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Transcript of Hearing

Date: November 20, 2023

Case: Axcobar Tree Experts (CU 24-02)

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Transcript of Hearing
Conducted on November 20, 2023

1 (1 to 4)

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Transcript of Hearing
Conducted on November 20, 2023

2 (5 to 8)

<p>5</p> <p>1 PROCEEDINGS</p> <p>2 (Whereupon, the court reporter was duly</p> <p>3 sworn.)</p> <p>4 THE COURT: Okay, I'm calling the case</p> <p>5 of CU24-02, Melvin Alfaro, d/b/a Axcobar Tree</p> <p>6 Experts, seeking a conditional use to -- to be a</p> <p>7 landscape contractor at 20108 Zion Road. Will the</p> <p>8 parties identify themselves for the record?</p> <p>9 MR. HUGHES: Thank you. Sean Hughes</p> <p>10 from Miller, Miller & Canby for Mr. Alfaro. Do --</p> <p>11 do you want me to introduce the other --</p> <p>12 THE COURT: No, thank you. Okay. Is</p> <p>13 there any -- I've got to ask it for the record. Is</p> <p>14 there anyone here that is not going to be called by</p> <p>15 Mr. Hughes or is in opposition to this case? Okay.</p> <p>16 Seeing none, are there any preliminary matters, Mr.</p> <p>17 Hughes?</p> <p>18 MR. HUGHES: I have one relatively minor</p> <p>19 preliminary matter. Well, two. One -- one I think</p> <p>20 you helped me with last week or a week and a half</p> <p>21 ago is, is it okay to move the exhibits in at the</p> <p>22 end of the hearing --</p> <p>23 THE COURT: Yes.</p> <p>24 MR. HUGHES: -- or ask to be moved in?</p> <p>25 The second one is, one of the conditions of</p>	<p>7</p> <p>1 THE COURT: Reduce the morning --</p> <p>2 MR. HUGHES: -- give back a half an hour</p> <p>3 and ask for the hour, so it would be a net gain of</p> <p>4 potentially half an hour.</p> <p>5 THE COURT: Okay. To -- it would be 7</p> <p>6 -- okay.</p> <p>7 MR. HUGHES: Yeah, 7:00 a.m.</p> <p>8 THE COURT: In -- in Daylight Savings,</p> <p>9 it would be 7:00 a.m. to 8:00 p.m.?</p> <p>10 MR. HUGHES: Yes, please.</p> <p>11 THE COURT: But then, what about the</p> <p>12 rest of the year?</p> <p>13 MR. HUGHES: We -- we could keep it as</p> <p>14 is --</p> <p>15 THE COURT: Okay.</p> <p>16 MR. HUGHES: -- or we could -- yes, we</p> <p>17 would keep -- keep it as is.</p> <p>18 THE COURT: Now, what does that do to</p> <p>19 your traffic study?</p> <p>20 MR. HUGHES: It would have no impact on</p> <p>21 it.</p> <p>22 THE COURT: Do you have anyone here that</p> <p>23 can explain that or --</p> <p>24 MR. HUGHES: Well --</p> <p>25 THE COURT: Because now you're in peak</p>
<p>6</p> <p>1 approval from -- Planning Board recommended is the</p> <p>2 hours. We were going to ask you to make a slight</p> <p>3 -- consider a slight adjustment.</p> <p>4 THE COURT: Okay. Can I just get to</p> <p>5 that --</p> <p>6 MR. HUGHES: Yes.</p> <p>7 THE COURT: -- really quickly?</p> <p>8 MR. HUGHES: Yes.</p> <p>9 THE COURT: That would be Exhibit --</p> <p>10 MR. HUGHES: Staff Report, Page 3.</p> <p>11 THE COURT: -- 32.</p> <p>12 (Exhibit 32 was marked.)</p> <p>13 MR. HUGHES: Yeah, 32, Page 3, and in</p> <p>14 Condition 2.</p> <p>15 THE COURT: Okay.</p> <p>16 MR. HUGHES: In that, we had asked, and</p> <p>17 they have recommended approval, from 6:30 a.m.</p> <p>18 until 7:00 p.m., Monday through Friday. We would</p> <p>19 like for you to consider adjusting it until 7:00</p> <p>20 a.m., but allow it to 8:00 p.m., or at least 8:00</p> <p>21 p.m. during daylight savings hours.</p> <p>22 THE COURT: So you want it to be 6:30</p> <p>23 a.m. until --</p> <p>24 MR. HUGHES: Actually, 7:00. We would</p> <p>25 reduce -- we would --</p>	<p>8</p> <p>1 time. Well, you always were in peak time.</p> <p>2 MR. HUGHES: Right. That's -- that's</p> <p>3 fine. Yeah.</p> <p>4 THE COURT: Okay. Let me -- let me just</p> <p>5 note that, and we will -- I'll hear testimony on</p> <p>6 that --</p> <p>7 MR. HUGHES: Okay.</p> <p>8 THE COURT: -- about why you want to do</p> <p>9 that and everything.</p> <p>10 MR. HUGHES: Okay. Thank you.</p> <p>11 THE COURT: Okay. Anything else?</p> <p>12 MR. HUGHES: No. No, ma'am.</p> <p>13 THE COURT: Do you want to make an</p> <p>14 opening statement?</p> <p>15 MR. HUGHES: I think we could bypass the</p> <p>16 opening statement, with your permission.</p> <p>17 THE COURT: Okay. And the -- so call</p> <p>18 your first witness, please.</p> <p>19 MR. HUGHES: Yes. I would call Mr.</p> <p>20 Michael Norton of Norton Land Design.</p> <p>21 THE COURT: Mr. Norton, I remember you.</p> <p>22 You qualified as an expert, but I can't remember</p> <p>23 what your qualification was.</p> <p>24 MR. NORTON: Yes, ma'am. I'm qualified</p> <p>25 as landscape architect and specialize in site</p>

Transcript of Hearing
Conducted on November 20, 2023

3 (9 to 12)

<p>9</p> <p>1 planning, qualified as an expert in site planning 2 in Montgomery County. 3 THE COURT: Okay. 4 MR. HUGHES: Site planning is like site 5 design? 6 MR. NORTON: Uh-huh. 7 MR. HUGHES: Okay. You're right, Madam 8 Hearing Examiner. He was before you a week and a 9 half ago on -- 10 THE COURT: Right. 11 MR. HUGHES: -- 24-01, I think it was. 12 THE COURT: To be honest -- 13 MR. HUGHES: Yeah. 14 THE COURT: -- we have so many of them -- 15 MR. HUGHES: Yes. 16 THE COURT: -- I -- I can't give you a 17 case number. 18 MR. HUGHES: And I should know that. 19 Yes. Yes. 20 THE COURT: But I do remember. Okay. 21 Go ahead, Mr. Hughes. 22 MR. HUGHES: Did you want to swear him 23 and any other witness at this point? 24 THE COURT: I'm -- I'm worried about the 25 --</p>	<p>11</p> <p>1 any point, obviously, just let us know, and we'll -- 2 THE COURT: No. 3 MR. HUGHES: -- I'll stop talking. 4 THE COURT: Well, thank you. Okay. Go 5 ahead. 6 MR. HUGHES: Okay. And -- yeah. And 7 for the record, Mr. Norton -- well, thank you for 8 accepting him as a -- as an expert. His resume is 9 in the record as of Part 31, our prehearing 10 statement. 11 EXAMINATION BY COUNSEL FOR THE APPLICANT 12 BY MR. HUGHES: 13 Q Mr. Norton -- sorry, one second. Mr. 14 Norton, can you -- can you tell us -- I'm sorry; 15 let me back up. Mr. Norton, are you familiar with 16 Exhibit 35, site aerial photo? 17 (Exhibit 35 was marked.) 18 A Yes, I am. 19 Q Is that something, along with Exhibit 20 10, your conditional use plan, that you could use 21 to explain the project -- 22 A Yes. 23 Q -- and how operations will flow on the 24 property? 25 A Yes.</p>
<p>10</p> <p>1 MR. HUGHES: Yeah. 2 THE COURT: Pardon me if I'm a little 3 distracted. I'm working with the -- the tech here 4 to figure out something, so I apologize. 5 MR. HUGHES: Take your time. 6 Whereupon, 7 MICHAEL NORTON, 8 being first duly sworn or affirmed to testify to 9 the truth, the whole truth, and nothing but the 10 truth, was examined and testified as follows: 11 THE COURT: Please state your name and 12 business address for the record. 13 MR. NORTON: Michael Norton, Norton Land 14 Design, 5146 Dorsey Hall Drive, 2nd Floor, Ellicott 15 City, Maryland 21042. 16 THE COURT: And just for the record, you 17 have testified here prior to this as an expert in 18 landscape architecture and planning site design? 19 MR. NORTON: Yes. 20 THE COURT: Okay. I'll go -- I will 21 qualify you as that, and I -- pardon me for being 22 distracted. I'm trying to find F11 -- be 23 distracted with the new technology. 24 MR. HUGHES: Well -- and we understand; 25 it's new for all of us. So if you need to pause at</p>	<p>12</p> <p>1 THE COURT: Which would you like first? 2 MR. NORTON: Thirty-five would be great. 3 Thank you. 4 Q Okay. Thank you. Mr. Norton, could you 5 explain to us about the property and the area and 6 how it's going to be utilized, first starting maybe 7 perhaps with the area? Tell us a little bit about 8 the area surrounding the property. 9 A Yes. The -- the property is 2.12 acres. 10 It is Residential Zone R-200, has an existing house 11 -- dilapidated house on the property. Currently, 12 to the north is pointing up on the aerial 13 photograph that we're looking at right now. 14 (Exhibit 6 was marked.) 15 A To the east is a 139-acre farm. I 16 believe it has a conditional use on it. I forget 17 what the name of the -- of the farm is. To the 18 west is the Pepco. Where you see the long strip of 19 -- of land is the Pepco right-of-way power lines. 20 That does back up to the property. Actually, the 21 wooded area to the west of the property is also 22 Pepco, so they did not clear all the forest. The 23 forest area is actually Pepco property. To the 24 north is an existing residence, and then to the 25 south is a residence as well, with a large area of</p>

