 MR. GROSSMAN: Okay.</p>	<p style="text-align: right;">Page 157</p> <p>1 residential?</p> <p>2 A Attached, we want to clarify that it's a senior</p> <p>3 product. It's primarily a single level product with the</p> <p>4 master bedroom on the first floor. Some people in the</p> <p>5 industry call them villas versus a townhouse. It would not</p> <p>6 be a townhouse. It may have a second floor, a loft, a</p> <p>7 bedroom or office.</p> <p>8 But the intent is that these would be a, primarily</p> <p>9 a first-floor living villa that's attached, not too</p> <p>10 dissimilar from the single-family unit, the same concept.</p> <p>11 They have your living space, your master bedroom on the</p> <p>12 first floor. Any second floor would be extra space, such as</p> <p>13 an office or another bedroom. The only difference would be,</p> <p>14 these would be attached if the market warrants that.</p> <p>15 Q And do you propose, or does the applicant propose</p> <p>16 to alter the number of attached units associated with the</p> <p>17 project?</p> <p>18 A We have discussed reducing that from 20 percent to</p> <p>19 15 --</p> <p>20 Q Go ahead and go to your PRC. Turn it sideways so</p> <p>21 we can look at it better. So your third block is titled PRC</p> <p>22 yield summary.</p> <p>23 A Yes. We show detached 80 percent, 112 units,</p> <p>24 attached not to exceed 20 percent, or 28 units. We'd like</p> <p>25 to modify that and change that to the attached, and we'd</p>

<p style="text-align: right;">Page 158</p> <p>1 like to put a definition for the attached. That would be  2 the villa, first floor master.  3 MR. GROSSMAN: So you'd like to change the  4 percentage of potential attached to --  5 THE WITNESS: From 20 to 15 percent, which would  6 be a maximum of 21 units for the attached, still not to  7 exceed 140 total would hold.  8 MR. KLINE: So, Mr. Grossman, the way I had kind  9 of doodled this up was that we would just asterisk where  10 attached appears in block A, block B, and the PRC zone  11 analysis, and in the definitions, and then come up with an  12 appropriate definition for attached residential, which was a  13 subject before we came in here today to try and get the  14 right, master bedroom, that is all understood. It's what  15 happens, if it happens at all, in that upper level.  16 MR. GROSSMAN: Right.  17 MR. KLINE: And we would come back with something.  18 But I guess the point I want to make, it isn't a multi-level  19 townhouse. That is for sure.  20 MR. GROSSMAN: Well, it's fine with me. I mean,  21 we would have to do the following. When do you think you'd  22 have this revised development plan together?  23 MR. KLINE: I'd say that probably we could submit  24 it to you by Tuesday or Wednesday.  25 MR. GROSSMAN: Okay. So, let's see, today is the</p>	<p style="text-align: right;">Page 160</p> <p>1 kind of structural elements.  2 MR. KLINE: Absolutely. And there's nowhere in  3 the report where there was a reference to an attached unit  4 as being something --  5 MR. GROSSMAN: Right.  6 MR. KLINE: -- incompatible with the neighborhood.  7 MR. GROSSMAN: But we do have to, under the  8 statute, we have to give them --  9 MR. KLINE: I understand. Well, we would probably  10 contact Ms. Kamen, brief her on it, and get her copied as  11 quickly as possible.  12 MR. GROSSMAN: Right.  13 MR. KLINE: I would suggest a week. I know you  14 typically like to check in with them and make sure that  15 sounds reasonable to her.  16 MR. GROSSMAN: Right. What if we say, we can say  17 10 days for both, for all parties, and that would be,  18 because that's anyway. That's essentially the same thing,  19 because that becomes February 4th, which is a Monday. So  20 it's -- so 2/4/13, for any comments from the opposition and  21 technical staff. And if technical staff says they need more  22 time, then I would extend it. I'd have to extend it by a  23 formal order.  24 MR. KLINE: I understand.  25 MR. GROSSMAN: And do you want any additional time</p>
<p style="text-align: right;">Page 159</p> <p>1 18th. Why don't we say, just to be safe, by Friday the  2 25th?  3 MR. KLINE: Okay. Fine.  4 MR. GROSSMAN: So 1/25/13. At the same time, I'd  5 ask you to submit copies to all of the opposition personnel,  6 and to technical staff. And then what do you think is a  7 reasonable time in terms of their review? I would ask  8 Technical Staff to review it and to determine whether or not  9 Planning Board has to look at it.  10 MR. KLINE: Yes. I understand.  11 MR. GROSSMAN: And then get back to me, or to all  12 of us. What is a reasonable time for that?  13 MR. KLINE: Well, I can't speak for these folks,  14 but I was actually very impressed that Ms. Kamen got back to  15 you so quickly on something that she's not really that good  16 at.  17 MR. GROSSMAN: Right.  18 MR. KLINE: So she really got it done right away.  19 So I have a feeling that staff could probably do it within a  20 week. If it had to go to the Board, that's a little bit  21 different.  22 MR. GROSSMAN: Right. I would hope that it  23 wouldn't have to go back to the Board --  24 MR. KLINE: I know.  25 MR. GROSSMAN: -- because you're not changing the</p>	<p style="text-align: right;">Page 161</p> <p>1 to respond to any comments you might get from staff and/or  2 the opposition?  3 MR. KLINE: February 4th is what day of the week?  4 MR. GROSSMAN: That's a Monday.  5 MR. KLINE: It's a Monday. February 5th would be  6 fine.  7 MR. GROSSMAN: Okay.  8 MS. GOODRICK: Excuse me. What was that February  9 the 5th? What happens on February the 5th?  10 MR. GROSSMAN: We're giving Mr. Kline a day, he  11 can have more than that if he wants, but he said he only  12 needs a day to respond to any comments from technical staff  13 or the opposition that you would be filing by February 4th.  14 MS. GOODRICK: All right.  15 MR. GROSSMAN: Okay. Do you think a day is enough  16 time, Mr. Kline?  17 MR. KLINE: Yes, sir.  18 MR. GROSSMAN: Okay. Could I ask you also, in the  19 10 days before you submit the amended plan to talk to the  20 opposition about whether or not it makes any sense to have a  21 larger, a wider screening area, and reduce the size of the  22 collection pool, since it apparently is not required by  23 County or State?  24 I'm very leery about putting anything in my report  25 about doing that kind of thing without everybody being on</p>



<p style="text-align: right;">Page 162</p> <p>1 board, because I'm fearful that, I don't want to create, I 2 don't want the Council, if it decides to approve this, to 3 create some kind of a straightjacket that would be, that 4 would create more problems than it would solve. 5 So I think maybe, and it may be that it should be 6 left the way it is. I have no opinion on it. I just wanted 7 to, see, since I know people who live to the west of the 8 site. 9 MR. KLINE: As I gratuitously stated earlier, we 10 would be meeting with Mr. Hancock, in any event, for -- so 11 we'll just accelerate that, and we can make ourselves 12 available, and he can invite anybody else he wants to do the 13 meeting with. Yes, we would be glad to meet with him within 14 those 10 days to see what could be worked out. 15 MR. GROSSMAN: Okay. All right. Anything further 16 on that? 17 MR. KLINE: There's nothing further on that in 18 terms of the scheduling. 19 MR. GROSSMAN: Okay. 20 MR. KLINE: That completes our presentation in 21 chief. 22 MR. GROSSMAN: Okay. And while we're talking 23 about dates, it would be my plan, then, if these dates are 24 agreeable, as apparently they are, that the record would 25 then close at close of business on February 5, 2013. And</p>	<p style="text-align: right;">Page 164</p> <p>1 MS. GOODRICK: May not consider anything outside 2 of -- 3 MR. GROSSMAN: Outside of the record. They may 4 not consider any additional evidence. All of the evidence 5 the Council will consider will be from the record that is 6 compiled here. 7 MS. GOODRICK: Can we -- 8 MR. GROSSMAN: And the only oral argument is a 9 request to make an argument on issues. It's not a request 10 to put in any additional information. 11 MS. GOODRICK: Okay. 12 MR. GROSSMAN: And then if there is a party, if a 13 party does request oral argument, then the Council can 14 decide whether or not it wants to hear oral argument. If it 15 decides to hear oral argument, then it will set a date on 16 which it will hear oral argument. And then, usually, it 17 allows each side 20 minutes or something like that to 18 present their oral argument. 19 And the hearing examiner sits at the table and 20 speaks up if somebody tries to go outside of the record, to 21 the extent that I can remember. 22 MS. GOODRICK: Okay. 23 MR. GROSSMAN: And that's the way, and it's 24 conducted by the president of the Council with the other 25 members present. And then they vote on the issue. If they</p>
<p style="text-align: right;">Page 163</p> <p>1 the way the system works, if my report is due 45 days 2 thereafter. And I can extend that time, but I almost never 3 do. 4 And we send out a notice then to all the people 5 who have participated in the hearings that the report has 6 been issued and it will be, the full report will be on our 7 website. If anybody has problems in accessing websites or 8 whatever, we can send out, we can make other arrangements. 9 But that's the statutory requirement, that we send out a 10 notice indicating that the full report will be on our 11 website. Yes, ma'am. 12 MS. GOODRICK: Okay. I just have a couple of 13 questions. So then it goes to the Council? 14 MR. GROSSMAN: Yes. 15 MS. GOODRICK: And how much time, you know, how 16 much time does it, do they have to react? 17 MR. GROSSMAN: Yes. 18 MS. GOODRICK: Or is there a deadline there? 19 MR. GROSSMAN: Yes, they do. They have a 60-day 20 requirement. They have to act with 60 days after I issue 21 the report. You and/or Mr. Kline, anybody, any aggrieved 22 party has 10 days after the report is issued within which to 23 request oral argument before the Council. But the Council 24 may not consider anything outside of the record that we 25 compile here. In other words --</p>	<p style="text-align: right;">Page 165</p> <p>1 decide not to have oral argument, they will just -- or if 2 nobody requests oral argument, they will just, at the time 3 when they set it for their review, and usually that is set 4 two to three weeks after my report would go up there. 5 At the time they set for their review, they will 6 then discuss it, ask any questions of me that they might 7 have, and once again I would stay within the record, and 8 then it would be, they would act on it. They'll vote on it. 9 MS. GOODRICK: Okay. 10 MR. GROSSMAN: Up, down or remand. 11 MS. GOODRICK: Okay. And I have a question of Mr. 12 Unterberg. 13 MR. GROSSMAN: Oh yes, did I forget to allow 14 cross-examination. 15 MS. GOODRICK: Yes. 16 MR. GROSSMAN: Yes. We got into the date setting. 17 MS. GOODRICK: Got you. Got it. Got it. 18 MR. GROSSMAN: We'll get back to it. We'll get 19 back. 20 MS. GOODRICK: That's right. Okay. 21 MR. GROSSMAN: But before we get back to that, so 22 everybody clear on that, and the dates are good, and we 23 understand all of that? Okay. All right. So now, we have 24 finished then with your questions on direct of Mr. 25 Unterberg?</p>

<p style="text-align: right;">Page 166</p> <p>1 MR. KLINE: I'm finished. Yes.</p> <p>2 MR. GROSSMAN: Okay. So let's, we'll reverse the</p> <p>3 order and Ms. Goodrick, any questions?</p> <p>4 CROSS-EXAMINATION</p> <p>5 BY MS. GOODRICK:</p> <p>6 Q I just want to ask about the chart because this is</p> <p>7 the --</p> <p>8 A Direct, which exhibit?</p> <p>9 Q Well, it was 66 that it was revised to --</p> <p>10 A Okay.</p> <p>11 Q -- 93(a), (b) and (c), if I --</p> <p>12 MR. GROSSMAN: Right.</p> <p>13 THE WITNESS: Keep going.</p> <p>14 BY MS. GOODRICK:</p> <p>15 Q Okay.</p> <p>16 A I'm just --</p> <p>17 Q Okay. One of the things I asked the last time was</p> <p>18 that on the bike system if you just had any kind of trails</p> <p>19 you got these points, 1.82, right?</p> <p>20 A Correct.</p> <p>21 Q Okay. And so --</p> <p>22 A It has to connect somewhere, which we do.</p> <p>23 Q Okay. It has to connect somewhere outside the</p> <p>24 site?</p> <p>25 A Well, to a bike trail. And the bike trail along</p>	<p style="text-align: right;">Page 168</p> <p>1 forward.</p> <p>2 MR. GROSSMAN: And that's done by technical staff</p> <p>3 and the Planning Board.</p> <p>4 BY MS. GOODRICK:</p> <p>5 Q Okay, because -- okay. All right. So one of the</p> <p>6 other things that was brought up the last time was that when</p> <p>7 we, if you look at Exhibit 66, that it had on there some</p> <p>8 things that have not been built. Remember we talked about</p> <p>9 that, and it said, Seneca Meadows Crossing Park?</p> <p>10 A That is --</p> <p>11 Q And then you've deleted that from Exhibit No.</p> <p>12 93(a)?</p> <p>13 A Yes. We went back and double checked. The list</p> <p>14 of amenities that are shown, they all exist on Ridge Road</p> <p>15 Recreational Park. So on the new 93(b), everything that is</p> <p>16 shown exists in Ridge Road. We included on Exhibit No. 66,</p> <p>17 also, Seneca Meadows Crossing Park, to make the point that</p> <p>18 that park is there. It's dedicated. It's rough graded.</p> <p>19 But again, there are no facilities there, and we did confirm</p> <p>20 that we have not taken credit for any facilities on Seneca</p> <p>21 Meadows Crossing Park.</p> <p>22 Q Okay. So then this revised paper, exhibit, 93(b)</p> <p>23 is the one that you present with this proposed, is this</p> <p>24 presented with this proposal as a formal document?</p> <p>25 MR. GROSSMAN: When you say presented, what do you</p>
<p style="text-align: right;">Page 167</p> <p>1 A-305 continues up, and there's a bike trail on, existing</p> <p>2 and to be built on Route 27 that continues down to</p> <p>3 Germantown.</p> <p>4 Q Okay. And the pedestrian system, is that the</p> <p>5 same? Where does that have to connect?</p> <p>6 A Same concept to interconnect. Internally it</p> <p>7 connects, then we have the external connection to the Ridge</p> <p>8 Road park to the south, and then it connects to the sidewalk</p> <p>9 system on the adjoining road.</p> <p>10 Q Okay, so what we seem to have some trouble with is</p> <p>11 determining where these crosswalks are going to be. And so</p> <p>12 does this pedestrian system then, is it drawn to such an</p> <p>13 extent that we can see where those crosswalks are going to</p> <p>14 be that are outside the property?</p> <p>15 A At site plan the sidewalks will be shown, whether</p> <p>16 the ones we are proposing or the existing ones, whether they</p> <p>17 are -- and there is a current plan for A-305, and for Ridge</p> <p>18 Road that's in progress. So those, by the time we get to</p> <p>19 site plan, those hopefully are all approved, so we can show</p> <p>20 those plus any new ones we are proposing, all at site plan.</p> <p>21 Q Okay. But site plan would be -- will we have,</p> <p>22 will we have access to that before we go, this goes to the</p> <p>23 Council?</p> <p>24 A No. Site plan would come after zoning. If the</p> <p>25 zoning is approved, that level of detail would be then taken</p>	<p style="text-align: right;">Page 169</p> <p>1 mean by that?</p> <p>2 BY MS. GOODRICK:</p> <p>3 Q Well, is this a formal document that will go, does</p> <p>4 this go to site planning. Is that what you're saying this</p> <p>5 document, where does this document go?</p> <p>6 A Actually, we're doing this probably premature.</p> <p>7 It's typically not done at zoning, but to clarify how we</p> <p>8 meet the recreation on site, we've documented that. There</p> <p>9 will be another version of this at site plan. We are</p> <p>10 committing by binding element. We are doing the community</p> <p>11 center. We will have, per the roads and the bikeways, those</p> <p>12 will all be part of the plan. And then we're proposing</p> <p>13 right now to do the community garden.</p> <p>14 Any other recreation amenities that Park and</p> <p>15 Planning may recommend will be added to this. So this is</p> <p>16 subject to change at site plan.</p> <p>17 Q Okay.</p> <p>18 MR. GROSSMAN: And they do have, technical staff</p> <p>19 has their recreation guidelines online. So you can look at</p> <p>20 how these figures are arrived at, demand, supply, and the</p> <p>21 factors that are multiplied out. It's confusing. I will</p> <p>22 give you that.</p> <p>23 MS. GOODRICK: Okay. All right.</p> <p>24 MR. GROSSMAN: But they are online.</p> <p>25 MS. GOODRICK: All right.</p>

<p style="text-align: right;">Page 170</p> <p>1 MR. GROSSMAN: These figures, what they've done in  2 93(a) and 93(b), 93(a) assumes that the definition that  3 applies is that of seniors. But seniors does not directly  4 correspond. Then 93(b) assumes that the definitions that  5 apply is that of adults. And adults, it doesn't directly  6 correspond either. So that's the question.  7 And they've given both versions, and under both,  8 they are suggesting that these figures establish that they  9 would meet the point total evaluations that technical staff  10 uses to determine whether they site, the proposed  11 development, meets its recreational guidelines. It is a  12 site plan issue, not a zoning issue.  13 MS. GOODRICK: Okay. All right. That's all of my  14 questions.  15 MR. GROSSMAN: Okay. Any redirect? Oh, I guess  16 we forgot Mr. Hancock. Any questions?  17 MR. HANCOCK: No, I'm fine.  18 MR. GROSSMAN: All right. No redirect? All  19 right. Thank you. See, you were pithy, terse, and laconic.  20 THE WITNESS: Thank you.  21 MR. GROSSMAN: All right. Have you any other  22 additional evidence?  23 MR. KLINE: I have no further witnesses.  24 MR. GROSSMAN: All right. Before we go through  25 the exhibit list, we'll ask Mr. Hancock, I think I swore you</p>	<p style="text-align: right;">Page 172</p> <p>1 I'm not empowered to evaluate his finances or whether or not  2 something is economically feasible. I mean, I may have the  3 educational background to do it, but that's not what I'm  4 about here. It's not within my purview. And so --  5 THE WITNESS: Well, actually, I'm agreeing with  6 that. It shouldn't be considered.  7 MR. GROSSMAN: Right. Right. I will only look at  8 the land use issues.  9 THE WITNESS: And the other thing is, Elm Street,  10 the lady made a very nice presentation, and they followed it  11 up with a letter saying that they think this is the greatest  12 thing since high-button shoes. And that I just don't  13 understand why it's so great. They've been dealing with  14 this Clarksburg for 10 or 12 years, 15 years, why they  15 haven't included it in their plan before.  16 If it's such a good idea, why in all the planning  17 that's gone on, the Clarksburg, the Clarksburg Village, and  18 that whole area, has this never been addressed before.  19 MR. GROSSMAN: That's also not an issue that I  20 can address.  21 THE WITNESS: Okay.  22 MR. GROSSMAN: I mean, I would just be speculating  23 as to why. I have to act on evidence.  24 THE WITNESS: Then I'm through. Then I'm through,  25 sir.</p>
<p style="text-align: right;">Page 171</p> <p>1 in --  2 MR. HANCOCK: Yes.  3 MR. GROSSMAN: -- on Monday.  4 MR. HANCOCK: Yes.  5 MR. GROSSMAN: So if you have additional testimony  6 regarding what's come up today, please feel free to give  7 that to us now.  8 STATEMENT BY WILLIAM HANCOCK  9 THE WITNESS: Yes. I'd like to, if I may, make a  10 comment on two letters that we received yesterday by e-mail.  11 MR. GROSSMAN: Okay.  12 THE WITNESS: One from Miller and Canby, and one  13 from Elm Street. My comments are very brief. The Miller,  14 Miller, Canby, excuse me, denying the request to reduce the  15 density. And in the next paragraph they say that reducing  16 below, reducing the number of units below 140 --  17 MR. GROSSMAN: Yes.  18 THE WITNESS: -- is not economically feasible.  19 But I don't see any place in any regulations or laws that  20 Montgomery County owes Mr. Butz a living. When he first  21 started to testify, he was testifying about the economics of  22 farming not being good. Well, the economics of less than  23 140 units aren't good, maybe he needs to find another way.  24 MR. GROSSMAN: It's not a factor in my  25 consideration, as I told Mr. Butz when he was testifying.</p>	<p style="text-align: right;">Page 173</p> <p>1 MR. GROSSMAN: All right. Mr. Hancock. Thank  2 you. Ms. Goodrick, would you, I presume you want to  3 testify?  4 MS. GOODRICK: Yes, I do.  5 MR. GROSSMAN: All right. Would you raise your  6 right hand please?  7 (Witness sworn.)  8 MR. GROSSMAN: All right. You may proceed.  9 STATEMENT OF MARY JANE GOODRICK  10 THE WITNESS: Well, I wanted to ask some questions  11 about the Elm Street Development letter that was written on  12 January the 16th, 2013, that was in response to our request  13 for an agreement about the HOA arrangements between the Butz  14 property and Clarksburg Village. And they responded.  15 MR. GROSSMAN: Right.  16 THE WITNESS: And so I would like to ask whether  17 this response is binding? Because in the letter it says,  18 the possible incorporation of Mr. Butz property into the  19 Clarksburg Village HOA was initially determined as follows.  20 And it's (a), (b) and (c). And it says, at the sole option  21 of Mr. Butz, for example. So I would like to have that  22 answered. So is it --  23 MR. GROSSMAN: I'm not sure I understand. First  24 of all, are you asking me whether it's binding? What are  25 you, who are you asking?</p>

<p style="text-align: right;">Page 174</p> <p>1 THE WITNESS: Okay. I'm not sure of the  2 procedures. What I would like to do is to, I would like to  3 ask Mr. Kline or Mr. Butz to, in this document, whether this  4 is binding on Elm Street and the Butz property owners, this  5 document that tried to -- in other words, our concern was  6 whether, even though they are saying that all of these --  7 MR. GROSSMAN: You mean whether these offers can  8 be withdrawn at some point?  9 THE WITNESS: Yes, can they be withdrawn and, you  10 know, they are saying, one of the requirements is that you  11 have these off-site facilities that people who live at the  12 Butz property can use.  13 MR. GROSSMAN: Yes.  14 THE WITNESS: And we had Elm Street come in and  15 testify to say that they had these agreements with the Butz  16 property owners. And then they wrote a document, which we  17 appreciated. They responded to our request.  18 MR. GROSSMAN: Right.  19 THE WITNESS: But what it doesn't seem to be  20 binding. It seems to be --  21 MR. GROSSMAN: It may not be, and it is, as the  22 saying goes these days, it is what it is. That is, this is  23 your opportunity for testimony, not for questioning, ma'am.  24 THE WITNESS: Well, I thought that's what I was  25 asking for, but I'm sorry.</p>	<p style="text-align: right;">Page 176</p> <p>1 of vehicles and traffic.  2 The Snowden Park Farm Parkway is not completed,  3 but it will be completed, because it's supposed to be  4 completed by the developers. And the traffic that will be  5 coming down, a tremendous amount from Clarksburg, will be  6 going through that property.  7 And it's Clarksburg and Clarksburg Village, which  8 is a large development. The traffic that will be going down  9 from Ridge Road will be coming from Damascus, Mt. Airy, and  10 the northern part of the County, and will be going down 27.  11 27 is a major route to 270. And there is going to be a  12 tremendous amount of traffic there.  13 Brink Road is also a very busy and one of the  14 major east-west corridors for the County. If you are going  15 south on 270, excuse me, south on 270, you can exit at exit  16 18 and you go south, and you will go -- if you want to get  17 to that property or to other parts of, eastern part of the  18 County, you will go down Brink Road.  19 If you are going north on Ridge Road, if you are  20 trying to get to the property or to Clarksburg or to  21 Damascus, you will be going north on Ridge Road. And you  22 would be turning left on Snowden Farm Parkway if you are  23 going to Clarksburg.  24 So threading that property are roads of huge  25 impact, and potential huge impact. Again, the M-83, you</p>
<p style="text-align: right;">Page 175</p> <p>1 MR. GROSSMAN: And I'm not sure that -- you're  2 essentially asking for a legal opinion. So I don't think  3 that they are in a position to give you that in this  4 context.  5 THE WITNESS: Okay.  6 MR. GROSSMAN: That's something, you can ask your  7 own lawyer whether or not he or she thinks it's binding, but  8 that's not really within this context.  9 THE WITNESS: Okay. So if this is said to me, I  10 would like to suggest that this isn't binding, and that  11 then, that it can be rescinded at any time, and so I, I am  12 concerned that there will be, I'm interested to know the  13 adverse effects that would happen to the Butz property  14 owners if these facilities are not available. So I question  15 the, well, the bindingness of this, and whether it could be  16 rescinded at any time, that this paper doesn't show that  17 sufficiently.  18 I would like to speak about the safety for the  19 people who would be, the seniors who would be living in the  20 Butz property. And though we had testimony today about the  21 transportation that surrounds the property, it didn't  22 include, for example, and it wasn't asked to include, for  23 example, the impact of Mid-County Highway, which the  24 terminus of Mid-County Highway is at the A-305, which goes  25 through that property, which will create a tremendous number</p>	<p style="text-align: right;">Page 177</p> <p>1 know, it's going through the process of investigation by DOT  2 about whether M-83 will be completed or not. And the  3 likelihood that Park and Planning will make a report about  4 that this summer is likely, so that we would then have a  5 better idea if M-83 will be built.  6 And if it is, that traffic will begin at Goshen  7 and Mid-County, large roads. It will pass passed, go  8 through Montgomery Village Avenue and go north. It will be  9 a huge feeder road. And its terminus is at the intersection  10 of Brink and, I mean, of 27 and Snowden Farm Parkway. So  11 that will have a light to it, but it is already a huge road  12 anyway.  13 The potential for Ridge Road, it's to be four  14 lanes, and whereas one of the testifiers today said that if  15 you have an island in the middle, that that's protective of  16 people. But you have a community of 50 year olds, 60 year  17 olds, 70 year olds, 80 year olds, and 90 year olds, and they  18 are expected to be able to cross those large roads.  19 And one of the concerns that you have in the  20 statute for a PRC is that it be safe. And the, it says in  21 the purpose clause, this would be section 59-C-7.4, and the  22 purpose clause is 59-C-7.41, and I am not a lawyer, but what  23 this says here in the first sentence is that, should I read  24 down to there or do I just comment?  25 MR. GROSSMAN: It's up to you. But it's --</p>

<p style="text-align: right;">Page 178</p> <p>1 THE WITNESS: Okay. "The purpose and intent of  2 PRC zone is to provide for the establishment of a planned  3 retirement community type of development accessible to, or  4 providing within it, most of the day-to-day recreational,  5 medical, retail, commercial, and similar services required  6 by the residents thereof, in accordance with the  7 comprehensive development plan approved by the Planning  8 Board and so designed as to achieve a maximum of  9 coordination between the development the surrounding uses,  10 including a maximum of safety."  11 So you guys probably have this memorized, but I do  12 have a copy with me.  13 MR. GROSSMAN: No, you don't have to hand that --  14 THE WITNESS: I don't have to give it. Okay.  15 MR. GROSSMAN: But if you want to give me a copy  16 of your testimony or something like that.  17 THE WITNESS: No.  18 MR. GROSSMAN: But we have the zoning ordinance.  19 THE WITNESS: Okay. So the issue that I would  20 like to raise is that the statute itself creating the PRC  21 says that it has to be designed to achieve a maximum  22 coordination between the development and its surrounding  23 uses. So that, so if you are living in that property, you  24 have to cross a major road to get out of it. And if you are  25 a senior, and not all seniors drive, so you would have to be</p>	<p style="text-align: right;">Page 180</p> <p>1 peripheral way in a rezoning, because the Council can't get  2 into the nitty-gritty of the individual parts of the, such  3 as this, the detail of an individual road, the curvatures,  4 that kind of thing. That's not something for the Council to  5 look at.  6 Broader issues about traffic and, you know, are  7 something. But that's not really the focus of the rezoning.  8 The rezoning, the focus is on the purpose and standards in  9 the zone, compatibility with the surrounding area, and the  10 public interest. That's really the focus. They're also  11 very specific questions for this type of zone.  12 There are a series of zones that are required  13 development plans. The PRC zone is one of those zones. And  14 in cases that require development plans, there are specific  15 questions that the Council has to, findings the Council has  16 to make. And so in that connection, they do make a finding  17 regarding access and that sort of thing.  18 But it's still not the kind of detail, it's still  19 not the kind of detail that is gone into when they do site  20 plan review and subdivision planning. So, you know, those  21 are the more direct places to look at those issues.  22 THE WITNESS: Okay.  23 MR. GROSSMAN: See, really, the question for the  24 Council really is, based on this development plan, is it  25 reasonable to conclude that the, that safe access and safe</p>
<p style="text-align: right;">Page 179</p> <p>1 crossing these major roads, or you would have to get into  2 your car and get onto these major roads that will be  3 increasing in traffic.  4 And again, the studies did not take into account  5 proposed and existing roads that will be completed.  6 MR. GROSSMAN: Well, we don't say will be  7 completed.  8 THE WITNESS: May be completed.  9 MR. GROSSMAN: You have to understand, the only  10 expert testimony I have here is that it will be safe. I  11 have that testimony and I have it in the record from  12 technical staff.  13 THE WITNESS: Well, but -- okay.  14 MR. GROSSMAN: That's a difficult hurdle for you  15 to get past in terms of safety, unless you've got some more  16 direct evidence on the point.  17 THE WITNESS: Well, I think that the point is that  18 M-83 is something that is being closer to being built.  19 There is a process that is studying M-83 and other  20 alternates so that, and if that came to fruition, it would  21 have a huge impact on that property. And even --  22 MR. GROSSMAN: You understand that all of these  23 safety issues, these roadway issues will be looked at at  24 preliminary plan, at subdivision, and at site review. These  25 are issues that are, they are looked at here in a much more</p>	<p style="text-align: right;">Page 181</p> <p>1 traffic and so on can be developed in this.  2 THE WITNESS: Right.  3 MR. GROSSMAN: Because they know that later on  4 that issue is going to be looked at. That's not exactly the  5 way it's phrased in the zoning ordinance, but that's really,  6 when you come down to it, that's what they are looking at.  7 THE WITNESS: Okay. The Greater Goshen Civic  8 Association --  9 MR. GROSSMAN: Yes.  10 THE WITNESS: -- is opposed to this zoning change.  11 And due to density and the -- due to density. And then the  12 concerns of seniors who are being placed in a property that  13 is surrounded by major traffic. And the requirement of  14 either crossing, being unable to exit the property without  15 crossing a major road, whether by a pedestrian or by a  16 vehicle.  17 MR. GROSSMAN: I understand.  18 THE WITNESS: We also would like to try to make  19 sure that the development remains as a PRC and that it not  20 be allowed to convert to some other type of housing. I  21 don't know how those assurances can be made.  22 MR. GROSSMAN: Well, it can't be changed. I mean,  23 the zone cannot be changed without the Council acting on it.  24 So it would have to go through, as you have probably  25 observed, this is a fairly lengthy process --</p>

<p style="text-align: right;">Page 182</p> <p>1 THE WITNESS: Yes.</p> <p>2 MR. GROSSMAN: -- beginning with the filing of an</p> <p>3 application, a review by technical staff, a review by</p> <p>4 Planning Board in an open session, a due process hearing, a</p> <p>5 report and recommendation to the Council, and the Council's</p> <p>6 action. So it is not any easy process.</p> <p>7 The zone will be the PRC zone unless, if the</p> <p>8 Council approves it, unless the Council changes it. There</p> <p>9 is nothing that an individual owner can do to change the</p> <p>10 zone without the Council approving their process.</p> <p>11 THE WITNESS: Okay. I would also like to say that</p> <p>12 there has been a lot of talk about the lack of senior</p> <p>13 housing. And I believe that they were limiting that to</p> <p>14 Clarksburg, and Clarksburg Village. But also nearby, there</p> <p>15 is a lot of other senior housing. And that is Asbury,</p> <p>16 Leisure World, Meadow Ridge, Lutheran Home. There is a lot</p> <p>17 of other senior housing in the area.</p> <p>18 And I suppose they are correct, if they say,</p> <p>19 within the limits that they made, that there is no senior</p> <p>20 housing other than the 100 units of low income housing</p> <p>21 that's across the street. But there is senior housing</p> <p>22 elsewhere in the County.</p> <p>23 MR. GROSSMAN: Okay. I'm sorry. So I heard you</p> <p>24 say, Leisure World --</p> <p>25 THE WITNESS: Asbury.</p>	<p style="text-align: right;">Page 184</p> <p>1 MR. GROSSMAN: Okay.</p> <p>2 THE WITNESS: They have some where there is care</p> <p>3 for if you are ill, you could --</p> <p>4 MR. GROSSMAN: And where is that located?</p> <p>5 THE WITNESS: That is at --</p> <p>6 UNIDENTIFIED MALE: Russell Avenue.</p> <p>7 THE WITNESS: Odenthal and Russell Avenue.</p> <p>8 Odenthal and Russell Avenue. What I can do is provide you a</p> <p>9 list, and I will research that information.</p> <p>10 MR. GROSSMAN: Okay.</p> <p>11 THE WITNESS: Will that be helpful?</p> <p>12 MR. GROSSMAN: Well, yes, except that in fairness</p> <p>13 we have to give the applicant an opportunity to respond to</p> <p>14 each of these. So let's, for a second, just go through</p> <p>15 orally. Where is Meadow Ridge and what type of facility is</p> <p>16 that?</p> <p>17 THE WITNESS: Okay. Meadow Ridge is a disabled</p> <p>18 and senior citizens complex that is at Wightman and</p> <p>19 Prathertown Road.</p> <p>20 MR. GROSSMAN: And are those individual homes or</p> <p>21 is this a --</p> <p>22 THE WITNESS: They are individual homes.</p> <p>23 MR. GROSSMAN: All right. And what about</p> <p>24 Churchill?</p> <p>25 THE WITNESS: I don't know.</p>
<p style="text-align: right;">Page 183</p> <p>1 MR. GROSSMAN: -- Asbury.</p> <p>2 THE WITNESS: Yes. Meadow Ridge.</p> <p>3 MR. GROSSMAN: Meadow Ridge.</p> <p>4 MR. HANCOCK: Churchill.</p> <p>5 THE WITNESS: Churchill, King Farm.</p> <p>6 MR. GROSSMAN: Hold on. Churchill --</p> <p>7 THE WITNESS: King Farm. That is a Lutheran home.</p> <p>8 MR. GROSSMAN: King Farm. Lutheran home. And so</p> <p>9 for each one of these things, I know a little bit more about</p> <p>10 Leisure World in terms of its similarities to this kind of</p> <p>11 thing. But what about Asbury? Where is that and what kind</p> <p>12 of housing is Asbury?</p> <p>13 THE WITNESS: Well, I'm not sure that I can go</p> <p>14 into each one of these and say, Asbury is a very, very large</p> <p>15 facility.</p> <p>16 MR. GROSSMAN: But you say facility. Is it --</p> <p>17 THE WITNESS: A senior housing. And it's at --</p> <p>18 UNIDENTIFIED MALE: 1,240 units.</p> <p>19 MR. GROSSMAN: No, you can't speak from the</p> <p>20 audience.</p> <p>21 THE WITNESS: Yes, okay, it's 1,240 units.</p> <p>22 MR. GROSSMAN: Okay. When you say it's senior</p> <p>23 housing, are you talking about single-family homes?</p> <p>24 THE WITNESS: There's some single-family homes.</p> <p>25 There are some attached homes.</p>	<p style="text-align: right;">Page 185</p> <p>1 MR. GROSSMAN: Okay. And King Farm?</p> <p>2 THE WITNESS: I don't know specifically.</p> <p>3 MR. GROSSMAN: And Lutheran Home?</p> <p>4 THE WITNESS: I don't know.</p> <p>5 MR. GROSSMAN: Okay. All right. Since we have 10</p> <p>6 days until the applicant submits its revised development</p> <p>7 plan, within that 10-day period, if you wish, you may submit</p> <p>8 a list of these other senior facilities and a description of</p> <p>9 what type of facility we're talking about. And I think it</p> <p>10 should be, if we're talking, I'm talking about, I'm</p> <p>11 interested in comparable things, that is, things with</p> <p>12 single-family homes, not a nursing home or that kind of</p> <p>13 thing.</p> <p>14 THE WITNESS: Uh-huh.</p> <p>15 MR. GROSSMAN: And where they are located, and the</p> <p>16 number of units.</p> <p>17 THE WITNESS: Okay.</p> <p>18 MR. GROSSMAN: And then Mr. Kline will have the</p> <p>19 same 10-day period to respond to that.</p> <p>20 THE WITNESS: Okay.</p> <p>21 MR. GROSSMAN: Okay. All right. Okay. That</p> <p>22 concludes my testimony.</p> <p>23 THE WITNESS: Okay. Any rebuttal, Mr. Kline?</p> <p>24 MR. KLINE: No questions of Ms. Goodrick.</p> <p>25 MR. GROSSMAN: Okay. And, oh yes, I should have</p>