Transcript of Hearing
Conducted on November 20, 2023

4 (13 to 16)

<p>13</p> <p>1 -- of gravel, similar to the condition that we have 2 on our property -- on the subject property. 3 Q Is that residence habitable or have 4 folks living in it? 5 A The subject property does not have -- 6 Q No. I'm sorry. The property to the 7 south? 8 A I do not know that I can speak to that 9 right now. I've only walked from the -- from the 10 subject property. It does not appear to have 11 anyone living in it or being used as a residence 12 right now. 13 Q Okay. 14 A I think the property to the north does. 15 Q Yeah. Thank you. Sorry. Continue. 16 A Uh-huh. To the intersection just to the 17 south are three residential houses as well. The -- 18 but the area -- there we go -- the area is 19 primarily kind of rural-residential, if you will. 20 THE COURT: Do you want to define the 21 area? Is it defined in the Staff Report? 22 MR. NORTON: It is defined in the Staff 23 Report for Planning. 24 Q Would you accept the -- 25 A Yes.</p>	<p>15</p> <p>1 see where the boundary of your defined neighborhood 2 is. 3 MR. NORTON: It -- it's the area in 4 light green. The subject property is the dark 5 green. The neighborhood boundary -- 6 THE COURT: You don't include the Pepco 7 property? 8 MR. NORTON: I included that as actually 9 the limits of the -- of the neighborhood to the 10 west. I said that was the end of the -- of the 11 neighborhood. 12 THE COURT: Okay. Well, I don't want to 13 get -- I would have included Pepco and left it 14 there, but -- because it's going to have -- if it 15 has an impact on anybody to the west, it'll be 16 Pepco. 17 MR. NORTON: It'll be Pepco. Yes. 18 THE COURT: So do you have any objection 19 if you extend it to the Pepco easement to the west? 20 MR. NORTON: We can certainly extend it 21 to the western side of the Pepco property. 22 MR. HUGHES: I don't think the Applicant 23 would have any issue with that. And I believe that 24 this was within consultation with Planning Staff -- 25 MR. NORTON: This -- right. This was</p>
<p>14</p> <p>1 Q -- Staff Report's definition? 2 A Yes. I could tell you which page, 3 potentially, if you'd like. Let me see if I can 4 find it real quick. 5 Q Here. I got -- I'm -- I can show you. 6 THE COURT: It's 32. 7 Q Exhibit 32. 8 A I don't remember which page. 9 Q And it's on Page 7. Do you -- do you 10 recognize what's -- what's called Figure 2 on Page 11 7 of Exhibit 32? 12 A Yes. I prepared that. 13 Q Well, yeah. You -- you worked with 14 Staff? 15 A Yeah, I worked with Staff. 16 Q Yes. 17 THE COURT: Staff adopted your 18 delineation. 19 MR. HUGHES: Staff -- 20 THE COURT: How's that? 21 MR. NORTON: Yeah, that -- that works. 22 MR. HUGHES: So you were -- 23 MR. NORTON: I did not prepare that 24 document. 25 THE COURT: Now, where -- but I don't</p>	<p>16</p> <p>1 actually working -- 2 MR. HUGHES: -- so -- but we would -- we 3 would be open to understanding and accepting some 4 of the property to the west for sure. I think I 5 could speak for the Applicant on that. 6 THE COURT: Okay. Keep going. 7 BY MR. HUGHES: 8 Q Okay. And can you tell us a little bit 9 about the property then and operations on it? You 10 can utilize -- you may want to drill down to your 11 site plan, which I believe is Exhibit -- or 12 conditional use plan, Exhibit 10; is that correct? 13 A Yes. If you could open Exhibit 10. 14 Great. Thank you. 15 (Exhibit 10 was marked.) 16 Q Can you see that okay, or do you want to 17 -- 18 A I can. I'm just thinking for a second. 19 Q If you want to stand up and point to it 20 or look at it -- 21 A No. Hold on one second. I'm -- 22 actually, I'm thinking -- I apologize. Could it go 23 to Exhibit 12 to start? 24 Q You mean 13, your forest conservation 25 plan?</p>

Transcript of Hearing
Conducted on November 20, 2023

5 (17 to 20)

<p>17</p> <p>1 A No, I'd like to start with 12.</p> <p>2 Q Twelve is (crosstalk).</p> <p>3 (Exhibit 12 was marked.)</p> <p>4 THE COURT: NRIFSD plan?</p> <p>5 MR. NORTON: Yes. You asked to describe</p> <p>6 the existing --</p> <p>7 THE COURT: That's --</p> <p>8 MR. HUGHES: NRIFSD?</p> <p>9 MR. NORTON: Yes.</p> <p>10 MR. HUGHES: Okay.</p> <p>11 MR. NORTON: It's the existing --</p> <p>12 THE COURT: That's 12A?</p> <p>13 MR. NORTON: Yes. That's what -- that's</p> <p>14 what I'm looking for, that's correct. I -- I</p> <p>15 thought I'd start with a little context so you</p> <p>16 could see the property a little bit better --</p> <p>17 MR. HUGHES: Okay.</p> <p>18 MR. NORTON: -- is where I'll start it.</p> <p>19 So on this property, there is an existing residence</p> <p>20 right now. It is about 760 to 780 square feet.</p> <p>21 It's just -- correct. Right there to the -- yeah.</p> <p>22 THE COURT: No, you can't -- you can't</p> <p>23 say there.</p> <p>24 MR. NORTON: I was going to describe --</p> <p>25 yep.</p>	<p>19</p> <p>1 MR. NORTON: That's all existing gravel,</p> <p>2 asphalt millings. And then, the areas of forest</p> <p>3 are to north of the gravel; the Pepco property is</p> <p>4 to the west. Again, it's completely forested until</p> <p>5 you get to the power lines themselves, but that</p> <p>6 property is Pepco. Open lawn area is the</p> <p>7 residential, and then specimen and significant</p> <p>8 trees are -- are shown on this drawing as well. So</p> <p>9 trees 24 inches and greater are what's shown on</p> <p>10 this property. So I thought I'd give a little bit</p> <p>11 more context in this drawing. Residence is to the</p> <p>12 north as well. That is the offsite adjacent</p> <p>13 property. Yes, that's correct. Yes. And then</p> <p>14 from here, we can go to the Exhibit 10, unless</p> <p>15 there's questions on this.</p> <p>16 THE COURT: No.</p> <p>17 MR. NORTON: Hopefully, my north arrow</p> <p>18 is -- let's see. All right. We'll rotate --</p> <p>19 THE COURT: Where's north on this one?</p> <p>20 MR. NORTON: The same direction. If we</p> <p>21 can just rotate this counter-clockwise -- yes.</p> <p>22 There we are. All right. And it's up to you, but</p> <p>23 we can zoom out a little bit, if you like.</p> <p>24 THE COURT: Oh, zoom out?</p> <p>25 MR. HUGHES: Yeah.</p>
<p>18</p> <p>1 THE COURT: Yeah. Go ahead and describe.</p> <p>2 MR. NORTON: I would like to say, on</p> <p>3 this drawing, north is to the right, so it is in</p> <p>4 the southeast corner --</p> <p>5 THE COURT: Oh, I see that. Okay.</p> <p>6 MR. NORTON: -- if you will.</p> <p>7 THE COURT: Hold on.</p> <p>8 MR. HUGHES: Yeah. Yeah. Let her turn</p> <p>9 it --</p> <p>10 THE COURT: Just a second.</p> <p>11 MR. HUGHES: Yes. Thank you.</p> <p>12 THE COURT: Here we go. Try that.</p> <p>13 MR. HUGHES: That works for me too.</p> <p>14 MR. NORTON: Sure.</p> <p>15 MR. HUGHES: Thank you.</p> <p>16 MR. NORTON: Sure. That works.</p> <p>17 MR. HUGHES: Yeah.</p> <p>18 MR. NORTON: So the existing residence</p> <p>19 -- dilapidated residence is along -- almost to the</p> <p>20 southern property line, if you will. The operation</p> <p>21 -- there's a gravel area that is the hatch that you</p> <p>22 see on, like, a stipple pattern on the northern</p> <p>23 property to -- just to the north. Yes, that's</p> <p>24 correct.</p> <p>25 THE COURT: That's all gravel?</p>	<p>20</p> <p>1 MR. NORTON: Yes, unless that --</p> <p>2 THE COURT: No; it -- I hit the wrong</p> <p>3 button. You -- just --</p> <p>4 MR. NORTON: Sure.</p> <p>5 THE COURT: -- put up with me on this</p> <p>6 one.</p> <p>7 MR. NORTON: Sure. Absolutely.</p> <p>8 THE COURT: Okay.</p> <p>9 MR. NORTON: Absolutely. So this is the</p> <p>10 conditional use drawing that we have submitted for</p> <p>11 a review, and the existing house will remain on the</p> <p>12 property. It is being -- it is proposed to be</p> <p>13 renovated to a single family property and will</p> <p>14 continue to be used as such. The -- there is an</p> <p>15 existing driveway that is -- currently serves the</p> <p>16 residence right now. There is also to the north --</p> <p>17 yes. To the north, there is an existing commercial</p> <p>18 entrance out -- if you come down slightly to the</p> <p>19 south a little bit more, maybe about a hundred feet</p> <p>20 -- correct. Right -- yes. That -- the entrance to</p> <p>21 the landscape contractor is currently right where</p> <p>22 your mouse is pointing, kind of in the center of</p> <p>23 the property.</p> <p>24 You -- there is one point of access</p> <p>25 for the landscape contractor at the entrance, as</p>

Transcript of Hearing
Conducted on November 20, 2023

6 (21 to 24)

<p>21</p> <p>1 shown. There is onsite circulation. There's one 2 loop around the property, so you would enter -- it 3 does allow for two-way traffic. There would be -- 4 yes. You would enter, drive back to the western 5 property line, to the Pepco, and then you would 6 circulate to the south, loop back around, a 7 counterclockwise loop, if you will, and back out. 8 Parking is accommodated for commercial vehicles on 9 the north side of that loop. 10 There's 10 parking spaces on the north 11 side of the loop. On the center island, if you 12 will, there is parking for seven commercial 13 vehicles and three company -- I'm sorry, employee 14 parking spaces to circulate and drive back out. 15 This basically tries to simplify how the commercial 16 operation will run, and we tried to keep it 17 separate from the employees parking as best as we 18 could, although we do have -- 19 THE COURT: The what? 20 MR. NORTON: The employees parking. So 21 the commercial parking -- sorry -- employees 22 parking. We tried to keep it separate as best that 23 we could. 24 To the -- there is one portion of the 25 property on that circle, if you -- to the south,</p>	<p>23</p> <p>1 conditional use drawing. The forest conservation 2 is met onsite through preservation of existing 3 forest to the rear, along the Pepco property line, 4 and also turns the -- the corner south and east 5 along the rear property line 50 feet wide to 6 provide some of the screening. Also as part of the 7 landscape component, the -- there is forest 8 preservation as well to the north, around the -- 9 between brook -- between Zion Road and the parking, 10 there is landscape as well, so landscape as -- as 11 method of forest conservation requirements. 12 So all the parking is set back to 50 13 feet. And so we did actually meet landscape 14 through conservation easements around the property. 15 So the parking is tucked back in, if you will, on 16 this property so that it's really not visible from 17 the road, except at the entrance itself. 18 Q Okay. Mr. Norton, let me ask you -- you 19 mentioned the forest conservation plan. 20 A Uh-huh. 21 Q Is it correct that that was approved by 22 the Planning Board on November -- Thursday, 23 November 2nd? 24 A That's correct. 25 MR. HUGHES: Madam Hearing Examiner, we</p>
<p>22</p> <p>1 there are seven parking spaces that are behind the 2 residence, if you will, and that is dead end 3 parking. That is strictly employee parking on that 4 side as well. There is stormwater management 5 associated with both of the parking areas, 6 stormwater to the east, for the seven parking 7 spaces, and then stormwater to the north that 8 accommodates the circulation of parking that we 9 have. The forest conservation for the property is 10 -- 11 THE COURT: Do you have a fire safety -- 12 MR. NORTON: We do. 13 THE COURT: -- fire access plan approved 14 for this? 15 MR. NORTON: We don't have fire access 16 requirements for this property. 17 THE COURT: Okay. 18 MR. NORTON: Yeah. 19 THE COURT: Go ahead. 20 MR. NORTON: I lost my train of thought 21 here. Forest conservation, I can speak to that 22 next, if you like, Sean. 23 BY MR. HUGHES: 24 Q Yeah. Thank you. 25 A So everything is integrated into this</p>	<p>24</p> <p>1 received, on Friday, the actual letter from the 2 Planning Board approving the forest conservation 3 plan. I'm not sure if it made it to your office. 4 I did send a copy over the weekend -- or Friday. 5 Is that something we could try to enter today? I'm 6 -- 7 THE COURT: Well, I think I have it. 8 MR. HUGHES: Okay. 9 THE COURT: Is it the resolution? 10 MR. HUGHES: Yes. 11 THE COURT: Yes. I have it as -- 12 MR. HUGHES: I just don't think it's an 13 exhibit number yet. 14 THE COURT: -- Exhibit 40. 15 (Exhibit 40 was marked.) 16 MR. HUGHES: Oh, you do? Okay. Great. 17 Thank you. Okay. Very good. Okay. 18 Q So, Mr. Norton -- 19 THE COURT: I don't know if she was able 20 to get it up on the website -- 21 MR. HUGHES: And I didn't check this 22 morning. 23 THE COURT: -- but -- 24 MR. HUGHES: Okay. 25 Q You're familiar with -- are you familiar</p>

Transcript of Hearing
Conducted on November 20, 2023

7 (25 to 28)

<p>25</p> <p>1 with this document, Mr. Norton?</p> <p>2 A Yes; the resolution.</p> <p>3 Q Yeah. And that's forest conservation</p> <p>4 resolution from the Planning Board approving the</p> <p>5 forest conservation plan?</p> <p>6 A Yes.</p> <p>7 Q And that's Exhibit 40; is that your</p> <p>8 understanding?</p> <p>9 A Yes.</p> <p>10 Q Okay. Very good.</p> <p>11 A That's what it says.</p> <p>12 Q Very good. Thank you. Okay. All</p> <p>13 right. And -- okay. Can you -- can you tell us</p> <p>14 about -- is there any request for additional</p> <p>15 lighting besides the residence onsite?</p> <p>16 A There is -- there's no lighting proposed</p> <p>17 on this. It is rural, and the owner is seeking to</p> <p>18 -- to stay as compatible with the community as</p> <p>19 possible.</p> <p>20 THE COURT: Is there any lighting on the</p> <p>21 existing house?</p> <p>22 MR. NORTON: I believe there's a front</p> <p>23 porch light. Yes.</p> <p>24 THE COURT: And that's going to remain?</p> <p>25 MR. NORTON: I don't think it's</p>	<p>27</p> <p>1 already testified to this, though, but you said</p> <p>2 there's adequate parking for the staff, the</p> <p>3 commercial and for the residential?</p> <p>4 A Yes.</p> <p>5 Q And that's all laid out on your plan?</p> <p>6 A That is correct.</p> <p>7 Q And would that be on Exhibit 10, your --</p> <p>8 the conditional use plan?</p> <p>9 A Yes.</p> <p>10 Q Very good. Thank you.</p> <p>11 THE COURT: Now, the only other problem</p> <p>12 with doing that too is if there's changes to the</p> <p>13 house --</p> <p>14 MR. NORTON: Right.</p> <p>15 THE COURT: -- they have to be approved</p> <p>16 as a modification to your plan, because it's</p> <p>17 included in the plan. Follow what I'm saying?</p> <p>18 MR. HUGHES: If there's any changes to --</p> <p>19 THE COURT: To that -- to the footprint</p> <p>20 of the house, it has to be -- it has to be a</p> <p>21 modification of the plan because it's included</p> <p>22 within the conditional use plan and it's part of</p> <p>23 the sanitary facilities.</p> <p>24 MR. HUGHES: Right.</p> <p>25 THE COURT: I just want to make sure</p>
<p>26</p> <p>1 operational right now, but it is shown out there.</p> <p>2 The property does have electric. It has -- you --</p> <p>3 THE COURT: No, it's just you've got to</p> <p>4 show -- is the house in this special exception area?</p> <p>5 MR. NORTON: The house is not part of</p> <p>6 the conditional use. The house is a residence, but</p> <p>7 it is on the property.</p> <p>8 THE COURT: Well, usually, we -- we cut</p> <p>9 it if it's not existing residence. So it's on the</p> <p>10 south side. Usually we remove that from the</p> <p>11 conditional use. If it's in the conditional use,</p> <p>12 then you have to have the lighting approved. Now,</p> <p>13 you can replace a bulb or, you know, if it's not a</p> <p>14 new fixture --</p> <p>15 MR. NORTON: Correct.</p> <p>16 THE COURT: -- you -- you don't --</p> <p>17 you're fine.</p> <p>18 MR. NORTON: Right. We don't plan --</p> <p>19 THE COURT: So what you're saying is</p> <p>20 there's not going to be any new lighting fixtures --</p> <p>21 MR. NORTON: Correct.</p> <p>22 THE COURT: -- on that property?</p> <p>23 MR. NORTON: Correct.</p> <p>24 BY MR. HUGHES:</p> <p>25 Q Very good. Thank you. And I think you</p>	<p>28</p> <p>1 because it -- I read that you were going to</p> <p>2 renovate it?</p> <p>3 MR. HUGHES: Yes. Would -- would it</p> <p>4 would it be possible for the Hearing Examiner to</p> <p>5 consider a condition of approval that would allow</p> <p>6 the footprint to have a slight increase, up to a</p> <p>7 thousand square feet from the 700-plus, and not</p> <p>8 require -- potentially not require a modification,</p> <p>9 or is that -- is there -- that flexibility not</p> <p>10 possible? The reason I bring that up is we've had</p> <p>11 some discussions with well and septic that -- about</p> <p>12 a potential slight increase, and I think the zoning</p> <p>13 code allows a slight increase, but the size of it</p> <p>14 being so small would not be --</p> <p>15 THE COURT: So you would go from what to</p> <p>16 what? What --</p> <p>17 MR. HUGHES: It's -- it's a -- it's a</p> <p>18 little less than 800 square feet. We'd like to</p> <p>19 have the flexibility to go up to a thousand square</p> <p>20 feet.</p> <p>21 THE COURT: Let me think about that one.</p> <p>22 I -- what is south of this? Is -- not the Pepco</p> <p>23 easement?</p> <p>24 MR. HUGHES: The -- you mean the</p> <p>25 property directly to the south?</p>