<p style="text-align: right;">Page 186</p> <p>1 given you an opportunity for cross-examination and I think I  2 screwed up there, perhaps with Mr. Hancock as well, I'm not  3 sure. Did I invite you to --  4 MR. KLINE: Not a problem.  5 MR. GROSSMAN: Okay. So you have no cross-  6 examination?  7 MR. KLINE: No, sir, of either.  8 MR. GROSSMAN: Okay. All right. And did you have  9 any rebuttal evidence you wished to put on?  10 MR. KLINE: No, sir.  11 MR. GROSSMAN: All right. Now, I would presume  12 that you wish to move the exhibits into evidence?  13 MR. KLINE: The applicant would request that  14 Exhibits No. 1-93(b) be accepted into the record and they  15 all be made a part of the record, request that those  16 exhibits be made part of the record.  17 MR. GROSSMAN: You don't want 93(c) in there?  18 MR. KLINE: That would have been that last  19 schedule, wasn't it. I didn't write that one down. Yes,  20 sir. Please.  21 MR. GROSSMAN: Okay. So Exhibits -- any  22 objection?  23 MS. GOODRICK: No.  24 MR. GROSSMAN: All right. So Exhibits No. 1-93(c)  25 and their subparts are admitted. And I will also admit the</p>	<p style="text-align: right;">Page 188</p> <p>1 surprised to see the technical staff of Park and Planning  2 Commission Planning Board have a disagreement, maybe not so  3 much as denial and then a 5-0 positive vote. But so I can  4 understand maybe the opposition scratching their head  5 saying, well, how could there be such a vast difference  6 between the two of them.  7 And so I would like to kind of take the cover page  8 of the staff report where the staff summarizes its  9 recommendations and kind of lead you through what I think is  10 all the testimony you've heard today, just to kind of try  11 and wrap that all up.  12 MR. GROSSMAN: You know, as you mentioned, I  13 should have also said you were going to make a decision as  14 to whether or not you want to put the portions of the  15 transcript of the --  16 MR. KLINE: Yes.  17 MR. GROSSMAN: Is that on the same time element?  18 Do you want that 10-day period?  19 MR. KLINE: If we can do it, and I really need to  20 talk to the client about that.  21 MR. GROSSMAN: Right.  22 MR. KLINE: But yes, we could comply with the time  23 frame.  24 MR. GROSSMAN: Okay. So we'll also include,  25 that's a third thing that if the, if the applicant wishes to</p>
<p style="text-align: right;">Page 187</p> <p>1 revised development plan when it's submitted. And the list  2 of additional senior facilities that Ms. Goodrick will  3 supply at her option will also be admitted. And any  4 comments back and forth about those two items.  5 And the deadlines that apply to that are the same  6 ones that apply to the development plan, that is January 25,  7 '13, for the development plan as amended. February 4 for  8 the technical staff and responsive comments. And then  9 February 5 for any reply. By responsive comments I mean, as  10 far as the development plan, responsive comments from the  11 opposition. And as far as the list of senior housing from  12 the opposition, the responsive comments would come from the  13 applicant. All right. Is there anything further that we  14 haven't hit?  15 (Exhibit Nos. 1-93 were  16 admitted in evidence.)  17 MR. KLINE: Well, I'm actually going to do  18 something I rarely do. I think you know my style enough.  19 But the day is shot, as it is, so I'd actually like to do a  20 little bit of a closing argument if I could.  21 MR. GROSSMAN: Okay. That seems fair.  22 MR. KLINE: And then I'll offer the same to them.  23 And it comes up in the context of maybe because myself and  24 most of the, a number of people who are with me today, all  25 kind of work in this environment all the time, and are not</p>	<p style="text-align: right;">Page 189</p> <p>1 put in Planning Board transcript, they would have until  2 January 25 to do that. You would have, and included in that  3 would be a transcript plus citations to any particular parts  4 of the transcript they thought were appropriate to note.  5 And you would have, that's the opposition would have until  6 February 4, 2013, to respond to that, and note any comments  7 or objections. And then Mr. Kline would have until February  8 5 to respond to that.  9 MR. KLINE: Thank you.  10 MR. GROSSMAN: And the record will close on  11 February 5, 2013. Okay. Go ahead. I'm sorry to interrupt  12 you.  13 MR. KLINE: No, no problem. On page 1 of the  14 staff report, the staff summarized in four bullets kind of  15 what was the gist of its recommendation to the Planning  16 Board. And the first bullet said, "The project does not  17 substantially comply with the density provisions in the  18 master plan."  19 And that's why we had Ms. Russel go through so  20 much detail of actually giving you each of the pages of the  21 master plan so that you could appreciate while there was,  22 why there was reasonable minds could disagree about what the  23 master plan wanted to say.  24 MR. GROSSMAN: All right.  25 MR. KLINE: The second bullet they've got in the</p>

<p style="text-align: right;">Page 190</p> <p>1 staff report is, "Does not provide adequate transition in 2 density between the two planning areas." And in my opinion, 3 that's the thing that I thought the Board was most impressed 4 about with what the applicant had achieved. 5 There is, in the master plan elements that have 6 been given to you, a section dealing with, create a 7 transition, supplement the green belt between Germantown and 8 Clarksburg. 9 And as I said to the Planning Board, what we have 10 tried to do is kind of push the density a little bit further 11 to the north to be able to create that green, supplement the 12 green belt and create the transition in the southeast corner 13 on the west side, to some extent, and on the east side, 14 although I'm not talking so much about that, but basically 15 creating that green buffer at the lower southeast corner. 16 And, in fact, what the Board basically concluded, 17 that you did a good job of that, in their letter. "You meet 18 the overall goals in density of the Brink Road transition 19 area and provide an appropriate transition." So I think 20 regardless of what the density should have been, we still 21 achieved the transition, which I thought was the driving 22 force in the plan, as it related to the density as well. 23 "The project requires public sewer and water 24 that's not recommended in the master plan." And that's what 25 I will call a contemporaneousness issue, that's sort of hard</p>	<p style="text-align: right;">Page 192</p> <p>1 a septic system. 2 So the staff position, we didn't feel, adapted to 3 the current set of circumstances that we are dealing with, 4 that would justify, we thought, the kind of project we're 5 talking about. 6 The project, going on in the staff report, "The 7 project does not meet the purpose clause of the PR zone." 8 And I'll kind of give you a couple of page references to 9 that, because on page nine it says, it does not contain the 10 day-to-day services generally anticipated with a planned 11 unit development. 12 Ms. Russel gave you the history of the evolution 13 of the PRC zone which basically has said, if you're down to 14 25 acres, and in this case 50 acres plus, we don't expect 15 you to be able to provide a retail center like Leisure World 16 has along Georgia Avenue. And the advantage of, in this 17 case, was one of the Planning Board members, Mr. Dreyfus, 18 was with the firm that developed Leisure World. 19 So he knew darn well what happened when the PRC 20 zone changed, and realized, no, no, as long as you can get 21 to it, as long as you can basically have accessible or 22 providing within, and noted that accessible comes first. So 23 as long as we can get people to the services, including both 24 recreational facilities, as well as those services needed by 25 the people who would be relying in the community, then we've</p>
<p style="text-align: right;">Page 191</p> <p>1 to do. 2 We're dealing with a 1994 plan which is, as the 3 witnesses testified, was predicated on a misunderstanding of 4 being able to sewer the property. We have now overcome that 5 problem, that situation. Sewer is around, all around us, 6 and in fact, we, ourselves, are entitled to hook up to sewer 7 today, if we wanted to build a church on the property. 8 But we've been able to overcome the physical 9 problems with getting sewer on the property. And then 10 you're left, and this is the problem that we have had 11 through the whole way, staff just locking into that density 12 issue. It isn't recommended for the density you want, or 13 the sewer, and feeling that everything flowed from there 14 after that. 15 And as I say, that represents, I think, a lack of 16 adaptability to what is the current situation. It's 17 highlighted in the testimony you heard about, and I won't be 18 able to say it properly, but that Maryland's sustainable 19 growth and agricultural preservation act, which in essence 20 leaves Mr. Butz in this catch 22 where he can't get, well, 21 under staff's position, he can't get to the PRC zone, which 22 he thinks is a better sustainable land use of the property, 23 yet were he to develop it with McMansions, which would be 24 his default solution, he can't do that either, because the 25 government is not going to allow him to put those houses on</p>	<p style="text-align: right;">Page 193</p> <p>1 satisfied the purpose clause in that part of it. 2 The staff also, on page 10 said, "The project does 3 not provide a variety of on-site recreational facilities, 4 such as swimming, bocce ball," which has been the subject of 5 some humor among the team, "and shuffleboards." 6 Well, Mr. Unterberg has given you multiple sheets 7 of paper showing whether it's seniors or whether it's 8 adults. We are able to meet the recreational requirements 9 on-site that the Planning Board would have approved at the 10 time of site plan. So basically, the calculations 11 demonstrate that that's an incorrect assumption that we 12 don't have the appropriate on-site amenities. 13 Compatibility is addressed on page 15 of the staff 14 report, and it's phrased this way. "We find that the 15 proposed uses are similar in nature to the uses surrounding 16 the property." I'm on page 15 at the top of the paragraph, 17 which is paragraph number two entitled, compatible 18 surrounding area. 19 MR. GROSSMAN: Okay. 20 MR. KLINE: And the first sentence says, "The 21 staff finds their proposed uses are similar in nature to the 22 uses surrounding the site." So it's not a matter of having 23 two different types of land uses. They are both residential, 24 ergo they should be able to work together. 25 But if you drop down about five lines below that</p>



<p style="text-align: right;">Page 194</p> <p>1 it says, "The density, however," and this is, I think,  2 driving the staff, the theme of the staff, "The density,  3 however, is two and a half times the upper limits of what  4 the master plan recommends, and the clustering of houses is  5 not characteristic of the surrounding rural character of  6 Green Ridge Acres and Brink Meadows."  7 And then the last line says, "Clustering and  8 higher densities proposed do not align with the vision of  9 the master plan." You know, nowhere in there did I really  10 kind of see or hear anything that said, a house on two acres  11 is incompatible with a house on a 7,000 square foot lot. It  12 still goes back to the master planning density issues, and  13 thinking that they are inherently incompatible.  14 And we've tried to demonstrate to you by  15 basically, by taking the screening, by having the separation  16 that Mr. Unterberg went into in a lot of detail, about the  17 distances, and then trying to maximize the amount of  18 vegetation between the two, to what I call the blocked views  19 or filtered views, at best, if you do the landscaping right.  20 We should be able to have a compatible situation between the  21 two properties in that location.  22 MR. GROSSMAN: I'll tell you, if there were no  23 exit points on the western side of the subject site directly  24 into those properties immediately to the west, except for --  25 MR. KLINE: You make a good point in terms of</p>	<p style="text-align: right;">Page 196</p> <p>1 MR. GROSSMAN: Excuse me, sir. Sir, in the back,  2 please? Thank you. I'm sorry.  3 MR. KLINE: -- the development plan, with the  4 arrangement of units, coupled with the forest buffers and  5 the setbacks, provides compatibility with the surrounding  6 neighborhood. So I think the Board was able to make that  7 leap to say, no, this can be done, has been done in a way  8 that it will be compatible.  9 And the last thing I'll say is, and I think it's a  10 thing that I think the staff didn't put any weight or give  11 us any credit for at all is, all the number of public  12 benefits that flow from the application, Ms. Russel tried to  13 point out to you, the plan is 94 years old. A lot of the  14 things that we're talking about trying to achieve today  15 weren't even really contemplated at all in 1994.  16 And you heard them today in the context of Mr.  17 Bossong talking about the storm water management with less  18 water coming off the property than today. Mr. Rood talking  19 about the environmental enhancement, with the nitrogen  20 loading on the property because of the agricultural  21 activities on the property. Substantial improvement  22 consistent with all the Chesapeake Bay environmental  23 preservation ideas.  24 The, basically the housing, the need for the  25 housing product in the area, that Ms. Russel also stressed.</p>
<p style="text-align: right;">Page 195</p> <p>1 linkage. Normally, we're talking about linkages. But for  2 this community to link into the RE-2 neighborhood probably  3 doesn't make sense. There is no trail system within there  4 that we would be able to link into.  5 I mean, if Mr. Hancock said he would love to be  6 able to walk over to our community center for Bingo on  7 Wednesday nights, yes, we would probably work something out  8 for him. But I don't think, there has been no suggestion  9 that that would be of interest.  10 MR. GROSSMAN: No, I think the suggestion that's  11 been made is that he wants to be more separated from that  12 development. But it's just an observation. I assume I'm  13 reading that correctly that there are no linkages to that  14 community.  15 MR. KLINE: There are none now, which is not to  16 say they couldn't occur if the community said that they want  17 to be some relationship between the way.  18 MR. GROSSMAN: Yes. I'm not suggesting there  19 should be. I'm just saying --  20 MR. KLINE: Understood.  21 MR. GROSSMAN: -- that that's, I think that  22 sometimes in terms of compatibility issues there are those  23 concerns. But that is not a concern here.  24 MR. KLINE: Basically, on that point, the Planning  25 Board said, when you come up with --</p>	<p style="text-align: right;">Page 197</p> <p>1 Mr. Butz gave you that much stuff in the appendix that you  2 can look at, at your leisure, saying this is a product that  3 we really need.  4 And then Ms. Kubit acknowledging that our product,  5 basically, gives the Clarksburg Village, and then this area,  6 a larger, what I call, a full life-cycle community. So  7 we're the converse of what Mr. Hancock said. We're actually  8 plugging in a hole something that gives something that  9 really makes it, as I said, that full life-cycle community.  10 Those public benefits, which staff really didn't  11 identify at all, I think are what really rounded out in the  12 context of satisfying all the technical requirements and  13 getting, when you get down to that public interest, it's  14 just the right thing to do at this time in the world, 2013,  15 rather than 1994. Thank you.  16 MR. GROSSMAN: So Mr. Kline, you ought to make  17 these closing arguments more often. You do it very well.  18 MR. KLINE: Thank you.  19 MR. GROSSMAN: All right. Mr. Hancock, did you  20 wish to make a closing statement?  21 MR. HANCOCK: Very, very short. The opposition  22 completely agrees with the staff at Park and Planning. We  23 agree with everything they say, and that this should be  24 denied.  25 I would dispute that Jody, or Mr. Kline, in that</p>

<p style="text-align: right;">Page 198</p> <p>1 Mr. Butz is precluded from developing this property. He  2 can't do RE-2. He can't put septic on it. But that doesn't  3 preclude him from building half-acre, developing this as  4 half-acre.  5 So it may not be what one of his partners terms as  6 economically feasible, but that's not our problem. He's not  7 precluded from developing the property. This is not his  8 only avenue of developing this property. And I think that's  9 very important.  10 MR. GROSSMAN: It's not really the question that  11 either I or the counsel have to deal with, because he's  12 entitled to have the development that he's proposed  13 evaluated. It's, we can't say, well, there were lots of  14 other things you could have done.  15 He's entitled to have the development he's  16 proposed, evaluated, and to see whether he meets the  17 statutory criteria. So it's not a question of whether he  18 can do anything else.  19 MR. HANCOCK: Well, I would just disagree with  20 what Mr. Kline said --  21 MR. GROSSMAN: I understand.  22 MR. HANCOCK: -- that he's precluded from doing  23 anything else. That's not quite the case.  24 MR. GROSSMAN: I understand. Okay.  25 MR. HANCOCK: That's really all I have.</p>	<p style="text-align: right;">Page 200</p> <p>1 MR. GROSSMAN: It's my job.  2 MS. GOODRICK: Yeah, I think that's fair. It is  3 absolutely fair.  4 MR. GROSSMAN: Okay. And by the way, you said,  5 you asked if you could ask a question. You can ask me a  6 question if you want, but you can't ask them a question.  7 MS. GOODRICK: No, no. I wanted, no. Thank you.  8 MR. GROSSMAN: Okay. All right. Thank you. Is  9 there anything further?  10 MR. KLINE: Just to verify, submission by the  11 25th, and follow-up on the 4th and the 5th.  12 MR. GROSSMAN: That's correct.  13 MR. KLINE: To close on the 5th?  14 MR. GROSSMAN: Record to close on the 5th.  15 MR. KLINE: All right.  16 MR. GROSSMAN: That's correct. Okay.  17 MR. KLINE: Thank you very much, Mr. Grossman.  18 MR. GROSSMAN: Thank you, sir.  19 MS. GOODRICK: Yes. Thank you.  20 MR. KLINE: Mr. Grossman, a question. You have  21 copies of all of these. Do you want all the sheets?  22 MR. GROSSMAN: Not all of them. I don't have all  23 of them. But I have most of them. So the ones I want are  24 the ones that were admitted during the hearing.  25 MR. KLINE: Okay.</p>
<p style="text-align: right;">Page 199</p> <p>1 MR. GROSSMAN: Thank you, sir. Ms. Goodrick, did  2 you have any additional closing statement to make?  3 MS. GOODRICK: Okay. I would like to suggest, I  4 mean, because I don't get to ask a question, is that  5 correct?  6 MR. GROSSMAN: That's correct.  7 MS. GOODRICK: Okay. So then I would like to say  8 that I believe that Mr. Kline, representing the Butz  9 property and others, met with the Planning Staff. They met  10 with the Planning Staff before the report, and I believe  11 after the report was written. So meeting with the planning  12 staff, the staff still determined that it would make these  13 recommendations, you know, after having heard these  14 arguments that they made.  15 And I would like to thank you, and that is for  16 requesting the written transcript of the Park and Planning  17 hearing, because I tried to get one, but they don't make  18 them. You have to listen to the recording.  19 MR. GROSSMAN: Right.  20 MS. GOODRICK: And it's hard to take notes. And  21 so when that request was made, I appreciate you requesting  22 that it would be a written transcript for us.  23 MR. GROSSMAN: Well, certainly. I mean, I try to  24 look out for everybody.  25 MS. GOODRICK: It's fair.</p>	<p style="text-align: right;">Page 201</p> <p>1 MR. GROSSMAN: Because those are the ones. And  2 there were a couple that we modified the surrounding area  3 exhibits, both the --  4 MR. KLINE: We'll put them all in order.  5 MR. GROSSMAN: Okay. Because I think there are at  6 least three. There are the surrounding area map. There's a  7 surrounding area aerial. Both of those were modified. And  8 there is the one today showing the tiers. I don't know if  9 there were any others.  10 (Whereupon, at 2:15 p.m., the hearing was  11 concluded.)  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>

. Digitally signed by Teresa S. Hinds

**ELECTRONIC CERTIFICATE**

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 in the matter of:

Petition of Theodore Butz, et al.  
Local Map Amendment No. G-881

By:

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Teresa S. Hinds, Transcriber

	100:19;160:2;200:3	55:9;56:23;59:11; 112:10;124:21;126:24; 130:12;182:21	28:7;34:13,15;35:2; 44:16;69:21;71:7; 72:12;87:25;88:13; 90:5,7;92:3;102:15; 107:3;136:11,17,17; 145:23;149:2;172:20	4;201:7
<b>\$</b>	<b>absorbed (2)</b> 74:16,17	<b>act (5)</b> 112:9;163:20;165:8; 172:23;191:19	<b>addressed (4)</b> 44:15;71:17;172:18; 193:13	<b>aesthetic (1)</b> 78:21
<b>\$1,000 (3)</b> 29:4,5,6	<b>abundance (1)</b> 101:2	<b>acting (1)</b> 181:23	<b>addresses (1)</b> 72:25	<b>aesthetics (1)</b> 101:7
<b>\$11,700 (3)</b> 30:21;31:11,12	<b>abutting (1)</b> 101:6	<b>action (2)</b> 111:17;182:6	<b>addressing (3)</b> 34:21;74:2;146:24	<b>affect (6)</b> 48:7,11;83:20;95:14; 98:23;139:10
<b>\$46,000 (1)</b> 29:25	<b>accelerate (1)</b> 162:11	<b>active (12)</b> 53:15,16,19,22,23; 54:1,3,8,9;61:3,8;77:14	<b>adds (2)</b> 24:8,9	<b>affected (1)</b> 142:2
<b>\$46,800 (1)</b> 30:22	<b>accept (3)</b> 18:24;71:1;91:4	<b>active-adult (1)</b> 78:15	<b>adequacy (1)</b> 107:4	<b>affects (1)</b> 147:20
<b>\$5,000 (1)</b> 29:4	<b>acceptable (2)</b> 22:16,21	<b>activities (1)</b> 196:21	<b>adequate (13)</b> 28:4;29:24;33:9,11; 39:7,9;58:6;81:13; 108:16;147:2;152:16, 17;190:1	<b>afforestation (1)</b> 101:16
<b>\$600 (1)</b> 29:6	<b>accepted (1)</b> 186:14	<b>actual (6)</b> 60:15;64:1;133:24; 134:1,3;143:14	<b>adjoining (3)</b> 5:5;34:18;167:9	<b>afforested (2)</b> 81:18;127:25
<b>‘</b>	<b>access (18)</b> 22:19;25:21;33:15; 34:17;35:4,9,10,25; 36:20;55:3;58:2;59:15, 16,18;109:21;167:22; 180:17,25	<b>actually (43)</b> 12:14;13:14;25:2; 29:12,24;37:15;38:5; 47:22;49:7;63:8;69:2; 78:4;79:4;84:13;85:9; 88:7;100:5,7;108:2,21; 111:1,16;118:4,6; 119:20;122:5;130:4; 131:7;135:9;137:1,24; 138:21;144:14;148:7; 152:1,16;159:14; 169:6;172:5;187:17, 19;189:20;197:7	<b>Administration (7)</b> 26:13,16;27:23; 29:19;41:19;43:8;51:7	<b>afraid (1)</b> 54:11
<b>“and (1)</b> 193:5	<b>accessible (3)</b> 178:3;192:21,22	<b>adaptability (1)</b> 191:16	<b>Administrative (1)</b> 18:10	<b>afternoon (1)</b> 13:17
<b>“Clustering (1)</b> 194:7	<b>accessing (1)</b> 163:7	<b>adapted (1)</b> 192:2	<b>admit (2)</b> 9:16;186:25	<b>again (24)</b> 5:15;16:2;20:18; 30:25;33:13;45:4; 48:14,17;56:19;62:13; 99:4,17;101:14; 105:12;115:5;137:25; 138:18;140:25;149:7; 153:5;165:7;168:19; 176:25;179:4
<b>“Does (1)</b> 190:1	<b>accommodate (1)</b> 152:12	<b>add (7)</b> 47:3;80:24;110:22; 119:22;125:15;154:11; 155:6	<b>admission (7)</b> 26:13,16;27:23; 29:19;41:19;43:8;51:7	<b>against (3)</b> 47:6;49:15;117:2
<b>“The (9)</b> 10:21;178:1;189:16; 190:23;192:6;193:2, 20;194:1,2	<b>accommodated (1)</b> 145:10	<b>added (7)</b> 63:14,16;64:23;65:1; 139:24;153:4;169:15	<b>admitted (8)</b> 15:5,9,12,15;186:25; 187:3,16;200:24	<b>age (16)</b> 7:11,13,14;41:25; 42:4,11,11,23;43:4; 44:8,8,12;52:19;60:22; 152:24;153:22
<b>“We (1)</b> 193:14	<b>accomplish (1)</b> 94:21	<b>adding (2)</b> 76:6;140:2	<b>adopted (3)</b> 108:25;109:13;110:4	<b>age- (1)</b> 4:11
<b>“You (1)</b> 190:17	<b>accordance (1)</b> 178:6	<b>additional (32)</b> 6:13,23;12:8;28:18; 29:1,6,8;31:23,24; 50:17;55:13;63:17; 71:13;76:7;82:3,18; 96:19;100:14;101:18; 102:25;103:16;106:24; 110:21;120:13;125:24; 160:25;164:4,10; 170:22;171:5;187:2; 199:2	<b>adoption (1)</b> 109:2	<b>age-centric (3)</b> 42:4,5,7
<b>A</b>	<b>according (2)</b> 15:12;87:2	<b>address (25)</b> 6:6;12:19;18:1,3;	<b>adult (17)</b> 20:14;42:1;44:25; 52:2;53:15,16,19,22, 23;54:1,3,8,9;61:3,8; 91:12,25	<b>age-determinate (1)</b> 53:10
<b>A- (1)</b> 76:1	<b>account (2)</b> 140:25;179:4	<b>adulthood (1)</b> 191:16	<b>adults (8)</b> 7:14;153:2,11,15,21; 170:5,5;193:8	<b>agencies (6)</b> 22:16;27:15;72:14, 18;103:8;106:20
<b>A-305 (39)</b> 22:20;33:16,19,23; 48:23;55:7,12;56:22; 57:1;58:2,20;59:13,16, 18;64:25;73:13;119:2, 4,7;129:5,6,7;134:11; 138:17,18;139:2,19; 140:10,12;141:5,16,25; 142:6;143:3,8,9;167:1, 17;175:24	<b>accumulating (1)</b> 74:12	<b>adulthood (1)</b> 191:16	<b>advance (1)</b> 67:19	<b>agency (1)</b> 113:18
<b>A-80 (1)</b> 119:6	<b>accurate (5)</b> 45:3;46:2;130:17; 132:13,25	<b>adulthood (1)</b> 191:16	<b>advantage (1)</b> 192:16	<b>agenda (1)</b> 139:25
<b>able (21)</b> 36:14,16;42:13; 82:22;94:5,21,22; 118:16;126:6;177:18; 190:11;191:4,8,18; 192:15;193:8,24; 194:20;195:4,6;196:6	<b>accurately (3)</b> 49:22;134:25;135:15	<b>adulthood (1)</b> 191:16	<b>adverse (2)</b> 144:16;175:13	<b>age-restricted (1)</b> 107:7
<b>above (9)</b> 42:24;53:7,8,9; 121:12;125:5;128:5; 151:3;153:17	<b>achieve (4)</b> 81:11;178:8,21; 196:14	<b>adulthood (1)</b> 191:16	<b>advise (2)</b> 58:12;72:20	<b>age-restriction (1)</b> 6:25
<b>Absolutely (9)</b> 26:11;28:6;33:11; 55:18;95:19;96:21;	<b>achieved (3)</b> 73:3;190:4,21	<b>adulthood (1)</b> 191:16	<b>aerial (5)</b> 113:23;132:2;133:1,	<b>ages (1)</b> 153:14
	<b>acknowledge (1)</b> 72:11	<b>adulthood (1)</b> 191:16		<b>aggrieved (1)</b> 163:21
	<b>acknowledging (1)</b> 197:4	<b>adulthood (1)</b> 191:16		<b>ago (2)</b> 54:10;145:5
	<b>acre (3)</b> 4:6;73:13;76:2	<b>adulthood (1)</b> 191:16		<b>agree (3)</b> 123:19;127:12; 197:23
	<b>acres (12)</b> 76:6,25;83:20;86:9; 142:13,16;156:18,23; 192:14,14;194:6,10	<b>adulthood (1)</b> 191:16		<b>agreeable (1)</b>
	<b>acronym (2)</b> 28:11,16	<b>adulthood (1)</b> 191:16		
	<b>across (12)</b> 34:13;37:6,16;48:1;	<b>adulthood (1)</b> 191:16		

162:24	<b>although (8)</b>	143:1;154:19	182:8	191:5,5
<b>agreed (3)</b>	7:7;8:4;72:8;82:1;	<b>applicant (21)</b>	<b>approving (5)</b>	<b>arranged (1)</b>
6:18;7:3;106:20	84:12;101:8;145:11;	5:16,18;6:8,12;	11:20,22;12:4;57:7;	68:25
<b>agreeing (1)</b>	190:14	14:22;15:4;23:19;	182:10	<b>arrangement (1)</b>
172:5	<b>always (5)</b>	31:15;72:14,20;73:1;	<b>approximately (10)</b>	196:4
<b>agreement (7)</b>	13:1;15:5;42:12;	103:10;104:8;154:11;	73:13;76:6;108:1,5,	<b>arrangements (2)</b>
14:22;16:9;19:9,11;	65:21,21	157:15;184:13;185:6;	8;121:12,21;133:15;	163:8;173:13
27:14;94:23;173:13	<b>amended (4)</b>	186:13;187:13;188:25;	142:16;156:18	<b>arrive (2)</b>
<b>agreements (1)</b>	110:4,23;161:19;	190:4	<b>April (1)</b>	47:19;62:19
174:15	187:7	<b>applicant's (3)</b>	21:5	<b>arrived (7)</b>
<b>agrees (1)</b>	<b>amendment (4)</b>	6:19;10:23;24:1	<b>aquifer (1)</b>	6:4;7:7;30:3,5;31:4;
197:22	4:4;14:23;70:8;	<b>applicants (2)</b>	78:9	148:14;169:20
<b>agricultural (5)</b>	154:16	4:7,11	<b>archdiocese (1)</b>	<b>arriving (1)</b>
73:15;112:9;133:3;	<b>amenities (9)</b>	<b>application (8)</b>	114:9	63:13
191:19;196:20	6:5,22;7:9;146:24;	4:3;29:16;71:8;	<b>architects (1)</b>	<b>arrow (1)</b>
<b>agriculture (1)</b>	148:14;153:23;168:14;	72:23;73:18;111:14;	93:5	113:24
73:19	169:14;193:12	182:3;196:12	<b>area (91)</b>	<b>artful (1)</b>
<b>ahead (7)</b>	<b>amenity (1)</b>	<b>applications (1)</b>	6:19;7:4;12:18;19:4;	103:1
67:21;97:19;101:23;	44:14	149:17	20:7;23:10,11,16,21,	<b>Asbury (6)</b>
110:23;136:11;157:20;	<b>American (1)</b>	<b>applied (2)</b>	24,24;28:11,14,17,20;	182:15,25;183:1,11,
189:11	77:5	53:25;71:12	29:20;30:7;32:3;35:21;	12,14
<b>air (2)</b>	<b>among (1)</b>	<b>applies (3)</b>	46:21;47:6;59:15,22;	<b>ascertain (1)</b>
7:8,11	193:5	29:13,14;170:3	60:16;71:6,11,23;72:5,	98:19
<b>Airy (1)</b>	<b>amount (28)</b>	<b>apply (5)</b>	7,19;76:25;79:16;	<b>aspect (1)</b>
176:9	20:9,11;25:20;30:5;	29:23;45:21;170:5;	80:16;81:17;82:6,7,9,	108:2
<b>al (1)</b>	31:14;35:15;42:18;	187:5,6	11;83:9,10,11;97:3,4,	<b>assert (1)</b>
4:4	74:11;75:25;76:8;	<b>appreciate (3)</b>	25;99:23;100:11,13;	10:22
<b>align (1)</b>	77:22,25;79:4;81:8,9;	9:7;189:21;199:21	101:5,17;102:5;	<b>assigned (6)</b>
194:8	86:20;93:2,25;95:8;	<b>appreciated (1)</b>	103:13;108:3,13,13,16;	20:10,18;22:14;
<b>allocation (1)</b>	97:21;98:22;103:19;	174:17	109:7,25;110:2,6,12,	24:14;25:7;64:25
147:14	104:20;106:19;112:15;	<b>approach (8)</b>	22;114:7,15,15;	<b>assigns (1)</b>
<b>allow (6)</b>	176:5,12;194:17	47:4,4;58:17;74:2,5;	116:13;120:25;122:6,	24:4
36:4;98:22;110:12;	<b>analysis (19)</b>	75:22;77:18;151:6	8;123:16,22,23;124:16,	<b>assisted (1)</b>
129:18;165:13;191:25	22:18;23:16,17;	<b>approaches (3)</b>	20,21;127:25;138:10;	61:16
<b>allowed (1)</b>	26:12;49:5,5,25;50:3,	47:1;73:1;75:20	142:2;152:11;156:20,	<b>associated (5)</b>
181:20	17,18,25;51:8;56:19;	<b>approaching (1)</b>	24;161:21;172:18;	71:8;90:9;138:10;
<b>allowing (1)</b>	60:14;66:9;139:11;	46:25	180:9;182:17;190:19;	141:23;157:16
93:20	149:1,20;158:11	<b>appropriate (18)</b>	193:18;196:25;197:5;	<b>Associates (2)</b>
<b>allows (2)</b>	<b>analyzed (1)</b>	7:21;8:4;9:16;15:9,	201:2,6,7	33:4;90:10
58:8;164:17	32:18	18;44:12;45:20;50:5;	<b>areas (24)</b>	<b>Association (3)</b>
<b>almost (4)</b>	<b>and/or (3)</b>	51:11,16,17;58:13;	11:13;59:19;76:20,	5:8;6:25;181:8
15:11;33:18;73:12;	142:12;161:1;163:21	77:4;79:23;158:12;	20,21,24;77:1,4;87:7;	<b>assume (1)</b>
163:2	<b>answered (1)</b>	189:4;190:19;193:12	89:5;93:13,20;96:18;	195:12
<b>alone (4)</b>	173:22	<b>approval (12)</b>	98:23;99:18;101:14;	<b>assumed (2)</b>
96:1;130:24;137:14;	<b>antecedent (1)</b>	75:4,9,15;76:5;	102:24;112:20;114:4;	116:4;138:22
146:12	140:7	80:19;106:14,15;	115:12;116:16,16;	<b>assumes (2)</b>
<b>along (25)</b>	<b>anticipate (1)</b>	116:15;118:15;141:25;	150:25;151:11	170:2,4
19:18,18;20:20;	59:4	143:3;145:7	<b>areas'' (1)</b>	<b>assumption (10)</b>
22:15;52:18;57:1,4;	<b>anticipated (1)</b>	<b>approvals (1)</b>	190:2	116:3,9,12,17;
59:16,17,17;71:16;	192:10	142:10	<b>aren't (2)</b>	132:11;133:24;134:9,
76:25;79:14;81:22;	<b>apologize (1)</b>	<b>approve (4)</b>	52:19;171:23	10;151:20;193:11
82:9;83:4;85:4,5;	48:13	57:3;75:3;113:20;	<b>argue (5)</b>	<b>assurances (1)</b>
98:20;100:12,13;	<b>apparently (6)</b>	162:2	17:3,4;38:25;39:2,4	181:21
108:6;146:10;166:25;	10:1;51:20;154:9;	<b>approved (32)</b>	<b>argument (12)</b>	<b>asterisk (1)</b>
192:16	156:2;161:22;162:24	11:22;20:2;24:10;	17:5;163:23;164:8,9,	158:9
<b>alter (1)</b>	<b>appear (2)</b>	57:6,9;64:22,25;75:5;	13,14,15,16,18;165:1,	<b>attached (22)</b>
157:16	15:8;132:8	76:6,11;80:9,9,13;	2;187:20	27:10;107:13,15;
<b>alternate (1)</b>	<b>appears (1)</b>	99:5;103:7,7;106:16;	<b>arguments (2)</b>	138:21;155:24;156:2,
37:23	158:10	110:3;114:2;115:7;	197:17;199:14	11,17,25;157:2,9,14,
<b>alternates (1)</b>	<b>Appendix (9)</b>	117:24;140:1,3,5;	<b>arithmetic (2)</b>	16,24,25;158:1,4,6,10,
179:20	62:3,6;63:7;139:13,	145:9,19;149:1,17;	46:17,22	12;160:3;183:25
<b>alternative (3)</b>	14,15,18;140:18;197:1	167:19,25;178:7;193:9	<b>around (5)</b>	<b>Attachment (15)</b>
6:9;14:3;115:22	<b>applicable (2)</b>	<b>approves (1)</b>	35:25;41:6;45:13;	6:6;26:17;75:13,15,

18,19;107:16;111:24; 136:20;138:5,13,20,21, 22;143:1 <b>attachments (1)</b> 27:9 <b>attempted (1)</b> 76:19 <b>attention (1)</b> 8:2 <b>attorney (2)</b> 4:24;129:19 <b>audience (1)</b> 183:20 <b>audio (1)</b> 14:4 <b>auspices (1)</b> 19:9 <b>auto (1)</b> 36:6 <b>automobile (1)</b> 36:7 <b>availability (1)</b> 112:3 <b>available (5)</b> 9:1;67:15;111:25; 162:12;175:14 <b>Avenue (6)</b> 177:8;184:6,7,8; 192:16;198:8 <b>averages (1)</b> 50:25 <b>aware (5)</b> 20:1;33:12,14;40:15, 18 <b>away (13)</b> 82:21;94:15;100:21; 108:1,4,5,6,8,9,11; 143:25;145:5;159:18	<b>background (8)</b> 19:25;20:1;24:8; 64:10;134:10,22; 135:10;172:3 <b>backup (1)</b> 37:14 <b>balance (1)</b> 104:3 <b>ball'' (1)</b> 193:4 <b>Baltimore (1)</b> 18:4 <b>barely (2)</b> 122:15;123:14 <b>base (1)</b> 91:11 <b>based (20)</b> 18:13,22;25:11; 35:20;42:1,7;44:22; 70:11,23;81:3;90:20; 91:2;107:22;117:18; 147:7;149:12,12; 152:14;153:5;180:24 <b>baseline (1)</b> 73:22 <b>basically (57)</b> 12:9;19:9;20:3; 33:14;42:8;46:22; 63:21;67:16;77:16; 82:17;86:8;92:12;93:9; 19:95;23:99;23; 101:13;102:6;103:21; 105:4,24,25;106:10,13; 107:21;109:6;110:20; 111:5;112:10,18; 113:23;114:4,16,25,25; 115:1,11,12;117:7; 118:9,13;121:8; 124:21;126:18;129:8; 130:11;142:2;155:23; 190:14,16;192:13,21; 193:10;194:15;195:24; 196:24;197:5 <b>basing (2)</b> 41:24;60:25 <b>basis (5)</b> 28:22;37:11;89:1; 104:12;116:20 <b>Bay (5)</b> 72:1,4;112:15,16; 196:22 <b>Bear (2)</b> 131:24;137:1 <b>became (3)</b> 110:8,9,10 <b>become (3)</b> 28:18;72:9;83:3 <b>becomes (3)</b> 31:23;47:5;160:19 <b>bedroom (5)</b> 157:4,7,11,13; 158:14 <b>begin (1)</b>	177:6 <b>beginning (3)</b> 67:17;112:2;182:2 <b>begins (1)</b> 72:13 <b>begun (1)</b> 4:13 <b>below (3)</b> 171:16,16;193:25 <b>belt (3)</b> 81:14;190:7,12 <b>benefit (1)</b> 147:24 <b>benefits (2)</b> 196:12;197:10 <b>best (10)</b> 39:21;73:9;74:4,9; 86:7,10,17;87:9; 117:24;194:19 <b>Bethesda (1)</b> 62:10 <b>better (7)</b> 25:6;95:8;127:16; 147:12;157:21;177:5; 191:22 <b>beyond (3)</b> 29:8;51:20;61:6 <b>bicycle (1)</b> 33:6 <b>big (1)</b> 129:1 <b>bike (7)</b> 150:25;151:8;153:9; 166:18,25,25;167:1 <b>bikeways (1)</b> 169:11 <b>binding (11)</b> 6:23;154:11,18; 155:6;169:10;173:17, 24;174:4,20;175:7,10 <b>bindingness (1)</b> 175:15 <b>Bingo (1)</b> 195:6 <b>bio (4)</b> 88:25;93:13;94:4,4 <b>Bisecting (1)</b> 119:1 <b>bit (15)</b> 28:9;43:4,19;46:10; 99:19;100:7;104:5; 114:8;117:17;146:13; 147:12;159:20;183:9; 187:20;190:10 <b>blank (1)</b> 129:20 <b>block (10)</b> 81:23;84:10,20;85:3; 122:20;153:6;154:6; 157:21;158:10,10 <b>blocked (1)</b> 194:18 <b>blocking (1)</b>	84:7 <b>blue (1)</b> 114:1 <b>BMP's (2)</b> 73:7,8 <b>Board (42)</b> 7:1,25;8:5,7,11;9:11, 15,25;11:21;12:3;14:5; 75:5;76:6,10;77:12; 80:19;81:10;90:16,18; 115:24;137:7;139:25; 140:5;155:7,12;159:9, 20,23;162:1;168:3; 178:8;182:4;188:2; 189:1,16;190:3,9,16; 192:17;193:9;195:25; 196:6 <b>Board's (1)</b> 10:14 <b>bocce (1)</b> 193:4 <b>Bossong (16)</b> 5:12;12:18;79:22; 85:18;89:20,22,23; 90:4,6,12;91:6;92:1,3; 119:20,22;196:17 <b>B-O-S-S-O-N-G (2)</b> 5:12;90:7 <b>Bossong's (3)</b> 90:20,25;91:2 <b>both (21)</b> 10:21,23;19:18,19; 27:15;29:17;33:5; 92:20;98:24;99:5; 119:3;122:12;147:8; 153:14;160:17;170:7, 7;192:23;193:23; 201:3,7 <b>bother (1)</b> 154:15 <b>bottom (5)</b> 95:6;105:17;121:9; 125:4;128:11 <b>Boulevard (2)</b> 69:23;90:8 <b>boundaries (1)</b> 142:7 <b>boundary (2)</b> 133:17;134:4 <b>bowl (3)</b> 122:12;124:16,21 <b>bowled (2)</b> 123:16,22 <b>box (1)</b> 156:15 <b>break (4)</b> 47:8;89:15;146:1,3 <b>breed (1)</b> 88:19 <b>breeding (1)</b> 89:7 <b>bridging (1)</b> 153:14	<b>brief (4)</b> 8:6;89:17;160:10; 171:13 <b>briefly (1)</b> 108:23 <b>bring (3)</b> 68:1;88:7;109:10 <b>bringing (1)</b> 94:24 <b>Brink (50)</b> 5:4;19:19;20:21; 22:20;33:16,24;34:11, 11,25;35:11;36:1,15, 20;37:1,14;38:5,16; 39:17,19;40:3;41:9,10; 47:16,25;48:7,22; 55:21;57:4,23;59:17, 17;62:5;65:22;85:4,5; 100:3,5,6,7;109:21; 114:22;135:4,8,13; 142:11;176:13,18; 177:10;190:18;194:6 <b>Broader (1)</b> 180:6 <b>brought (3)</b> 14:20;87:25;168:6 <b>Bruce (1)</b> 107:10 <b>buffer (2)</b> 82:5;190:15 <b>buffering (1)</b> 76:23 <b>buffers (1)</b> 196:4 <b>Build (4)</b> 64:8;73:23;111:8; 191:7 <b>builders (1)</b> 28:19 <b>building (4)</b> 32:22;64:19;77:18; 198:3 <b>builds (1)</b> 73:6 <b>built (15)</b> 36:5;55:17;56:3; 64:18,25;77:24;82:3; 141:16;142:11,14,17; 167:2;168:8;177:5; 179:18 <b>bullet (2)</b> 189:16,25 <b>bullets (1)</b> 189:14 <b>bundled (1)</b> 14:11 <b>business (5)</b> 18:1,3;69:21;90:5; 162:25 <b>busy (2)</b> 57:22;176:13 <b>Butz (21)</b> 4:3,9;16:10;115:19;
<b>B</b>				
<b>B-1 (1)</b> 153:9 <b>back (59)</b> 7:1,18,21;10:6; 13:21;19:12;44:18; 46:17;48:14;53:17,18; 56:19;66:14;89:16; 93:16;94:1,2,25,25; 100:10,21;105:2; 109:13,18,23;115:4,16; 120:11;125:12;129:7; 131:2;135:9;136:25; 137:21,21;139:9; 140:1;142:5,6;143:2; 147:21;148:7;149:11, 13;151:4;152:24; 155:4,7;158:17; 159:11,14,23;165:18, 19,21;168:13;187:4; 194:12;196:1 <b>backed (1)</b> 47:25	<b>basing (2)</b> 41:24;60:25 <b>basis (5)</b> 28:22;37:11;89:1; 104:12;116:20 <b>Bay (5)</b> 72:1,4;112:15,16; 196:22 <b>Bear (2)</b> 131:24;137:1 <b>became (3)</b> 110:8,9,10 <b>become (3)</b> 28:18;72:9;83:3 <b>becomes (3)</b> 31:23;47:5;160:19 <b>bedroom (5)</b> 157:4,7,11,13; 158:14 <b>begin (1)</b>	177:6 <b>beginning (3)</b> 67:17;112:2;182:2 <b>begins (1)</b> 72:13 <b>begun (1)</b> 4:13 <b>below (3)</b> 171:16,16;193:25 <b>belt (3)</b> 81:14;190:7,12 <b>benefit (1)</b> 147:24 <b>benefits (2)</b> 196:12;197:10 <b>best (10)</b> 39:21;73:9;74:4,9; 86:7,10,17;87:9; 117:24;194:19 <b>Bethesda (1)</b> 62:10 <b>better (7)</b> 25:6;95:8;127:16; 147:12;157:21;177:5; 191:22 <b>beyond (3)</b> 29:8;51:20;61:6 <b>bicycle (1)</b> 33:6 <b>big (1)</b> 129:1 <b>bike (7)</b> 150:25;151:8;153:9; 166:18,25,25;167:1 <b>bikeways (1)</b> 169:11 <b>binding (11)</b> 6:23;154:11,18; 155:6;169:10;173:17, 24;174:4,20;175:7,10 <b>bindingness (1)</b> 175:15 <b>Bingo (1)</b> 195:6 <b>bio (4)</b> 88:25;93:13;94:4,4 <b>Bisecting (1)</b> 119:1 <b>bit (15)</b> 28:9;43:4,19;46:10; 99:19;100:7;104:5; 114:8;117:17;146:13; 147:12;159:20;183:9; 187:20;190:10 <b>blank (1)</b> 129:20 <b>block (10)</b> 81:23;84:10,20;85:3; 122:20;153:6;154:6; 157:21;158:10,10 <b>blocked (1)</b> 194:18 <b>blocking (1)</b>	84:7 <b>blue (1)</b> 114:1 <b>BMP's (2)</b> 73:7,8 <b>Board (42)</b> 7:1,25;8:5,7,11;9:11, 15,25;11:21;12:3;14:5; 75:5;76:6,10;77:12; 80:19;81:10;90:16,18; 115:24;137:7;139:25; 140:5;155:7,12;159:9, 20,23;162:1;168:3; 178:8;182:4;188:2; 189:1,16;190:3,9,16; 192:17;193:9;195:25; 196:6 <b>Board's (1)</b> 10:14 <b>bocce (1)</b> 193:4 <b>Bossong (16)</b> 5:12;12:18;79:22; 85:18;89:20,22,23; 90:4,6,12;91:6;92:1,3; 119:20,22;196:17 <b>B-O-S-S-O-N-G (2)</b> 5:12;90:7 <b>Bossong's (3)</b> 90:20,25;91:2 <b>both (21)</b> 10:21,23;19:18,19; 27:15;29:17;33:5; 92:20;98:24;99:5; 119:3;122:12;147:8; 153:14;160:17;170:7, 7;192:23;193:23; 201:3,7 <b>bother (1)</b> 154:15 <b>bottom (5)</b> 95:6;105:17;121:9; 125:4;128:11 <b>Boulevard (2)</b> 69:23;90:8 <b>boundaries (1)</b> 142:7 <b>boundary (2)</b> 133:17;134:4 <b>bowl (3)</b> 122:12;124:16,21 <b>bowled (2)</b> 123:16,22 <b>box (1)</b> 156:15 <b>break (4)</b> 47:8;89:15;146:1,3 <b>breed (1)</b> 88:19 <b>breeding (1)</b> 89:7 <b>bridging (1)</b> 153:14	<b>brief (4)</b> 8:6;89:17;160:10; 171:13 <b>briefly (1)</b> 108:23 <b>bring (3)</b> 68:1;88:7;109:10 <b>bringing (1)</b> 94:24 <b>Brink (50)</b> 5:4;19:19;20:21; 22:20;33:16,24;34:11, 11,25;35:11;36:1,15, 20;37:1,14;38:5,16; 39:17,19;40:3;41:9,10; 47:16,25;48:7,22; 55:21;57:4,23;59:17, 17;62:5;65:22;85:4,5; 100:3,5,6,7;109:21; 114:22;135:4,8,13; 142:11;176:13,18; 177:10;190:18;194:6 <b>Broader (1)</b> 180:6 <b>brought (3)</b> 14:20;87:25;168:6 <b>Bruce (1)</b> 107:10 <b>buffer (2)</b> 82:5;190:15 <b>buffering (1)</b> 76:23 <b>buffers (1)</b> 196:4 <b>Build (4)</b> 64:8;73:23;111:8; 191:7 <b>builders (1)</b> 28:19 <b>building (4)</b> 32:22;64:19;77:18; 198:3 <b>builds (1)</b> 73:6 <b>built (15)</b> 36:5;55:17;56:3; 64:18,25;77:24;82:3; 141:16;142:11,14,17; 167:2;168:8;177:5; 179:18 <b>bullet (2)</b> 189:16,25 <b>bullets (1)</b> 189:14 <b>bundled (1)</b> 14:11 <b>business (5)</b> 18:1,3;69:21;90:5; 162:25 <b>busy (2)</b> 57:22;176:13 <b>Butz (21)</b> 4:3,9;16:10;115:19;

138:15;141:17;171:20; 25;173:13,18,21;174:3; 4,12,15;175:13,20; 191:20;197:1;198:1; 199:8	200:5 <b>can't (18)</b> 39:2;47:23;57:15; 75:9;120:25;122:19; 126:5;159:13;180:1; 181:22;183:19;191:20, 21,24;198:2,2,13;200:6	<b>causes (1)</b> 106:8 <b>cautiousness (1)</b> 96:5 <b>cedar (1)</b> 77:5 <b>census (1)</b> 53:12 <b>center (13)</b> 4:12;20:4;122:7; 123:16,21,22,23; 124:16;147:14;152:19; 169:11;192:15;195:6 <b>central (2)</b> 94:16;101:17 <b>centralized (1)</b> 78:2 <b>centrally (1)</b> 89:3 <b>Century (2)</b> 69:22;90:7 <b>certain (3)</b> 89:2;94:10;138:12 <b>certainly (12)</b> 15:20,22;16:17;18:2; 19:8;29:17;39:4;48:15; 66:2;72:6;120:4; 199:23 <b>certification (2)</b> 154:6,22 <b>certified (1)</b> 137:4 <b>certify (1)</b> 12:12 <b>challenge (1)</b> 73:16 <b>change (9)</b> 44:21;79:12;111:15; 155:12;157:25;158:3; 169:16;181:10;182:9 <b>changed (10)</b> 22:10;45:16;92:15; 110:23;111:1,12; 150:21;181:22,23; 192:20 <b>changes (2)</b> 150:18;182:8 <b>changing (2)</b> 79:20;159:25 <b>channel (1)</b> 105:21 <b>chapter (5)</b> 80:8,17;92:11;96:3; 106:17 <b>character (1)</b> 194:5 <b>characteristic (1)</b> 194:5 <b>characteristics (1)</b> 80:11 <b>chart (2)</b> 120:23;166:6 <b>check (3)</b>	7:17;147:15;160:14 <b>checked (1)</b> 168:13 <b>checklist (1)</b> 136:7 <b>Chesapeake (3)</b> 72:1,4;196:22 <b>chief (2)</b> 131:8;162:21 <b>children (8)</b> 42:19,21;53:16;54:3; 61:10,19;107:8;153:1 <b>Christel (2)</b> 107:10,21 <b>church (2)</b> 111:8;191:7 <b>Churchill (4)</b> 183:4,5,6;184:24 <b>circles (1)</b> 101:18 <b>circulation (2)</b> 33:5,9 <b>circumstance (2)</b> 42:11,15 <b>circumstances (1)</b> 192:3 <b>citations (1)</b> 189:3 <b>citizens (1)</b> 184:18 <b>Civic (2)</b> 5:8;181:7 <b>civil (8)</b> 12:19;90:13,15,22, 25;91:3,4;93:6 <b>clarification (2)</b> 54:21;149:3 <b>clarify (3)</b> 43:1;157:2;169:7 <b>clarifying (1)</b> 149:15 <b>Clarksburg (36)</b> 20:4,4;22:3;30:6,7; 33:3;42:20;59:5,5,6,14, 19,20,20,22;71:11; 81:15;109:6,7;110:11; 118:21;119:5;172:14, 17,17;173:14,19;176:5, 7,7,20,23;182:14,14; 190:8;197:5 <b>clause (4)</b> 177:21,22;192:7; 193:1 <b>cleaned (1)</b> 105:15 <b>cleansed (1)</b> 74:15 <b>cleansing (1)</b> 87:22 <b>cleanup (1)</b> 156:15 <b>clear (3)</b> 122:17;140:15;	165:22 <b>clearly (2)</b> 74:25;104:9 <b>clicker (1)</b> 66:20 <b>client (1)</b> 188:20 <b>clip (1)</b> 148:7 <b>close (6)</b> 123:17;162:25,25; 189:10;200:13,14 <b>closely (1)</b> 93:4 <b>closer (1)</b> 179:18 <b>closest (3)</b> 107:25;142:15,18 <b>closing (4)</b> 187:20;197:17,20; 199:2 <b>club (1)</b> 152:10 <b>clubhouse (2)</b> 152:13,15 <b>clustering (1)</b> 194:4 <b>CLV (1)</b> 46:8 <b>coarse (2)</b> 106:2,8 <b>Code (4)</b> 44:6,7,15;92:12 <b>colleagues (1)</b> 90:16 <b>collect (3)</b> 110:22;118:16;119:3 <b>collection (1)</b> 161:22 <b>colored (2)</b> 96:9;97:11 <b>column (1)</b> 149:23 <b>combination (1)</b> 79:9 <b>combined (1)</b> 79:3 <b>coming (16)</b> 34:2,17;35:22;37:6; 43:12,13;44:18;45:8; 63:12;103:19,22; 124:2;128:8;176:5,9; 196:18 <b>commencing (1)</b> 77:15 <b>comment (10)</b> 8:8,14;13:10;15:17, 23;57:19;67:21; 100:10;171:10;177:24 <b>comments (13)</b> 9:23;103:2;136:13; 160:20;161:1,12; 171:13;187:4,8,9,10,
<b>C</b>	<b>Canby (4)</b> 4:25;13:8;171:12,14 <b>cap (1)</b> 74:24 <b>capacity (14)</b> 106:22;109:4,8,9,22; 110:8,9,20,21,21; 111:20,25,25;118:5 <b>Capital (2)</b> 19:10;50:13 <b>capture (1)</b> 102:7 <b>captures (1)</b> 105:23 <b>car (7)</b> 34:1,2;36:6;38:16; 39:8;47:12;179:2 <b>care (7)</b> 61:15;78:19;103:17; 126:23;136:3;150:17; 184:2 <b>cared (2)</b> 78:21,25 <b>careful (1)</b> 150:15 <b>carry (1)</b> 40:22 <b>cars (11)</b> 36:13,14,15;37:21; 39:10;41:17,21,21; 47:25;54:21,22 <b>case (23)</b> 4:21;7:25;9:17; 16:19;17:2;19:4;30:18; 31:7;48:21;49:24;50:8; 19:51;19:69;4;70:7; 78:22;90:10;92:20; 131:8;138:24;192:14, 17;198:23 <b>cases (5)</b> 10:21,24;15:11; 88:20;180:14 <b>Castle (1)</b> 118:22 <b>catch (4)</b> 87:17;95:12;147:4; 191:20 <b>categories (2)</b> 7:13;152:24 <b>category (13)</b> 76:12;77:10;81:17; 83:7;111:2,15,17; 112:6;148:18;150:20, 21;151:21;152:25 <b>caused (1)</b> 156:5	<b>causes (1)</b> 106:8 <b>cautiousness (1)</b> 96:5 <b>cedar (1)</b> 77:5 <b>census (1)</b> 53:12 <b>center (13)</b> 4:12;20:4;122:7; 123:16,21,22,23; 124:16;147:14;152:19; 169:11;192:15;195:6 <b>central (2)</b> 94:16;101:17 <b>centralized (1)</b> 78:2 <b>centrally (1)</b> 89:3 <b>Century (2)</b> 69:22;90:7 <b>certain (3)</b> 89:2;94:10;138:12 <b>certainly (12)</b> 15:20,22;16:17;18:2; 19:8;29:17;39:4;48:15; 66:2;72:6;120:4; 199:23 <b>certification (2)</b> 154:6,22 <b>certified (1)</b> 137:4 <b>certify (1)</b> 12:12 <b>challenge (1)</b> 73:16 <b>change (9)</b> 44:21;79:12;111:15; 155:12;157:25;158:3; 169:16;181:10;182:9 <b>changed (10)</b> 22:10;45:16;92:15; 110:23;111:1,12; 150:21;181:22,23; 192:20 <b>changes (2)</b> 150:18;182:8 <b>changing (2)</b> 79:20;159:25 <b>channel (1)</b> 105:21 <b>chapter (5)</b> 80:8,17;92:11;96:3; 106:17 <b>character (1)</b> 194:5 <b>characteristic (1)</b> 194:5 <b>characteristics (1)</b> 80:11 <b>chart (2)</b> 120:23;166:6 <b>check (3)</b>	7:17;147:15;160:14 <b>checked (1)</b> 168:13 <b>checklist (1)</b> 136:7 <b>Chesapeake (3)</b> 72:1,4;196:22 <b>chief (2)</b> 131:8;162:21 <b>children (8)</b> 42:19,21;53:16;54:3; 61:10,19;107:8;153:1 <b>Christel (2)</b> 107:10,21 <b>church (2)</b> 111:8;191:7 <b>Churchill (4)</b> 183:4,5,6;184:24 <b>circles (1)</b> 101:18 <b>circulation (2)</b> 33:5,9 <b>circumstance (2)</b> 42:11,15 <b>circumstances (1)</b> 192:3 <b>citations (1)</b> 189:3 <b>citizens (1)</b> 184:18 <b>Civic (2)</b> 5:8;181:7 <b>civil (8)</b> 12:19;90:13,15,22, 25;91:3,4;93:6 <b>clarification (2)</b> 54:21;149:3 <b>clarify (3)</b> 43:1;157:2;169:7 <b>clarifying (1)</b> 149:15 <b>Clarksburg (36)</b> 20:4,4;22:3;30:6,7; 33:3;42:20;59:5,5,6,14, 19,20,20,22;71:11; 81:15;109:6,7;110:11; 118:21;119:5;172:14, 17,17;173:14,19;176:5, 7,7,20,23;182:14,14; 190:8;197:5 <b>clause (4)</b> 177:21,22;192:7; 193:1 <b>cleaned (1)</b> 105:15 <b>cleansed (1)</b> 74:15 <b>cleansing (1)</b> 87:22 <b>cleanup (1)</b> 156:15 <b>clear (3)</b> 122:17;140:15;	165:22 <b>clearly (2)</b> 74:25;104:9 <b>clicker (1)</b> 66:20 <b>client (1)</b> 188:20 <b>clip (1)</b> 148:7 <b>close (6)</b> 123:17;162:25,25; 189:10;200:13,14 <b>closely (1)</b> 93:4 <b>closer (1)</b> 179:18 <b>closest (3)</b> 107:25;142:15,18 <b>closing (4)</b> 187:20;197:17,20; 199:2 <b>club (1)</b> 152:10 <b>clubhouse (2)</b> 152:13,15 <b>clustering (1)</b> 194:4 <b>CLV (1)</b> 46:8 <b>coarse (2)</b> 106:2,8 <b>Code (4)</b> 44:6,7,15;92:12 <b>colleagues (1)</b> 90:16 <b>collect (3)</b> 110:22;118:16;119:3 <b>collection (1)</b> 161:22 <b>colored (2)</b> 96:9;97:11 <b>column (1)</b> 149:23 <b>combination (1)</b> 79:9 <b>combined (1)</b> 79:3 <b>coming (16)</b> 34:2,17;35:22;37:6; 43:12,13;44:18;45:8; 63:12;103:19,22; 124:2;128:8;176:5,9; 196:18 <b>commencing (1)</b> 77:15 <b>comment (10)</b> 8:8,14;13:10;15:17, 23;57:19;67:21; 100:10;171:10;177:24 <b>comments (13)</b> 9:23;103:2;136:13; 160:20;161:1,12; 171:13;187:4,8,9,10,

12;189:6 <b>commercial (1)</b> 178:5 <b>Commission (10)</b> 22:22;48:21;49:16; 50:13;55:24;72:17; 75:1;80:10;144:14; 188:2 <b>commitment (1)</b> 68:18 <b>committing (1)</b> 169:10 <b>common (1)</b> 78:17 <b>commonly (1)</b> 156:2 <b>communities (15)</b> 44:16,24,25;46:3; 53:20,23,23,24;54:1,3, 8;61:3,8,14,15 <b>community (44)</b> 4:12;7:15,20;14:3; 33:6;34:22;41:24; 44:16;52:2;53:13;54:7; 57:21;63:16;77:7; 78:15,21;79:16;81:25; 88:10,11;147:14; 151:1,2,5,5,7,14;152:6, 9,19;153:9,10,10; 169:10,13;177:16; 178:3;192:25;195:2,6, 14,16;197:6,9 <b>commuting (4)</b> 25:10,10;42:19; 45:18 <b>comparable (2)</b> 74:8;185:11 <b>compatibility (4)</b> 180:9;193:13; 195:22;196:5 <b>compatible (3)</b> 193:17;194:20;196:8 <b>compendious (1)</b> 146:22 <b>compensate (1)</b> 31:15 <b>compile (1)</b> 163:25 <b>compiled (1)</b> 164:6 <b>complaints (1)</b> 79:15 <b>complete (3)</b> 27:14;45:13;155:16 <b>completed (10)</b> 4:14;56:18;107:3; 176:2,3,4;177:2;179:5, 7,8 <b>completely (3)</b> 53:10;95:4;197:22 <b>completes (1)</b> 162:20 <b>complex (1)</b>	184:18 <b>complicated (1)</b> 25:3 <b>complied (1)</b> 63:24 <b>complimented (1)</b> 76:21 <b>comply (2)</b> 188:22;189:17 <b>complying (1)</b> 64:1 <b>component (3)</b> 74:3,19;77:18 <b>comport (1)</b> 147:18 <b>comprehensive (2)</b> 110:4;178:7 <b>computation (1)</b> 46:17 <b>compute (1)</b> 7:12 <b>computed (1)</b> 46:16 <b>concentration (1)</b> 61:1 <b>concept (4)</b> 72:17;106:15; 157:10;167:6 <b>concern (13)</b> 35:23;60:11;88:17; 97:1;100:23;102:9,11; 103:13;112:14;126:19; 156:5;174:5;195:23 <b>concerned (5)</b> 60:2,7;83:23;124:6; 175:12 <b>concerning (1)</b> 34:10 <b>concerns (4)</b> 102:16;177:19; 181:12;195:23 <b>concise (1)</b> 146:23 <b>conclude (1)</b> 180:25 <b>concluded (2)</b> 190:16;201:11 <b>concludes (1)</b> 185:22 <b>conclusion (4)</b> 28:3;65:4,7,10 <b>conclusions (2)</b> 19:7;27:24 <b>concur (1)</b> 41:20 <b>concurred (2)</b> 26:12,14 <b>concurring (1)</b> 27:23 <b>condition (13)</b> 51:9;61:5;74:8,8; 79:8;86:18,22;95:1,5; 128:6;129:7;133:2,9	<b>conditions (7)</b> 64:1;73:5,10,22,24; 86:17;94:19 <b>conduct (1)</b> 66:24 <b>conducted (3)</b> 64:17;66:17;164:24 <b>confident (2)</b> 95:17,19 <b>configured (1)</b> 83:8 <b>confirm (1)</b> 168:19 <b>conflict (1)</b> 80:3 <b>confused (2)</b> 122:16;124:10 <b>confusing (3)</b> 64:5,12;169:21 <b>confusion (1)</b> 122:18 <b>connect (5)</b> 87:3;119:8;166:22, 23;167:5 <b>connecting (1)</b> 78:7 <b>connection (2)</b> 167:7;180:16 <b>connects (2)</b> 167:7,8 <b>conservation (26)</b> 10:15;11:21,23;12:2, 16,18;70:6,15;71:1,20; 76:4,10,12;77:10,17; 80:8,14,17;81:12,21; 83:13;100:25;101:1; 140:9,25;151:11 <b>conservative (8)</b> 149:13,20;150:8,11, 14,18;151:6,16 <b>consider (11)</b> 39:6,8;48:25;102:10, 22;115:22;146:1; 163:24;164:1,4,5 <b>consideration (11)</b> 52:19;55:4,11,12; 56:1;60:15;63:25,25; 64:16;129:16;171:25 <b>considered (4)</b> 23:20;25:4;49:10; 172:6 <b>considering (1)</b> 102:21 <b>considers (1)</b> 102:21 <b>consistent (4)</b> 53:25;81:18,20; 196:22 <b>constantly (1)</b> 37:10 <b>constructed (2)</b> 20:3;92:16 <b>construction (4)</b>	71:14;106:21,25; 141:24 <b>contact (3)</b> 69:3,5;160:10 <b>contain (1)</b> 192:9 <b>contained (2)</b> 19:20;129:6 <b>contains (2)</b> 76:2;138:1 <b>contemplated (1)</b> 196:15 <b>contemporaneousness (1)</b> 190:25 <b>context (7)</b> 52:21;142:15;175:4, 8;187:23;196:16; 197:12 <b>continue (4)</b> 41:12;71:21;89:5; 94:11 <b>continues (3)</b> 99:24;167:1,2 <b>continuing (2)</b> 45:16;61:15 <b>continuous (1)</b> 130:11 <b>contractor (1)</b> 78:18 <b>contribute (2)</b> 81:5,13 <b>control (5)</b> 78:20;87:14;106:17, 21,24 <b>controlled (2)</b> 105:22;129:5 <b>controls (1)</b> 92:12 <b>conventional (1)</b> 94:12 <b>conversation (1)</b> 143:11 <b>converse (1)</b> 197:7 <b>convert (1)</b> 181:20 <b>conveyance (8)</b> 109:5,10;110:11,13, 15,22;118:6;119:19 <b>conveying (1)</b> 11:19 <b>coordination (2)</b> 178:9,22 <b>copied (1)</b> 160:10 <b>copies (17)</b> 5:16,17,19,19,22; 6:16;8:13;10:14;68:2; 91:15;107:16;147:2, 11;148:6,17;159:5; 200:21 <b>copy (28)</b> 5:23;6:16;8:23;11:1,	2;26:24;27:17;44:4; 66:5,7,9;67:14,24,25; 68:4,12;75:8;91:8; 137:3;138:14;139:22; 148:8,8,9;154:2,4; 178:12,15 <b>corner (12)</b> 63:7;66:20;76:3; 128:1;134:23;137:10, 25;141:13;145:11,14; 190:12,15 <b>corrected (5)</b> 10:19;11:20,21;12:3; 21:20 <b>correction (1)</b> 10:22 <b>correctly (2)</b> 41:16;195:13 <b>correspond (2)</b> 170:4,6 <b>corridors (1)</b> 176:14 <b>couldn't (4)</b> 38:14;125:10; 144:13;195:16 <b>Council (43)</b> 4:19,20,20;28:13; 31:21;32:2,9;48:20; 49:16;55:20;57:6,6; 102:21;104:4,13; 110:3,25;111:12,16; 113:19;114:2;115:7, 13;116:1;117:25; 162:2;163:13,23,23; 164:5,13,24;167:23; 180:1,4,15,15,24; 181:23;182:5,8,8,10 <b>Council's (2)</b> 116:15;182:5 <b>counsel (2)</b> 5:18;198:11 <b>count (7)</b> 6:21;7:9,20,21; 48:24;49:9,9 <b>counted (1)</b> 45:1 <b>counties (1)</b> 106:5 <b>counting (2)</b> 48:14;151:16 <b>country (6)</b> 134:20;136:25; 137:9;145:2,8,16 <b>counts (7)</b> 38:7,17;64:9,17,18; 66:17,24 <b>County (71)</b> 20:8;23:21;24:15; 28:13,19;31:15,20; 32:2;38:11,12;46:16; 48:20;49:2,16,19;51:6, 6;55:14,16,20;56:25; 57:3;63:22;71:12,17;
--	---	---	---	--



74:24;92:11,12;94:8; 13:95:22;96:21,22; 98:1,3,5,8,14,17,25; 99:5;103:10;106:1,7, 11,20;107:11;108:11; 109:5,11;110:3,6,13, 25;111:12,16;112:20; 113:19;114:2;117:9, 13,25;126:20;133:22; 134:5;161:23;171:20; 176:10,14,18;182:22	<b>criticized (1)</b> 49:20 <b>critique (3)</b> 136:12,16,17 <b>crop (1)</b> 132:20 <b>crops (2)</b> 73:14;133:12 <b>cross (14)</b> 34:18,24;37:3;38:20; 39:8,9,12;57:21,21; 58:9,10;134:12; 177:18;178:24 <b>cross- (3)</b> 25:23;34:8;186:5 <b>crossed (1)</b> 154:22 <b>crosses (1)</b> 134:17 <b>cross-examination (15)</b> 9:12;37:25;38:2; 41:12;51:24;83:17; 85:23;89:11;119:23; 120:20,21;127:8; 165:14;166:4;186:1 <b>crossing (19)</b> 34:11;36:1,2,15,25; 37:9;56:15,22;57:18, 24;58:9,13;60:8;168:9, 17,21;179:1;181:14,15 <b>crosswalk (7)</b> 34:22;35:24;36:10, 18;57:1,4,21 <b>crosswalks (9)</b> 56:8,10,11,21;57:7, 17;58:14;167:11,13 <b>crudely (1)</b> 102:1 <b>Crystal (2)</b> 109:7;110:10 <b>cul- (1)</b> 119:13 <b>cul-de-sac (5)</b> 118:20,21;119:5,7, 12 <b>cultivation (1)</b> 73:19 <b>cumulative (1)</b> 16:20 <b>curious (1)</b> 126:13 <b>current (5)</b> 56:21;138:22; 167:17;191:16;192:3 <b>currently (6)</b> 40:3,4,5;79:5,13; 82:2 <b>curvatures (1)</b> 180:3 <b>cut (2)</b> 126:6;143:2	<b>D</b> <b>D-1 (1)</b> 152:25 <b>D-2 (1)</b> 153:1 <b>D-3 (1)</b> 153:1 <b>D-5 (2)</b> 149:23;153:3 <b>daily (1)</b> 72:2 <b>dam (3)</b> 100:20;124:16,24 <b>Damascus (3)</b> 63:12;176:9,21 <b>dams (1)</b> 126:20 <b>dark (1)</b> 137:8 <b>darker (3)</b> 95:25;101:14;114:15 <b>darn (1)</b> 192:19 <b>data (1)</b> 65:24 <b>date (4)</b> 4:14;14:18;164:15; 165:16 <b>dated (6)</b> 14:17;21:5,8;23:3; 111:22;144:8 <b>dates (3)</b> 162:23,23;165:22 <b>day (8)</b> 46:11;71:4;156:2; 161:3,10,12,15;187:19 <b>days (10)</b> 10:6;67:2;160:17; 161:19;162:14;163:1, 20,22;174:22;185:6 <b>day-to-day (2)</b> 178:4;192:10 <b>deadline (1)</b> 163:18 <b>deadlines (1)</b> 187:5 <b>deal (3)</b> 59:10;72:11;198:11 <b>dealing (6)</b> 50:24;92:19;172:13; 190:6;191:2;192:3 <b>December (5)</b> 23:3;139:20;140:1; 141:25;143:7 <b>decentralized (1)</b> 87:8 <b>decentralizing (1)</b> 74:9 <b>decide (4)</b> 32:3;102:23;164:14; 165:1	<b>decides (2)</b> 162:2;164:15 <b>deciduous (3)</b> 77:3,6;81:19 <b>decision (5)</b> 4:20;56:5;67:13; 115:14;188:13 <b>declined (1)</b> 14:2 <b>dedicated (1)</b> 168:18 <b>deemed (1)</b> 108:16 <b>deep (4)</b> 85:12;104:24;124:5, 8 <b>deeper (1)</b> 104:23 <b>default (1)</b> 191:24 <b>deferred (1)</b> 111:17 <b>define (2)</b> 7:8;73:8 <b>defined (2)</b> 147:17;149:22 <b>definitely (1)</b> 15:21 <b>definition (8)</b> 152:5,7,15,17; 154:14;158:1,12;170:2 <b>definitions (3)</b> 156:11;158:11;170:4 <b>degree (1)</b> 100:5 <b>delay (2)</b> 49:5;50:17 <b>delays (2)</b> 50:16;51:2 <b>deleted (1)</b> 168:11 <b>delivered (1)</b> 14:1 <b>demand (5)</b> 150:22,23;151:3,22; 169:20 <b>demonstrate (3)</b> 150:8;193:11;194:14 <b>denial (1)</b> 188:3 <b>denied (1)</b> 197:24 <b>densities (1)</b> 194:8 <b>density (17)</b> 6:10;115:21;138:12; 171:15;181:11,11; 189:17;190:2,10,18,20, 22;191:11,12;194:1,2, 12 <b>denying (1)</b> 171:14 <b>DEP (1)</b>	99:6 <b>departing (1)</b> 62:20 <b>Department (12)</b> 36:4,12;51:7;58:11; 72:15,16;75:1,2,8,14; 81:10;99:5 <b>depending (4)</b> 61:5;104:20;126:18; 128:5 <b>depends (1)</b> 83:8 <b>depict (1)</b> 135:15 <b>depicted (3)</b> 97:12;135:1;153:22 <b>depiction (2)</b> 132:13,25 <b>depicts (1)</b> 133:8 <b>depth (7)</b> 83:6;85:14,19; 124:22,23,23,25 <b>depths (1)</b> 104:15 <b>de-sac (1)</b> 119:14 <b>describe (4)</b> 19:6;91:21;156:8,16 <b>described (3)</b> 35:21;70:13;81:5 <b>describes (5)</b> 31:3;80:10;91:10,12, 23 <b>describing (1)</b> 156:19 <b>description (2)</b> 30:16;185:8 <b>design (13)</b> 56:18;74:6,7,19; 85:19;92:18;93:23; 94:21;98:24;99:4; 100:16,17;103:14 <b>designated (12)</b> 96:11,18;109:15,24; 110:6;112:10;114:2; 115:9;116:14,16; 117:25;119:6 <b>designates (1)</b> 108:11 <b>designation (1)</b> 111:1 <b>designed (15)</b> 34:5;58:5;63:22; 86:19;87:13;92:16; 94:4;96:18;97:23; 105:6,20;106:22; 126:17;178:8,21 <b>designing (1)</b> 105:3 <b>detached (3)</b> 156:16,22;157:23 <b>detached/attached (2)</b>
--	---	--	--	---