Transcript of Hearing
Conducted on November 20, 2023

8 (29 to 32)

<p>29</p> <p>1 THE COURT: Uh-huh.</p> <p>2 MR. HUGHES: Yeah. There is -- and I --</p> <p>3 Mr. -- Mr. Alfaro will testify to it a little bit,</p> <p>4 but there is a -- there's a property -- my</p> <p>5 understanding is it has a residence that is either</p> <p>6 not habitable or not being used. It previously had</p> <p>7 a similar business operating on it that -- the</p> <p>8 entire property became impervious and no longer has</p> <p>9 anything on it right now, operating now.</p> <p>10 THE COURT: The only problem is there's</p> <p>11 case law that says that I can't defer a decision --</p> <p>12 I can't defer to another agency some part of the</p> <p>13 approval. Is there any way, while the record is</p> <p>14 open, that you could just figure out where the</p> <p>15 thousand square feet is going to -- or the -- a</p> <p>16 slight additional square footage is going to go?</p> <p>17 MR. HUGHES: I think we could probably</p> <p>18 draw it out, just because it's going to stay</p> <p>19 essentially in the same area, but as far as where</p> <p>20 we bump it out, I think we could --</p> <p>21 THE COURT: You don't have to do it</p> <p>22 today.</p> <p>23 MR. HUGHES: Okay.</p> <p>24 THE COURT: I've got to keep the record</p> <p>25 open --</p>	<p>31</p> <p>1 MR. HUGHES: Well, it -- it's very close</p> <p>2 because I -- we're not going to be able to go --</p> <p>3 MR. NORTON: I just want to point that</p> <p>4 out for the owner so you can ask.</p> <p>5 MR. HUGHES: Well, we're not going to be</p> <p>6 able to go much larger than that, and I know the</p> <p>7 maximum potentially up to -- could -- could --</p> <p>8 could you consider leaving the record open to us to</p> <p>9 settle about that?</p> <p>10 THE COURT: I will.</p> <p>11 MR. HUGHES: Yeah.</p> <p>12 THE COURT: I will.</p> <p>13 MR. HUGHES: Okay.</p> <p>14 THE COURT: And if you need more time --</p> <p>15 I mean, I know you want to get this done, but if</p> <p>16 you need more time, I just can't --</p> <p>17 MR. HUGHES: Right.</p> <p>18 THE COURT: -- open-ended approve</p> <p>19 something.</p> <p>20 MR. HUGHES: Okay.</p> <p>21 THE COURT: So if -- if you want to take</p> <p>22 the time you need to get that done --</p> <p>23 MR. HUGHES: Thank you. Okay.</p> <p>24 THE COURT: And then I've got to send it</p> <p>25 back. It's required --</p>
<p>30</p> <p>1 MR. HUGHES: Okay.</p> <p>2 THE COURT: -- for 10 days to get the</p> <p>3 transcript.</p> <p>4 MR. HUGHES: I think I understand what</p> <p>5 you're asking.</p> <p>6 BY MR. HUGHES:</p> <p>7 Q Do you understand that, Mr. Norton?</p> <p>8 A I -- I do. The existing house is</p> <p>9 roughly 762 square feet. There is a covered porch,</p> <p>10 as shown on the plan, that is south, if you will,</p> <p>11 that is an approximately an extra 150. I believe</p> <p>12 the footprint as shown is over 900 square feet.</p> <p>13 THE COURT: The footprint that's shown --</p> <p>14 MR. NORTON: Yeah.</p> <p>15 THE COURT: Well, can you stick to that</p> <p>16 footprint, or do you need more?</p> <p>17 MR. NORTON: That's why I'm -- that's</p> <p>18 why I'm asking the -- well, that's why I'm asking</p> <p>19 the question. I believe we have 900 right now, if</p> <p>20 you look at the footprint of roof area, so I -- I</p> <p>21 want to be clear about that.</p> <p>22 THE COURT: Yeah. Is that enough for</p> <p>23 you?</p> <p>24 MR. NORTON: I'm not the owner. I can't</p> <p>25 answer that.</p>	<p>32</p> <p>1 MR. HUGHES: To Staff.</p> <p>2 THE COURT: -- to Staff, which is --</p> <p>3 anyway, it -- it just is what it is. So factor</p> <p>4 that in too, but it's not -- it probably wouldn't</p> <p>5 delay a decision, because I can do the -- the rest</p> <p>6 of the decision, you know, while you're getting</p> <p>7 that decided.</p> <p>8 MR. HUGHES: Very good.</p> <p>9 MR. NORTON: If we were to show that as</p> <p>10 a proposed -- just -- just say 1,000 square feet</p> <p>11 over top of the -- the footprint that we currently</p> <p>12 have, and showed the net increase, would we have to</p> <p>13 have the septic re-approval prior to your approval,</p> <p>14 or can we just show that as proposed?</p> <p>15 THE COURT: Well --</p> <p>16 MR. NORTON: Would we have to have the</p> <p>17 DPSes sign off on the septic?</p> <p>18 THE COURT: You should have DPSes --</p> <p>19 MR. HUGHES: Yeah, we already do have --</p> <p>20 MR. NORTON: We have that, but not for</p> <p>21 the addition, though.</p> <p>22 MR. HUGHES: No; we -- we -- well, we</p> <p>23 do. We have some testimony that we can have to</p> <p>24 that effect, that DPS has already said there can be</p> <p>25 some flexibility on that.</p>

Transcript of Hearing
Conducted on November 20, 2023

9 (33 to 36)

<p>33</p> <p>1 MR. NORTON: Okay.</p> <p>2 THE COURT: Okay. Well, Staff didn't</p> <p>3 let you know this?</p> <p>4 MR. HUGHES: About which part of the --</p> <p>5 THE COURT: Just that you need to show</p> <p>6 the expansion among the plans?</p> <p>7 MR. HUGHES: We did not talk about that.</p> <p>8 We talked about -- I mean, they're very familiar,</p> <p>9 obviously, that this is part -- this is kind of</p> <p>10 some of the -- I guess there's some precedent with</p> <p>11 having some landscape contractors or similar ones</p> <p>12 where a -- a restroom can be utilized in a</p> <p>13 residence that's onsite, so they're familiar with</p> <p>14 that.</p> <p>15 THE COURT: Oh, okay.</p> <p>16 MR. HUGHES: Yeah.</p> <p>17 THE COURT: Well, let's see what the DPS</p> <p>18 approval says, because the DP -- if you can't do</p> <p>19 the thousand square feet --</p> <p>20 MR. HUGHES: Right.</p> <p>21 THE COURT: -- although I guess you can</p> <p>22 have a condition saying --</p> <p>23 MR. HUGHES: Up to DPS.</p> <p>24 THE COURT: -- up to the DPS septic</p> <p>25 approval.</p>	<p>35</p> <p>1 --</p> <p>2 MR. HUGHES: No; you're --</p> <p>3 THE COURT: -- I just --</p> <p>4 MR. HUGHES: I understand. You're --</p> <p>5 you're giving good guidance here.</p> <p>6 BY MR. HUGHES:</p> <p>7 Q Mr. Norton, do you -- do you need to</p> <p>8 talk any more about -- well, is it your position</p> <p>9 that we're in compliance with the canopy coverage</p> <p>10 rules on this plan?</p> <p>11 A For -- we're going to landscape now.</p> <p>12 Yes, we -- we have a landscape plan I can -- that</p> <p>13 is Exhibit 14, if we'd like to --</p> <p>14 (Exhibit 14 was marked.)</p> <p>15 Q And are we in compliance with the canopy</p> <p>16 coverage requirements?</p> <p>17 A Yes --</p> <p>18 Q And did Staff --</p> <p>19 A -- parking lot canopy coverage and</p> <p>20 screening requirements.</p> <p>21 Q And did Staff, in their Exhibit 32, their</p> <p>22 Staff Report, did they concur with that as well?</p> <p>23 A Yes.</p> <p>24 Q Okay. And --</p> <p>25 THE COURT: I have an idea --</p>
<p>34</p> <p>1 MR. NORTON: That's what I was asking.</p> <p>2 MR. HUGHES: Yeah, and -- and I think</p> <p>3 that's what we were kind of getting --</p> <p>4 THE COURT: But I still need it shown --</p> <p>5 I need --</p> <p>6 MR. HUGHES: On the plan.</p> <p>7 THE COURT: I need the square footage</p> <p>8 shown --</p> <p>9 MR. HUGHES: Yes. Right.</p> <p>10 THE COURT: -- on the plan.</p> <p>11 MR. HUGHES: Okay.</p> <p>12 MR. NORTON: Yes.</p> <p>13 MR. HUGHES: Okay.</p> <p>14 BY MR. HUGHES:</p> <p>15 Q And Mr. -- excuse me. Mr. --</p> <p>16 THE COURT: But if you could get DPS</p> <p>17 approval, that would be ideal, because then -- let</p> <p>18 me just think this through. If you showed more,</p> <p>19 then you get --</p> <p>20 MR. HUGHES: Okay. Right. And we do</p> <p>21 less because that's what DPS says, then that's --</p> <p>22 okay. If it's --</p> <p>23 THE COURT: I'm not sure, but go ahead.</p> <p>24 MR. HUGHES: Okay. Sorry.</p> <p>25 THE COURT: I'm not trying to be a pain</p>	<p>36</p> <p>1 MR. HUGHES: Yes, ma'am?</p> <p>2 THE COURT: -- on the square footage.</p> <p>3 Can you just draw -- it -- it looks like it's just</p> <p>4 a -- a rectangle.</p> <p>5 MR. HUGHES: More or less, yes.</p> <p>6 THE COURT: Could you just draw hashed</p> <p>7 incremental lines and say, one of these lines up to</p> <p>8 the capacity used available from the septic? Can</p> <p>9 you do something like that?</p> <p>10 MR. NORTON: I think that makes sense.</p> <p>11 MR. HUGHES: Yes.</p> <p>12 MR. NORTON: That's where I was headed</p> <p>13 with this.</p> <p>14 MR. HUGHES: Right.</p> <p>15 THE COURT: Okay.</p> <p>16 MR. NORTON: I think that makes sense.</p> <p>17 Yes.</p> <p>18 THE COURT: Just look at all your --</p> <p>19 MR. HUGHES: Yeah.</p> <p>20 THE COURT: Just do it in increments,</p> <p>21 and then -- okay.</p> <p>22 MR. HUGHES: Thank you.</p> <p>23 THE COURT: Back to the landscaping.</p> <p>24 Okay. I'm sorry.</p> <p>25 MR. HUGHES: No; thank you.</p>