156:19,23 <b>detail (8)</b> 46:20;93:15;167:25; 180:3,18,19;189:20; 194:16 <b>detailed (2)</b> 51:8;101:20 <b>details (2)</b> 56:18;96:16 <b>detention (5)</b> 93:14;96:12,15; 99:13;104:19 <b>deteriorating (1)</b> 112:16 <b>determine (14)</b> 20:11;24:2;31:14; 32:10;49:1,2;50:1; 52:24;53:12;61:11; 66:13,16;159:8;170:10 <b>determined (8)</b> 20:8,15;22:16,22; 25:14;54:6;173:19; 199:12 <b>determines (1)</b> 24:5 <b>determining (3)</b> 55:6,17;167:11 <b>develop (3)</b> 25:3;93:3;191:23 <b>developed (9)</b> 22:5;72:9;86:9; 103:22;114:5,5;115:2; 181:1;192:18 <b>developers (2)</b> 28:19;176:4 <b>developing (6)</b> 92:21;93:1;198:1,3, 7,8 <b>development (57)</b> 5:25;6:1,14;14:3; 24:3;28:5;32:4;33:3; 41:20;42:20;48:15; 52:5;54:25;55:1,2; 56:19;58:3;71:14; 76:13;86:5;101:18; 107:7,8,23;110:5; 112:1,7;143:23;154:2, 7,8,9,16;155:13; 156:12;158:22;170:11; 173:11;176:8;178:3,7, 9,22;180:13,14,24; 181:19;185:6;187:1,6, 7,10;192:11;195:12; 196:3;198:12,15 <b>developments (8)</b> 19:25;20:2,2,3,10; 42:2;64:22,24 <b>dialogue (1)</b> 148:15 <b>didn't (20)</b> 13:4;38:10;50:23; 51:16,20;52:21;88:7; 119:20;120:6,7;	125:16;132:9;136:16; 147:13;149:2;175:21; 186:19;192:2;196:10; 197:10 <b>difference (6)</b> 52:24;59:1;102:10; 122:1;157:13;188:5 <b>differences (1)</b> 103:17 <b>different (13)</b> 39:11;42:15,15,19; 46:16;93:9;99:19,20; 100:7;106:3;150:19; 159:21;193:23 <b>difficult (2)</b> 9:22;179:14 <b>dig (1)</b> 12:11 <b>dilemma (1)</b> 104:5 <b>dimension (1)</b> 110:18 <b>DIRECT (8)</b> 17:23;69:18;90:2; 136:4;165:24;166:8; 179:16;180:21 <b>direction (2)</b> 37:18;135:6 <b>directions (1)</b> 24:4 <b>directly (7)</b> 34:24,24;100:4; 149:2;170:3,5;194:23 <b>disabled (1)</b> 184:17 <b>disagree (8)</b> 35:1;64:3;144:2,4,7, 16;189:22;198:19 <b>disagreement (1)</b> 188:2 <b>discharge (1)</b> 87:14 <b>disconnect (2)</b> 93:19;96:1 <b>discretionary (1)</b> 56:4 <b>discuss (4)</b> 16:12;73:7;146:18; 165:6 <b>discussed (7)</b> 8:1;34:16;72:21; 99:22;112:14;141:3; 157:18 <b>discusses (1)</b> 141:8 <b>discussion (12)</b> 8:2,11,13;9:25;27:3; 58:17;68:10;69:9;92:5; 112:2;131:13,18 <b>disk (5)</b> 7:24;8:3,23;9:18,19 <b>dispute (1)</b> 197:25	<b>dissimilar (1)</b> 157:10 <b>distance (8)</b> 35:5,17,20;36:12; 39:7;48:8;58:6;133:16 <b>distances (1)</b> 194:17 <b>distributed (1)</b> 33:18 <b>distributing (1)</b> 74:9 <b>District (1)</b> 4:19 <b>diverse (1)</b> 77:7 <b>divert (1)</b> 87:21 <b>divides (1)</b> 85:10 <b>division (1)</b> 99:8 <b>document (8)</b> 138:18;168:24; 169:3,5,5;174:3,5,16 <b>documented (1)</b> 169:8 <b>doesn't (10)</b> 47:24;50:22,22; 116:1;135:5;170:5; 174:19;175:16;195:3; 198:2 <b>don't (53)</b> 9:12;12:15;13:1; 16:25;27:9;41:14; 45:10;51:12,13,16; 64:7;65:6;66:12;67:5; 83:22;87:16,17;92:5,7; 105:5;106:2,9;107:18; 113:14;116:20;121:25; 122:20;123:9;124:4; 125:18;126:23;127:1; 132:14;136:11;140:22; 142:22;148:7;154:15; 156:8;159:1;162:1,2; 171:19;172:12;178:13, 14;179:6;186:17; 192:14;193:12;199:4, 17;200:22 <b>done (26)</b> 7:17;38:16;49:6; 50:7,8,12,18;66:23; 67:8,23;69:6;93:7,24; 100:15;102:7;113:25; 129:8;149:6,19; 159:18;168:2;169:7; 170:1;196:7,7;198:14 <b>donut (1)</b> 114:21 <b>doodled (1)</b> 158:9 <b>DOT (1)</b> 177:1 <b>double (1)</b>	168:13 <b>down (32)</b> 27:18;47:8;55:21; 60:8;63:12;84:15;97:3; 99:24,25;102:3; 103:13,18;105:7,10; 108:12;119:9;121:1,3; 123:20;151:12;165:10; 167:2;176:5,8,10,18; 177:24;181:6;186:19; 192:13;193:25;197:13 <b>downhill (1)</b> 126:3 <b>downspouts (2)</b> 87:18;93:20 <b>Dozens (1)</b> 18:11 <b>drain (4)</b> 86:10;105:7,10,17 <b>drainage (4)</b> 85:10;88:22;123:23; 138:3 <b>draining (1)</b> 88:24 <b>drains (2)</b> 105:24;138:3 <b>draw (1)</b> 130:14 <b>drawn (2)</b> 130:16;167:12 <b>draws (1)</b> 112:6 <b>drew (1)</b> 130:9 <b>Dreyfus (1)</b> 192:17 <b>Drive (4)</b> 18:4;140:10;141:1; 178:25 <b>driven (1)</b> 117:17 <b>driveway (7)</b> 36:15,24;137:23; 141:4,7,19;143:19 <b>driving (4)</b> 53:17;125:2;190:21; 194:2 <b>drop (1)</b> 193:25 <b>dry (5)</b> 85:16;93:14;104:19; 105:11,12 <b>due (4)</b> 163:1;181:11,11; 182:4 <b>duplicate (2)</b> 92:8;137:14 <b>duration (1)</b> 9:2 <b>during (11)</b> 41:16;62:10,16,25; 97:2;106:21,25; 133:11;148:10;156:1;	200:24 <b>Dusty (3)</b> 5:12;69:12,22 <b>dwelling (3)</b> 45:7;152:12,14 <hr/> <b>E</b> <hr/> <b>earlier (11)</b> 33:25;57:2;76:15; 88:16;92:17;95:13; 112:14;124:22;137:17, 17;162:9 <b>early (4)</b> 63:11,15,15;71:4 <b>earth (1)</b> 106:19 <b>easel (1)</b> 92:7 <b>easels (1)</b> 33:2 <b>easement (8)</b> 76:12,17;77:10,12; 81:17;83:10,12;84:12 <b>easements (1)</b> 77:11 <b>easier (1)</b> 78:20 <b>easiest (1)</b> 8:22 <b>east (10)</b> 7:5;35:23;48:1; 110:13;114:9;118:19; 135:9;138:16;139:1; 190:13 <b>eastbound (3)</b> 37:17,19;58:17 <b>eastern (3)</b> 77:5;145:11;176:17 <b>eastward (1)</b> 135:12 <b>east-west (3)</b> 47:4;56:23;176:14 <b>easy (3)</b> 26:23;66:8;182:6 <b>economically (3)</b> 171:18;172:2;198:6 <b>economics (2)</b> 171:21,22 <b>edge (5)</b> 76:25;82:21;126:12; 134:2;137:24 <b>edit (1)</b> 148:4 <b>edition (2)</b> 91:10,25 <b>education (1)</b> 90:13 <b>educational (1)</b> 172:3 <b>effect (3)</b> 32:16;96:3;108:22 <b>effected (2)</b>
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48:6,21 <b>effectively (1)</b> 78:18 <b>effects (1)</b> 175:13 <b>efficiency (1)</b> 34:4 <b>efficient (2)</b> 33:9,11 <b>eight (4)</b> 123:17;124:24; 125:5;126:4 <b>either (10)</b> 32:21;48:1;115:22; 138:24;147:8;170:6; 181:14;186:7;191:24; 198:11 <b>elaborated (1)</b> 72:8 <b>electronic (2)</b> 5:17,19 <b>electronically (2)</b> 66:7,8 <b>element (7)</b> 6:24;75:21;78:12; 154:12;155:6;169:10; 188:17 <b>elements (2)</b> 160:1;190:5 <b>elevations (1)</b> 122:13 <b>eliminate (1)</b> 126:25 <b>Elm (12)</b> 13:7;14:8,10,13,21; 16:8,9;171:13;172:9; 173:11;174:4,14 <b>else (7)</b> 7:23;27:10;84:8; 153:25;162:12;198:18, 23 <b>elsewhere (1)</b> 182:22 <b>e-mail (10)</b> 5:22,24;6:15;7:2; 13:15;107:10;136:14; 147:11;148:22;171:10 <b>e-mails (2)</b> 136:6;149:12 <b>embankment (2)</b> 82:17,20 <b>employed (2)</b> 18:4;75:23 <b>empowered (1)</b> 172:1 <b>empty (1)</b> 150:16 <b>enclosed (1)</b> 14:4 <b>encompassed (1)</b> 96:20 <b>encompassing (1)</b> 59:3	<b>encroachments (1)</b> 77:13 <b>end (18)</b> 15:3;34:12,23;36:7; 56:9;96:9;121:4,9,13, 17,22;122:13,23; 123:11,12;125:4; 134:16;135:12 <b>ended (1)</b> 65:12 <b>ends (1)</b> 122:12 <b>enforce (2)</b> 6:25;77:12 <b>engineer (4)</b> 12:10;21:13;39:23; 90:25 <b>engineering (13)</b> 12:19;18:16,24; 43:23;44:21;61:6;85:7, 18;90:13,15,23;91:3,5 <b>engineers (6)</b> 20:14;53:11,14; 54:13;91:9;93:6 <b>enhanced (1)</b> 78:5 <b>enhancement (1)</b> 196:19 <b>enough (6)</b> 22:5;35:16;82:20; 83:5;161:15;187:18 <b>ensure (3)</b> 73:2;77:13;89:4 <b>ensuring (1)</b> 6:24 <b>entail (1)</b> 76:16 <b>entered (2)</b> 77:11;140:18 <b>entering (1)</b> 77:22 <b>entire (11)</b> 49:8;80:16;94:25; 98:4;102:5,13;112:10; 118:17;122:9;142:2,4 <b>entirely (2)</b> 73:12;81:18 <b>entitled (4)</b> 191:6;193:17; 198:12,15 <b>entrance (9)</b> 36:4,7,7;38:21,23; 57:2,4;59:6;137:18 <b>entrances (1)</b> 34:2 <b>entry (1)</b> 40:11 <b>environment (3)</b> 89:7,9;187:25 <b>environmental (20)</b> 12:13,15,17;70:5,14, 25;71:18;72:16;74:5,7, 20;81:4;92:17;98:24;	99:8;141:22;142:4,8; 196:19,22 <b>environmentalists (1)</b> 93:5 <b>envision (1)</b> 77:1 <b>envisioned (1)</b> 50:9 <b>Epigrammatic (1)</b> 146:22 <b>equivalent (2)</b> 127:16,17 <b>ergo (1)</b> 193:24 <b>erosive (1)</b> 73:21 <b>error (1)</b> 5:25 <b>ESD (14)</b> 92:17;94:2,4,6,7,10, 11,22,22;96:22;98:3; 102:13;103:15,18 <b>ESD's (1)</b> 96:20 <b>especially (6)</b> 49:20;97:25;102:12; 105:25;117:10;128:7 <b>essence (2)</b> 130:9;191:19 <b>Essentially (12)</b> 23:18;31:5;44:11; 47:16;48:24;93:23; 94:23;95:2;96:14; 130:5;160:18;175:2 <b>establish (1)</b> 170:8 <b>established (4)</b> 31:21;34:23;48:20; 55:20 <b>establishing (1)</b> 36:18 <b>establishment (1)</b> 178:2 <b>et (1)</b> 4:3 <b>evaluate (1)</b> 172:1 <b>evaluated (2)</b> 198:13,16 <b>evaluations (1)</b> 170:9 <b>evaporate (1)</b> 105:18 <b>even (14)</b> 29:13;51:1;55:22; 87:11;97:22;101:5; 115:20;123:14;126:19; 133:2;142:9;174:6; 179:21;196:15 <b>evening (6)</b> 20:17;25:11;30:19; 41:22;54:23;65:19 <b>event (6)</b>	14:21;49:24;70:23; 115:22;144:15;162:10 <b>eventually (5)</b> 76:10;77:7;110:1,14; 119:9 <b>evergreen (3)</b> 77:2;81:19,19 <b>evergreens (1)</b> 82:4 <b>everybody (10)</b> 9:2;17:10;41:25; 45:8,8;120:5;148:17; 161:25;165:22;199:24 <b>everyone (1)</b> 43:8 <b>everywhere (1)</b> 84:9 <b>evidence (13)</b> 4:18;9:12;15:5;17:2; 50:23;164:4,4;170:22; 172:23;179:16;186:9, 12;187:16 <b>evolution (1)</b> 192:12 <b>evolve (1)</b> 45:16 <b>evolved (1)</b> 148:18 <b>exact (2)</b> 12:12;13:14 <b>exactly (7)</b> 39:2;40:22;46:4; 47:13;62:18;127:14; 181:4 <b>EXAMINATION (11)</b> 17:23;25:24;34:9; 62:1;69:18;88:3;90:2; 129:22;130:23;136:4; 186:6 <b>examine (2)</b> 19:17;46:25 <b>examiner (4)</b> 4:18;18:9;148:16; 164:19 <b>example (7)</b> 83:1;86:3;106:6; 127:24;173:21;175:22, 23 <b>exceed (5)</b> 65:12;86:21;151:17; 157:24;158:7 <b>exceeds (2)</b> 49:2;151:15 <b>excellent (2)</b> 24:19,22 <b>except (3)</b> 84:11;184:12;194:24 <b>excerpt (2)</b> 113:15,17 <b>excluded (1)</b> 15:10 <b>Excluding (3)</b> 73:12;76:1;103:23	<b>Excuse (10)</b> 11:8;24:24;33:20; 51:14;59:7,17;161:8; 171:14;176:15;196:1 <b>Exhibit (121)</b> 6:21;8:7;10:13;11:6, 18,24;13:19;14:15; 18:12;19:3,8,20,20,21; 20:25;21:1,1,4,8,13,14, 15,21;22:9,10;23:4,9; 27:6,21,25;29:18,20; 30:15,23;31:1;33:2,13, 15;35:10;46:18;56:20; 58:2;59:13;62:3;66:10; 68:4,12;70:11;75:12, 17,19;76:9;82:8;83:1; 90:19;91:14,17;92:23, 25;93:8;95:25;96:11; 97:12;101:12,12; 107:18,20;112:22,25; 113:1,3,5,10,22,23; 118:10,11,13,23,24; 121:11;129:20;132:4, 4;133:5,6,25;134:1; 136:25;137:3,11,16,24, 24;139:13,23;140:18; 141:2;148:25;149:5,6, 24;150:1,3,8,18,20,21, 24;152:7;153:4;154:4; 156:13,14;166:8; 168:7,11,16,22;170:25; 187:15 <b>exhibits (13)</b> 15:4,8,16;20:24; 21:3;68:15;132:1; 186:12,14,16,21,24; 201:3 <b>exist (4)</b> 47:24;50:22;117:10; 168:14 <b>existing (30)</b> 24:8;33:24;64:16,17, 18;65:3,24;66:13,24; 73:5,10;76:8;79:8; 80:15;81:24;94:19; 109:19,21;114:17; 119:9;121:6,11,22; 122:14;125:6;129:14; 137:18;167:1,16;179:5 <b>exists (4)</b> 51:9;86:16;88:20; 168:16 <b>exit (8)</b> 33:22;34:22,23; 97:24;176:15,15; 181:14;194:23 <b>exiting (7)</b> 33:19,20,23;36:14; 41:17,22;103:25 <b>exits (2)</b> 43:2;54:16 <b>expanded (2)</b> 40:2,14
--	---	---	---	--

<b>expect (5)</b> 56:19,25;57:3;58:11; 192:14 <b>expected (4)</b> 23:22;24:11;41:5; 177:18 <b>experience (5)</b> 18:14,23;46:1;70:13; 90:21 <b>expert (18)</b> 12:13;18:8,15,23,24; 24:1;70:5,14,25;71:2; 83:19;88:1,13;90:14, 22;91:3,4;179:10 <b>experts (1)</b> 40:8 <b>explain (9)</b> 6:4;25:6;29:11;30:2; 54:19;64:7,14;115:18; 149:4 <b>explained (1)</b> 18:14 <b>explanation (1)</b> 28:9 <b>explicit (1)</b> 71:12 <b>explicitly (1)</b> 72:8 <b>exposing (1)</b> 73:21 <b>extend (4)</b> 119:8;160:22,22; 163:2 <b>extended (9)</b> 39:18,19;93:14; 96:12,15;99:13; 103:24;104:18;105:6 <b>extending (2)</b> 116:24;117:3 <b>extent (8)</b> 74:14,21;89:2; 127:15;138:12;164:21; 167:13;190:13 <b>external (1)</b> 167:7 <b>extra (6)</b> 66:9;67:14,24,25; 68:1;157:12 <b>extract (1)</b> 78:9	15,23,25;97:20,23; 98:10,11;100:16,18,20, 22;103:9,15,23,24,24; 104:16,19,25;105:3,5, 6,14,23;106:1;107:4; 108:2;149:21;150:11; 153:13,13;168:19,20; 174:11;175:14;185:8; 187:2;192:24;193:3 <b>facility (29)</b> 79:12,21,24;82:17, 20,22;84:1,2;85:16; 87:17;97:12;99:13,20, 21,22;100:8,9;102:12; 103:16;104:21,24; 105:20;111:7;130:18; 152:8;183:15,16; 184:15;185:9 <b>fact (18)</b> 26:11;35:22;37:21; 43:10;49:14;87:20; 97:20;98:18;99:3; 102:25;103:14;111:24; 115:1;141:6;150:1; 154:7;190:16;191:6 <b>factor (7)</b> 7:11,11,16;31:7,22; 148:15;171:24 <b>factors (2)</b> 24:12;169:21 <b>failing (1)</b> 49:21 <b>fails (1)</b> 138:17 <b>fair (9)</b> 8:16,17;17:9;25:25; 26:4;187:21;199:25; 200:2,3 <b>fairly (4)</b> 24:16;25:2;132:24; 181:25 <b>fairness (2)</b> 32:15;184:12 <b>fall (1)</b> 22:21 <b>falling (2)</b> 100:1,4 <b>far (14)</b> 82:20;86:15;100:8; 106:7;107:23;111:20; 126:19,20;127:13; 134:10;143:25;149:7; 187:10,11 <b>Farm (24)</b> 4:9;20:22;22:20; 55:10;57:18;118:18, 19;133:9,22;136:8,8; 138:16,16,17;139:1,19; 140:10;176:2,22; 177:10;183:5,7,8; 185:1 <b>farmhouse (1)</b> 134:22	<b>farming (2)</b> 95:10;171:22 <b>farther (1)</b> 59:22 <b>fast (1)</b> 139:12 <b>fat (3)</b> 139:14,15;146:7 <b>Father (1)</b> 108:13 <b>favor (1)</b> 102:7 <b>favoring (1)</b> 117:14 <b>fearful (1)</b> 162:1 <b>feasible (4)</b> 74:22;171:18;172:2; 198:6 <b>features (1)</b> 95:21 <b>February (13)</b> 111:22;160:19; 161:3,5,8,9,13;162:25; 187:7,9;189:6,7,11 <b>Federal (3)</b> 63:23;64:2;72:10 <b>fee (1)</b> 30:8 <b>feed (1)</b> 59:14 <b>feedback (1)</b> 72:18 <b>feeder (3)</b> 59:5,23;177:9 <b>feel (6)</b> 51:10,17;133:3; 155:20;171:6;192:2 <b>feeling (6)</b> 80:23;131:3;145:24; 146:11;159:19;191:13 <b>feet (21)</b> 39:14;58:23,25;59:1; 84:6,9;104:20;105:1; 123:17,18;124:22,24; 125:5,11,11;126:4; 142:17,20;152:11,14, 21 <b>felt (4)</b> 8:7;50:15;51:15; 76:21 <b>fertilization (1)</b> 79:1 <b>fertilized (1)</b> 78:25 <b>fertilizers (1)</b> 73:18 <b>few (2)</b> 82:2;145:5 <b>fewer (2)</b> 44:17;53:3 <b>field (8)</b> 12:13;18:15;44:21; 70:14;90:15,22;92:18; 133:9 <b>fields (8)</b> 18:9;70:5,12;71:2; 112:13,17,19;115:12 <b>figure (10)</b> 31:13;43:2,25;47:24; 104:3;131:22;132:6; 133:13,21;135:3 <b>figured (4)</b> 135:8;154:21; 155:10,15 <b>figures (4)</b> 7:8;169:20;170:1,8 <b>file (9)</b> 5:13,17,19;26:15; 66:3;67:9,19;115:19; 119:25 <b>filed (2)</b> 6:11;29:16 <b>filing (3)</b> 14:19;161:13;182:2 <b>filings (1)</b> 5:20 <b>fill (2)</b> 124:21;130:10 <b>filter (1)</b> 82:5 <b>filtered (2)</b> 81:23;194:19 <b>filters (2)</b> 74:13;94:4 <b>filtration (1)</b> 95:7 <b>final (5)</b> 4:20;11:23;85:7; 109:2;126:17 <b>finances (1)</b> 172:1 <b>find (9)</b> 13:14;49:7,10;50:23; 120:9;129:20;139:21; 171:23;193:14 <b>finding (1)</b> 180:16 <b>findings (4)</b> 19:7;20:24;26:14; 180:15 <b>finds (1)</b> 193:21 <b>fine (8)</b> 8:18;113:1;130:16; 139:17;158:20;159:3; 161:6;170:17 <b>finish (3)</b> 42:17;146:3,5 <b>finished (6)</b> 27:20;80:23;101:24; 155:18;165:24;166:1 <b>fire (3)</b> 107:24;108:2,15 <b>fire/rescue (1)</b> 108:2	<b>firm (7)</b> 4:24;19:5;38:5;45:1; 46:2;90:9;192:18 <b>first (26)</b> 5:24;15:2;30:5;58:9; 64:12;74:3,12;75:20; 88:23;92:9;98:14; 119:5;131:20;147:2; 149:19,25;156:8; 157:4,12;158:2; 171:20;173:23;177:23; 189:16;192:22;193:20 <b>first-floor (1)</b> 157:9 <b>fiscal (1)</b> 30:7 <b>fit (1)</b> 116:1 <b>five (6)</b> 34:1,3;39:12;108:5; 153:1;193:25 <b>five-minute (1)</b> 89:15 <b>flexibility (2)</b> 53:19;102:15 <b>flooding (1)</b> 102:10 <b>floor (5)</b> 157:4,6,12,12;158:2 <b>flow (2)</b> 13:2;196:12 <b>flowed (1)</b> 191:13 <b>flowing (2)</b> 99:23,24 <b>focus (4)</b> 72:2;180:7,8,10 <b>folks (8)</b> 28:10;43:11,12;44:9; 60:24;140:20;146:8; 159:13 <b>followed (4)</b> 20:6;72:22;80:13; 172:10 <b>following (4)</b> 19:13,23,23;158:21 <b>follows (1)</b> 173:19 <b>follow-up (2)</b> 43:19;200:11 <b>foot (4)</b> 86:8;123:10;156:17; 194:11 <b>force (1)</b> 190:22 <b>forces (1)</b> 73:21 <b>forest (43)</b> 10:14;11:21,22;12:2, 16,18;70:6,15;71:1,19; 73:14;75:25;76:3,4,7,8, 9,20;77:7,8,17,17;80:7, 14,15,17;81:9,12,21;
<b>F</b>			
<b>faceted (1)</b> 74:2 <b>facilitate (1)</b> 37:15 <b>facilities (61)</b> 12:19,20;29:15,24; 78:1,17;82:13;83:3; 86:7;87:9;88:23,25; 89:8;93:10,13,14,17, 24;94:18;95:24;96:1,9,			

83:5,6,13;100:24,25; 127:15,17;128:5,6; 129:7;140:9,25; 151:11;196:4	<b>frequently (1)</b> 50:12	<b>generate (2)</b> 20:16;65:5	57:11,14,16;58:22; 59:9,25;60:6,13,20,21; 61:23;65:15,17;66:4, 11,18;68:4,5,9,13,21; 69:1,8;70:18,19;85:21, 24;91:1,16,19;121:1; 127:6,9,18,20;128:15, 20,23,25;129:11; 130:25;140:21,23; 161:8,14;163:12,15,18; 164:1,7,11,22;165:9, 11,15,17,20;166:3,5, 14;168:4;169:2,23,25; 170:13;173:2,4,9; 185:24;186:23;187:2; 199:1,3,7,20,25;200:2, 7,19	130:4;133:12;142:13, 16;190:7,11,12,15; 194:6
<b>forestation (2)</b> 79:14,18	<b>Friday (1)</b> 159:1	<b>generated (16)</b> 20:9,12;24:3;28:5; 30:6;31:6,16;32:5; 42:18;52:6,25;53:1; 59:10;91:22,23;107:8	<b>Greenway (1)</b> 20:4	<b>GROSSMAN (556)</b> 4:2,17;5:2,3,6,9,14; 8:19,21;9:6,9,22;10:10, 12,16,20,25;11:4,7,9, 11,15,18;12:2,6,21,22, 23;13:5,11,16,18,20, 22,23,25;14:7,9,12,16, 18,25;15:20,25;16:3,7, 11,14,17,22,25;17:7,9, 12,15,19,22;18:12,17, 22;19:15,22;20:1,23; 21:4,7,9,10,16,19,21; 22:2,7,11,23;23:1,8,10, 14;24:20,23;25:2,25; 26:3,6,11,15,21,25; 27:8,13,19,21;29:8,11; 30:2,10,14,16,24;31:2, 5,10,13,18,25;32:5,8, 12,15,20,23;33:12; 34:1,6,8,20;35:3,7,12, 19;36:6,9,17,22;37:5, 25;38:23;39:2,25;40:7, 10,13,17,19,25;41:3,7, 11;43:18,24;44:4,7,10; 45:19,24;46:5,7;48:18, 24;49:12,17;50:7,21, 22;51:12,15,19,23; 52:8;53:6;57:5,13; 58:19;59:24;60:4,10, 18;61:25;63:6,17;64:5, 7,11,14;65:6,9,15;66:2, 6,16;67:14,24;68:3,7, 11,14,16,20,22;69:2, 10,13,16,24;70:1,9,10, 16,20;71:5;75:8,13,16; 79:11,25;80:5,20;82:6, 10,24;83:16,25;84:3, 17,22,25;85:21;86:13, 20,24;87:23;88:2,7,11, 14;89:11,15,19,23; 90:1,15,17,19,24;91:2, 20;92:22,24;96:8,13; 97:4,6,10,13,14;98:5, 10,14,19;99:2,11,15; 100:2,12;101:10; 102:20;103:5;104:2,7, 11,17;105:10,17;106:4, 12;107:13,19;113:2,3, 9,11;116:3,11,17; 117:5,16,21;118:10,12, 23;119:11,15,23;120:6, 9,16,19;121:15,19; 122:8,11,17,20,21; 123:11,24;124:12,14; 125:14,19,22;126:1,7, 10,14;127:1,6,14,19; 128:1,14,19,22,24; 129:17,25;130:7,13,21,
<b>forested (1)</b> 95:4	<b>front (2)</b> 90:18;103:14	<b>generation (6)</b> 20:8,14;26:10;91:9, 11,24	<b>Goshen (3)</b> 5:8;177:6;181:7	
<b>forget (2)</b> 131:20;165:13	<b>fruit (1)</b> 179:20	<b>gentleman (1)</b> 70:17	<b>government (4)</b> 46:15;51:3;54:5; 191:25	
<b>forgot (4)</b> 87:24;88:1,13; 170:16	<b>full (8)</b> 42:20;69:11;94:6; 155:16;163:6,10; 197:6,9	<b>gentlemen (1)</b> 5:13	<b>grab (1)</b> 137:1	
<b>forgotten (1)</b> 88:15	<b>fully (1)</b> 147:13	<b>Georgia (1)</b> 192:16	<b>grabbed (1)</b> 154:24	
<b>form (1)</b> 117:6	<b>funded (2)</b> 55:21;56:2	<b>Germantown (8)</b> 4:10;69:23;81:15; 90:8;107:25;108:8; 167:3;190:7	<b>grade (2)</b> 122:23;125:6	
<b>formal (3)</b> 160:23;168:24;169:3	<b>further (18)</b> 34:7;48:22;63:4; 79:18;80:20;83:14; 98:18;100:21;104:24; 119:22;130:22;147:15; 162:15,17;170:23; 187:13;190:10;200:9	<b>gets (1)</b> 17:10	<b>graded (1)</b> 168:18	
<b>format (1)</b> 8:24	<b>furthest (1)</b> 108:4	<b>gist (1)</b> 189:15	<b>grades (1)</b> 58:7	
<b>formerly (1)</b> 150:12	<b>future (4)</b> 55:13;65:3;78:13; 138:25	<b>given (13)</b> 8:6;33:9;49:16;60:2; 63:25;72:18;78:14; 81:4;144:22;170:7; 186:1;190:6;193:6	<b>grading (3)</b> 77:15;93:3;128:3	
<b>formula (1)</b> 20:14	<b>FV-122 (1)</b> 4:8	<b>gives (3)</b> 135:19;197:5,8	<b>graph (1)</b> 134:3	
<b>formulas (1)</b> 63:23	<b>G</b>	<b>giving (2)</b> 161:10;189:20	<b>graphic (3)</b> 130:4;137:2,14	
<b>forth (14)</b> 6:9,13;22:18;53:17, 18;72:22;94:5;101:4; 105:8,16;111:21; 112:16;138:11;187:4	<b>G-881 (2)</b> 4:4;138:15	<b>glad (2)</b> 146:10;162:13	<b>grass (8)</b> 93:15;95:25;105:14; 125:20,23;126:6,24; 130:12	
<b>forward (7)</b> 6:13;55:16;85:8; 101:19;139:12;143:7; 168:1	<b>G-884 (1)</b> 70:8	<b>goal (1)</b> 81:14	<b>grateful (1)</b> 68:25	
<b>found (4)</b> 22:16,19;45:2; 144:15	<b>gained (1)</b> 71:24	<b>goals (4)</b> 73:2;78:22;81:6; 190:18	<b>gratuitously (1)</b> 162:9	
<b>four (27)</b> 5:23;20:9;30:20,21; 34:1,3;39:14,15,16,18; 40:2,3,4,14;62:6,63:7; 104:20;105:1;108:2; 123:17;124:22,25; 125:11,11;153:1; 177:13;189:14	<b>game (1)</b> 152:9	<b>Goddard (1)</b> 20:5	<b>gravity (2)</b> 118:16,17	
<b>four-hour (1)</b> 45:5	<b>gap (1)</b> 153:14	<b>goes (13)</b> 43:9;84:12;85:8; 100:7;101:19;105:2; 119:9;141:5;163:13; 167:22;174:22;175:24; 194:12	<b>gray (2)</b> 114:9,15	
<b>fourth (1)</b> 135:3	<b>gaps (2)</b> 35:16;37:2	<b>Good (19)</b> 4:23;17:25;39:16; 74:8;86:18,22;88:16; 92:4;95:1,5;117:16; 129:7;159:15;165:22; 171:22,23;172:16; 190:17;194:25	<b>great (2)</b> 59:10;172:13	
<b>frame (1)</b> 188:23	<b>garden (3)</b> 151:2;153:10;169:13	<b>Goodrick (118)</b> 5:6,7,7;8:20;9:6,7; 10:9;11:2,3,4,8,10,12, 17;16:4,5,8,12,16,21, 24;17:6,8,11,14;18:18, 21;23:15;24:24;26:5; 27:2,16,20;51:23,25; 52:10,14,17;56:7;	<b>Greater (4)</b> 5:8;95:7;98:22; 181:7	
<b>Frank (3)</b> 5:12;89:22;90:6	<b>Gary (1)</b> 112:23		<b>greatest (1)</b> 172:11	
<b>Franklin (1)</b> 18:3	<b>gas (1)</b> 84:12		<b>green (26)</b> 81:14;82:7,9;93:13; 95:25;96:5,8;97:11; 101:14,18;102:5; 103:9,24;109:25; 124:20;126:24;129:24;	
<b>frankly (2)</b> 27:6;73:24	<b>Gateway (1)</b> 108:6			
<b>Frederick (1)</b> 106:7	<b>gave (7)</b> 7:6;11:2;12:25; 21:11;155:22;192:12; 197:1			
<b>free (1)</b> 171:6	<b>general (6)</b> 50:8;53:5;72:21; 76:11;98:15;138:23			
	<b>Generally (4)</b> 15:11;76:19;85:8; 192:10			

23;131:1,7,10,11,14, 17,19,25;132:4,8,12, 17,22,24;133:4,7,10, 13,18,21;134:5,13,16, 20,25;135:3,11,15,18, 21,25;136:2,9,16; 137:11,15,20;138:20; 139:5,7,10,14,16,21; 140:3,6,12,16;141:11, 15;142:21;143:8,10,13, 22;144:2,5,9,13,19; 145:13,18,21;146:2,7, 14,19,22;147:9;148:1, 9,21;149:10,14,24; 150:6,10;151:20,24; 152:4,18,22;153:12,19, 24;154:14,17,20;155:2, 4,10,15,19,25;156:4; 158:3,8,16,20,25; 159:4,11,17,22,25; 160:5,7,12,16,25; 161:4,7,10,15,18; 162:15,19,22;163:14, 17,19;164:3,8,12,23; 165:10,13,16,18,21; 166:2,12;168:2,25; 169:18,24;170:1,15,18, 21,24;171:3,5,11,17, 24;172:7,19,22;173:1, 5,8,15,23;174:7,13,18, 21;175:1,6;177:25; 178:13,15,18;179:6,9, 14,22;180:23;181:3,9, 17,22;182:2,23;183:1, 3,6,8,16,19,22;184:1,4, 10,12,20,23;185:1,3,5, 15,18,21,25;186:5,8, 11,17,21,24;187:21; 188:12,17,21,24; 189:10,24;193:19; 194:22;195:10,18,21; 196:1;197:16,19; 198:10,21,24;199:1,6, 19,23;200:1,4,8,12,14, 16,17,18,20,22;201:1,5	24:13,16;25:6;26:8,23; 28:3;33:1;34:7,9; 36:24;40:14;49:12; 50:11;62:3;68:1,3,8,12, 17,23;91:11;107:5 <b>G-U-C-K-E-R-T (1)</b> 18:3 <b>Guckert's (3)</b> 18:13,22;21:18 <b>guess (20)</b> 13:24;14:20;35:22; 39:25;47:21;80:6; 81:22;85:25;86:11; 102:14;106:6;107:18; 108:21;120:16;149:2, 4;152:2,3;158:18; 170:15 <b>guidance (1)</b> 115:5 <b>guidelines (15)</b> 19:14;20:6,7;22:19; 55:19;71:18;74:20; 149:22;151:19;152:3, 7,25;153:15;169:19; 170:11 <b>guys (1)</b> 178:11	14:1;17:20;69:14; 89:24;113:22;119:6,7; 129:19;133:19;134:23; 173:6;178:13 <b>handed (2)</b> 149:5,25 <b>handle (4)</b> 9:5;26:20;28:4;88:5 <b>hang (1)</b> 45:13 <b>Hanson (1)</b> 70:8 <b>happen (6)</b> 13:1;50:6;115:23; 120:7;130:4;175:13 <b>happened (3)</b> 112:5;127:3;192:19 <b>happening (2)</b> 95:9;122:5 <b>happens (4)</b> 45:10;158:15,15; 161:9 <b>happy (1)</b> 5:16 <b>hard (6)</b> 5:19;8:23;67:14; 118:20;190:25;199:20 <b>Haus (3)</b> 133:22;134:7;136:8 <b>haven't (2)</b> 172:15;187:14 <b>he'll (1)</b> 146:12 <b>he's (12)</b> 50:12;128:25; 140:14;144:6;146:11; 155:23;198:6,11,12,15, 15,22 <b>head (2)</b> 26:22;188:4 <b>heading (1)</b> 10:23 <b>health (1)</b> 61:5 <b>hear (9)</b> 8:5,5;95:13;104:11; 116:4;164:14,15,16; 194:10 <b>heard (9)</b> 17:10;37:12;103:12; 130:8;182:23;188:10; 191:17;196:16;199:13 <b>hearing (16)</b> 4:3,13,15,17;9:3,10; 12:25;18:9;67:18; 90:16;148:16;164:19; 182:4;199:17;200:24; 201:10 <b>Hearings (2)</b> 18:10;163:5 <b>heaviest (3)</b> 45:17;47:3,4 <b>heavily (1)</b>	101:8 <b>heavy (1)</b> 97:2 <b>hedgerow (2)</b> 82:13,15 <b>help (11)</b> 37:2;39:22;75:24; 77:21;78:23;79:4;82:4; 89:4;93:16;104:9; 135:20 <b>helped (1)</b> 147:11 <b>helpful (1)</b> 184:11 <b>helps (1)</b> 37:20 <b>herbicides (1)</b> 73:18 <b>here's (1)</b> 130:2 <b>Hereto (1)</b> 142:1 <b>hesitating (1)</b> 117:8 <b>high (2)</b> 124:24;126:15 <b>high-button (1)</b> 172:12 <b>higher (2)</b> 61:1;194:8 <b>highlight (2)</b> 8:15,16 <b>highlighted (1)</b> 191:17 <b>highly (1)</b> 60:16 <b>Highway (9)</b> 26:13,16;27:23; 29:19;41:19;43:8;51:7; 175:23,24 <b>hill (2)</b> 84:14,14 <b>hillside (1)</b> 123:20 <b>hilly (1)</b> 35:21 <b>himself (2)</b> 144:9;146:13 <b>hindrances (1)</b> 109:16 <b>historic (22)</b> 6:7;134:1,3,6,8; 137:9;138:9,10; 139:11;141:3,23; 142:3,17,20;143:2,14, 15,24;144:1,11,12,14 <b>historically (1)</b> 61:3 <b>history (3)</b> 108:21,23;192:12 <b>hit (1)</b> 187:14 <b>HOA (2)</b>	173:13,19 <b>Hold (4)</b> 40:7;85:17;158:7; 183:6 <b>hole (1)</b> 197:8 <b>holes (1)</b> 106:8 <b>hollies (1)</b> 77:5 <b>home (9)</b> 28:19;42:13;69:3; 101:4;182:16;183:7,8; 185:3,12 <b>homeowners (1)</b> 6:25 <b>homes (8)</b> 4:12;77:24;183:23, 24,25;184:20,22; 185:12 <b>honor (1)</b> 85:9 <b>hook (1)</b> 191:6 <b>hope (4)</b> 68:23;136:19; 155:20;159:22 <b>hopefully (2)</b> 8:24;167:19 <b>hoping (1)</b> 146:2 <b>hospice (1)</b> 61:17 <b>hour (39)</b> 20:16,17;22:17;25:9, 10,10;30:19;33:25; 40:22;41:6,9,10,16,22; 42:20;43:9,11,12,13, 14,45;9:13,17;46:2,3, 11,23;47:9;54:16,22, 23;62:4,11;63:9;65:18, 19,21,22;146:6 <b>hours (5)</b> 43:15;44:18,18; 62:21;65:13 <b>house (31)</b> 84:14;87:17;97:9; 134:2,3,6,8,10,21,23; 136:24;137:9,9,22,23; 138:9;141:9;142:9,10, 15,17,18,22;143:3,15, 20,21;145:15,17; 194:10,11 <b>houses (9)</b> 43:2,3;52:5;53:1; 142:11,13,22;191:25; 194:4 <b>housing (19)</b> 20:14;42:1,5,8; 43:21;44:14;181:20; 182:13,15,17,20,20,21; 183:12,17,23;187:11; 196:24,25
<b>Grossman's (1)</b> 147:7 <b>ground (13)</b> 93:17,22,25;94:1,20; 95:7;99:25;100:5; 106:9;119:24;120:1,2, 10 <b>Group (3)</b> 18:5;44:13;61:18 <b>grouping (1)</b> 153:6 <b>growth (3)</b> 89:9;112:9;191:19 <b>guarantee (1)</b> 69:6 <b>Guckert (31)</b> 5:11;12:9;17:17,18, 19,25;18:3,6;19:3;	<b>H</b> <b>half (7)</b> 33:22,23;39:13; 52:12,13;156:17;194:3 <b>half-acre (2)</b> 198:3,4 <b>HANCOCK (103)</b> 5:4,4;11:3,4;12:24; 13:5,6;14:8,17;15:16, 17;16:5;18:17,20; 23:15;25:7,14,18,22; 27:1,4;30:15;37:14; 38:1,3,25;39:5;40:5,7, 24;41:2,12,13;44:10; 46:7,9;49:7;50:5; 51:22;52:16;63:18,20; 64:6;70:17;83:16,18; 84:2,4,19,24;85:1,20; 86:25;91:15;96:7;97:1, 5;102:3;104:9,11; 120:22;121:2,17,24; 122:15,19,23,25;123:1, 3,5,13,19,25;125:1,15, 16,25;126:3,9,11,15, 23;127:5;155:22; 156:6;162:10;170:16, 17,25;171:2,4,8;173:1; 183:4;186:2;195:5; 197:7,19,21;198:19,22, 25 <b>Hancock's (5)</b> 95:13;97:9,16;99:13, 24 <b>hand (12)</b>			

<b>housing/detached (2)</b> 91:13,25 <b>however” (1)</b> 194:1 <b>HPC (1)</b> 144:12 <b>huge (6)</b> 55:18;176:24,25; 177:9,11;179:21 <b>humor (1)</b> 193:5 <b>hurdle (1)</b> 179:14 <b>Hurley (1)</b> 108:13 <b>hurt (1)</b> 95:17 <b>hurts (1)</b> 37:20 <b>Hyattstown (1)</b> 108:4 <b>hydrologic (1)</b> 74:8	16;170:17;172:1,3,5, 24,24;173:23;174:1, 25;175:1,12;182:23; 183:13;185:10,10; 186:2;187:17;189:11; 190:14;193:16;195:12, 18,19;196:2 <b>I’ve (8)</b> 24:20;48:16;80:11; 105:2;106:6;107:16; 145:24;146:11 <b>ice (1)</b> 69:7 <b>idea (2)</b> 172:16;177:5 <b>ideally (1)</b> 85:25 <b>ideas (1)</b> 196:23 <b>identification (6)</b> 11:25;19:24;28:1; 91:18;113:6;150:4 <b>identified (1)</b> 15:2 <b>identify (5)</b> 4:21;120:2,17; 135:21;197:11 <b>identifying (1)</b> 131:19 <b>ill (1)</b> 184:3 <b>illustrates (1)</b> 93:9 <b>illustrative (3)</b> 33:2;132:2;138:2 <b>immediately (3)</b> 97:6;114:20;194:24 <b>imminent (1)</b> 56:2 <b>impact (22)</b> 6:7;21:5;24:5;28:23, 25;31:22;32:1;34:3; 55:11,12,18;107:9,22, 23;139:11;141:24; 143:23;144:16;175:23; 176:25,25;179:21 <b>impervious (3)</b> 71:19;74:21,24 <b>implemented (1)</b> 92:16 <b>implementing (1)</b> 115:14 <b>importance (1)</b> 141:5 <b>important (3)</b> 33:12;63:5;198:9 <b>imposed (1)</b> 24:12 <b>impressed (2)</b> 159:14;190:3 <b>improve (2)</b> 73:24;102:23 <b>improvement (2)</b>	129:15;196:21 <b>improvements (4)</b> 25:17;26:9;129:4,8 <b>inch (4)</b> 109:19,20,20,21 <b>inches (2)</b> 69:7;110:18 <b>inclined (1)</b> 67:22 <b>include (11)</b> 7:5;44:15;49:25; 67:1;143:2,16,18; 152:9;175:22,22; 188:24 <b>included (10)</b> 46:17;64:19,21;67:2; 137:6;139:18;143:11; 168:16;172:15;189:2 <b>including (3)</b> 72:15;178:10;192:23 <b>income (1)</b> 182:20 <b>incompatible (3)</b> 160:6;194:11,13 <b>incomplete (3)</b> 138:8,25;144:8 <b>incorporate (1)</b> 100:17 <b>Incorporated (2)</b> 18:5;104:1 <b>incorporates (1)</b> 122:9 <b>incorporation (1)</b> 173:18 <b>incorrect (1)</b> 193:11 <b>increase (1)</b> 77:17 <b>increased (2)</b> 60:8;72:2 <b>increasing (5)</b> 75:25;81:9;102:24, 25;179:3 <b>increasingly (2)</b> 72:9,10 <b>indeed (4)</b> 25:11;37:4;45:3; 51:5 <b>indefinite (1)</b> 85:17 <b>independent (1)</b> 61:15 <b>indicate (1)</b> 148:13 <b>indicated (2)</b> 7:3;37:6 <b>indicates (2)</b> 7:13;23:12 <b>indicating (4)</b> 6:12;111:24;155:6; 163:10 <b>individual (11)</b> 7:20;24:25;87:6,6,	18;147:14;180:2,3; 182:9;184:20,22 <b>individuals (3)</b> 58:8;61:18;78:18 <b>indoor (8)</b> 150:25;151:5,7,14; 152:5,15;153:9,10 <b>industry (1)</b> 157:5 <b>infiltrate (5)</b> 74:14;89:5,6;93:16; 105:25 <b>infiltrated (2)</b> 106:9;128:6 <b>infiltrating (1)</b> 106:11 <b>infiltration (3)</b> 87:22;93:21;95:16 <b>influence (1)</b> 112:3 <b>information (6)</b> 6:20;7:6;46:10;69:3; 164:10;184:9 <b>inherently (2)</b> 15:14;194:13 <b>initially (1)</b> 173:19 <b>initiate (1)</b> 113:18 <b>initiation (1)</b> 4:15 <b>Inn (8)</b> 133:23;134:6,20; 137:9;145:2,8,16,19 <b>inquiries (2)</b> 88:9,11 <b>inquiry (1)</b> 147:8 <b>inside (1)</b> 27:6 <b>installed (2)</b> 56:24;58:14 <b>instance (1)</b> 47:22 <b>instead (1)</b> 106:23 <b>institute (4)</b> 20:13;43:22;54:12; 91:8 <b>institutional (1)</b> 111:6 <b>instructed (1)</b> 56:5 <b>integration (2)</b> 73:6;74:4 <b>intended (2)</b> 40:10;115:10 <b>intense (1)</b> 128:8 <b>intensity (1)</b> 97:24 <b>intent (3)</b> 72:6;157:8;178:1	<b>intention (2)</b> 115:11;154:3 <b>interchange (1)</b> 108:7 <b>interconnect (1)</b> 167:6 <b>interest (4)</b> 96:7;180:10;195:9; 197:13 <b>interested (4)</b> 6:8;11:13;175:12; 185:11 <b>interesting (2)</b> 44:11;115:13 <b>interior (2)</b> 105:23;129:9 <b>internal (1)</b> 128:23 <b>Internally (1)</b> 167:6 <b>interpreted (1)</b> 107:7 <b>interrupt (1)</b> 189:11 <b>intersection (30)</b> 23:21;24:7;25:4,15; 37:1,15;47:2,16;48:8, 12;49:1,3,9,23;50:1,2; 55:1,9;57:24;58:1,5; 59:11;62:5;63:13; 65:20,20;108:12; 135:5,13;177:9 <b>intersections (20)</b> 19:13,15,18,24; 20:11;22:19,24;23:19, 25;24:12,15;46:15,18; 48:6,7,16,21;49:21; 50:16;65:2 <b>interval (1)</b> 39:12 <b>into (65)</b> 15:5;20:23;32:16; 34:18;47:8;52:19;55:4, 10,12,25;59:6,14,19; 60:15;61:4,14;64:16; 67:5;68:23;72:8;74:15; 77:7,11,25;78:7,10; 81:17;84:15,18,22; 87:18;93:14,17,22; 94:1,20,25;95:7;96:20; 99:25;100:6,8,9,17; 112:6,15;116:1;119:8, 9;129:15;140:24; 165:16;173:18;179:1, 4;180:2,19;183:14; 186:12,14;191:11; 194:16,24;195:2,4 <b>introduce (1)</b> 9:14 <b>introduced (1)</b> 136:1 <b>inventory (1)</b> 80:9
<b>I</b>				
<b>I’d (14)</b> 11:5;18:14;46:10; 56:13;57:19;70:13; 90:21;115:4;155:22; 158:23;159:4;160:22; 171:9;187:19 <b>I’ll (24)</b> 8:25;35:1;43:6;45:4; 67:21;73:7;81:2;92:9; 93:14;107:6;108:3,23; 109:18;131:20;137:22; 147:1,4;148:12; 150:11,17;187:22; 192:8;194:22;196:9 <b>I’m (117)</b> 4:17,24;5:7,7;11:1,5; 13:14,21;18:7;27:8,20; 30:13,24;33:13;35:9, 23;36:9;38:22,25; 40:15,18,22;41:2;43:1, 2,5;47:19;48:17;49:7, 10,13;52:1,3,24;53:6; 57:11;59:8;60:1,1,7, 11;61:21,21;62:6,10, 20;67:22;68:18;75:17; 83:23;91:14;92:8,23; 94:6,12;95:23;97:5; 99:12;101:23;104:2; 108:6;109:4,5;114:1; 117:1;118:11,24,25; 122:16;124:10;125:2, 8;126:9,11,12;128:25; 132:13;133:25;136:6; 137:11;139:17;140:12; 146:10;147:6,6,19; 148:4;155:18,21; 161:24;162:1;166:1,				

<b>investigation (1)</b> 177:1 <b>invite (2)</b> 162:12;186:3 <b>involved (1)</b> 90:10 <b>island (1)</b> 177:15 <b>Isn't (5)</b> 39:18;87:3;158:18; 175:10;191:12 <b>issue (26)</b> 7:19;28:7;34:13,14, 15;36:18,25;57:12; 72:11;79:20;89:12; 98:20;105:2;109:22; 112:6;136:11;146:24; 163:20;164:25;170:12, 12;172:19;178:19; 181:4;190:25;191:12 <b>issued (2)</b> 163:6,22 <b>issues (17)</b> 49:21;71:7;109:4,5, 8,9;131:5;156:15; 164:9;172:8;179:23, 23,25;180:6,21; 194:12;195:22 <b>it's (166)</b> 9:22;13:24;14:14,17; 15:2,12;16:17;17:3; 21:5;22:5;23:6;25:2,5, 9,11;28:21;29:25;30:5; 31:11,21;32:13;36:13; 37:9,9;38:19;39:10,15; 40:1,5,15;41:10;42:1,4, 4,7,8,14,15;44:2,6; 45:16,17;46:14,16,22; 48:21;49:6,19,22;50:8; 51:3,19;53:9;55:22; 56:1;57:10;58:25;59:3; 62:24;63:15;65:21; 67:9;74:15,22;75:13, 18;78:20;85:3,12,16, 16;91:24;92:12;98:15; 99:23;104:5;107:17; 109:1;110:15,17; 114:9;115:2;117:17; 118:20;119:17;120:9; 121:1,3;122:12;124:4; 125:16,17,25;126:11, 21;127:19;128:4; 129:9;130:11;132:15, 21;133:15;134:10; 137:5;138:16,25; 139:18;142:9,21; 144:8,14;145:1,3,5; 147:18;148:17;150:16; 152:16;154:3;156:23; 157:2,3;158:14,20; 160:20;161:5;164:9, 23;168:18,18;169:7, 21;171:24;172:4,13,	16;173:20,24;175:7; 176:3,7;177:1,13,25, 25;180:18,18;181:5; 183:17,21,22;187:1; 191:16;193:7,7,14,22; 195:12;196:9;197:13; 198:10,13,17;199:20, 25;200:1 <b>ITE (4)</b> 44:6,6;45:2;91:24 <b>item (1)</b> 140:8 <b>items (4)</b> 71:23;72:21;150:19; 187:4 <b>iteration (1)</b> 31:21  <b>J</b>  <b>J-140 (1)</b> 118:25 <b>Jane (2)</b> 5:7;173:9 <b>January (10)</b> 4:13,16;5:21;6:15; 11:19;14:19;32:16; 173:12;187:6;189:2 <b>job (4)</b> 24:19,22;190:17; 200:1 <b>Jody (3)</b> 4:24;95:21;197:25 <b>July (3)</b> 21:7,8;111:16 <b>junk (1)</b> 84:7 <b>jurisdiction (2)</b> 68:18,24 <b>jurisdictions (3)</b> 106:2;112:11;129:4 <b>justify (1)</b> 192:4  <b>K</b>  <b>Kamen (5)</b> 27:5;147:8,10; 159:14;160:10 <b>Kamen's (1)</b> 155:9 <b>keep (3)</b> 131:9;147:4;166:13 <b>key (4)</b> 77:18,21;78:7,12 <b>kids (1)</b> 53:17 <b>kind (30)</b> 49:5;61:5;73:22; 92:4;102:6;115:18; 118:20;134:16,22; 154:14;158:8;160:1; 161:25;162:3;166:18;	180:4,18,19;183:10,11; 185:12;187:25;188:7, 9,10;189:14;190:10; 192:4,8;194:10 <b>King (4)</b> 183:5,7,8;185:1 <b>KLINE (233)</b> 4:23,24;5:9,11,22; 6:3,11;7:24;8:10,18, 25;9:21;10:1,7,12,17, 21;11:1,5;12:1,5,7,9, 17,22,24;13:13,17,19, 21,24;14:6,11,14,24; 15:24;16:1;17:16,17, 24;18:12;19:1,2;21:6, 9,11,17,20,25;22:5; 23:6;25:23;26:2,7,17, 23;27:1,24;28:2;30:12; 32:24,25;34:7;35:13; 36:23;39:22;56:4;59:8; 62:2;63:4,6;64:8,19; 65:4,8,11;67:15,16; 68:1,14,17;69:17,19, 24;70:2,3,10;71:3; 75:6,18;80:20,22; 82:12,25;83:14;87:23, 24;88:4,9,12;89:13,21; 90:3,19;91:15;92:2; 95:11;97:15,18; 101:22;104:5,8;107:2; 108:14;112:23;113:1, 13;116:8,21,23;117:15, 22;118:2;119:20; 120:4,8,13,18;122:21, 24;123:21;124:18; 129:18,23;130:2,8,15, 22;131:3,9,12;136:2,5, 10,18;137:16;140:14, 19,22;141:21;142:23; 144:6,12,21;145:23; 146:4,10,16,21,25; 147:22;148:2;150:13; 154:1,18;155:1,9,14, 18,20;156:1,5,7;158:8, 17,23;159:3,10,13,18, 24;160:2,6,9,13,24; 161:3,5,10,16,17; 162:9,17,20;163:21; 166:1;170:23;174:3; 185:18,23,24;186:4,7, 10,13,18;187:17,22; 188:16,19,22;189:7,9, 13,25;193:20;194:25; 195:15,20,24;196:3; 197:16,18,25;198:20; 199:8;200:10,13,15,17, 20,25;201:4 <b>Kline's (1)</b> 11:19 <b>knew (2)</b> 110:1;192:19 <b>knowledge (1)</b> 39:21	<b>known (3)</b> 4:8,8;149:23 <b>Kubit (1)</b> 197:4  <b>L</b>  <b>labeled (5)</b> 101:14;113:24; 131:22;137:5;138:16 <b>labels (1)</b> 156:9 <b>lack (3)</b> 83:19;182:12;191:15 <b>laconic (1)</b> 170:19 <b>lady (1)</b> 172:10 <b>land (20)</b> 15:11;32:10;44:6,7, 15;79:9;87:20;91:10, 24,25;93:4;120:11; 124:1;131:21;137:6; 146:7;156:16;172:8; 191:22;193:23 <b>landscape (4)</b> 78:17;93:5;100:17, 17 <b>landscaped (1)</b> 78:16 <b>landscaping (8)</b> 81:21;100:22;101:1, 2,4,19;102:6;194:19 <b>lane (14)</b> 22:18;23:12,23,25; 24:5,11,14;25:5;46:12; 47:5;48:19,25;49:8; 65:12 <b>lanes (14)</b> 25:13;39:15,16,18; 40:3,3,4,4,5,9,14;47:1; 49:14;177:14 <b>language (2)</b> 154:13;156:23 <b>large (10)</b> 55:24;57:20;97:22; 104:21;117:13;122:5; 176:8;177:7,18;183:14 <b>larger (6)</b> 59:3;77:8;116:25; 117:3;161:21;197:6 <b>largest (1)</b> 76:24 <b>larvae (2)</b> 88:19;89:10 <b>last (13)</b> 6:11;9:10;12:22; 31:21;54:13;64:4; 92:14;106:4;166:17; 168:6;186:18;194:7; 196:9 <b>Lastly (1)</b> 154:2	<b>late (1)</b> 105:3 <b>later (5)</b> 25:24;29:14;57:10; 104:10;181:3 <b>LATR (2)</b> 20:6;62:4 <b>law (7)</b> 4:24;55:19,19,20; 87:2;114:3;154:19 <b>lawn (4)</b> 78:19,21;93:20; 123:14 <b>lawns (1)</b> 78:24 <b>laws (2)</b> 96:3;171:19 <b>lawyer (2)</b> 175:7;177:22 <b>laying (1)</b> 33:4 <b>layout (5)</b> 74:3;93:1,1,1;118:14 <b>lays (2)</b> 100:8,9 <b>lead (2)</b> 65:6;188:9 <b>leading (1)</b> 62:16 <b>leap (1)</b> 196:7 <b>least (10)</b> 23:23;62:5;79:7; 81:23;83:9;84:9; 120:10;123:9;155:7; 201:6 <b>leave (5)</b> 45:11,12,14;102:20; 137:22 <b>leaves (1)</b> 191:20 <b>leaving (5)</b> 44:17;62:10,24; 128:12,13 <b>leery (1)</b> 161:24 <b>left (13)</b> 25:12;37:8;46:24; 47:9;67:20;84:14; 109:25;110:2;119:6; 134:23;162:6;176:22; 191:10 <b>legal (1)</b> 175:2 <b>legislature (1)</b> 112:8 <b>legs (2)</b> 56:21,21 <b>Leisure (7)</b> 7:17;182:16,24; 183:10;192:15,18; 197:2 <b>lengths (1)</b>
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39:8 <b>lengthy (1)</b> 181:25 <b>less (12)</b> 6:9;24:14;30:17,18; 79:17;95:8;103:21,25; 104:24;128:12;171:22; 196:17 <b>lesser (1)</b> 62:22 <b>Let's (19)</b> 7:22;14:16;26:23; 40:7;89:15;97:22; 103:17;108:24;109:11; 112:12;128:7;131:19; 20;139:12;146:19; 151:23;158:25;166:2; 184:14 <b>letter (22)</b> 8:6;11:19;14:1,2,4,8, 12,14,21;16:8;26:15; 27:5,22;29:19;101:14; 107:10;111:22;118:15; 172:11;173:11,17; 190:17 <b>letters (5)</b> 13:7,11,12;14:1; 171:10 <b>level (23)</b> 48:15,16;51:4;56:18; 71:13;72:11;92:18; 94:10,11,25;98:17,18; 112:5,12;119:24; 120:1,2,10;121:12; 131:22;157:3;158:15; 167:25 <b>lieu (2)</b> 30:9;112:19 <b>life-cycle (2)</b> 197:6,9 <b>light (3)</b> 57:20;96:8;177:11 <b>lighter (2)</b> 93:13;114:1 <b>liked (1)</b> 22:5 <b>likelihood (1)</b> 177:3 <b>likely (6)</b> 28:21;33:22,23; 62:10;115:25;177:4 <b>limit (5)</b> 40:19,22;41:7;97:23; 112:19 <b>limited (1)</b> 82:14 <b>limiting (1)</b> 182:13 <b>limits (4)</b> 141:22,24;182:19; 194:3 <b>line (21)</b> 23:12;38:19;63:23;	83:4;84:5,12;95:6; 100:14,14;110:16,17; 118:17;119:3,8,10,17; 123:16;128:11;133:17; 134:4;194:7 <b>liner (1)</b> 106:10 <b>lines (6)</b> 52:19;109:20;118:5, 8,9;193:25 <b>link (2)</b> 195:2,4 <b>linkage (1)</b> 195:1 <b>linkages (2)</b> 195:1,13 <b>list (8)</b> 19:25;27:9;168:13; 170:25;184:9;185:8; 187:1,11 <b>listed (2)</b> 14:15;29:19 <b>listen (1)</b> 199:18 <b>listened (1)</b> 8:3 <b>little (23)</b> 6:9;25:3;28:9;39:22; 43:4,19;46:10;53:19; 56:17;63:25;99:19; 100:7;101:18;104:22, 23;106:7;114:8; 117:17;147:12;159:20; 183:9;187:20;190:10 <b>live (6)</b> 44:24;45:10;53:2; 146:7;162:7;174:11 <b>living (10)</b> 52:2;61:16,16; 119:13;145:4;157:9, 11;171:20;175:19; 178:23 <b>LMA (1)</b> 4:4 <b>load (2)</b> 72:2;77:25 <b>loading (1)</b> 196:20 <b>local (14)</b> 4:4;14:22;19:4;20:7; 23:10,16;28:14;46:21; 64:1;71:22;72:4,10; 78:9;129:4 <b>located (9)</b> 4:10;35:25;76:20; 79:13;113:21;142:12; 144:25;184:4;185:15 <b>location (14)</b> 35:5,7,8,18;58:14; 79:12,21;87:14; 121:12,15;133:16; 138:23;141:7;194:21 <b>locations (3)</b>	19:18;59:14;76:11 <b>locking (1)</b> 191:11 <b>loft (1)</b> 157:6 <b>logical (2)</b> 102:12;103:16 <b>long (6)</b> 9:2;18:23;142:11; 192:20,21,23 <b>longer (4)</b> 143:1,16;146:13; 151:8 <b>look (39)</b> 9:15;19:13,16;26:19; 30:19;33:17;39:11; 44:5;45:7;46:23,24; 47:22;48:5,5,10,10,19; 49:8,14,15;51:4;53:14; 56:10;57:24;63:6; 65:21;66:3;67:18; 132:12,24;157:21; 159:9;168:7;169:19; 172:7;180:5,21;197:2; 199:24 <b>looked (9)</b> 53:22;54:1;57:23; 99:6,7;151:4;179:23, 25;181:4 <b>looking (27)</b> 27:4,8;30:5;49:18; 50:25;57:11;64:21; 83:1;99:3;102:1; 118:10,11,23,24; 126:11,12;131:22; 132:2,6,13,21;133:14; 134:17;135:9,12; 156:13;181:6 <b>looks (11)</b> 23:6;48:16;79:16; 84:15;113:15;132:15, 18,19,21;133:15; 150:16 <b>lost (1)</b> 106:4 <b>lot (21)</b> 24:20;93:1;95:17; 97:15;99:24;112:17; 116:5,18;117:13; 124:9;128:8;131:4; 144:24;145:9,17; 182:12,15,16;194:11, 16;196:13 <b>lots (9)</b> 55:22;87:4,11; 115:20;116:25;117:3, 7,19;198:13 <b>love (1)</b> 195:5 <b>low (6)</b> 43:4;99:23;105:22; 122:23;124:1;182:20 <b>lower (5)</b>	84:13;85:2,4,8; 190:15 <b>lowest (1)</b> 85:12 <b>lump (1)</b> 29:21 <b>lunch (3)</b> 146:3,5,6 <b>Lutheran (4)</b> 182:16;183:7,8; 185:3 <b>lying (1)</b> 99:23	141:1,25;143:6,8 <b>manual (4)</b> 7:12;44:1;91:9; 147:17 <b>many (13)</b> 24:2,5;25:5;39:8,10; 43:3;47:25;53:12; 61:11;67:2;90:17; 91:22;142:18 <b>map (14)</b> 4:4,8;14:22;70:7; 113:11,18,22;116:15; 137:4;138:22,23,23; 148:15;201:6 <b>mapping (1)</b> 116:14 <b>maps (3)</b> 55:25;112:21;115:15 <b>March (1)</b> 110:25 <b>mark (1)</b> 91:14 <b>marked (5)</b> 11:24;27:25;91:17; 113:5;150:3 <b>market (1)</b> 157:14 <b>marketing (1)</b> 21:25 <b>marries (1)</b> 72:6 <b>Martin (1)</b> 4:17 <b>Mary (2)</b> 5:7;173:9 <b>Maryland (11)</b> 4:8,10;19:10;90:8; 92:15;108:7;109:20; 112:8,8,11;140:11 <b>Maryland's (1)</b> 191:18 <b>Maryland-National (1)</b> 50:13 <b>master (28)</b> 55:8,16,22,23,24,24; 56:1;81:6;108:25; 109:1,3,24;110:4; 138:18,25;139:2; 157:4,11;158:2,14; 189:18,21,23;190:5,24; 194:4,9,12 <b>material (2)</b> 14:11;144:22 <b>math (1)</b> 153:7 <b>mathematical (3)</b> 25:11;32:13;46:14 <b>matter (3)</b> 10:12;144:10;193:22 <b>matters (4)</b> 5:15;10:11;16:4; 17:13 <b>mature (2)</b>
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77:8;82:4 <b>maximize (2)</b> 96:17;194:17 <b>maximizing (1)</b> 93:25 <b>maximum (8)</b> 23:22;24:14;72:1; 152:12;158:6;178:8, 10,21 <b>may (33)</b> 15:13;17:22;29:13; 49:24;51:8;56:12,13; 66:6;69:16;85:6;90:1; 92:1;96:19;104:23; 124:24;126:18,18; 136:17;151:10;152:9; 157:6;162:5;163:24; 164:1,3;169:15;171:9; 172:2;173:8;174:21; 179:8;185:7;198:5 <b>maybe (16)</b> 13:2,3;27:16;37:13; 41:21;92:4;103:1; 115:21;122:19;136:7; 140:13;162:5;171:23; 187:23;188:2,4 <b>McMansion (1)</b> 115:19 <b>McMansions (1)</b> 191:23 <b>Meadow (6)</b> 5:5;182:16;183:2,3; 184:15,17 <b>Meadows (5)</b> 114:22;142:11; 168:9,17,21 <b>Meadows'' (1)</b> 194:6 <b>mean (32)</b> 16:14;28:9;29:4; 34:20;38:7;50:22; 54:24;56:11;57:23; 59:4;85:4;101:11; 102:9;115:7;117:23; 120:4;121:6;123:13; 124:5;125:25;146:6; 158:20;169:1;172:2, 22;174:7;177:10; 181:22;187:9;195:5; 199:4,23 <b>meaning (2)</b> 83:25;141:22 <b>means (5)</b> 4:18;43:11;53:16,17; 115:10 <b>meant (2)</b> 156:10,25 <b>measure (5)</b> 50:2;75:23;94:7; 98:3;110:22 <b>measured (1)</b> 47:6 <b>measurements (1)</b>	44:14 <b>measures (13)</b> 73:7;78:23;79:3; 81:5;94:3,10,11,12,22; 103:18;104:1;106:21, 25 <b>measuring (2)</b> 49:18,22 <b>media (1)</b> 74:14 <b>median (4)</b> 58:8,10,10,25 <b>medical (1)</b> 178:5 <b>meet (18)</b> 80:16;92:11;94:6; 96:21;98:12,16; 102:13;149:8;150:9; 153:16,17,21;162:13; 169:8;170:9;190:17; 192:7;193:8 <b>meeting (15)</b> 72:13,22;96:21;98:7, 23;100:25;149:16,18; 151:1,16;152:9,16; 162:10,13;199:11 <b>meets (6)</b> 72:14;96:2;103:8; 149:9;170:11;198:16 <b>members (3)</b> 8:5;164:25;192:17 <b>memo (4)</b> 139:8;143:5,12; 155:9 <b>memorandum (1)</b> 139:20 <b>memorized (1)</b> 178:11 <b>mention (6)</b> 80:7;91:7,20;102:19; 139:8;142:10 <b>mentioned (18)</b> 9:9;20:25;37:2;38:4; 70:12;76:1;81:16; 82:12;92:17,20;93:18; 94:2;97:1;112:17; 134:8;143:12;145:2; 188:12 <b>mentioning (1)</b> 124:22 <b>met (4)</b> 73:2;98:2;199:9,9 <b>methodologies (1)</b> 49:17 <b>methodology (2)</b> 19:6;26:12 <b>metric (3)</b> 46:15;48:2;49:15 <b>micro- (1)</b> 88:24 <b>micro-bioretenction (1)</b> 87:9 <b>micro-bios (1)</b>	94:4 <b>mid-block (1)</b> 37:9 <b>Mid-County (3)</b> 175:23,24;177:7 <b>middle (3)</b> 33:22;132:16;177:15 <b>might (10)</b> 50:17;76:16,16; 79:19,20;83:8,12; 125:15;161:1;165:6 <b>mile (1)</b> 40:22 <b>miles (9)</b> 41:6,9,10;108:1,5,6, 8,9,11 <b>Miller (8)</b> 4:24,25;13:8,8; 136:23;171:12,13,14 <b>mimic (1)</b> 95:4 <b>mind (4)</b> 92:7;113:7;125:14, 23 <b>minds (1)</b> 189:22 <b>mine (1)</b> 42:6 <b>minimally (1)</b> 85:7 <b>minimize (6)</b> 74:21;77:21;78:23; 87:14;93:2,2 <b>minimizing (1)</b> 106:19 <b>minimum (2)</b> 96:22;98:16 <b>minute (4)</b> 27:18;46:11;47:17; 93:15 <b>minutes (7)</b> 27:17;34:1,3;51:1,2; 146:12;164:17 <b>mislead (1)</b> 13:4 <b>misnamed (1)</b> 5:25 <b>misunderstand (1)</b> 48:13 <b>misunderstanding (1)</b> 191:3 <b>misunderstood (2)</b> 48:4;140:13 <b>mitigated (1)</b> 30:8 <b>mitigation (1)</b> 30:22 <b>mix (2)</b> 77:2;81:19 <b>mobility (2)</b> 23:11;28:11 <b>model (2)</b> 45:25;91:13	<b>modeling (1)</b> 51:9 <b>modifications (1)</b> 146:17 <b>modified (2)</b> 201:2,7 <b>modify (1)</b> 157:25 <b>moment (2)</b> 134:9;137:1 <b>Monday (5)</b> 10:13;160:19;161:4, 5;171:3 <b>money (2)</b> 28:18;32:3 <b>Monroe (1)</b> 4:25 <b>Montgomery (23)</b> 20:8;51:6,6;71:17; 92:10;94:13;96:3;98:1, 3,8,14;99:5;103:10; 105:25;106:11;107:11; 108:10;112:20;113:19; 117:9;126:19;171:20; 177:8 <b>months (1)</b> 54:13 <b>more (45)</b> 39:3;46:10;49:9; 51:8,8;52:13,16;53:19; 60:22;71:25;76:7;79:7; 88:21;93:15;94:12,14, 17;102:4,4,6,14; 108:24;117:17;119:21; 124:9;133:2;146:8,11; 149:13,20;150:7,10; 151:5,6,16;152:16; 160:21;161:11;162:4; 179:15,25;180:21; 183:9;195:11;197:17 <b>morning (14)</b> 4:23;5:2;17:25; 20:16;25:10;41:21; 45:11;53:18;54:22; 62:7;63:10,15;68:25; 75:7 <b>Morningstar (3)</b> 140:10;141:1;142:12 <b>mosquito (4)</b> 88:19;89:10,12; 105:2 <b>mosquitoes (5)</b> 88:1,5,19;89:7;105:8 <b>most (13)</b> 33:24;61:10;63:2; 70:7;77:10;78:4;79:23; 115:25;146:5;178:4; 187:24;190:3;200:23 <b>mostly (2)</b> 99:25;100:4 <b>motorcycle (1)</b> 24:25 <b>mountain (5)</b>	125:12,19,20;130:8, 11 <b>move (4)</b> 61:4,14,16;186:12 <b>moved (3)</b> 80:1;85:2,6 <b>movement (1)</b> 37:16 <b>movements (6)</b> 23:25;24:6;25:4,5; 48:25;65:13 <b>moving (4)</b> 37:10;55:16;106:20; 111:16 <b>mow (3)</b> 122:15,22;126:5 <b>mowed (1)</b> 105:15 <b>mower (2)</b> 122:16;123:14 <b>MP-4 (1)</b> 14:4 <b>MR- (1)</b> 140:9 <b>Mt (1)</b> 176:9 <b>much (19)</b> 32:3;59:3;77:25; 78:20;79:17;81:7; 87:21;99:20;107:1; 108:17;126:24;163:15, 16;179:25;188:3; 189:20;190:14;197:1; 200:17 <b>mulberry (1)</b> 84:6 <b>mulch (1)</b> 74:13 <b>multi- (1)</b> 74:1 <b>multi-level (1)</b> 158:18 <b>multiple (6)</b> 59:14,15,16;75:20; 149:18;193:6 <b>multiplied (1)</b> 169:21 <b>multiplies (2)</b> 31:7,10 <b>multiply (1)</b> 30:20 <b>multipurpose (2)</b> 152:8,9 <b>must (4)</b> 30:8;67:11;145:14; 152:11 <b>myself (3)</b> 41:20;67:12;187:23
<b>N</b>				
<b>name (11)</b> 4:17,23;10:23;18:1,				