Transcript of Hearing
Conducted on November 20, 2023

10 (37 to 40)

<p>37</p> <p>1 BY MR. HUGHES:</p> <p>2 Q And does your plan also show that we're</p> <p>3 in compliance with the perimeter planning</p> <p>4 requirements of the code?</p> <p>5 A That is correct. We used forest</p> <p>6 conservation extensively, also the landscape</p> <p>7 planting. We -- we can pull that exhibit if you</p> <p>8 like, but I can continue talking from the drawing</p> <p>9 that we have --</p> <p>10 Q Yes, sir.</p> <p>11 A -- the conditional use drawing. The</p> <p>12 landscape canopy is also tied to the forest</p> <p>13 conservation, because we did take individual tree</p> <p>14 credits as well.</p> <p>15 THE COURT: Okay.</p> <p>16 A So it is tied actually into both plans.</p> <p>17 Q Very good. And Staff in their Staff</p> <p>18 Report, Exhibit 32, they concurred as well with the</p> <p>19 perimeter planning requirements?</p> <p>20 A Yes.</p> <p>21 Q Okay. On your -- on your -- Exhibit 10,</p> <p>22 your conditional use plan, is it correct that you</p> <p>23 show the R-200 zone development standard</p> <p>24 requirements?</p> <p>25 A Yes, there is a zoning table.</p>	<p>39</p> <p>1 MR. NORTON: That Page -- yes, that's</p> <p>2 what I was -- that's correct, yes.</p> <p>3 BY MR. HUGHES:</p> <p>4 Q Okay. Very good. Thank you. Mr.</p> <p>5 Norton, in this project, is -- is it your</p> <p>6 understanding that this property is within the 2005</p> <p>7 only master plan?</p> <p>8 A That is correct.</p> <p>9 Q And in the Staff Report, is it your</p> <p>10 understanding that they stated that it was in</p> <p>11 compliance with the master plan?</p> <p>12 A Yes.</p> <p>13 Q Okay. And in your viewpoint, is it also</p> <p>14 -- is it -- did you -- do you concur with Staff</p> <p>15 that's it's in compliance?</p> <p>16 A Yes, I do.</p> <p>17 Q And there are any -- take -- any specific</p> <p>18 points you want to add to it about the master plan?</p> <p>19 A I think it -- I believe that the report,</p> <p>20 the Staff Report that was done, was well thought</p> <p>21 out and very detailed. I don't have any more to</p> <p>22 add to that.</p> <p>23 Q Okay. Can you -- can you tell us a</p> <p>24 little about --</p> <p>25 A (Indiscernible) pages.</p>
<p>38</p> <p>1 Q Yeah. And are we in compliance with all</p> <p>2 those codes?</p> <p>3 A Yes, that -- that is correct.</p> <p>4 Q Okay.</p> <p>5 A We do meet the zoning requirements.</p> <p>6 Q And on Page 14 of Staff Report, Exhibit</p> <p>7 32, they -- they agreed with that as well? In the</p> <p>8 Staff Report, you -- do you recall the date?</p> <p>9 A Yes, I -- I agree with the Staff Report</p> <p>10 in -- in general. I don't remember all the</p> <p>11 exhibits within it.</p> <p>12 Q But --</p> <p>13 THE COURT: Well, wait. Just look at --</p> <p>14 MR. HUGHES: Yeah.</p> <p>15 MR. NORTON: Exhibit --</p> <p>16 THE COURT: What page was it?</p> <p>17 MR. HUGHES: Page --</p> <p>18 MR. NORTON: No, I was --</p> <p>19 MR. HUGHES: Page 14 --</p> <p>20 MR. NORTON: I want to make sure I'm on</p> <p>21 the same page.</p> <p>22 MR. HUGHES: -- of Exhibit 32.</p> <p>23 MR. NORTON: That is correct.</p> <p>24 THE COURT: It should be up on the</p> <p>25 screen.</p>	<p>40</p> <p>1 Q Can you tell us a little bit about the</p> <p>2 residential look that -- that this property will or</p> <p>3 will not have or retain?</p> <p>4 A Yes. The property will retain the rural</p> <p>5 residential character, the small nature of the</p> <p>6 house. It is set back, tucked into the property,</p> <p>7 forested along the roadway of Zion Road. So the</p> <p>8 views into the property are very limited. The</p> <p>9 landscape contractor used, as well, will be</p> <p>10 screened back very well. It's not visible</p> <p>11 currently when you drive by, if you look on the</p> <p>12 road.</p> <p>13 THE COURT: Can I --</p> <p>14 MR. NORTON: Yes.</p> <p>15 THE COURT: Can I take you back to --</p> <p>16 MR. NORTON: Chart?</p> <p>17 THE COURT: I don't like this. I'm not</p> <p>18 talking about you guys or the application, I swear.</p> <p>19 MR. NORTON: I'm trying to look at what</p> <p>20 you're looking at as well and not the papers.</p> <p>21 THE COURT: No. Now, I'm going back to</p> <p>22 the conditional use plan.</p> <p>23 MR. NORTON: Yes.</p> <p>24 THE COURT: Where -- what type of</p> <p>25 contractor -- does he store materials --</p>

Transcript of Hearing
Conducted on November 20, 2023

11 (41 to 44)

<p>41</p> <p>1 MR. NORTON: Sure. I can -- I can talk 2 -- 3 THE COURT: -- on the site? And can you 4 just -- 5 MR. NORTON: Sure. 6 THE COURT: -- help me with that a 7 little bit? 8 MR. NORTON: Yes. Sure, I can do that, 9 and Mr. Alfaro can expand on -- on whatever I -- I 10 miss on this. 11 THE COURT: That's fine. 12 MR. NORTON: This is -- I probably -- I 13 guess I never started with this. Mr. Alfaro -- 14 Axcobar is an arborist business; it is not a 15 landscape contractor. 16 THE COURT: That's what I wondered 17 because -- 18 MR. NORTON: I apologize. I -- 19 THE COURT: No, it's okay. 20 MR. NORTON: I completely missed the 21 whole -- 22 THE COURT: So you don't have storage of 23 materials? 24 MR. NORTON: That's right. This is more 25 -- landscape -- tree care companies fall into</p>	<p>43</p> <p>1 trucks, things to -- for tree care in particular, 2 and that is all that they do on this property. 3 BY MR. HUGHES: 4 Q It is -- 5 THE COURT: Okay. 6 Q -- correct that they -- so I think you 7 kind of said this. It's correct that all the work 8 they do for customers is at the customer's property? 9 A That's -- that's correct. There's no 10 work taking place on the subject property. 11 THE COURT: Okay. That's why I was just 12 confused. 13 MR. NORTON: Yeah. 14 THE COURT: When I was looking at the 15 plan, all I saw was parking -- 16 MR. NORTON: Yeah, that's an amateur 17 mistake I made. 18 THE COURT: -- and I'm like, well, wait. 19 Okay. 20 MR. HUGHES: Well, and I -- I probably -- 21 MR. NORTON: I think we jumped into some 22 things. 23 MR. HUGHES: Yeah. Well, because I 24 didn't do an intro, and I should have, but -- 25 THE COURT: No, it's okay.</p>
<p>42</p> <p>1 landscape contractor from the conditional use. You 2 know well more than I do on this stuff, but it is 3 basically a parking for their contractor -- for the 4 trucks in the evenings. They come in in the 5 morning. As to the hours, Mr. Alfaro can speak to 6 that. The employees come in. They basically come 7 in in groups of threes, if you will, in one car. 8 They commute together, come in in the morning. 9 They -- they get in their trucks, they have their 10 safety briefing, and they have tree care trucks, 11 and basically -- with trailers, things like that, 12 box trucks, things. 13 They don't do lawn maintenance. They 14 don't do mulching. They don't do wood chipping, 15 anything like that, onsite. This is strictly a 16 place to park their landscape -- their -- I'm 17 sorry, arborist trucks that they have, they leave 18 for the day, and then they come back more on a 19 staggered return, if you will, depending on how 20 long their job is and -- and things. Where they 21 are in Montgomery County is basically where they 22 focus. So it's more of a staggered return. The 23 morning is employees come in, trucks leave, come 24 back in the afternoon more, again, staggered. But 25 it's arborist trucks, the flatbed trucks, box</p>	<p>44</p> <p>1 MR. HUGHES: Yeah. Yeah. 2 BY MR. HUGHES: 3 Q So there is -- as I think you sort of 4 testified, there's quite a distinction between a 5 full landscape company and a tree care company. 6 A That is correct. 7 Q So is it correct that they do not have 8 customers come onsite? 9 A Yes. 10 Q And they do not have products delivered 11 onsite? 12 A That -- yes. 13 Q And they don't have -- they don't store 14 material on site? 15 A That's correct. 16 Q Very good. 17 A Very simple operation. 18 Q And they don't sell material -- 19 A Correct. 20 Q -- from the site, correct? 21 A Correct. 22 Q Thank you. 23 A I can't believe I missed that. 24 Q No; that's me. 25 THE COURT: No; it's --</p>