2;21:25;22:2;69:11,21; 90:5,6 <b>narrowed (1)</b> 151:12 <b>narrower (1)</b> 83:3 <b>National (2)</b> 19:10;43:7 <b>native (1)</b> 76:13 <b>natural (6)</b> 80:9;85:9;127:15,17; 150:25;151:9 <b>naturally (2)</b> 74:13;128:5 <b>nature (9)</b> 35:21;73:16;78:14; 79:9;86:16,16,16; 193:15,21 <b>near (1)</b> 129:13 <b>nearby (1)</b> 182:14 <b>necessarily (3)</b> 66:22;83:12;127:19 <b>necessary (1)</b> 96:19 <b>need (23)</b> 16:13;19:12,13; 24:18;26:8;28:19; 39:22;42:9;83:9;87:16; 98:18;107:18,19; 139:23;149:3;150:9; 153:7;154:10,13; 160:21;188:19;196:24; 197:3 <b>needed (1)</b> 192:24 <b>needing (1)</b> 25:17 <b>needs (4)</b> 145:9;152:8;161:12; 171:23 <b>neighborhood (6)</b> 34:18;142:13,16; 160:6;195:2;196:6 <b>neighbors (1)</b> 103:1 <b>net (1)</b> 80:15 <b>network (5)</b> 20:19;26:9;28:4; 33:10;93:24 <b>new (18)</b> 30:10,13;31:6,16; 38:21,23;81:24;92:18; 96:3;112:22,25;113:1; 141:5,7;149:5;154:4; 167:20;168:15 <b>next (10)</b> 17:15,18;68:8;75:23; 89:19,21;101:21; 151:23,24;171:15	<b>nice (2)</b> 126:24;172:10 <b>nights (1)</b> 195:7 <b>nine (2)</b> 125:5;192:9 <b>nitrogen (9)</b> 72:3;77:22,25;78:5; 79:4,6;81:8;112:15; 196:19 <b>nitty-gritty (1)</b> 180:2 <b>nobody (2)</b> 119:13;165:2 <b>none (2)</b> 89:12;195:15 <b>non-senior (2)</b> 52:3,4 <b>normal (1)</b> 26:19 <b>Normally (1)</b> 195:1 <b>north (28)</b> 20:21;33:16,19,20; 41:9;59:6,16,21,22,22; 64:23;81:23;97:8; 119:5;121:5;131:23; 132:7,13,21;134:16; 135:8;141:2;142:13, 19;176:19,21;177:8; 190:11 <b>northern (13)</b> 97:7;99:15,21,22; 101:5;120:24;121:18, 20,22,22;123:12; 142:19;176:10 <b>north-south (2)</b> 47:4;56:22 <b>northwest (10)</b> 64:23;76:3;128:1,2; 133:14;137:10,25; 141:9,12,13 <b>northwestern (1)</b> 79:13 <b>Nos (1)</b> 187:15 <b>note (3)</b> 119:16;189:4,6 <b>noted (4)</b> 62:4;138:10;139:18; 192:22 <b>notes (4)</b> 9:2;12:11;139:25; 199:20 <b>notice (4)</b> 4:14;84:11;163:4,10 <b>noticed (3)</b> 21:22;62:3;119:24 <b>notifies (1)</b> 138:8 <b>notoriety (1)</b> 71:24 <b>nowhere (2)</b>	160:2;194:9 <b>Number (44)</b> 4:4;6:17;21:12;23:4, 6;24:2;25:12,13;31:6; 32:5;35:16,16,17;43:5, 6,16;45:1;46:23,24; 47:1;48:24;49:14;50:1; 52:5,6;53:1;54:6,15; 101:15;107:16;112:23; 132:8;137:12;149:8; 151:12,22;156:13; 157:16;171:16;175:25; 185:16;187:24;193:17; 196:11 <b>numbering (1)</b> 147:20 <b>numbers (5)</b> 38:4;64:9;65:11; 148:25;149:1 <b>numerous (2)</b> 59:18;91:21 <b>nursing (2)</b> 61:17;185:12 <b>nutrients (5)</b> 72:2;74:17;77:22; 78:23;79:2	26:21;27:3;68:10; 69:9;71:9;73:23;79:5; 86:3;103:19,22; 131:13,18;134:1; 137:19,24;141:20; 146:7;151:11;154:24; 196:18 <b>offer (4)</b> 18:15;70:13;90:22; 187:22 <b>offers (1)</b> 174:7 <b>office (8)</b> 13:13;14:20;18:9; 62:9,19;152:11;157:7, 13 <b>offices (1)</b> 4:25 <b>offsite (1)</b> 129:9 <b>off-site (2)</b> 88:21;174:11 <b>often (1)</b> 197:17 <b>old (5)</b> 44:23,23;61:19; 153:1;196:13 <b>older (1)</b> 154:13 <b>olds (8)</b> 60:25;61:1,2;177:16, 17,17,17,17 <b>Once (3)</b> 5:15;74:15;165:7 <b>oncoming (1)</b> 36:16 <b>one (106)</b> 9:3;10:12;11:2,15; 12:22;13:7,7,14;14:1; 25:9;27:10,11,18; 28:13,14;30:4;33:1; 34:1,2;35:16,16;39:11; 40:1;41:22;43:11,14; 45:9;46:3,23;49:18; 54:22;56:8;59:13,18; 60:22;63:9;64:17; 65:22;69:25;71:4; 74:19;75:21;76:12; 77:10;78:2,22,22; 79:15;81:17;83:7; 85:12,25;88:8,9;90:15; 99:10,15,16,17,25; 100:2,2,3;102:20; 108:4;109:14;114:13, 14,15,16;115:16; 117:11,12;127:10; 128:16;131:22;132:8; 136:20;137:1;138:5, 21;140:19;143:1; 146:16;148:8;149:19; 151:14;153:9;154:24; 166:17;168:5,23; 171:12,12;174:10;	176:13;177:14,19; 180:13;183:9,14; 186:19;192:17;198:5; 199:17;201:8 <b>one-acre (8)</b> 115:21;116:5,18,25; 117:3,8,9,19 <b>one-hour (2)</b> 45:4,17 <b>ones (9)</b> 38:13;96:5;167:16, 16,20;187:6;200:23, 24;201:1 <b>ongoing (3)</b> 73:17;89:4,8 <b>online (2)</b> 169:19,24 <b>only (26)</b> 8:16;10:22;11:2; 41:17;42:24;76:2; 78:20;84:11;87:1,24; 96:23;100:23;118:3; 119:24;121:25;129:20; 146:16;151:6,7; 153:21;157:13;161:11; 164:8;172:7;179:9; 198:8 <b>on-site (11)</b> 78:8;86:7;149:7,8; 150:9;151:19;153:16, 21;193:3,9,12 <b>onto (7)</b> 33:20,23,24;35:10; 128:17;145:22;179:2 <b>open (5)</b> 34:8;67:20;110:23; 133:9;182:4 <b>opening (2)</b> 103:20,21 <b>operation (1)</b> 34:5 <b>operations (2)</b> 95:10;106:25 <b>opinion (20)</b> 26:8;33:8;35:4,11, 24;36:17,21;45:23; 80:3;81:3,12;83:19; 103:25;117:24;128:11; 138:8;143:22;162:6; 175:2;190:2 <b>opportunities (2)</b> 37:3;42:14 <b>opportunity (15)</b> 8:8,9;10:5;13:2,10; 15:7,22;16:18;17:3; 61:11;73:23;83:4; 174:23;184:13;186:1 <b>opposed (5)</b> 78:18;116:6,19; 138:21;181:10 <b>opposing (1)</b> 46:24 <b>opposition (16)</b>
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5:17,22;8:7,13,19; 15:7;159:5;160:20; 161:2,13,20;187:11,12; 188:4;189:5;197:21 <b>option (2)</b> 173:20;187:3 <b>options (2)</b> 61:20,22 <b>oral (9)</b> 163:23;164:8,13,14, 15,16,18;165:1,2 <b>orally (1)</b> 184:15 <b>orange (3)</b> 93:11;95:21,24 <b>Orchard (1)</b> 21:23 <b>order (9)</b> 29:3;34:12;56:22; 79:1;83:9;93:3;160:23; 166:3;201:4 <b>ordinance (5)</b> 4:5;154:15;155:11; 178:18;181:5 <b>Ordinarily (1)</b> 9:9 <b>organized (2)</b> 147:1;155:23 <b>orientation (1)</b> 101:12 <b>original (4)</b> 21:22;66:14;100:10; 141:6 <b>originally (1)</b> 88:1 <b>Orobona (1)</b> 14:20 <b>others (3)</b> 156:6;199:9;201:9 <b>Otherwise (2)</b> 36:3,3 <b>ought (2)</b> 108:21;197:16 <b>ourselves (4)</b> 54:1;154:18;162:11; 191:6 <b>out (53)</b> 25:21;33:4,24,24; 34:2;43:3,4;45:5,9,17; 46:6;47:24;48:9;49:7; 10;52:21;55:3;63:8; 75:24;88:21;93:21; 97:15;99:24;102:4; 104:3,10,24;105:16; 109:18;111:18;113:17; 114:8;115:18;122:21; 131:19;135:8;139:24; 140:19;147:3;149:5; 152:2,6;154:22; 162:14;163:4,8,9; 169:21;178:24;195:7; 196:13;197:11;199:24 <b>outbuildings (2)</b>	134:2;143:20 <b>outcome (1)</b> 111:17 <b>outlet (1)</b> 39:19 <b>outlined (2)</b> 23:2;152:24 <b>outlines (1)</b> 14:22 <b>outside (8)</b> 78:16;144:15; 163:24;164:1,3,20; 166:23;167:14 <b>over (16)</b> 25:21;45:13;55:3; 68:12;73:20;77:8;82:4; 87:20;96:23;102:2; 105:1,7;128:5;142:19; 151:2;195:6 <b>overall (5)</b> 29:25;34:5;50:24; 152:18;190:18 <b>overcome (2)</b> 191:4,8 <b>overlay (1)</b> 71:11 <b>owes (1)</b> 171:20 <b>own (2)</b> 15:8;175:7 <b>owned (1)</b> 4:7 <b>owner (1)</b> 182:9 <b>owners (3)</b> 174:4,16;175:14 <b>owners' (1)</b> 102:16	<b>pantry (1)</b> 152:10 <b>paper (3)</b> 168:22;175:16;193:7 <b>paragraph (3)</b> 171:15;193:16,17 <b>parcel (2)</b> 4:6,8 <b>parcels (1)</b> 87:13 <b>Pardon (1)</b> 46:13 <b>parens (1)</b> 133:22 <b>Park (36)</b> 10:18;19:10;26:19; 34:12,19,24;36:20; 50:13;72:16;75:1,4; 80:10;99:7;107:16; 111:23;112:20;113:16, 17;116:14;139:24; 141:19,20;148:16; 151:19;167:8;168:9; 15,17,18,21;169:14; 176:2;177:3;188:1; 197:22;199:16 <b>parking (3)</b> 144:24;145:9,17 <b>Parkway (13)</b> 20:22;22:20;55:10, 10;57:19;118:18,19; 138:17;139:19;140:10; 176:2,22;177:10 <b>part (34)</b> 9:11,14;13:9;14:25; 33:24;35:20;50:3,14; 57:10;66:6;71:12; 74:19;75:11;76:13; 84:11;85:8,12;97:15; 109:5,10;114:12; 116:15;118:15;128:18; 131:6;145:11;148:4; 156:6;169:12;176:10, 17;186:15,16;193:1 <b>participated (1)</b> 163:5 <b>particular (18)</b> 19:14;24:4,6;28:20; 32:6;43:25;45:25; 49:18;50:3,8,9,15; 53:18;63:18;91:24; 92:20;141:3;189:3 <b>particularly (4)</b> 10:3;77:22;88:21; 151:9 <b>parties (3)</b> 4:21;6:16;160:17 <b>partners (1)</b> 198:5 <b>parts (4)</b> 46:16;176:17;180:2; 189:3 <b>party (4)</b>	152:10;163:22; 164:12,13 <b>pass (3)</b> 140:19;147:2;177:7 <b>passed (3)</b> 112:8;145:4;177:7 <b>past (2)</b> 149:16;179:15 <b>pattern (2)</b> 47:22;130:12 <b>pay (4)</b> 8:2;28:19;32:4,11 <b>payment (4)</b> 30:21,22;31:3,14 <b>payments (1)</b> 32:22 <b>peak (32)</b> 20:16,17;22:17;25:9, 9,10;30:19;33:25; 41:22;42:19;43:11,14, 14;44:18,18;45:9,17; 46:2,3;54:16,22,23,23; 62:4,11,21;63:8,9,11; 65:13,19,22 <b>pedestrian (12)</b> 33:5;36:10;37:15; 39:12;58:13,13; 150:25;151:8;153:9; 167:4,12;181:15 <b>pedestrians (2)</b> 36:2,13 <b>pen (1)</b> 129:19 <b>pending (2)</b> 111:17,18 <b>people (39)</b> 24:21;34:24;36:15; 39:13;42:22,24;43:3,4; 44:17,24;45:5,7,11,12, 13;50:1;53:7,9,12; 57:21;60:8;61:4,9,13; 62:24;63:11;67:17; 119:11;146:5;157:4; 162:7;163:4;174:11; 175:19;177:16;187:24; 192:23,25 <b>per (14)</b> 25:14;28:22;29:6; 39:14;40:22;47:9; 83:13;93:20;96:3; 129:4;145:20;151:19; 152:17;169:11 <b>percent (31)</b> 20:19;22:12,14; 28:23;29:1;30:8,10,12, 13,16,20;31:8,23; 42:24;50:20;79:7,8; 86:11;94:22;96:2; 102:13;103:14,17,18; 106:22,23,24;157:18, 23,24;158:5 <b>percentage (1)</b> 158:4	<b>perfect (1)</b> 127:24 <b>performance (1)</b> 73:2 <b>perhaps (2)</b> 77:5;186:2 <b>period (16)</b> 25:7;43:14;45:5,18; 49:1,19;54:16;62:25; 67:20;105:1,6,7;128:9; 185:7,19;188:18 <b>periods (1)</b> 85:17 <b>peripheral (1)</b> 180:1 <b>permit (1)</b> 32:22 <b>permits (1)</b> 154:3 <b>permitted (1)</b> 16:22 <b>Permitting (7)</b> 72:15;75:2,2,9,14; 81:10;99:6 <b>perpetuity (1)</b> 77:9 <b>person (1)</b> 79:23 <b>personally (3)</b> 40:18;54:2;126:23 <b>personnel (1)</b> 159:5 <b>perspective (1)</b> 52:1 <b>phonetic (2)</b> 107:11;133:22 <b>phosphorous (1)</b> 79:7 <b>phosphorus (3)</b> 72:3;79:5;81:8 <b>photo (7)</b> 132:2,9,12;133:1,4, 20;134:24 <b>photograph (2)</b> 120:17;135:1 <b>photographs (2)</b> 135:21,24 <b>photos (9)</b> 119:24;120:1,2,7,10; 131:20,21,22;132:10 <b>phrase (4)</b> 130:8;147:6;156:3, 25 <b>phrased (2)</b> 181:5;193:14 <b>physical (1)</b> 191:8 <b>pick (1)</b> 133:17 <b>picture (2)</b> 130:14;134:13 <b>PIF (2)</b> 111:6,15
<b>P</b>				
	<b>P-429 (1)</b> 4:8 <b>page (37)</b> 19:20;20:15,19;23:3, 9;27:8;30:9,11,15,19, 22,24;31:1;43:25;62:6; 63:7;91:8,10,23; 131:20;133:13,21; 134:1;135:4;138:13; 149:25;151:23,25; 152:2,6;188:7;189:13; 192:8,9;193:2,13,16 <b>pages (7)</b> 10:3;44:3;91:21; 120:19;136:21;138:6; 189:20 <b>paid (2)</b> 29:22;30:8 <b>PAMR (12)</b> 28:8,11,14,16;29:11, 13,15,20;30:21;31:3,5, 24			

<b>pilot (1)</b> 105:21	113:16,18;115:24; 120:11;128:3,4;130:1; 139:25;140:5;141:19; 20;144:11;148:16; 155:7,12;159:9;168:3; 169:4,15;172:16; 177:3;178:7;180:20; 182:4;188:1,2;189:1; 15;190:2,9;192:17; 193:9;194:12;195:24; 197:22;199:9,10,11,16	149:8;158:18;168:17; 170:9;174:8;179:16; 17;194:25;195:24; 196:13	158:4;176:25;177:13	73:16
<b>pine (1)</b> 77:6			<b>potentially (2)</b> 99:9;110:1	<b>Preservation (5)</b> 144:12,13,14; 191:19;196:23
<b>pipe (1)</b> 87:17		<b>pointing (1)</b> 118:25	<b>PR (2)</b> 154:14;192:7	<b>preserve (1)</b> 112:9
<b>pithy (1)</b> 170:19		<b>points (24)</b> 5:24;6:6;7:13;8:1; 25:21;33:14,14;55:3; 59:15,16,18;63:12; 87:15;149:8,13; 151:12,15,18;153:4,7, 8,11;166:19;194:23	<b>practice (1)</b> 86:10	<b>president (1)</b> 164:24
<b>place (10)</b> 29:15;74:12;77:15; 87:1;93:3;101:16; 102:12;103:16;110:19; 171:19	<b>Planning's (3)</b> 116:14;139:25; 151:19	<b>police (4)</b> 107:24,25,25;108:15	<b>practices (6)</b> 73:9;74:4,10;79:9; 86:8;87:10	<b>presumably (1)</b> 114:21
<b>placed (5)</b> 76:11;81:17;83:10; 113:2;181:12	<b>plans (5)</b> 10:15;106:19; 146:18;180:13,14	<b>policy (10)</b> 23:11;28:11,17;30:7; 32:3;47:6;72:10; 116:24;117:2,5	<b>Prathertown (1)</b> 184:19	<b>presume (4)</b> 9:18,18;173:2; 186:11
<b>places (2)</b> 74:24;180:21	<b>plant (12)</b> 77:5;78:2;82:16,21; 83:4,6,11;100:19; 109:9,12;110:9,21	<b>pond (25)</b> 83:23,25;84:13,15; 85:2,4,11,13;87:7,18; 97:12;101:5;120:24, 25;121:4,17,20,20,22; 122:9;123:12;124:8; 125:5;126:25;130:4	<b>PRC (14)</b> 4:6;111:19;157:20, 21;158:10;177:20; 178:2,20;180:13; 181:19;182:7;191:21; 192:13,19	<b>pretty (1)</b> 107:1
<b>plan (105)</b> 5:25;6:1,9,13,14; 10:17;11:21,23;12:3,4, 7;14:3;33:2;55:8,16, 22,23,24,24;56:1;57:9; 63:22;67:25;72:12,24, 25;73:4;75:3,6;76:4, 10,14,21;78:3;80:14; 81:4,6,13,14,22; 101:21;106:16;108:25; 109:1,3,24;110:5; 114:2;115:19,23; 118:8;122:4;132:2; 137:22;138:2,18,25; 139:2;140:9,9;141:6,7; 148:23;154:3,7,8,10, 16,23;155:13,24; 156:10,12;158:22; 161:19;162:23;167:15, 17,19,20,21,24;169:9, 12,16;170:12;172:15; 178:7;179:24;180:20, 24;185:7;187:1,6,7,10; 189:21,23;190:5,22; 191:2;193:10;194:4; 196:3,13	<b>plantings (2)</b> 95:9;100:15	<b>ponding (3)</b> 105:1;124:23,25	<b>pre-application (1)</b> 72:13	<b>prevent (4)</b> 69:5;74:11;79:1; 89:6
<b>plan'' (3)</b> 189:18;190:24;194:9	<b>plants (3)</b> 74:16,17;81:20	<b>ponds (5)</b> 94:14,16,16;98:11, 21	<b>preceding (1)</b> 64:3	<b>prevented (1)</b> 82:18
<b>planned (2)</b> 178:2;192:10	<b>play (2)</b> 114:8;115:18	<b>pool (1)</b> 161:22	<b>precisely (4)</b> 6:4;25:5;70:21; 148:13	<b>previous (7)</b> 18:13;21:13;70:11; 90:20;91:3;92:5; 104:14
<b>planner (3)</b> 12:10;18:7;120:11	<b>playing (1)</b> 92:18	<b>populated (1)</b> 60:16	<b>preclude (1)</b> 198:3	<b>previously (6)</b> 70:25;71:10;73:11; 80:12;81:16;150:24
<b>planners (3)</b> 53:11,14;93:5	<b>please (18)</b> 4:22;17:18,20,25; 19:5;62:14;68:8;69:11, 14,20;71:21;89:24; 90:4;113:9;171:6; 173:6;186:20;196:2	<b>population (2)</b> 53:1,2	<b>precluded (3)</b> 198:1,7,22	<b>primarily (5)</b> 141:8;143:19; 145:12;157:3,8
<b>Planning (86)</b> 7:1,25;8:5,6,11;9:11, 15,25;10:14,19;11:21; 12:3,16,17;14:5;18:16, 24;19:10;22:22;26:12, 20;28:12;43:7;48:20; 50:13,14;55:23;61:7; 70:5,14,25;72:17;75:1, 4,5;76:5,5,10;77:12; 80:10,19;81:10;99:7,8; 107:17;111:23;112:21;	<b>pleasure (1)</b> 71:21	<b>portion (6)</b> 33:15;100:17; 121:19;128:2;141:9; 142:19	<b>prime (1)</b> 111:6;191:3	<b>prime (1)</b> 41:16
	<b>plugging (1)</b> 197:8	<b>portions (6)</b> 8:12,14,15;9:24; 10:6;188:14	<b>predictor (1)</b> 46:2	<b>principally (1)</b> 64:23
	<b>plus (10)</b> 29:19;100:15;132:4; 146:10;147:19,19; 153:2;167:20;189:3; 192:14	<b>posed (1)</b> 40:1	<b>predominantly (2)</b> 156:16,22	<b>printing (1)</b> 139:24
	<b>pm (1)</b> 201:10	<b>position (3)</b> 175:3;191:21;192:2	<b>prefer (1)</b> 131:7	<b>prior (4)</b> 70:23;77:15;109:2; 132:19
	<b>point (58)</b> 5:23;6:4,12,21;7:7,9, 18,20,22;9:24;22:3; 34:17,23;35:9,10;36:1, 2,19;39:3,6,15,24;40:4, 6,10,20;44:11;51:20; 58:6;63:6;104:5,12; 105:10,22,24;116:4; 117:16;119:16;124:4; 126:25;127:2;130:24; 140:13;144:17;145:22; 147:10,13;148:14;	<b>positive (1)</b> 188:3	<b>preliminarily (1)</b> 103:7	<b>private (5)</b> 77:20,24;111:6; 115:11;118:1
		<b>possible (6)</b> 27:16;67:10;79:11; 105:8;160:11;173:18	<b>preliminary (19)</b> 5:15;10:11;11:22; 12:1,2,5,6;16:3;17:13; 72:23,25;75:3;76:9; 80:14;99:4;106:14,15; 118:14;179:24	<b>probably (21)</b> 39:22;62:20,20;77:2; 79:22;85:18;94:13; 108:22;147:23;148:10; 155:16,22;156:6; 158:23;159:19;160:9; 169:6;178:11;181:24; 195:2,7
		<b>possibly (3)</b> 104:22;117:10;128:6	<b>premature (2)</b> 56:17;169:6	<b>problem (13)</b> 50:15;51:1;84:16; 85:11;125:14,22; 146:9;155:1;186:4; 189:13;191:5,10;198:6
		<b>post (1)</b> 67:16	<b>premise (1)</b> 117:17	<b>problems (5)</b> 50:9;103:1;162:4; 163:7;191:9
		<b>posted (5)</b> 33:1;40:23,23,24; 41:6	<b>prepared (5)</b> 19:4,8;21:12;26:24; 154:11	<b>procedural (1)</b> 10:12
		<b>potential (10)</b> 6:7;86:2,20;88:18, 18;112:7;117:18;	<b>present (5)</b> 42:21;89:9;164:18, 25;168:23	<b>procedure (1)</b> 8:17
			<b>presentation (4)</b> 100:24;156:1; 162:20;172:10	<b>procedures (2)</b>
			<b>presented (3)</b> 72:18;168:24,25	
			<b>presently (2)</b> 76:8;78:5	
			<b>presents (1)</b>	

22:18;174:2 <b>proceed (6)</b> 5:14;17:22;69:16; 90:1;92:1;173:8 <b>proceeding (2)</b> 15:3;20:20 <b>proceedings (2)</b> 9:10,14 <b>process (19)</b> 15:1;24:10;28:12,14; 51:3;57:10;67:17; 71:15;72:13;74:20; 109:1;111:22;148:22; 177:1;179:19;181:25; 182:4,6,10 <b>processes (1)</b> 46:20 <b>product (5)</b> 157:3,3;196:25; 197:2,4 <b>profession (2)</b> 18:6;90:12 <b>professional (3)</b> 33:8;103:25;128:11 <b>program (2)</b> 77:14;89:3 <b>programs (1)</b> 89:1 <b>progress (1)</b> 167:18 <b>project (35)</b> 19:5;24:7;28:22; 29:21;30:1;33:22,23; 34:12;35:10;36:1,19; 42:18;53:15;73:1;74:4, 22,23;78:4;86:18;93:4, 11,12;94:18;101:13, 19;115:9;119:4,18; 157:17;189:16;190:23; 192:4,6,7;193:2 <b>projecting (1)</b> 54:23 <b>projections (2)</b> 48:23;62:15 <b>projects (2)</b> 24:9;32:17 <b>proliferate (1)</b> 88:19 <b>promote (1)</b> 87:22 <b>promptly (1)</b> 147:23 <b>promulgating (1)</b> 93:21 <b>proper (3)</b> 116:1;117:12;148:18 <b>properly (3)</b> 149:1;154:6;191:18 <b>properties (5)</b> 7:5;76:23;78:13; 194:21,24 <b>property (160)</b> 4:7,9,9;5:5;16:10;	20:12;21:23;33:18; 62:10,16;65:1;67:17; 70:8;71:5,8,10;72:17; 73:4,6,10,11,14;74:3, 10,18;76:1,2,7,22;77:1, 15,19;78:11;79:6,13; 80:8,11,16;82:21;83:4, 20;84:12;85:9,12;86:1, 4,6,21;87:2,19;88:6; 94:25;95:4;97:8,16,24; 98:21;99:14;100:14, 14;101:15;102:8,15; 103:11,19;104:1; 108:5,20,24;109:15,19, 22,24,25;111:1,2,9,13, 18;112:4,7;113:20,21; 114:1,6,10;115:5,10, 15,15;117:18,25; 118:6;119:1,2;120:5; 126:8,10,12;128:17,21; 129:1,13;130:5,12; 132:20;134:7,11,17; 137:2,8,25;138:1,4,15, 15,16;139:4;141:14,17, 18;142:2,3,4,19; 143:17,19;144:23; 145:10,11;151:22; 167:14;173:14,18; 174:4,12,16;175:13,20, 21,25;176:6,17,20,24; 178:23;179:21;181:12, 14;191:4,7,9,22; 196:18,20,21;198:1,7, 8;199:9 <b>property” (1)</b> 193:16 <b>proposal (2)</b> 153:5;168:24 <b>propose (2)</b> 157:15,15 <b>proposed (39)</b> 6:19,21,21;10:8; 14:3;24:3,9;26:10; 28:5;33:3;36:19;38:21, 23;57:20;77:19;79:10; 86:6,9;93:10;95:3; 101:19;118:9,18,20,21; 142:18;143:23;146:17; 152:19;153:23;156:16; 168:23;170:10;179:5; 193:15,21;194:8; 198:12,16 <b>proposes (3)</b> 73:1;80:14,16 <b>proposing (8)</b> 4:11;149:7,16; 152:13,20;167:16,20; 169:12 <b>protect (2)</b> 75:24;78:23 <b>protected (2)</b> 76:17;77:9 <b>protection (10)</b>	71:5,11,14;72:1,4,7, 16,19;75:22;102:4 <b>protective (1)</b> 177:15 <b>provide (14)</b> 8:22;14:2;46:19,20; 56:22;120:13;125:24; 151:18;178:2;184:8; 190:1,19;192:15;193:3 <b>provided (10)</b> 7:24;19:25;38:11; 52:2;66:7;67:10;75:6; 77:19;79:17;138:22 <b>provides (1)</b> 196:5 <b>providing (6)</b> 71:13;76:22;78:10; 147:24;178:4;192:22 <b>provision (1)</b> 145:15 <b>provisions (1)</b> 189:17 <b>proximity (1)</b> 36:24 <b>public (40)</b> 4:3,14;12:19;29:14, 24;72:10;77:20;78:1,7, 10;107:4,11;109:16,17, 19;112:12,20;114:6,17, 19;115:10,15;116:6,16, 19,24,25;117:2,3,5,9; 118:1;119:17,18; 129:8;180:10;190:23; 196:11;197:10,13 <b>publication (2)</b> 91:21;113:15 <b>Pump (4)</b> 109:7;110:9,10,22 <b>purpose (6)</b> 177:21,22;178:1; 180:8;192:7;193:1 <b>purposes (4)</b> 29:22,25;71:13; 72:19 <b>purview (1)</b> 172:4 <b>push (2)</b> 84:8;190:10 <b>put (25)</b> 5:23;10:13;17:1,2; 52:1;68:15;77:14; 102:12;103:16;106:10; 112:22;129:7,19; 137:3;154:2;155:5; 158:1;164:10;186:9; 188:14;189:1;191:25; 196:10;198:2;201:4 <b>putting (5)</b> 6:9,12;102:22; 103:23;161:24	<b>qualification (3)</b> 18:13;70:12;90:21 <b>qualifications (3)</b> 18:19;70:17;90:25 <b>qualified (6)</b> 12:10;18:8;70:4,22, 24;90:14 <b>qualify (2)</b> 83:5,10 <b>quality (36)</b> 10:17;12:4,7,16,17; 70:6,15;71:1,6,7,13,18, 23,24;72:12,21,23,25; 73:3,4,17,24;74:2;75:3, 6,21,24;77:18;78:12; 80:3;81:6;83:6;99:7; 106:14;140:8,25 <b>quantify (1)</b> 86:3 <b>queued (2)</b> 37:22;50:1 <b>queuing (4)</b> 49:5,25;50:17;51:2 <b>quick (2)</b> 80:7;108:3 <b>quickly (6)</b> 92:9;101:11;105:2; 109:17;159:15;160:11 <b>quite (4)</b> 27:6;41:15;120:25; 198:23 <b>quote (1)</b> 125:20	53:24;54:2 <b>rather (5)</b> 97:15;102:1;150:10; 154:7;197:15 <b>rational (1)</b> 32:14 <b>re- (1)</b> 155:16 <b>RE-2 (6)</b> 4:6;109:15,24;112:4; 195:2;198:2 <b>react (1)</b> 163:16 <b>read (3)</b> 120:25;156:9;177:23 <b>reading (2)</b> 121:4;195:13 <b>ready (1)</b> 148:3 <b>real (3)</b> 36:25;80:7;108:3 <b>realignment (1)</b> 141:18 <b>realistic (1)</b> 52:16 <b>realize (1)</b> 125:17 <b>realized (1)</b> 192:20 <b>really (41)</b> 31:18;33:18;34:3,3; 43:6;49:9,13;63:24; 74:1,11;84:8,11,15; 89:9;101:1;109:10; 118:20;120:8;122:19; 126:2;128:3;145:25; 147:6;148:23;159:15, 18;175:8;180:7,10,23, 24;181:5;188:19; 194:9;196:15;197:3,9, 10,11;198:10,25 <b>reapproves (1)</b> 141:7 <b>reason (8)</b> 34:18;61:2;83:2; 96:17;102:13;109:14; 117:7;154:20 <b>reasonable (6)</b> 48:8;159:7,12; 160:15;180:25;189:22 <b>reasons (2)</b> 49:20;144:17 <b>rebuttal (5)</b> 17:2;131:5,6;185:23; 186:9 <b>rec (4)</b> 151:17;152:6,25; 153:15 <b>recall (5)</b> 26:21;70:20,21,21; 75:10 <b>receive (4)</b> 5:16;83:12;87:10;
<b>R</b>				
<b>R-2 (1)</b> 139:19 <b>R-200 (3)</b> 109:25;110:2;112:4 <b>rainfall (1)</b> 128:8 <b>rains (1)</b> 97:2 <b>raise (5)</b> 17:20;69:14;89:24; 173:5;178:20 <b>raised (5)</b> 5:23;7:19;57:14; 88:17;154:20 <b>raises (1)</b> 71:6 <b>raising (2)</b> 44:11,13 <b>range (6)</b> 7:14;29:5;52:12; 61:13,20;62:21 <b>rarely (1)</b> 187:18 <b>rate (1)</b> 28:22 <b>rates (5)</b> 20:8;44:22;45:2;				
<b>Q</b>				