Transcript of Hearing
Conducted on November 20, 2023

12 (45 to 48)

<p>45</p> <p>1 Q That's -- that's not on you; that's on 2 me. Okay. 3 A I just jumped right into the layout. 4 Q And I was -- okay. All right. And is 5 it your understanding that Staff also agreed that 6 this application meets adequate public facilities 7 review? 8 A That -- that is correct. 9 Q And can you tell us a little bit about 10 -- I'm going to ask you about an exhibit that's in 11 the record -- 12 A Okay. 13 Q -- Exhibit 20, which is called your site 14 distance evaluation -- or our site distance 15 evaluation. Are you familiar with Exhibit 20? 16 (Exhibit 20 was marked.) 17 A Yes. 18 Q And can you tell us what that is and 19 what it shows? 20 A Sure. The site distance evaluation is 21 -- surveyors reviewed how far that they can see 22 from the entrance of the -- actually exiting the 23 property from the commercial driveway to the left 24 and to the right on Zion Road, and the setback -- 25 the site distance has exceeded, almost doubled,</p>	<p>47</p> <p>1 is asking for up to 15 vehicles? 2 A Yes. 3 Q Okay. With those number -- numbers, are 4 there -- is there any issue in meeting the less 5 than 50 trips per -- per hour during prime time, so 6 to speak? 7 A No. I'm -- I'm not a traffic engineer, 8 but that -- that's my understanding, yes. 9 Q So that number is well below; is that -- 10 A We are well below the 50. 11 Q Yeah. Okay. 12 THE COURT: Now, the staff people, do 13 they just come and get in the -- are -- are they 14 crews that come and get in the trucks and then 15 leave the site? Is that what -- 16 MR. NORTON: Yeah, the -- 17 THE COURT: -- the 19 staff people are? 18 MR. NORTON: That -- that is correct. 19 We don't propose to have anyone onsite during the 20 day. There's no loading of vehicles. There's no 21 onsite staff. So everything that we -- 22 MR. HUGHES: Well, there's no office, no 23 permanent office. 24 THE COURT: Okay. 25 MR. HUGHES: There's no office onsite,</p>
<p>46</p> <p>1 what's required. 2 THE COURT: Okay. 3 A It's a pretty straight road. 4 Q Is it -- yeah -- fair to say it's pretty 5 flat and pretty straight? 6 A It's flat and straight, yes. 7 Q And can -- can you point again to the 8 aerial, which is Exhibit 35? 9 A Getting your exercise today, flipping 10 around. 11 Q Yeah. 12 THE COURT: Whoops. Sorry about that. 13 A Exhibit -- 14 Q Exhibit 35, does that help explain what 15 you were showing about the -- the -- the road? 16 A I think it shows that the road is fairly 17 straight -- 18 Q Yeah. 19 A -- north, south; uh-huh. 20 Q Very good. And can you tell us, is it 21 your understanding that they will -- that the 22 application is asking for up to 19 staff members? 23 Is that correct? 24 A That is correct. 25 Q And is it also true that the application</p>	<p>48</p> <p>1 but you'll hear testimony from Mr. Alfaro, who is 2 the -- you know, the founder and operator, that, 3 yes, generally, the -- the -- the yard is pretty 4 quiet, except in the morning and the end. He is 5 there occasionally to -- you know, to do some 6 switching out of vehicles or picking up materials, 7 or he might stay onsite a little bit to do some 8 planning. He does -- he goes out and does a lot of 9 the customer quotes and troubleshooting. 10 THE COURT: Okay. 11 MR. HUGHES: But by and large, the staff 12 are out -- and the 19 does include him as the 13 owner, and also management, and they are -- you 14 know, they're there on occasion more than the -- 15 the -- the crews, but the place is very quiet 16 typically during the day -- 17 THE COURT: Okay. 18 MR. HUGHES: -- and certainly at night. 19 No one is there at night. 20 THE COURT: Okay. 21 BY MR. HUGHES: 22 Q Very good. Okay. And can you tell us a 23 little bit about the septic system, Mr. Norton? 24 And I'll refer us to Exhibits -- let's see. 25 Where's that one? Sorry. Exhibit 18. Can you</p>

Transcript of Hearing
Conducted on November 20, 2023

13 (49 to 52)

<p>49</p> <p>1 tell us a little bit about the septic situation out 2 there and -- and the plan? 3 (Exhibit 18 was marked.) 4 A I'm not -- we might want to go to the 5 conditional use drawing, Exhibit 10. Exhibit 18 is 6 the approval memo from -- from DPS, if I'm not 7 mistaken. 8 Q Okay. And I think it also has a report 9 from Mr. Ashton. 10 A Yes, it has the -- the report from our 11 expert in innovative septic design. I can speak to 12 that, and I can speak to the drawing. 13 Q And is -- you -- you helped bring in Mr. 14 Ashton to help with this project; is that correct? 15 A That is correct. The property had been 16 substantially tested, water table testing. We -- 17 that's what delayed us getting here for quite a 18 while, water table testing last year. The property 19 does not support a traditional trench septic field 20 or sand mounts. It's been tested for many, many 21 years by other owners, and we tried with Mr. Alfaro 22 one more time last year. 23 Q And did you consult also with DPS and -- 24 and the lead at well and septic, Ms. Benham? Is 25 that correct?</p>	<p>51</p> <p>1 or less in the morning and 30 to 45 minutes in the 2 afternoon. 3 THE COURT: Okay. So you're saying that 4 all 19 aren't going to be going to the bathroom at 5 the same time? 6 MR. HUGHES: No, it -- it -- one of the 7 things that Mr. Alfaro may also testify is -- I 8 mean, they are at their client's properties most of 9 the day -- 10 THE COURT: Right. 11 MR. HUGHES: -- so they are kind of 12 professionals, and realizing that they have to kind 13 of go before they get there, on their lunch breaks, 14 and afterwards, because usually most of their 15 clients are not allowing them to come onto their 16 homes and businesses to utilize the facilities. 17 THE COURT: Yeah. Okay. 18 MR. HUGHES: Very good. Thank you. 19 THE COURT: What does as needed mean? 20 MR. HUGHES: Well, I -- I've -- I've 21 tried to come up with the right terminology. You 22 know -- 23 THE COURT: There's a reason I'm 24 struggling with this. 25 MR. HUGHES: Yeah. We --</p>
<p>50</p> <p>1 A That is correct. We started when -- the 2 system out there right now is currently failing for 3 the existing house. We sought out working with DPS 4 and Maryland Department of the Environment to 5 actually innovate a septic field system, and which 6 we brought in an expert soil scientist who's versed 7 in alternative practices for septic design, which 8 you can start to look at following -- following 9 failing of a traditional system. We brought in an 10 expert and came up with an innovative system that 11 does meet the requirements for the residents. We 12 have approve -- preliminary approval of the septic 13 design right now, currently. That is the memo from 14 Ms. Benham, and also the report from the expert. 15 That is -- 16 THE COURT: Can I look at the memo? 17 Which -- 18 MR. NORTON: Sure. That's 18. 19 THE COURT: Okay. So they say, As 20 needed use by staff of the landscape contractor? 21 MR. HUGHES: Correct. I -- I probably -- 22 THE COURT: How long are these employees 23 going to be on the site? 24 MR. HUGHES: You'll hear testimony from 25 Mr. Alfaro that they are typically there 45 minutes</p>	<p>52</p> <p>1 THE COURT: I mean, I know it means you 2 can't hold it anymore and you've got to go, but -- 3 MR. HUGHES: Available, if necessary, is 4 what Mr. Norton was suggesting to me earlier today. 5 MR. NORTON: I was trying find something 6 other than emergency. 7 MR. HUGHES: Yeah. Perhaps available if 8 necessary or -- 9 THE COURT: I guess what -- 10 MR. NORTON: Limited capacity? 11 THE COURT: How many -- I guess what I'm 12 trying to get at is, did DPS say how many flushes 13 it'll hold? 14 MR. HUGHES: They were not concerned 15 about -- they knew the number would not have any 16 impact. 17 THE COURT: Okay. 18 MR. HUGHES: Yeah. 19 THE COURT: Is there something -- well, 20 I guess they say that here -- 21 MR. HUGHES: Yeah. 22 THE COURT: -- when they said -- 23 MR. HUGHES: Right. 24 THE COURT: Okay. The things you get 25 into in land use.</p>

Transcript of Hearing
Conducted on November 20, 2023

14 (53 to 56)

<p>53</p> <p>1 MR. HUGHES: Very true.</p> <p>2 BY MR. HUGHES:</p> <p>3 Q Okay. And can you -- is there water</p> <p>4 onsite or near site, Mr. Norton?</p> <p>5 A It has --</p> <p>6 Q Public water?</p> <p>7 A The property has public water access.</p> <p>8 Q Very good. And --</p> <p>9 A I'm sorry. It is -- does have public</p> <p>10 water.</p> <p>11 Q Right. In fact, there's hydrants very</p> <p>12 close to there?</p> <p>13 A They're -- yes, it's on the property.</p> <p>14 THE COURT: Do you have any problem if I</p> <p>15 impose as a condition that you fulfill all</p> <p>16 conditions for the well and septic from DPS? It</p> <p>17 says you need to do an agreement and easement for</p> <p>18 installation of --</p> <p>19 MR. HUGHES: Oh, you mean the -- from --</p> <p>20 from -- are you talking about from the well and</p> <p>21 septic team or --</p> <p>22 THE COURT: Yeah. Yeah. Yeah. Yeah.</p> <p>23 MR. HUGHES: I --</p> <p>24 THE COURT: See the third bullet there?</p> <p>25 MR. HUGHES: Yes. Yes. No, we're -- we</p>	<p>55</p> <p>1 Q Mr. Norton, you've been out on the site</p> <p>2 several times; is that correct?</p> <p>3 A Yes.</p> <p>4 Q And you're familiar with the area around</p> <p>5 there?</p> <p>6 A Yes.</p> <p>7 Q Okay. And is it your understanding that</p> <p>8 Staff concurred that the use would be harmonious</p> <p>9 for the area and would not alter the character of</p> <p>10 the neighborhood in a manner inconsistent with the</p> <p>11 master plan?</p> <p>12 A Yes, that is correct.</p> <p>13 Q And from your experience, would you</p> <p>14 concur with that?</p> <p>15 A Yes.</p> <p>16 Q Okay. And do you believe that this --</p> <p>17 if approved, this conditional use would result in</p> <p>18 the impact of too many conditional uses in the area</p> <p>19 or -- or having --</p> <p>20 THE COURT: Over-concentration of --</p> <p>21 Q Yeah, over-concentration?</p> <p>22 A I do not believe that it would result in</p> <p>23 over-concentration of conditional uses. There is</p> <p>24 -- I believe that Pepco has a -- I may be mistaken,</p> <p>25 but I believe that Pepco has a conditional use for</p>
<p>54</p> <p>1 are expecting to comply with that. I --</p> <p>2 THE COURT: Okay.</p> <p>3 MR. HUGHES: -- wonder if, more broadly,</p> <p>4 the Staff had gathered that or not. I thought they</p> <p>5 had intended to. Maybe you're right. No, we -- we</p> <p>6 have -- we would have no concerns with -- with</p> <p>7 that. We -- we expect it -- we expect to work very</p> <p>8 closely with well and septic on this, or continue</p> <p>9 to do so.</p> <p>10 THE COURT: I'm fascinated to hear what</p> <p>11 the alternative system is, but --</p> <p>12 MR. HUGHES: Yeah.</p> <p>13 THE COURT: -- it's probably unnecessary</p> <p>14 at this --</p> <p>15 MR. HUGHES: It was a variation. Yeah.</p> <p>16 THE COURT: -- since you have DPS</p> <p>17 approval.</p> <p>18 MR. HUGHES: Yeah. It is interesting,</p> <p>19 though. You know, it --</p> <p>20 THE COURT: Okay. And what did -- this</p> <p>21 is Exhibit 18?</p> <p>22 MR. HUGHES: Eighteen, yes.</p> <p>23 THE COURT: Okay. I'm sorry. Go ahead.</p> <p>24 MR. HUGHES: Yep.</p> <p>25 BY MR. HUGHES:</p>	<p>56</p> <p>1 their operation and, again, the farm has a</p> <p>2 conditional use across the street, but they're not</p> <p>3 landscape contracted.</p> <p>4 Q And I would -- yeah. And I -- I think</p> <p>5 we might need to check about that farm. I'm not</p> <p>6 too sure --</p> <p>7 A It says 1966, and I honestly did not dig</p> <p>8 into --</p> <p>9 Q Well --</p> <p>10 A -- any more than what was --</p> <p>11 THE COURT: Well, shouldn't the Staff</p> <p>12 Report --</p> <p>13 MR. NORTON: It did. It does.</p> <p>14 MR. HUGHES: And I think it talks about</p> <p>15 Our House or similar.</p> <p>16 MR. NORTON: Yes.</p> <p>17 MR. HUGHES: It's a charitable type home</p> <p>18 for -- for kids in need, and I believe, though,</p> <p>19 that that is just south of that farm, and Staff</p> <p>20 does address that.</p> <p>21 MR. NORTON: They -- they do. Yeah.</p> <p>22 Q But Staff is -- is it --</p> <p>23 A I'm just trying to find (crosstalk).</p> <p>24 Q Is it -- is it your -- is it your</p> <p>25 understanding that Staff's position was that this</p>

Transcript of Hearing
Conducted on November 20, 2023

15 (57 to 60)

<p>57</p> <p>1 would not be an over saturation?</p> <p>2 A Correct.</p> <p>3 MR. HUGHES: Okay. But Madam Hearing</p> <p>4 Examiner, they do address that in more detail in</p> <p>5 their Staff Report. They note --</p> <p>6 THE COURT: Yeah, I see that.</p> <p>7 MR. HUGHES: Yeah. Yeah.</p> <p>8 THE COURT: So you concur with staff's</p> <p>9 findings?</p> <p>10 MR. NORTON: Yes, I do.</p> <p>11 Q Okay. And do you also concur with</p> <p>12 Staff's findings that the use will not cause harm</p> <p>13 to the neighborhood as a result of non-inherent</p> <p>14 adverse effect, along with or a combination of</p> <p>15 inherent and non-inherent adverse effects?</p> <p>16 A Yes, that's correct.</p> <p>17 Q And Staff -- because Staff also put</p> <p>18 analysis to that in their Exhibit 32, their Staff</p> <p>19 Report?</p> <p>20 A I'd have to look at Exhibit 32. I don't</p> <p>21 remember which page that was.</p> <p>22 Q Page 22 through 23 of Exhibit 32.</p> <p>23 A Oh, I'm sorry. That -- yes. Yes.</p> <p>24 Q Yeah. Okay. Is it also true that Staff</p> <p>25 in fact, on Page 23 of Exhibit 32, said that they</p>	<p>59</p> <p>1 supplies, garden equipment from the property; is</p> <p>2 that your understanding?</p> <p>3 A I can just say what I understand. Yes.</p> <p>4 Q And -- and I guess I can --</p> <p>5 A Yes.</p> <p>6 Q -- I can ask Mr. Alfaro as well, correct?</p> <p>7 A Yes.</p> <p>8 Q Yep.</p> <p>9 A Yes.</p> <p>10 Q And have you worked on other landscape</p> <p>11 contractor cases in the -- in the county?</p> <p>12 A I have.</p> <p>13 Q Okay. And would you say that the hours</p> <p>14 being requested and days are fairly standard?</p> <p>15 A I believe that they are.</p> <p>16 Q Okay. Okay. And I think you testified</p> <p>17 to this earlier, the fact that tree companies or</p> <p>18 arborists, they fit within the definition of</p> <p>19 landscape contractors?</p> <p>20 A Yes.</p> <p>21 MR. HUGHES: Madam Hearing Examiner,</p> <p>22 those would be my direct questions for Mr. Norton,</p> <p>23 in case you have some additional questions, and</p> <p>24 then I would have one more witness, the Applicant.</p> <p>25 THE COURT: Okay. Just one minute. I'm</p>
<p>58</p> <p>1 find no non-inherent characteristics from this use?</p> <p>2 A That is correct.</p> <p>3 Q That in fact --</p> <p>4 A I was looking for a table.</p> <p>5 Q -- in fact, the impacts are all inherent</p> <p>6 --</p> <p>7 A Yes.</p> <p>8 Q -- all expected from a tree -- tree</p> <p>9 company --</p> <p>10 A Yes.</p> <p>11 Q -- or a landscape contractor?</p> <p>12 A Yes.</p> <p>13 Q Okay. All right. Mr. Norton, I'm going</p> <p>14 to switch gears to the actual code section for</p> <p>15 landscape contractors, 3.5.5.</p> <p>16 A Okay.</p> <p>17 Q You've testified to this, but the -- the</p> <p>18 -- the property -- potential use area/property is</p> <p>19 over two acres; is that correct?</p> <p>20 A Yes; 2.12.</p> <p>21 Q Okay. And all the buildings and parking</p> <p>22 areas meet the required setbacks; is that correct?</p> <p>23 A Yes, they do.</p> <p>24 Q Okay. And I believe you testified that</p> <p>25 the Applicant will not sell plant materials, garden</p>	<p>60</p> <p>1 just writing. I don't have any questions. Thank</p> <p>2 you.</p> <p>3 MR. NORTON: Sure.</p> <p>4 MR. HUGHES: Thank you, Mr. Norton. Did</p> <p>5 you -- did you want some water to take with you?</p> <p>6 MR. NORTON: I'm good. Thank you.</p> <p>7 MR. HUGHES: You have that one. Did you</p> <p>8 use this one? No? Okay. Melvin, come on up, and</p> <p>9 if you need some water --</p> <p>10 MR. ALFARO: Oh. Thanks so much.</p> <p>11 THE COURT: Good morning, Mr. Alfaro.</p> <p>12 MR. ALFARO: Good morning.</p> <p>13 THE COURT: Okay. Go ahead, Mr. Hughes.</p> <p>14 MR. HUGHES: Thank you.</p> <p>15 Whereupon,</p> <p>16 MELVIN ALFARO,</p> <p>17 being first duly sworn or affirmed to testify to</p> <p>18 the truth, the whole truth, and nothing but the</p> <p>19 truth, was examined and testified as follows:</p> <p>20 EXAMINATION BY COUNSEL FOR THE APPLICANT</p> <p>21 BY MR. HUGHES:</p> <p>22 Q Good morning, Mr. Alfaro.</p> <p>23 A Good morning, sir.</p> <p>24 Q Are you nervous?</p> <p>25 A A little.</p>

Transcript of Hearing
Conducted on November 20, 2023

16 (61 to 64)