93:20 <b>received (5)</b> 10:18;14:9,18; 149:17;171:10 <b>receiving (1)</b> 107:9 <b>recent (2)</b> 29:18;71:25 <b>recently (2)</b> 70:7;92:14 <b>recess (1)</b> 89:17 <b>recharge (4)</b> 93:25;94:1;95:6,17 <b>reclassification (1)</b> 4:5 <b>recognition (1)</b> 115:1 <b>recognizes (1)</b> 148:23 <b>recommend (1)</b> 169:15 <b>recommendation (4)</b> 4:19;80:18;182:5; 189:15 <b>recommendations (2)</b> 188:9;199:13 <b>recommended (4)</b> 75:4;76:5;190:24; 191:12 <b>recommends (1)</b> 194:4 <b>reconfigured (3)</b> 80:2;82:23;85:7 <b>record (48)</b> 4:22,23;5:3,23;6:17; 7:3;8:12;9:11;10:1,13; 11:6;13:9;14:13;15:1, 2;18:2;19:3;22:9;27:2, 3;67:20;68:10,11;69:9; 70:11;75:9;90:6,20; 91:4,8;113:2;131:13, 18;136:1;147:10; 155:5;162:24;163:24; 164:3,5,20;165:7; 179:11;186:14,15,16; 189:10;200:14 <b>recording (4)</b> 7:25;9:17,20;199:18 <b>recreation (11)</b> 147:17;149:7,8,21, 22;151:18;152:8; 153:21;169:8,14,19 <b>recreational (10)</b> 120:15;145:24; 146:17;150:11;168:15; 170:11;178:4;192:24; 193:3,8 <b>recross (1)</b> 130:23 <b>REXCROSS-EXAMINATION (2)</b> 63:19;65:16 <b>red (2)</b>	77:5;118:8 <b>redirect (9)</b> 61:25;62:1;63:18; 87:23;88:3;129:17,22; 170:15,18 <b>redrew (1)</b> 142:6 <b>reduce (6)</b> 74:11;79:4;97:21; 103:18;161:21;171:14 <b>reduced (3)</b> 79:6;80:2;142:7 <b>reducing (4)</b> 81:7;157:18;171:15, 16 <b>reductions (1)</b> 71:19 <b>re-establishment (1)</b> 141:18 <b>re-explain (1)</b> 43:6 <b>refer (1)</b> 114:24 <b>reference (9)</b> 10:2;21:11;30:25; 43:25,25;138:3; 144:23;145:8;160:3 <b>referenced (1)</b> 8:1 <b>references (3)</b> 22:8,9;192:8 <b>referral (7)</b> 139:20;140:4,9,24; 141:1;143:6,8 <b>referred (1)</b> 98:7 <b>referring (8)</b> 33:13;50:12;56:20; 59:2;63:7;92:22,23; 133:4 <b>refers (2)</b> 50:11;136:14 <b>reflect (3)</b> 68:11;138:18;149:1 <b>reflected (1)</b> 148:22 <b>reflecting (1)</b> 154:7 <b>reflects (1)</b> 114:25 <b>reforestation (2)</b> 84:20;85:3 <b>reforesting (1)</b> 82:7 <b>regard (3)</b> 80:7;85:19;116:24 <b>regarding (16)</b> 6:7,24;14:22;18:18; 34:14;44:13;70:17; 72:19;76:15;92:19; 93:7;100:24;102:19; 107:24;171:6;180:17 <b>regardless (1)</b>	190:20 <b>regards (1)</b> 92:10 <b>region (1)</b> 54:2 <b>regular (3)</b> 37:10;52:5;89:1 <b>regulated (2)</b> 37:7,8 <b>regulating (1)</b> 78:24 <b>regulation (1)</b> 72:8 <b>regulations (4)</b> 63:23;64:2;94:9; 171:19 <b>rehabilitated (1)</b> 145:16 <b>reiterate (1)</b> 106:18 <b>rejected (1)</b> 115:25 <b>relate (1)</b> 71:23 <b>related (5)</b> 19:5;28:18;71:19; 90:24;190:22 <b>relates (3)</b> 61:20;71:24,25 <b>relating (2)</b> 20:25;63:18 <b>relation (1)</b> 48:11 <b>relationship (2)</b> 47:10;195:17 <b>relatively (1)</b> 122:13 <b>relayed (1)</b> 75:7 <b>release (1)</b> 68:19 <b>relevant (5)</b> 10:4,7;16:19;72:7; 135:21 <b>relocated (1)</b> 80:2 <b>relying (1)</b> 192:25 <b>remainder (2)</b> 143:16,19 <b>remains (1)</b> 181:19 <b>remand (1)</b> 165:10 <b>remedied (2)</b> 79:20,20 <b>remember (4)</b> 27:6;43:8;164:21; 168:8 <b>remind (1)</b> 5:15 <b>removal (1)</b> 78:5	<b>remove (1)</b> 154:10 <b>rendering (1)</b> 101:13 <b>Renee (1)</b> 136:23 <b>repeatedly (1)</b> 98:7 <b>rephrase (2)</b> 62:12,13 <b>replaced (1)</b> 31:24 <b>reply (1)</b> 187:9 <b>report (57)</b> 4:19;6:7;19:6;20:15; 23:3,5;26:14,18;27:9; 29:18;65:11,23,23; 66:7,9;67:1,3,9,11,11; 75:12;107:14,15,17; 111:23;119:25;120:3, 20;131:21;132:3; 133:14;135:4;136:15, 21;137:6;138:6; 139:18,24;140:17; 160:3;161:24;163:1,5, 6,10,21,22;165:4; 177:3;182:5;188:8; 189:14;190:1;192:6; 193:14;199:10,11 <b>representation (1)</b> 130:17 <b>representative (1)</b> 54:3 <b>represented (1)</b> 5:18 <b>representing (3)</b> 5:8;101:18;199:8 <b>represents (1)</b> 191:15 <b>request (13)</b> 58:12;111:14,17; 163:23;164:9,9,13; 171:14;173:12;174:17; 186:13,15;199:21 <b>requested (2)</b> 16:6;19:24 <b>requesting (3)</b> 4:5;199:16,21 <b>requests (1)</b> 165:2 <b>require (6)</b> 30:20;56:25;58:12; 74:20;155:16;180:14 <b>required (12)</b> 5:18;31:15;36:12; 74:21;88:25;125:17, 17;151:3;155:11; 161:22;178:5;180:12 <b>requirement (13)</b> 71:16;96:2,21,22; 98:1;103:10;151:15, 17,18;153:16;163:9,	20;181:13 <b>requirements (17)</b> 71:17;80:17;92:11; 94:7;95:22;98:3,6,6,8, 12,24;103:9;104:23; 126:20;174:10;193:8; 197:12 <b>requires (2)</b> 38:12;190:23 <b>rescinded (2)</b> 175:11,16 <b>rescue (2)</b> 107:24;108:15 <b>research (1)</b> 184:9 <b>reserve (1)</b> 8:25 <b>residences (2)</b> 81:24,24 <b>Resident (1)</b> 5:4 <b>residential (8)</b> 129:9;156:11,17,17, 22;157:1;158:12; 193:23 <b>residents (3)</b> 36:19;154:12;178:6 <b>resolution (7)</b> 10:14,22;11:20,22; 12:3;75:7;102:23 <b>resolution" (1)</b> 10:23 <b>resolutions (1)</b> 10:19 <b>resource (6)</b> 80:9;134:8;141:3,23; 142:3,20 <b>resources (1)</b> 72:5 <b>respective (1)</b> 112:11 <b>respond (10)</b> 8:14;16:24;17:5; 67:22;161:1,12; 184:13;185:19;189:6,8 <b>responded (3)</b> 7:2;173:14;174:17 <b>response (6)</b> 6:11;7:2;147:9; 155:4;173:12,17 <b>responsible (1)</b> 129:12 <b>responsive (4)</b> 187:8,9,10,12 <b>rest (3)</b> 20:21;73:14;106:5 <b>restrict (4)</b> 78:25;79:1;112:19; 115:11 <b>restricted (4)</b> 4:12;7:15;118:1; 154:12 <b>restricting (1)</b>
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105:7 <b>restrictions (1)</b> 109:14 <b>restrictive (1)</b> 77:11 <b>restrooms (1)</b> 152:10 <b>result (4)</b> 24:7;30:20;31:10; 143:3 <b>resulting (5)</b> 30:18,21;65:4,7,10 <b>resume (8)</b> 18:13,14;70:10,13, 24;90:20,21;91:4 <b>resumed (1)</b> 4:15 <b>resumes (1)</b> 5:13 <b>resumption (1)</b> 4:2 <b>retail (2)</b> 178:5;192:15 <b>retain (4)</b> 86:1;87:3;104:21; 127:16 <b>retention (10)</b> 80:15;85:13;87:18, 19;88:25;93:13;98:11; 103:24;127:17;130:18 <b>retired (1)</b> 61:9 <b>retirement (2)</b> 41:24;178:3 <b>return (1)</b> 136:3 <b>reverse (1)</b> 166:2 <b>review (26)</b> 8:8;19:4;20:7;23:11, 11,16,20;28:12,14,17; 29:15;46:21;57:9; 71:14;72:13;103:7; 148:24;155:17;159:7, 8;165:3,5;179:24; 180:20;182:3,3 <b>reviewed (3)</b> 101:20;118:15; 141:19 <b>reviewing (1)</b> 140:12 <b>revise (1)</b> 154:23 <b>revised (11)</b> 149:20;150:1,1,6,10; 156:15;158:22;166:9; 168:22;185:6;187:1 <b>revolutions (3)</b> 47:8,11,17 <b>rezoning (7)</b> 29:13;57:6,8;111:18; 180:1,7,8 <b>rid (1)</b>	101:23 <b>Ridge (28)</b> 4:10;7:5;41:8;56:21; 109:25;135:5,9,13; 137:19;139:1;140:11; 141:5;142:13,16; 167:7,17;168:14,16; 176:9,19,21;177:13; 182:16;183:2,3; 184:15,17;194:6 <b>right (191)</b> 5:3,9;7:22;8:21,25; 9:9;10:10;12:7,21; 13:25;14:6;15:25;17:1, 1,7,11,12,15,19,20,22; 18:17,22;22:2;23:14; 24:23;25:12;26:6,25; 29:7;30:2;32:12,23,23; 34:6;35:3;36:22;37:25; 39:6;40:25;41:3,11; 46:5;47:9;51:23;55:5, 9;56:1;61:23;63:3,7; 65:8,15;66:5;68:7,22; 69:10,13,14,16;70:16, 20;71:21;75:16;79:25; 82:7,10,24;83:14,16; 88:12,14;89:11,12,19, 23,24;90:1,24;91:2; 92:1;95:12,20;97:10, 16;98:9;101:10;102:3, 9;103:9;104:7;113:3,7, 22;114:6,8,22;115:4; 116:21;120:6;121:9, 21;122:4,8;123:24; 126:11;129:17;131:1, 2,17,25;133:10,19; 134:3,5;135:18;136:2, 9;137:15,20,23,24; 139:5,7,17;140:16; 142:1,21;143:10; 144:9;145:3,21;148:1, 11,20,21;151:21; 152:13;153:19;154:17, 20;155:2,14;156:4; 158:14,16;159:17,18, 22;160:5,12,16; 161:14;162:15;165:20, 23;166:12,19;168:5; 169:13,23,25;170:13, 18,19,21,24;172:7,7; 173:1,5,6,8,15;174:18; 181:2;184:23;185:5, 21;186:8,11,24; 187:13;188:21;189:24; 194:19;197:14,19; 199:19;200:8,15 <b>right-of-way (4)</b> 37:23;59:2;73:12; 76:1 <b>rights-of-way (1)</b> 87:12 <b>rise (4)</b> 122:19;123:10;	124:9;125:4 <b>rises (1)</b> 124:1 <b>rising (1)</b> 100:5 <b>Road (101)</b> 4:10;7:5;19:19,19; 20:18,21;22:21,21; 33:16,24;34:11,11,25; 35:11,16;36:1,16,20; 37:1,16;38:6,16;39:17, 19;40:2,3,4,21;41:8; 47:25;48:7,8;55:11,17, 21;56:1,2,2,22;57:4,20, 22,23;58:15,16,17,19; 59:3,5,17,17,23;62:5, 22;85:4,5;87:12;93:1; 100:4,5,6,7;109:21; 118:22;135:4,5,9,10, 13,13;137:19,19; 138:17,18;139:1,1,2,6, 9;140:11;141:1,5; 143:12;167:8,9,18; 168:14,16;176:9,13,18, 19,21;177:9,11,13; 178:24;180:3;181:15; 184:19;190:18 <b>roads (20)</b> 55:22;56:15;128:17, 19,20,23;129:1,2,8,9, 10,12;139:19;169:11; 176:24;177:7,18; 179:1,2,5 <b>roadway (2)</b> 55:21;179:23 <b>roadways (1)</b> 101:6 <b>Rock (2)</b> 109:7;110:10 <b>Rockville (1)</b> 5:1 <b>Rodgers (2)</b> 33:4;90:9 <b>role (1)</b> 72:2 <b>Rood (28)</b> 5:12;12:11,15;68:9; 69:12,12,13,20,22; 70:4,21;71:4;80:23; 83:15;89:13;92:9,17, 21;94:24;95:13; 100:19,23;104:15; 105:13;112:14;127:10, 24;196:18 <b>R-O-O-D (3)</b> 5:12;69:12,22 <b>Rood's (1)</b> 70:10 <b>rooftop (2)</b> 93:19;96:1 <b>room (8)</b> 82:22;99:4,9;147:14; 152:9,10,10,10	<b>rooms (5)</b> 7:20;149:16,18; 151:1,17 <b>rotation (1)</b> 73:14 <b>rough (1)</b> 168:18 <b>roughly (2)</b> 134:11;142:9 <b>round (3)</b> 84:17,22;101:21 <b>rounded (1)</b> 197:11 <b>Route (14)</b> 19:19;20:20;22:15, 20;37:7,10;48:22;55:9, 13;56:23;62:5;109:20; 167:2;176:11 <b>rule (2)</b> 15:9;39:16 <b>rules (1)</b> 28:20 <b>Run (1)</b> 21:23 <b>running (1)</b> 79:5 <b>runoff (26)</b> 74:11,12,13;79:1; 83:19;86:1,2,3,14,17, 21,22;87:1,10,14;95:3, 8;112:15;127:21,21, 22;128:7,10,11,12,17 <b>runs (2)</b> 126:3;128:17 <b>rural (1)</b> 194:5 <b>rush (2)</b> 41:16;45:13 <b>Russel (4)</b> 189:19;192:12; 196:12,25 <b>Russell (3)</b> 184:6,7,8  <b>S</b>  <b>safe (10)</b> 33:9,11;35:11;36:1; 131:4;159:1;177:20; 179:10;180:25,25 <b>safely (1)</b> 39:9 <b>safety (13)</b> 34:10,11,14,15; 36:18;56:15;57:12,18, 24;60:7;175:18; 179:15,23 <b>safety'' (1)</b> 178:10 <b>sake (1)</b> 58:16 <b>same (20)</b> 26:14;43:9;44:13;	85:11;99:18;101:12; 122:13;133:16;153:5, 8;156:22;157:10; 159:4;160:18;167:5,6; 185:19;187:5,22; 188:17 <b>satisfactory (3)</b> 35:6,11,17 <b>satisfied (1)</b> 193:1 <b>satisfy (1)</b> 95:22 <b>satisfying (2)</b> 81:5;197:12 <b>save (2)</b> 127:1;155:11 <b>saw (2)</b> 119:24;155:9 <b>saying (28)</b> 15:18;22:12;35:24; 42:23;47:15;53:3;54:4; 57:15;61:21,21;71:9; 83:2;102:2;123:15; 125:11;127:25;134:13; 142:25;143:4,17; 169:4;172:11;174:6, 10,22;188:5;195:19; 197:2 <b>scale (1)</b> 87:8 <b>scatter (1)</b> 95:24 <b>scattered (2)</b> 93:12;103:15 <b>scene (2)</b> 134:25;135:16 <b>schedule (1)</b> 186:19 <b>scheduled (1)</b> 5:1 <b>scheduling (1)</b> 162:18 <b>schematic (5)</b> 6:1;154:8,9,10,21 <b>School (2)</b> 20:5;107:8 <b>schools (6)</b> 107:6,9,11,12,22,23 <b>science (1)</b> 12:13 <b>scope (2)</b> 19:11;23:20 <b>scoping (1)</b> 19:9 <b>Scott (2)</b> 6:6;136:23 <b>scrape (1)</b> 102:5 <b>scratching (1)</b> 188:4 <b>screening (14)</b> 79:17;98:20,22; 99:10,18;101:8,8,9;
---	--	---	--	---



102:24,25;125:15,24; 161:21;194:15 <b>screwed (1)</b> 186:2 <b>se (2)</b> 83:13;93:20 <b>sea (1)</b> 121:12 <b>seasonable (1)</b> 73:20 <b>second (18)</b> 5:21;7:19;11:16; 26:18;30:4;39:12,14; 43:20;58:10;60:20; 68:14;131:24;138:13; 148:8;157:6,12; 184:14;189:25 <b>Secondly (1)</b> 7:6 <b>section (3)</b> 113:20;177:21;190:6 <b>sections (1)</b> 156:10 <b>sediment (7)</b> 79:5,7;81:8;106:17, 19,21,24 <b>sediments (1)</b> 72:3 <b>seeing (2)</b> 27:6;89:12 <b>seeking (1)</b> 60:16 <b>seeks (2)</b> 9:14;74:7 <b>seem (3)</b> 8:17;167:10;174:19 <b>seemed (2)</b> 9:3;52:25 <b>seemingly (1)</b> 79:19 <b>seems (2)</b> 174:20;187:21 <b>segue (1)</b> 92:4 <b>semi-retired (2)</b> 42:14;61:10 <b>send (4)</b> 155:7;163:4,8,9 <b>sending (1)</b> 119:12 <b>Seneca (6)</b> 78:3;109:8,12;168:9, 17,20 <b>senior (30)</b> 20:14,15;42:1,5,8; 43:20;44:14;52:2,2; 53:23,23;91:12,25; 147:17,18,18,19;157:2; 178:25;182:12,15,17, 19,21;183:17,22; 184:18;185:8;187:2,11 <b>seniors (16)</b> 7:13;149:9,21,21;	151:21,21;153:2,3,17, 22;170:3,3;175:19; 178:25;181:12;193:7 <b>sense (4)</b> 35:19;115:14; 161:20;195:3 <b>sent (4)</b> 5:21;6:15;13:15; 16:8 <b>sentence (4)</b> 30:16;106:5;177:23; 193:20 <b>sententious (1)</b> 146:23 <b>separate (2)</b> 52:25;87:12 <b>separated (1)</b> 195:11 <b>separation (2)</b> 81:15;194:15 <b>September (5)</b> 27:22;115:8;136:22; 138:6,7 <b>septic (13)</b> 77:24;112:13,17,19; 115:2,12,23;116:6,19; 117:13;118:1;192:1; 198:2 <b>septics (1)</b> 77:21 <b>series (1)</b> 180:12 <b>serve (2)</b> 108:20;118:4 <b>served (1)</b> 153:14 <b>service (7)</b> 78:11;108:16;110:2, 24;116:16;117:18; 118:6 <b>Services (12)</b> 72:15;75:2,3,9,15; 81:10;99:6;108:15; 178:5;192:10,23,24 <b>serving (2)</b> 119:18;152:8 <b>session (3)</b> 7:25;14:5;182:4 <b>set (14)</b> 22:18;33:18;46:15; 54:5,9,10;72:21;94:9; 150:19;164:15;165:3, 3,5;192:3 <b>setbacks (1)</b> 196:5 <b>sets (2)</b> 84:14;92:12 <b>setting (12)</b> 6:8;141:8,23;142:4, 8;143:2,15,15,24; 144:1,15;165:16 <b>seven (3)</b> 23:3,9;126:4	<b>seventies (1)</b> 105:3 <b>several (8)</b> 28:13;44:3;90:17; 92:4,14;109:1;143:20; 145:2 <b>sewer (50)</b> 77:20,20;78:1; 108:18,24,24;109:7,10, 16,18,23;110:1,4,13, 15,24;111:1,25;112:3, 6,12,12,20;114:6,17, 19;115:10,11,15;116:6, 16,19,25;117:3,9; 118:1,7,9,14,17;119:3, 4,8,18;190:23;191:4,5, 6,9,13 <b>sewerage (1)</b> 119:12 <b>shaded (1)</b> 137:8 <b>shading (1)</b> 137:8 <b>shape (1)</b> 122:13 <b>she'll (1)</b> 67:20 <b>she's (2)</b> 147:20;159:15 <b>shed (1)</b> 138:10 <b>sheets (2)</b> 193:6;200:21 <b>shoes (1)</b> 172:12 <b>short (3)</b> 128:8;153:20;197:21 <b>shot (1)</b> 187:19 <b>shoulders (1)</b> 62:21 <b>shouldn't (1)</b> 172:6 <b>show (10)</b> 113:24;137:2,23; 138:14,17;139:2,6; 157:23;167:19;175:16 <b>showing (5)</b> 27:1;96:14;124:9; 193:7;201:8 <b>shown (19)</b> 19:20;20:19;33:10; 35:10;96:6;99:12; 103:6;112:1;113:24; 114:1;121:11,23; 138:2;149:15;151:10; 153:17;167:15;168:14, 16 <b>shows (9)</b> 59:13;76:11;114:6; 118:14;133:2;137:7; 138:15,25;153:6 <b>shrubs (2)</b>	82:2,4 <b>shuffleboards'' (1)</b> 193:5 <b>side (19)</b> 79:13,19;82:19; 98:21;101:15;113:23; 114:9;119:6,7;124:18, 20;126:5;130:5,17; 133:20;164:17;190:13, 13;194:23 <b>sides (3)</b> 17:9;100:21;119:3 <b>sidewalk (1)</b> 167:8 <b>sidewalks (1)</b> 167:15 <b>sideways (1)</b> 157:20 <b>sight (5)</b> 35:5,17,19;36:11; 38:19 <b>signal (4)</b> 37:7,22;56:23; 135:10 <b>signalized (1)</b> 37:1 <b>signals (2)</b> 37:9,23 <b>signed (1)</b> 141:20 <b>significance (2)</b> 17:4;71:25 <b>significantly (3)</b> 42:19;79:6;85:6 <b>signs (1)</b> 58:13 <b>Similar (6)</b> 16:5;86:19;99:17; 178:5;193:15,21 <b>similarities (1)</b> 183:10 <b>simple (1)</b> 114:16 <b>simply (2)</b> 28:18;79:8 <b>single (3)</b> 65:21;84:5;157:3 <b>single-family (7)</b> 4:12;150:22;153:6; 157:10;183:23,24; 185:12 <b>sink (1)</b> 106:8 <b>sit (2)</b> 102:3;143:13 <b>site (64)</b> 22:19;57:9;58:6; 64:23;65:3;74:5,7; 80:17;86:14;92:17,21; 96:10;98:4,24;99:23; 100:6;101:21;102:8; 103:22;107:24;113:24, 25;118:17;120:10;	127:12;128:3,12,13; 131:22;132:6,13,16,21, 22;133:14;135:8,11, 12;137:7;139:3,11; 141:9,11,14;143:14; 148:23;153:18;162:8; 166:24;167:15,19,20, 21,24;169:4,8,9,16; 170:10,12;179:24; 180:19;193:10;194:23 <b>site'' (1)</b> 193:22 <b>sits (3)</b> 66:20;137:9;164:19 <b>sitting (2)</b> 4:19;28:10 <b>situation (5)</b> 8:4;49:8;191:5,16; 194:20 <b>situations (1)</b> 51:1 <b>six (2)</b> 123:17;124:24 <b>size (4)</b> 80:2;152:15,18; 161:21 <b>skinny (1)</b> 146:8 <b>Skylark (3)</b> 19:19;22:21;48:22 <b>slope (3)</b> 100:21;105:20; 126:19 <b>small (5)</b> 34:3;82:2;88:22; 119:7;134:22 <b>smaller (5)</b> 74:9;83:11;87:8; 98:21;104:22 <b>smattering (1)</b> 94:17 <b>snapshot (1)</b> 149:6 <b>snow (2)</b> 68:25;69:7 <b>snow- (1)</b> 68:23 <b>Snowden (16)</b> 20:22;22:20;55:9,10; 57:18;118:18,19; 138:16,16,17;139:1,19; 140:10;176:2,22; 177:10 <b>snowfall (1)</b> 69:4 <b>society (2)</b> 45:10,15 <b>soil (4)</b> 73:20;74:14,15; 106:8 <b>sole (1)</b> 173:20 <b>solution (1)</b>
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191:24 <b>solve (1)</b> 162:4 <b>somebody (1)</b> 164:20 <b>someone (2)</b> 66:20;67:12 <b>sometimes (3)</b> 105:21,21;195:22 <b>somewhere (6)</b> 117:6;132:15,21; 134:11;166:22,23 <b>sophisticated (1)</b> 51:8 <b>sorry (19)</b> 11:1;27:20;30:13,24; 35:9;41:2;59:8;64:13; 73:9;75:17;97:5;99:12; 108:6;126:9;137:11; 174:25;182:23;189:11; 196:2 <b>sort (15)</b> 9:1,13;44:13;57:8; 71:22;85:11;92:9; 103:20;108:12;114:20; 122:6;128:7;136:7; 180:17;190:25 <b>sounds (1)</b> 160:15 <b>source (2)</b> 43:20;44:12 <b>south (17)</b> 20:20;22:15;33:16; 34:24;36:20;41:10; 60:17;79:18;108:7; 110:11;121:4,9;141:2; 167:8;176:15,15,16 <b>southeast (2)</b> 190:12,15 <b>southern (21)</b> 33:15,23;34:12,23; 35:25,25;36:7;38:23; 56:9;57:4;99:16,17,20; 100:2,3,9;109:6; 121:16,19;123:11; 135:12 <b>southwest (2)</b> 145:11,14 <b>soybeans (1)</b> 132:20 <b>sp (2)</b> 107:11;133:22 <b>space (14)</b> 7:20;129:20;145:17; 151:1,5,5,7,14;152:6, 16;153:9,10;157:11,12 <b>speak (5)</b> 69:24;122:24; 159:13;175:18;183:19 <b>speaking (1)</b> 85:8 <b>speaks (2)</b> 150:21;164:20	<b>special (4)</b> 71:5,11;72:7,19 <b>species (5)</b> 76:13,16,16;77:3,6 <b>specific (11)</b> 10:3;48:16;51:3; 54:25;71:16,18,18; 117:1;151:10;180:11, 14 <b>Specifically (7)</b> 7:10;43:20;72:3; 79:24;81:1;93:8;185:2 <b>specification (1)</b> 23:21 <b>specifics (2)</b> 20:24;57:7 <b>specified (1)</b> 4:14 <b>specify (2)</b> 12:7;74:25 <b>speculating (1)</b> 172:22 <b>speed (5)</b> 40:19,22,23,23;41:7 <b>speeds (1)</b> 39:13 <b>spell (3)</b> 18:1;69:20;90:4 <b>spent (1)</b> 67:2 <b>spoke (3)</b> 137:17,17;156:14 <b>spot (1)</b> 87:19 <b>spread (5)</b> 20:21;25:21;55:2; 93:21;104:23 <b>sprinkling (1)</b> 94:17 <b>Square (6)</b> 18:4;86:8;152:11,14, 20;194:11 <b>SRA (1)</b> 116:15 <b>SRA-12-01 (1)</b> 115:9 <b>Staff (92)</b> 6:7,16,18,20;7:2,12, 17;19:11,24;22:22; 23:3,5,18;26:12,18; 27:5,9,16;28:12;29:18; 41:19;42:8;43:7;45:3; 50:10,11,12,14;51:5; 55:23,24;75:1,2,4,11; 76:5;80:10;107:14,15, 17;111:23;115:21; 119:25;120:2,19; 131:21;132:3,11; 133:14;135:4;136:14, 21;138:5,23;139:18; 149:2,2;155:5;159:6,8, 19;160:21,21;161:1, 12;168:2;169:18;	170:9;179:12;182:3; 187:8;188:1,8,8; 189:14,14;190:1; 191:11;192:2,6;193:2, 13,21;194:2,2;196:10; 197:10,22;199:9,10,12, 12 <b>staff's (2)</b> 80:18;191:21 <b>stage (3)</b> 101:20,21;110:6 <b>stages (1)</b> 110:5 <b>stand (4)</b> 21:20;128:13; 137:14;148:12 <b>standard (24)</b> 20:6;22:17,23,25; 23:2,12,23,24;42:1; 43:21;44:12,15;45:20; 46:15;47:6;48:19;49:3; 53:5,10;54:4,5,9,10; 147:16 <b>standards (3)</b> 22:22;91:12;180:8 <b>standing (6)</b> 39:7;88:18;89:6; 105:5,8;148:10 <b>standpoint (4)</b> 73:25;99:7;103:4; 122:14 <b>start (11)</b> 33:17;61:4,14;71:9; 92:6;107:6;108:21; 131:19;133:16;153:15; 155:22 <b>started (5)</b> 12:25;105:4;146:1; 147:7;171:21 <b>starting (1)</b> 73:10 <b>starts (2)</b> 73:5;74:3 <b>state (27)</b> 17:25;26:13,16; 27:22;29:18;41:19; 43:8;45:4;51:7;63:13, 23;69:10,20;72:10; 87:2;90:4;92:14;94:8; 98:6,12,16,17,25; 112:10,18;129:4; 161:23 <b>stated (7)</b> 33:25;51:15;52:22; 90:21;102:1;144:17; 162:9 <b>statement (8)</b> 34:4;64:4;98:14; 103:20;171:8;173:9; 197:20;199:2 <b>state-of-the-art (1)</b> 78:4 <b>states (1)</b>	65:11 <b>statewide (1)</b> 112:5 <b>stating (1)</b> 14:2 <b>station (9)</b> 107:25,25;108:9,10, 11;109:8;110:9,10,22 <b>statistic (1)</b> 52:25 <b>statistics (2)</b> 43:7;52:3 <b>statute (4)</b> 29:12;160:8;177:20; 178:20 <b>statutory (2)</b> 163:9;198:17 <b>stay (2)</b> 47:23;165:7 <b>staying (1)</b> 106:17 <b>steep (2)</b> 126:5,20 <b>step (9)</b> 15:2;28:13,14,15; 64:16,19,21;115:16; 149:11 <b>step-by-step (1)</b> 46:19 <b>still (27)</b> 7:7,11;28:21;41:14, 25;60:22;62:21,24; 83:5,6,7,11;96:20; 127:22;128:10;131:14; 144:15;149:16;151:17; 154:13;155:20;158:6; 180:18,18;190:20; 194:12;199:12 <b>stop (1)</b> 106:10 <b>stopped (1)</b> 37:21 <b>storage (1)</b> 106:24 <b>storm (43)</b> 79:23;82:12,17,19; 83:3;86:10,14,20;92:5, 10,15,19;93:8,9;94:9, 14,15,16,18;95:22; 96:2,9,15,19;97:11,22; 98:2,11,15;100:16,18; 103:3,8;105:4;106:13, 15;107:1;124:23; 127:11;128:8;129:3,5; 196:17 <b>storms (1)</b> 97:22 <b>straddles (1)</b> 130:5 <b>straightjacket (1)</b> 162:3 <b>stream (4)</b> 99:25;119:10;138:1;	145:12 <b>streams (1)</b> 88:22 <b>Street (24)</b> 4:25;13:7;14:8,10, 13,21;16:8,9;34:13; 38:20;39:8;63:8,8; 84:21;85:3;101:3,6,9; 171:13;172:9;173:11; 174:4,14;182:21 <b>streets (1)</b> 87:2 <b>stress (1)</b> 115:5 <b>stressed (1)</b> 196:25 <b>stricter (2)</b> 98:6,16 <b>strictly (1)</b> 111:15 <b>strip (1)</b> 83:23 <b>structural (1)</b> 160:1 <b>structure (1)</b> 105:22 <b>studied (4)</b> 23:19;50:16;57:8,9 <b>studies (4)</b> 21:23;38:5;48:3; 179:4 <b>study (13)</b> 19:12;20:10;21:5,12, 17;24:1;27:23;28:15; 62:4;65:2;67:19,21,25 <b>studying (1)</b> 179:19 <b>stuff (2)</b> 131:4;197:1 <b>style (1)</b> 187:18 <b>subdivision (15)</b> 29:23;39:20;41:18, 22;48:9;57:10;64:22; 87:16;101:3,20; 110:12;114:22;115:19; 179:24;180:20 <b>subdivisions (1)</b> 117:10 <b>subject (23)</b> 11:13;16:2;20:12; 58:3;65:1;74:23;92:6; 113:21;115:15;119:1, 1;128:3;131:22;132:6; 133:14;137:7;138:9; 139:3;146:12;158:13; 169:16;193:4;194:23 <b>submission (1)</b> 200:10 <b>submissions (1)</b> 13:13 <b>submit (10)</b> 8:12;15:8,21;27:2;
--	---	---	--	---

147:23;154:4;158:23; 159:5;161:19;185:7 <b>submits (1)</b> 185:6 <b>submitted (10)</b> 9:18;11:1;15:2;19; 19:11;27:5;111:14,14; 115:24;187:1 <b>subparts (1)</b> 186:25 <b>subsequent (2)</b> 14:14;142:10 <b>subsequently (3)</b> 75:5;114:3;143:6 <b>substance (1)</b> 22:12 <b>Substantial (1)</b> 196:21 <b>substantially (3)</b> 75:24;81:9;189:17 <b>succeed (1)</b> 77:7 <b>successor (1)</b> 28:7 <b>succinct (2)</b> 146:20;148:4 <b>sudden (1)</b> 126:4 <b>sufficient (1)</b> 38:20 <b>sufficiently (1)</b> 175:17 <b>suggest (4)</b> 8:10;160:13;175:10; 199:3 <b>suggested (2)</b> 7:4;10:1 <b>suggesting (2)</b> 170:8;195:18 <b>suggestion (3)</b> 34:21;195:8,10 <b>suggests (1)</b> 115:21 <b>Suite (2)</b> 69:23;90:8 <b>sum (1)</b> 29:21 <b>summarize (1)</b> 24:15 <b>summarized (1)</b> 189:14 <b>summarizes (1)</b> 188:8 <b>summary (3)</b> 81:2;146:23;157:22 <b>summation (1)</b> 46:14 <b>summer (4)</b> 132:19,19;133:11; 177:4 <b>superseded (2)</b> 21:15;28:16 <b>supplement (3)</b>	82:14;190:7,11 <b>supplemented (1)</b> 89:3 <b>supplied (1)</b> 151:2 <b>supply (8)</b> 151:13,18;153:5,7,8, 11;169:20;187:3 <b>supported (2)</b> 80:18;81:11 <b>suppose (1)</b> 182:18 <b>supposed (3)</b> 89:5;114:19;176:3 <b>Sure (39)</b> 16:3;23:14;27:19,19; 28:11;35:23;38:22,25; 40:22;47:13;49:13; 53:6;54:20;56:14; 63:21;68:16;69:12,22; 70:1,1;71:9,22;81:2; 88:12,15,15;117:1; 120:18;132:14;147:20; 148:24;158:19;160:14; 173:23;174:1;175:1; 181:19;183:13;186:3 <b>surface (2)</b> 71:19;97:21 <b>surfaces (2)</b> 74:21,24 <b>surprised (1)</b> 188:1 <b>surround (2)</b> 128:20;129:1 <b>surrounded (1)</b> 181:13 <b>surrounding (15)</b> 6:19;7:4;28:4; 143:20;178:9,22; 180:9;193:15,18,22; 194:5;196:5;201:2,6,7 <b>surrounds (1)</b> 175:21 <b>surveying (1)</b> 90:13 <b>sustainable (3)</b> 112:9;191:18,22 <b>swale (10)</b> 122:6,6,7,8;123:16, 23;124:16;130:6,9,10 <b>swales (4)</b> 87:21;93:15;94:5; 95:25 <b>swear (1)</b> 24:18 <b>swimming (1)</b> 193:4 <b>switch (1)</b> 44:22 <b>swore (1)</b> 170:25 <b>sworn (5)</b> 17:21;24:20;69:15;	89:25;173:7 <b>symbols (1)</b> 93:11 <b>system (22)</b> 33:5;78:8,10;95:18; 110:11;115:23;116:6, 18,19;147:20;149:9; 150:25,25;151:8,8; 163:1;166:18;167:4,9, 12;192:1;195:3 <b>systems (4)</b> 33:9;77:24;87:6; 115:2  <b>T</b>  <b>table (1)</b> 164:19 <b>tag (1)</b> 137:6 <b>talk (9)</b> 45:17;76:17;79:23; 118:4;138:12;155:24; 161:19;182:12;188:20 <b>talked (9)</b> 47:14;57:2;78:14; 80:11;81:13,22; 128:25;153:3;168:8 <b>talking (39)</b> 13:12;21:18;35:20; 36:9;37:17;44:8;45:4; 54:25;58:2,19;60:1,23; 61:12,18;82:6;96:8; 97:10;100:24;101:1; 104:25;111:2;112:3; 122:9;123:21;124:18; 125:11;129:1;136:8; 162:22;183:23;185:9, 10,10;190:14;192:5; 195:1;196:14,17,18 <b>talks (3)</b> 136:23;141:4;145:10 <b>taller (1)</b> 125:23 <b>tally (1)</b> 149:13 <b>Tank (1)</b> 4:9 <b>tapping (1)</b> 78:10 <b>tax (19)</b> 4:8;28:18,21,23,24, 25;29:1,2,21,25;31:14, 19,20,22,23,23,24; 32:1,6 <b>team (2)</b> 120:5;193:5 <b>technical (34)</b> 5:25;6:16,18,20;7:2, 12,16;23:18;50:9,12; 102:14;107:13;119:25; 120:2;131:21;132:11; 136:14,21;138:5,23;	155:5;159:6,8;160:21, 21;161:12;168:2; 169:18;170:9;179:12; 182:3;187:8;188:1; 197:12 <b>technically (1)</b> 95:8 <b>technique (1)</b> 25:3 <b>techniques (1)</b> 95:2 <b>technology (2)</b> 66:25;78:6 <b>teens (1)</b> 153:1 <b>telecommute (2)</b> 42:13;45:14 <b>telling (2)</b> 19:11;143:14 <b>tells (1)</b> 23:18 <b>tender (1)</b> 136:3 <b>term (5)</b> 44:8;92:17;95:16; 136:17;147:16 <b>terminology (1)</b> 70:22 <b>terminus (2)</b> 175:24;177:9 <b>terms (9)</b> 37:2;114:16;159:7; 162:18;179:15;183:10; 194:25;195:22;198:5 <b>terse (1)</b> 170:19 <b>test (1)</b> 49:15 <b>tested (1)</b> 29:24 <b>testified (8)</b> 15:24;16:15,24;13; 45:22,25;71:10;73:11; 191:3 <b>testifiers (1)</b> 177:14 <b>testify (9)</b> 12:8;15:22;16:18,22; 39:4;85:18;171:21; 173:3;174:15 <b>testifying (5)</b> 16:1;18:23;120:14; 171:21,25 <b>testimony (29)</b> 26:3;34:10,16,17,20; 36:21;37:13;38:19; 66:14;70:23,24;81:4; 91:3;92:8;104:12,14; 120:14;127:2;142:24; 148:5;171:5;174:23; 175:20;178:16;179:10, 11;185:22;188:10; 191:17	<b>textual (1)</b> 6:23 <b>that's (152)</b> 8:16,18;14:13;15:18; 16:19;21:13;23:20; 24:13;25:14,21,25; 26:4,22;27:22;30:10, 22;33:16;35:17;36:12; 37:22;39:18,20;42:25; 43:1;44:19;45:9;47:13, 15,19;48:2,11;49:10; 50:2,3,23;52:16,21,23; 53:24;54:11;55:7,23; 56:2,17;57:8;60:10,10, 18;61:12,23;63:5,5,14; 64:5;66:19;67:12,16; 72:7;73:22;74:19; 75:20,21;78:7,13;79:5, 12;80:18;81:17;84:11, 13;85:11,20;89:8;90:7; 94:23;97:17;99:15; 103:19;106:3,25; 107:13;108:7;109:14, 23;111:10;114:12; 119:1,17;123:2,17; 124:12;125:2,8,10; 126:1;127:2,5,14; 131:4;134:8,23;135:6; 139:16,17;145:1,24,25; 152:14;153:20;155:8; 157:9;159:20;160:18, 18;161:4;163:9; 164:23;165:20;167:18; 168:2;170:6,13;172:3, 17,19;174:24;175:6,8; 177:15;179:14;180:4, 7,10;181:4,5,6;182:21; 188:25;189:5,19; 190:3,24,24,25;193:11; 195:10,21;198:6,8,23, 25;200:2 <b>theme (1)</b> 194:2 <b>Theodore (1)</b> 4:3 <b>there's (33)</b> 7:16;14:21;28:25; 35:16;43:2,13;46:6; 53:19;54:21;55:22; 59:1;68:21;75:20; 101:6;102:10;103:21; 112:14;119:7;123:9; 124:9;125:12;129:14; 131:3;133:21;136:21; 144:23;145:15;152:25; 160:2;162:17;167:1; 183:24;201:6 <b>thereafter (1)</b> 163:2 <b>therefore (9)</b> 34:4;42:15,17,17; 105:7;107:9;108:16; 141:10,16
---	---	--	--	--

thereof (1) 178:6	12	100:21	46:21;50:14;51:6,7; 53:11,14;54:13;55:25; 58:12;61:6;63:2;91:9; 107:4;175:21	turned (1) 68:12
they're (1) 37:22	tiers (6) 113:11,18,19,25; 117:17;201:8	towards (8) 100:4,7;109:11,11; 119:4;134:17,19; 135:12	trash (1) 105:15	turning (2) 73:20;176:22
They'll (1) 165:8	tightened (1) 28:21	Town (1) 20:4	travel (6) 45:15;53:20,20,21; 118:19;133:12	turns (6) 25:12,12;37:8;46:25; 47:9,9
they're (12) 37:6;57:7;61:13,21; 84:6,6;105:11,12; 126:5;129:14;149:22; 180:10	tilling (2) 73:19,20	townhouse (4) 156:3;157:5,6; 158:19	Travels (4) 137:21,21;139:2,3	two (66) 7:10;13:6;14:1; 19:17;21:2;27:17;28:9; 15:30;16:33;14:35;17; 39:10,25;40:4,5,9; 46:25;52:12,12,12; 64:19,21;71:22;96:14; 104:19;105:1;110:5,6; 114:3,4,7,19;115:5,6,9, 12:116:13,16;117:12; 123:16;124:22,25; 131:21;132:1;136:6, 20,21;138:6,13,20,22; 140:21,22;148:6; 156:10;165:4;171:10; 187:4;188:6;190:2; 193:17,23;194:3,10,18, 21
they've (4) 170:1,7;172:13; 189:25	times (12) 18:11;30:21;31:7,11, 22;52:12,13;76:8; 77:25;90:17;145:2; 194:3	townhouses (1) 156:3	treat (1) 78:1	two-acre (2) 115:20;117:19
thinking (1) 194:13	tired (1) 11:5	TPAR (12) 28:8,17,17,21;29:1,1, 13;31:18,19,20,23; 32:19	treated (3) 15:12;86:6;129:6	two-foot (1) 122:1
third (7) 23:12;33:19,20;34:2; 71:23;157:21;188:25	title (3) 12:12;21:2;23:10	track (2) 80:15;154:14	treatment (10) 78:2,3;79:12,21; 84:1,2;109:9,12;110:8, 21	two-lane (1) 58:17
thirds (1) 33:19	titled (1) 157:21	traffic (85) 12:10;18:5,7,15,24; 20:9,10,12,18,20,25; 21:5,12,13,17,22; 22:13,15,17,23,22; 24:8;25:21;26:10; 27:23;28:5,15;30:5; 34:10,14;35:15,22; 36:10;37:7,8,10;38:5, 7;42:18;46:3;47:22; 49:8,18;50:6;52:13; 53:11,14;55:13;56:23; 59:11;60:2,8;61:6; 63:2,14,14,16,22; 64:16,17,24,25;65:1,3, 3,3,5,24;66:7,9,9,13,17, 24;67:19,25;135:10; 176:1,4,8,12;177:6; 179:3;180:6;181:1,13	tree (3) 84:6;101:9;133:17	two-step (3) 15:1;28:14;58:9
though (8) 29:13;32:14;55:22; 99:24;133:2;144:7; 174:6;175:20	today (37) 4:15;5:10;6:3;15:22; 63:9;66:24;76:8;88:21; 94:17;95:9;96:3,18; 102:8;103:23;109:21; 111:2;114:17;119:14; 121:6;127:3;128:13; 142:24;143:13;147:24, 25;158:13,25;171:6; 175:20;177:14;187:24; 188:10;191:7;196:14, 16,18;201:8	trail (6) 151:9,10;166:25,25; 167:1;195:3	trees (9) 82:2,3,19,21;84:5,7; 101:3,6;102:4	two-tenths (2) 73:13;76:2
thought (13) 8:2;12:25;48:4;54:4, 15;78:14;91:7;125:11; 174:24;189:4;190:3, 21;192:4	toe (1) 82:20	trails (1) 166:18	tremendous (3) 175:25;176:5,12	type (21) 29:21;32:4,10;41:20; 44:16;50:3;53:24;54:7; 87:16;93:9,23;94:3,4, 12;106:1;107:22; 178:3;180:11;181:20; 184:15;185:9
thousand (1) 44:3	together (2) 158:22;193:24	transcript (13) 8:12,23,23;9:8,19; 10:2,3;188:15;189:1,3, 4;199:16,22	tried (5) 174:5;190:10; 194:14;196:12;199:17	types (5) 44:24;48:2;50:25; 61:14;193:23
threading (1) 176:24	told (4) 19:17;45:21;119:11; 171:25	transition (7) 81:14,20;190:1,7,12, 18,21	tries (1) 164:20	typical (1) 94:14
three (26) 5:1,10,13;12:8; 20:24;25:21;33:14; 39:13;43:15;45:5;55:3; 56:21,21;76:24;77:1; 96:1;110:5,7;114:25; 140:8;149:16;150:25; 151:1,16;165:4;201:6	took (10) 55:12;69:3;139:24; 140:24;149:11;151:5, 6,6,7,11	transitioning (1) 76:22	trip (10) 20:8,14;30:18;44:22; 45:2;53:24;54:2;91:9, 11,24	typically (9) 39:11;40:21;61:8,19; 104:18,25;105:19; 160:14;169:7
three-feet (3) 124:5,5,8	top (7) 26:21;33:19,20; 121:13,14,17;193:16	transmittal (1) 10:18	trips (22) 20:16,17;24:2,4; 25:18,20;30:8,10,13, 17,17,18;31:6,16;32:6; 33:25;43:10;46:3;52:4; 53:3;60:15;91:22	U
three-hour (2) 43:14;45:18	topics (1) 146:14	transport (1) 93:16	trouble (1) 167:10	ultimate (1) 75:25
threshold (3) 25:16;152:11,23	topo (3) 121:4,10;122:1	transportation (39) 12:10,20;18:7,16,23; 19:4,10;20:7,13;23:11, 16;28:4,17,23,25;29:2, 9,14;31:22;32:1;33:10; 36:4,12;43:22;44:21;	trunk (3) 110:15,17;119:9	ultimately (3) 47:3;74:11,16
throughout (11) 20:21;54:2,24;55:1; 74:10;93:12;94:13,18; 95:24;98:4;101:3	topography (11) 84:13;99:19;100:4,8, 9;106:2,8,12;11:6,11,23; 122:14	turn (1) 157:20	try (12) 17:9;45:4;92:9;93:2; 104:9;112:18;130:3; 147:1;158:13;181:18; 188:10;199:23	unable (4) 82:16;96:17;102:13; 181:14
throughs (1) 25:13	tot (1) 152:25		trying (22) 13:14;43:1,2;47:19; 49:7,10;52:1,4,24; 85:9;87:20;92:8;93:2; 94:15,19;98:19;102:7, 15;104:2;176:20; 194:17;196:14	unbuilt (1) 64:22
thumb (1) 39:16	total (11) 22:17;24:11,25;47:5; 55:2,2;72:1;151:12,15; 158:7;170:9		Tuesday (1) 158:24	
tied (1) 111:15	totals (4) 6:4;7:7;148:14; 156:20		Turn (1) 157:20	
tier (22) 112:12,21;113:22; 114:3,4,7,12,15,16,19, 25;115:5,6,9,12,14; 116:1,13,16;117:11,11,	tow (1)			

<b>uncertainty (1)</b> 55:14	153:4;154:2;156:3,17; 158:9,11;164:20; 165:4,10;167:1;168:6; 171:6;172:11;177:25; 186:2;187:23;188:11; 191:6;195:25	<b>utilizing (5)</b> 78:8;94:7;95:2,23; 97:20	157:5	9,15,19;97:1,3,11,21, 21,24;98:2,11,15;99:6; 100:6,16,18;102:4,7, 25;103:3,8,13,19,21, 25;104:20,23,24;105:4, 5,8,23,25;106:9,13,14, 15;107:1;108:18,24; 109:12,17,19,21,21; 110:4,24;111:25; 118:5,14;120:23; 124:21,23,24;126:24; 127:11,11,16,17,19; 129:3,5,6;140:8,25; 190:23;196:17,18
<b>under (13)</b> 9:12;19:8;23:10; 32:18,19;131:14; 139:19;153:9;155:11; 156:15;160:7;170:7; 191:21	<b>update (1)</b> 156:15	<b>V</b>	<b>visible (1)</b> 101:7	<b>watershed (2)</b> 77:23;78:1
<b>understood (3)</b> 48:5;158:14;195:20	<b>updated (4)</b> 21:7;54:12,12;75:6	<b>vacant (2)</b> 145:3,6	<b>vision (1)</b> 194:8	<b>way (45)</b> 7:21;8:16;10:2; 26:19,23;29:12;34:5; 45:10,15,15;54:5; 68:24;70:21;77:21; 79:11;80:2;82:23; 92:15;94:8;98:15; 104:3;105:5,19; 109:10,18;116:22; 124:1;125:12;134:10; 138:3;142:5,6;155:20; 158:8;162:6;163:1; 164:23;171:23;180:1; 181:5;191:11;193:14; 195:17;196:7;200:4
<b>undertook (1)</b> 22:17	<b>updating (1)</b> 144:6	<b>valley (4)</b> 99:25;119:10;138:1; 145:12	<b>visited (2)</b> 120:5;132:22	<b>ways (2)</b> 39:11;88:22
<b>unforested (1)</b> 73:12	<b>upgraded (1)</b> 78:4	<b>varied (1)</b> 65:20	<b>visual (1)</b> 125:16	<b>We'd (3)</b> 17:17;157:24,25
<b>Unfortunately (2)</b> 146:4;156:1	<b>uphill (2)</b> 82:19;122:16	<b>variety (3)</b> 44:23;49:20;193:3	<b>voice (2)</b> 9:17,19	<b>we'll (20)</b> 9:4;11:15;17:5;27:2, 21;89:16,21;104:11, 12;113:11;119:18; 134:8;151:24;162:11; 165:18,18;166:2; 170:25;188:24;201:4
<b>UNIDENTIFIED (2)</b> 183:18;184:6	<b>upon (9)</b> 25:12;35:20;42:1,7; 44:22;64:18;73:6;82:3; 149:1	<b>various (2)</b> 39:13;72:14	<b>volume (16)</b> 22:18;23:12,22,23; 24:11,14,25;46:12; 47:5;48:19;49:15,22; 60:1,2;104:22;127:13	<b>we're (49)</b> 9:5;45:4;50:24,25; 54:23;61:5,18;68:17; 82:14;85:9;87:20; 92:19;93:12,25;94:5, 15,24;96:8,14;97:10; 104:25;106:23;111:2, 21;118:15,16;120:24; 128:3,4;130:9;134:1; 138:4;146:4;152:20; 153:14,15;155:11; 161:10;162:22;169:6, 12;185:9,10;191:2; 192:4;195:1;196:14; 197:7,7
<b>unit (8)</b> 28:22;29:5,6;87:18; 156:11;157:10;160:3; 192:11	<b>usage (2)</b> 63:2;99:18	<b>vast (1)</b> 188:5	<b>volumes (1)</b> 62:22	<b>we've (19)</b> 33:1;43:10;54:1; 78:14;93:7,24;96:17; 98:2;106:18,20;137:5; 149:6,17;151:11; 153:23;169:8;191:8;
<b>units (27)</b> 20:16;26:10;43:10; 45:7;87:7;119:1,6; 150:22;152:12,14; 153:6,8;155:24;156:2, 19,24;157:16,23,24; 158:6;171:16,23; 182:20;183:18,21; 185:16;196:4	<b>use (29)</b> 7:12,16;15:11;32:10; 42:9;44:6,7,8,15;45:3; 66:24;73:15,16;78:15; 91:10,24,25;94:12; 101:12;115:23;129:20; 136:6;137:6;147:17; 148:19;156:16;172:8; 174:12;191:22	<b>vegetation (4)</b> 74:17;100:20;101:9; 194:18	<b>volunteer (1)</b> 122:21	
<b>unless (9)</b> 48:17;50:8;66:8; 68:19;80:25;101:24; 179:15;182:7,8	<b>used (20)</b> 7:8;28:13;31:13; 43:7,21;45:20;48:2; 49:19;54:14;70:22; 91:11,13;94:13;95:16; 115:20;136:17;144:24; 145:7;147:16,18	<b>vehicle (2)</b> 24:25;181:16	<b>vote (3)</b> 164:25;165:8;188:3	
<b>unnecessarily (1)</b> 155:22	<b>uses (10)</b> 46:15;79:9;170:10; 178:9,23;193:15,15,21, 22,23	<b>vehicles (9)</b> 36:16;37:4,5;46:23, 25;55:11;62:16; 144:24;176:1	<b>W</b>	
<b>unreliable (1)</b> 15:14	<b>using (12)</b> 20:8;22:1,18;63:23; 76:13;83:1;92:25;94:3, 4;95:25;96:1;103:18	<b>vehicular (1)</b> 33:5	<b>W1-S3 (2)</b> 111:3,13	
<b>unsightly (2)</b> 125:25;126:2	<b>usually (4)</b> 9:11;15:3;164:16; 165:3	<b>verified (1)</b> 111:21	<b>W6 (1)</b> 111:5	
<b>Unterberg (21)</b> 71:10;73:11;92:21; 112:24;120:14;131:5, 12,14,16;136:3; 144:23;146:11;148:3; 150:14;154:3;155:21, 23;165:12,25;193:6; 194:16	<b>utilize (2)</b> 87:20;94:10	<b>verify (1)</b> 200:10	<b>W6-S6 (1)</b> 111:5	
<b>up (66)</b> 4:11;7:7,11,14;9:2; 12:11;24:11;26:19; 28:21;33:1,18;44:5; 47:3,25;48:22;50:1; 59:21;64:8;65:12; 67:12;68:15;80:13; 84:14;87:25;88:7;94:9, 10;95:12;101:5;106:7; 108:6;112:21;122:17, 24;123:6,14,20;124:2; 126:4;131:4;133:17; 137:3,22;146:13; 147:4;148:19;151:12;	<b>utilized (2)</b> 20:13;96:23	<b>version (5)</b> 14:5;150:7,8;153:20; 169:9	<b>wait (2)</b> 50:2;58:10	
		<b>versions (1)</b> 170:7	<b>waiting (1)</b> 47:25	
		<b>versus (6)</b> 25:12,12,13;53:13; 100:9;157:5	<b>walk (2)</b> 39:13;195:6	
		<b>vicinity (2)</b> 137:4;138:23	<b>wants (7)</b> 9:25;48:18;51:3; 161:11;162:12;164:14; 195:11	
		<b>video (1)</b> 66:25	<b>warrants (1)</b> 157:14	
		<b>view (7)</b> 82:5;84:7,10;104:6; 126:25;127:2;138:10	<b>wasn't (6)</b> 56:4;125:17;132:18; 151:21;175:22;186:19	
		<b>viewed (1)</b> 9:24	<b>waste (4)</b> 78:2,3;109:8,12	
		<b>views (3)</b> 81:23;194:18,19	<b>Water (150)</b> 4:9;10:17;12:4,6,16, 17;70:5,15,25;71:6,7, 13,18,23,24;72:5,12, 21,23,25;73:3,4,17,24; 74:2,16;75:3,5,21,24; 77:18;78:2,3,8,9,10,10, 12;79:12,21,23;80:3; 81:6;82:12,17,19;83:3, 25;84:2;85:17;86:10, 14,17,21;87:4,21,22; 88:18,24;89:5,6,6;92:5, 10,13,15,19;93:8,9,16, 21,25;94:9,14,15,16, 18,20;95:7,14,22;96:2,	
		<b>villa (2)</b> 157:9;158:2		
		<b>Village (19)</b> 20:4,5;22:3;42:20; 59:5,6,14,19,20; 110:12;118:21;119:5; 172:17;173:14,19; 176:7;177:8;182:14; 197:5		
		<b>villas (1)</b>		

192:25;194:14 <b>web (1)</b> 154:25 <b>website (3)</b> 139:25;163:7,11 <b>websites (1)</b> 163:7 <b>Wednesday (2)</b> 158:24;195:7 <b>week (4)</b> 137:18;159:20; 160:13;161:3 <b>weeks (1)</b> 165:4 <b>weight (2)</b> 15:12;196:10 <b>welcome (3)</b> 15:20;66:2,3 <b>wells (2)</b> 78:8;83:20 <b>weren't (1)</b> 196:15 <b>Wes (3)</b> 5:11;17:18;18:2 <b>west (25)</b> 48:1;76:23;81:22; 83:21;97:6,8,11;99:12; 109:11;110:13;114:20; 118:19;119:4,7; 124:18,20;130:5,17; 134:19;138:3;145:14, 17;162:7;190:13; 194:24 <b>westbound (3)</b> 37:5,6;58:18 <b>western (11)</b> 76:25;79:18;96:9; 98:20;100:12,14; 101:15;133:17;137:10, 22;194:23 <b>west-northwest (1)</b> 134:18 <b>what's (26)</b> 9:16,16;15:1;30:24; 33:12;40:19;50:6; 59:24;60:4;63:8;94:25; 95:9;112:5;113:14; 117:24;118:25;119:6; 121:10;122:5;128:12; 130:4;137:11;140:6,6; 148:18;171:6 <b>whereas (1)</b> 177:14 <b>Whereupon (2)</b> 89:17;201:10 <b>whip (1)</b> 126:6 <b>Whipple (8)</b> 6:6;136:23;142:25; 144:3,4,6,7,9 <b>Whipple's (1)</b> 136:12 <b>white (2)</b>	77:5;134:22 <b>whole (4)</b> 114:21;137:2; 172:18;191:11 <b>wide (2)</b> 83:9;84:9 <b>wider (1)</b> 161:21 <b>width (3)</b> 58:15;59:2,3 <b>Wightman (1)</b> 184:18 <b>William (2)</b> 5:4;171:8 <b>Wills (1)</b> 37:13 <b>winter (2)</b> 133:2,8 <b>wisdom (1)</b> 80:24 <b>wish (11)</b> 6:13;8:11,15,16; 9:24;17:3,4;39:3; 185:7;186:12;197:20 <b>wished (1)</b> 186:9 <b>wishes (2)</b> 15:4;188:25 <b>withdrawn (2)</b> 174:8,9 <b>within (32)</b> 19:21;22:21;43:15; 48:7;54:13,16;62:21; 71:10;76:12;77:4;78:3; 80:15;81:24;83:7,11, 12;86:9;87:12;108:3; 127:11;132:21;159:19; 162:13;163:22;165:7; 172:4;175:8;178:4; 182:19;185:7;192:22; 195:3 <b>without (9)</b> 25:16;42:18;54:3; 61:10,19;161:25; 181:14,23;182:10 <b>witness (283)</b> 6:3,5;17:15,18,21; 19:17,23;21:2;22:8,14, 25;23:2,9;24:17,22; 25:9,16,20;27:4,12,14; 29:10,17;30:4,11,13; 31:1,3,9,12,17,20;32:2, 7,9,13,19,21;34:15; 35:1,4,9,21;36:3,8,11, 21;38:24;40:9,12,15, 18,21;41:3,5,9;43:22; 44:2,6,9,20;45:23;46:4, 6;49:6,13;50:20,24; 51:14,18,21;52:11; 56:6;58:21;60:12,19; 63:5;64:13,15,21; 65:14;66:17;68:8; 69:15;75:11,14,17,19;	79:22;80:1,6,21;82:9, 16;84:25;85:22;86:15, 23;88:15;89:14,19,21, 25;92:23,25;96:11,14; 97:5,8,13,17;98:9,13; 99:1,3,12,17;100:3,13; 101:11;103:3,6; 104:14,18;105:12,19; 106:6,13;107:15,21; 112:25;113:7,10,12; 116:4,13;117:7,23; 118:11,13,24;119:13, 17;120:1;121:21; 122:10,12;123:2,4,15, 20,22;124:13,15,20; 125:21;126:17;127:4, 7;128:2;129:3;131:24; 132:1,6,10,15,18,23; 133:1,6,8,11,15,19,24; 134:7,15,19,21;135:2, 7,14,17,20,23;136:1; 137:13,17,21;138:24; 139:6,8,12,15,17,22; 140:4,8,17,24;141:13, 16;143:5,9,11,18,25; 144:4,7,18,20;145:14, 19;149:4,11,15;150:5, 7;151:23;152:1,5,20, 23;153:13,20,25; 154:24;155:3;158:5; 166:13;170:20;171:9, 12,18;172:5,9,21,24; 173:7,10,16;174:1,9, 14,19,24;175:5,9; 178:1,14,17,19;179:8, 13,17;180:22;181:2,7, 10,18;182:1,11,25; 183:2,5,7,13,17,21,24; 184:2,5,7,11,17,22,25; 185:2,4,14,17,20,23 <b>witness' (1)</b> 18:18 <b>witnesses (8)</b> 5:1,10;11:12,13; 12:8;32:16;170:23; 191:3 <b>won't (1)</b> 191:17 <b>woods (5)</b> 74:8;86:18,22;95:1,5 <b>Word (3)</b> 8:24;140:7;154:10 <b>words (13)</b> 25:22;27:17;28:9; 47:15;53:2;54:6;55:15; 59:21;80:24;86:13; 125:4;163:25;174:5 <b>work (23)</b> 25:19;31:19;42:13, 14,24;43:3,9;44:18; 45:6,16;59:13;61:12, 21,22;90:7;92:7;93:4; 102:4;104:9;124:5;	187:25;193:24;195:7 <b>worked (3)</b> 33:4;106:18;162:14 <b>working (6)</b> 41:25;42:9,10;47:7; 61:21;74:25 <b>works (2)</b> 148:22;163:1 <b>World (8)</b> 7:18;27:10;182:16, 24;183:10;192:15,18; 197:14 <b>worst (1)</b> 65:21 <b>wouldn't (6)</b> 86:15;103:1;126:7, 10;155:6;159:23 <b>wrap (1)</b> 188:11 <b>write (6)</b> 4:18;27:18;113:7; 129:25;130:1;186:19 <b>writing (2)</b> 15:19,21 <b>written (12)</b> 12:13;29:12;98:15; 117:6;136:22;138:6, 19;143:6;173:11; 199:11,16,22 <b>wrong (4)</b> 21:11;116:9,11; 154:24 <b>wrote (1)</b> 174:16 <b>WSSC (2)</b> 111:24;118:14	149:12;171:10 <b>yesterday's (1)</b> 10:18 <b>yield (1)</b> 157:22 <b>you'd (2)</b> 158:3,21 <b>You'll (8)</b> 29:17;30:4;32:9; 33:25;44:2;101:9; 105:20,21 <b>You're (47)</b> 12:14;41:3;42:12,14; 47:7,15;49:4;50:4; 53:17;58:1,19;59:2; 60:4;64:1;66:2;68:23; 82:6;90:9;92:22;95:17; 101:24;102:2;106:1,4; 119:12,15;121:8; 122:9,24;123:6,6,15, 21;124:18;134:13; 135:8,9;142:25; 143:14,17;147:3; 156:13;159:25;169:4; 175:1;191:10;192:13 <b>You've (15)</b> 36:13;38:16;45:25; 52:8;63:24;81:5;98:7; 102:6;107:3;132:22; 136:12;149:25;168:11; 179:15;188:10 <b>younger (1)</b> 42:21
<b>Z</b>				
<b>zero (1)</b> 152:25				
<b>zone (17)</b> 4:6,6;71:12;145:20; 154:15;158:10;178:2; 180:9,11,13;181:23; 182:7,7,10;191:21; 192:13,20				
<b>zone'' (1)</b> 192:7				
<b>zoned (2)</b> 137:8;145:2				
<b>zones (2)</b> 180:12,13				
<b>zoning (20)</b> 4:5;18:9;29:16,22, 25;48:16;49:16;70:7; 112:4;137:4,18; 154:15;155:11;167:24, 25;169:7;170:12; 178:18;181:5,10				
<b>1</b>				
<b>1 (5)</b> 6:6;32:16;131:22; 132:6;189:13				

<b>1,200 (1)</b> 152:11	152:14;153:5,8;158:7; 171:16,23	201:10	22:15,20;37:1,7,10; 38:6,13,16;40:23;	54:22;146:12
<b>1,240 (2)</b> 183:18,21	<b>15 (9)</b> 5:21;51:1;84:6;	<b>20 (18)</b> 19:3,8,21;20:25;	47:16,23,24;48:7,12,	<b>38.1 (1)</b> 156:18
<b>1,250 (1)</b> 152:23	150:23;157:19;158:5;	21:8,14,23;22:9;23:3;	22:55;9,13,21;56:23;	<b>38a (12)</b> 21:1,8,15,22;22:10;
<b>1,400 (2)</b> 152:14,20	172:14;193:13,16	30:10;42:24;69:7;	59:6;62:5;65:22;	29:20;30:15;31:1;
<b>1,425 (14)</b> 22:25;23:13,25;	<b>150 (1)</b> 43:3	123:10,18;157:18,24;	108:13;109:20;114:9;	46:18;66:10;68:4,12
24:24;25:1,14;41:15;	<b>16 (4)</b> 14:19;109:19,21;	158:5;164:17	140:11;167:2;176:10,	
43:16,18;46:6,8,11,11;	123:17	<b>200 (3)</b> 69:23;90:8;152:12	11;177:10	<b>4</b>
65:12	<b>16th (3)</b> 6:15;14:17;173:12	<b>2001 (3)</b> 110:3,8,25	<b>270 (4)</b> 108:7;176:11,15,15	<b>4 (3)</b> 135:3;187:7;189:6
<b>1.1 (1)</b> 108:11	<b>17 (2)</b> 11:19;153:2	<b>2009 (10)</b> 21:5,7,13;111:13;	<b>27th (1)</b> 110:25	<b>4:45 (1)</b> 65:22
<b>1.82 (1)</b> 166:19	<b>177.8 (1)</b> 153:8	136:22;138:7,19;	<b>28 (1)</b> 157:24	<b>40 (8)</b> 33:25;41:9,21;43:10;
<b>1/25/13 (1)</b> 159:4	<b>17th (2)</b> 136:22;138:7	139:9;143:6,12	<b>3</b>	54:15,22;62:16;152:21
<b>10 (17)</b> 10:6;30:7,12,13,16,	<b>18 (6)</b> 4:16;79:7;123:17;	<b>200-B (1)</b> 4:25	<b>3 (5)</b> 101:15;120:19;	<b>400 (1)</b> 142:16
20:31:7;77:25;123:17;	153:2,11;176:16	<b>2010 (4)</b> 139:12,20;141:25;	133:21,22;135:4	<b>41b (3)</b> 154:5,6;156:14
156:23;160:17;161:19;	<b>18.2 (3)</b> 150:23;151:3,15	143:7	<b>30 (17)</b> 20:16;25:18,20;	<b>41c (2)</b> 76:9;83:2
162:14;163:22;172:14;	<b>18-64 (1)</b> 153:15	<b>2010814 (1)</b> 140:10	30:17,18;40:22;41:6,	<b>42 (2)</b> 152:2,6
185:5;193:2	<b>18th (1)</b> 159:1	<b>2011 (1)</b> 111:16	15,17,21;43:2,4;51:2;	<b>43 (1)</b> 75:17
<b>100 (11)</b> 50:20;58:23;86:11;	<b>19 (4)</b> 27:8;92:11;96:4;	<b>2012 (7)</b> 21:8;23:4;27:22;	52:4;54:19,21;62:15	<b>45 (2)</b> 41:10;163:1
94:22;96:2;102:13;	106:17	30:7;111:22;112:8,9	<b>30-35 (1)</b> 54:21	<b>472 (2)</b> 91:10,24
103:14,17;106:23;	<b>1-93 (1)</b> 187:15	<b>2013 (10)</b> 4:13,16;5:21;11:19;	<b>305 (6)</b> 33:20,21;76:2;	<b>48 (1)</b> 109:20
156:19;182:20	<b>1-93b (1)</b> 186:14	14:19;162:25;173:12;	134:17;141:7;142:19	<b>49 (1)</b> 44:22
<b>100-year (1)</b> 97:22	<b>1-93c (1)</b> 186:24	189:6,11;197:14	<b>31 (2)</b> 21:14;54:15	<b>4th (4)</b> 160:19;161:3,13;
<b>10-day (3)</b> 185:7,19;188:18	<b>195.58 (1)</b> 153:11	<b>20874 (2)</b> 69:23;90:8	<b>31a (4)</b> 21:1,4,14,23	200:11
<b>11 (1)</b> 153:1	<b>19847 (2)</b> 69:22;90:7	<b>21 (2)</b> 20:15;158:6	<b>34 (1)</b> 108:11	
<b>11:35 (1)</b> 89:17	<b>1994 (6)</b> 108:25;109:13,23;	<b>21.84 (1)</b> 151:15	<b>34b (2)</b> 139:16,16	<b>5</b>
<b>11:45 (1)</b> 89:16	191:2;196:15;197:15	<b>21236 (1)</b> 18:4	<b>34e (1)</b> 133:6	<b>5 (6)</b> 19:20,20;162:25;
<b>112 (1)</b> 157:23	<b>1st (1)</b> 111:22	<b>21901 (1)</b> 4:10	<b>34f (2)</b> 137:5,13	187:9;189:8,11
<b>117-13 (1)</b> 149:20		<b>22 (1)</b> 191:20	<b>34g (11)</b> 33:2,13,15;35:10;	<b>5.9 (1)</b> 108:6
<b>12 (5)</b> 19:20;54:13;123:17;	<b>2</b>	<b>22a (2)</b> 80:8,17	56:20;58:2;101:13;	<b>5:00 (1)</b> 42:12
153:2;172:14		<b>23 (1)</b> 47:16	133:25;136:25;137:23;	<b>5:45 (1)</b> 65:22
<b>121 (1)</b> 108:7	<b>2 (4)</b> 120:19;131:20;	<b>24 (4)</b> 54:13;58:25;59:1;	141:2	<b>50 (19)</b> 41:25;42:3,23;43:4;
<b>125 (1)</b> 106:22	133:13,14	109:20	<b>34q (2)</b> 118:24,25	44:9,23;53:7,13;60:24;
<b>12-hour (2)</b> 105:1,7	<b>2.1 (1)</b> 108:1	<b>25 (10)</b> 28:23;29:1;30:9,15;	<b>34s (6)</b> 92:23,25;93:8;102:1;	61:1,4,8,19;79:7;
<b>13 (2)</b> 27:22;187:7	<b>2.2 (1)</b> 108:9	31:22;106:24;156:23;	121:12;129:21	147:19;153:16;154:12;
<b>130 (1)</b> 156:19	<b>2.3 (1)</b> 108:8	187:6;189:2;192:14	<b>34t (2)</b> 118:11,13	177:16;192:14
<b>14 (5)</b> 4:13;75:15,18,19;	<b>2.8 (1)</b> 76:25	<b>251 (6)</b> 44:6,7,15;91:10,24,	<b>35 (6)</b> 40:24;76:7;84:9;	<b>5-0 (1)</b> 188:3
123:17	<b>2/4/13 (1)</b> 160:20	25	152:21;156:17,23	<b>50-55 (1)</b> 53:9
<b>140 (13)</b> 4:11;20:15;43:2,4;	<b>2:15 (1)</b>	<b>25th (2)</b> 159:2;200:11	<b>355 (3)</b> 59:17;108:12,13	<b>50-foot (1)</b> 83:9
78:18;142:22;150:22;		<b>26 (3)</b> 30:19,22;31:1	<b>37.31 (1)</b> 151:2	<b>50-plus (2)</b>
		<b>27 (33)</b> 19:19;20:20,21;	<b>38 (5)</b> 20:17;30:18,23;	

7:15;44:12 <b>50-plusers (1)</b> 44:16 <b>51 (1)</b> 53:13 <b>52 (1)</b> 53:13 <b>53 (8)</b> 23:7,10;27:7;29:18; 75:12,17,20;132:4 <b>54 (3)</b> 8:7;83:20;86:9 <b>54.349 (1)</b> 4:5 <b>55c (1)</b> 70:11 <b>55d (1)</b> 90:19 <b>55e (1)</b> 18:12 <b>56 (2)</b> 6:21;132:5 <b>574 (3)</b> 123:1,2,3 <b>576 (2)</b> 123:6,7 <b>578 (4)</b> 121:12;122:3;123:7, 8 <b>580 (2)</b> 121:23;122:3 <b>59 (1)</b> 44:23 <b>59-C-7.4 (1)</b> 177:21 <b>59-C-7.41 (1)</b> 177:22 <b>5th (6)</b> 161:5,9,9;200:11,13, 14	145:8 <b>64 (4)</b> 59:13;153:2,11,16 <b>65 (5)</b> 42:3;53:8;147:19; 153:2,17 <b>65-plus (3)</b> 7:13,15;149:22 <b>65-plusers (1)</b> 44:17 <b>66 (10)</b> 148:25;149:6;150:1, 8,12,19,24;166:9; 168:7,16	42:12;45:12,14;62:9, 19 <b>9:30 (1)</b> 63:9 <b>90 (5)</b> 27:21,25;61:1; 103:18;177:17 <b>91 (2)</b> 91:14,17 <b>92 (4)</b> 113:4,5,11,22 <b>93 (1)</b> 150:3 <b>93a (7)</b> 149:25;153:5,17; 166:11;168:12;170:2,2 <b>93b (6)</b> 151:24;153:4; 168:15,22;170:2,4 <b>93c (3)</b> 152:3,7;186:17 <b>94 (1)</b> 196:13 <b>9900 (1)</b> 18:3		
	<b>7</b>			
	<b>7 (4)</b> 107:16;137:3,5,16 <b>7,000 (1)</b> 194:11 <b>7.2 (1)</b> 76:6 <b>7:00 (2)</b> 45:12,12 <b>7:45 (5)</b> 62:6,17,20;63:10,14 <b>70 (7)</b> 44:9;60:24;61:4,9, 13,19;177:17 <b>78 (1)</b> 13:19			
	<b>8</b>			
	<b>8:00 (2)</b> 45:12,12 <b>80 (5)</b> 22:12;60:25;61:13; 157:23;177:17 <b>800 (1)</b> 142:19 <b>80c (1)</b> 14:15 <b>82 (1)</b> 20:19 <b>83 (4)</b> 13:24;14:2;47:23; 55:16 <b>85 (2)</b> 20:19;22:14 <b>89 (2)</b> 11:18,24 <b>89a (1)</b> 11:19 <b>89b (1)</b> 12:3 <b>8th (2)</b> 91:9,25			
<b>6</b>				
<b>6 (1)</b> 139:20 <b>6:00 (2)</b> 45:11,12 <b>6:30 (1)</b> 63:9 <b>6:45 (4)</b> 62:6,16;63:10,13 <b>60 (4)</b> 44:23;53:13;163:20; 177:16 <b>60-day (1)</b> 163:19 <b>62 (2)</b> 10:13;53:13 <b>63 (2)</b> 10:13;144:24 <b>63- (1)</b> 145:16 <b>63-space (1)</b>				
	<b>9</b>			
	<b>9:00 (5)</b>			