<p>61</p> <p>1 THE COURT: Don't be. 2 Q Have -- have you done a lot of public 3 speaking like this before? 4 A First time. 5 Q Okay. All right. But you do run your 6 business, correct? 7 A Yes. 8 Q Okay. So let's pretend like you're 9 running your business. 10 A Okay. 11 Q Is it correct you're the founder and the 12 owner of Axcobar Tree? 13 A Yes. 14 Q Okay. And is it also true that you're 15 the owner of the two-plus-acre property that has -- 16 that is part of this application? 17 A Yes, me and my wife. 18 Q Okay. You and your wife? Okay. And 19 what year did you buy that, you and your wife? 20 A 2019. 21 Q '19? Okay. All right. And you're -- 22 you heard us testify earlier -- or you heard us ask 23 the Hearing Examiner earlier, potentially adjusting 24 your hours? 25 A Yes.</p>	<p>63</p> <p>1 Q Better -- 2 A -- better suited for our company. 3 Q And -- 4 THE COURT: Now, I'm going to jump in 5 one second. 6 MR. HUGHES: Yes, ma'am. 7 THE COURT: Do any of your trucks have 8 Jake brakes? 9 MR. ALFARO: No. 10 THE COURT: No? 11 MR. HUGHES: Good question. 12 THE COURT: Okay. 13 MR. HUGHES: Because that is a 14 condition. You're right. Some -- I guess some 15 larger ones are different types too, but yes, he 16 said his trucks do not have Jake brakes. 17 THE COURT: Okay. 18 MR. HUGHES: I guess those are the 19 really loud ones, I understand. 20 THE COURT: Yeah. 21 MR. HUGHES: Yeah. 22 MR. ALFARO: No, it's just -- 23 Q Okay. And it's true we're not asking 24 for Saturday hours, but you're asking for Sunday 25 from 9:00 to 3:00; is that correct?</p>
<p>62</p> <p>1 Q Can you tell us, is it correct that you 2 would like to have the hours during daylight 3 savings hours, Monday through Friday, 7:00 a.m. to 4 8:00 p.m. and then non-daylight as requested, 6:30 5 to 7:00 p.m. during the week? 6 A Yes. That will fit better with our 7 schedule. 8 Q Okay. And you can tell us why that would 9 help a little bit? 10 A Definitely. Of course. Wintertime, it 11 just get dark at 5:30, so we -- we -- if we get out 12 early, you know, it give us a half an hour 13 advantage. But in the summertime, the day is -- is 14 better; you know, you start 7:30. And then usually 15 afternoons, you know, we -- we take longer breaks 16 because of the hot season, you know? So we -- and 17 sometimes we go even, like -- just go get decent 18 lunch in a restaurant where the guys can rest, and 19 then, you know, they take, like, one hour and a 20 half to two -- almost sometime two hours break when 21 there is some sort of heat wave, so -- and 22 sometimes we delay a little extra, and then, you 23 know, having some time to get later, you know? 24 Q Okay. 25 A It's -- it's -- it's -- will be --</p>	<p>64</p> <p>1 A Yes, on Sundays. And sometime we have, 2 you know, to get back with the schedule because we 3 had some rain during the day -- the week, and then 4 we already have, like, two, three weeks scheduled 5 when we are in the busy season in summertime. So 6 Sunday will kind of get us to -- into schedule 7 again if it rains during the -- the week, you know, 8 so -- and of course, all that is -- it's -- it's 9 not every Sunday, definitely; it's just kind of 10 trying to catch up when we have -- 11 Q Sometimes -- 12 A -- we have the bad weather and we just 13 try to catch up. And sometimes we call the client 14 and say, no worries, come later, so we don't even 15 work on Sunday, you know? But it has to be a 16 little bit of, you know, agreeing with the client, 17 you know? 18 Q So you like that flexibility of some 19 Sundays? 20 A Yes. It's just a little -- you know, 21 it's just to kind of catch up with the schedule. 22 And sometimes we will have a storm or damage too 23 and, you know, just for the Saturday -- I -- I just 24 go to church, and we don't -- 25 Q Saturday's -- Saturday is your church</p>

Transcript of Hearing
Conducted on November 20, 2023

17 (65 to 68)

<p>65</p> <p>1 day?</p> <p>2 A Yeah. So --</p> <p>3 Q Okay. Very good.</p> <p>4 A So none of my guys --</p> <p>5 THE COURT: Saturdays, you're not</p> <p>6 working, correct?</p> <p>7 MR. ALFARO: Yes. I -- so, like, it's</p> <p>8 like I never work on a Saturday.</p> <p>9 Q And -- and can you tell us, what year</p> <p>10 did you get into the tree care business?</p> <p>11 A 2010.</p> <p>12 Q And is that when you opened your business</p> <p>13 or when you started learning it?</p> <p>14 A Well, I started learning in 2006, when I</p> <p>15 first got here with my brother, you know. So I</p> <p>16 used to work with him, and then after school, I was</p> <p>17 going to continue working with him, you know, do</p> <p>18 the -- finish up the work, you know, go stump</p> <p>19 grinding and whatever is the last things to do, or</p> <p>20 -- or we just join the crew and -- and that was the</p> <p>21 plan, you know, learn the business. And then he</p> <p>22 sponsored me to get my licensing, and then, you</p> <p>23 know, after I graduated, I just kind of start</p> <p>24 flying by my own.</p> <p>25 And, you know, when he started, it</p>	<p>67</p> <p>1 prepare --</p> <p>2 Q And do people -- do people carpool</p> <p>3 together?</p> <p>4 A Yes. Yeah. Yes. Well, we -- they --</p> <p>5 they come out -- you know, they live in the same</p> <p>6 apartment, some of them. They come, like, three or</p> <p>7 four in the same car, and -- and those are the same</p> <p>8 that goes out in a group, you know? So when they</p> <p>9 come back, they just -- you know, they don't have</p> <p>10 to wait for me.</p> <p>11 Q So you -- you kind of -- you know who's</p> <p>12 driving together regularly and you have them work</p> <p>13 together also, correct?</p> <p>14 A Yeah. Yes. Yeah, the same --</p> <p>15 Q Okay.</p> <p>16 A -- the same cars that comes --</p> <p>17 Q All right.</p> <p>18 A -- as a group.</p> <p>19 Q And then, towards the end of the day, I</p> <p>20 think you already mentioned, people come back when</p> <p>21 they finish the jobs?</p> <p>22 A Yes.</p> <p>23 Q It could be a little bit different times?</p> <p>24 A Yes, different, you know, time return,</p> <p>25 you know, stump grinding, different time. Like,</p>
<p>66</p> <p>1 was a little bit simpler because, you know, in 2006</p> <p>2 we used -- used to park on the side of the road,</p> <p>3 one truck here, one truck there. But then in 2009,</p> <p>4 you know, the law changes, and then you can't have</p> <p>5 trucks outside. So my brother was just running,</p> <p>6 chasing places to park the trucks. And then after</p> <p>7 I started, so it's the same situation, you know,</p> <p>8 and that's why I bought the property.</p> <p>9 Q Right. And so, you bought your -- you</p> <p>10 started your own business in 2010; is that correct?</p> <p>11 A Yes.</p> <p>12 Q Okay. And then, you bought this</p> <p>13 property, I think you mentioned, with your wife in</p> <p>14 2019?</p> <p>15 A Yes.</p> <p>16 Q Okay. Very good. And can you tell us a</p> <p>17 little bit about what a typical day is like, a</p> <p>18 workday for you and your staff when you first</p> <p>19 arrive, and what happens?</p> <p>20 A Yes, of course. The guys usually start</p> <p>21 arriving, you know, 5:50 to 7:05. You know, that's</p> <p>22 around time, and then, you know, we go to a -- a</p> <p>23 brief meeting, like a catch-up with what was done</p> <p>24 yesterday -- you know, yesterday, and try to</p> <p>25 prepare for the day, you know, and of course</p>	<p>68</p> <p>1 the guys who cut the tree, they --</p> <p>2 Q You say stump grinding. Does that</p> <p>3 happen on your clients' property?</p> <p>4 A Yeah. Yeah, of course. Yeah. Yeah.</p> <p>5 All -- everything is done outside.</p> <p>6 THE COURT: Wait. Wait. Did you -- did</p> <p>7 you say clients' property?</p> <p>8 MR. HUGHES: Clients', yeah, outside.</p> <p>9 THE COURT: Okay.</p> <p>10 MR. HUGHES: Yeah. Clients', yeah.</p> <p>11 MR. ALFARO: We don't do anything</p> <p>12 inside, you know, beside --</p> <p>13 Q You don't do stump grinding on this</p> <p>14 subject property inside?</p> <p>15 A No, no, no. It's just -- everything's</p> <p>16 done outside.</p> <p>17 Q Yeah.</p> <p>18 A Definitely.</p> <p>19 Q Okay. And will -- you're -- you're not</p> <p>20 asking for -- to have snow removal operation in</p> <p>21 this application, are you?</p> <p>22 A No. No.</p> <p>23 Q Okay. And you're not asking to -- oh,</p> <p>24 let me back that up. Okay. And you will not do</p> <p>25 any mulch or compost manufacturing on site, correct?</p>

Transcript of Hearing
Conducted on November 20, 2023

18 (69 to 72)

<p>69</p> <p>1 A No. No.</p> <p>2 Q Okay. And you will not -- is it true</p> <p>3 you will not have any retail sales on site or</p> <p>4 customers come to site?</p> <p>5 A No.</p> <p>6 Q Okay. And it also true that you do not</p> <p>7 have deliveries of product or materials come to the</p> <p>8 site?</p> <p>9 A No.</p> <p>10 Q Okay. And you -- you know what's in the</p> <p>11 application, and I think you've heard discussions</p> <p>12 today. If you're fortunate enough to be approved,</p> <p>13 you would accept a condition of approval of a</p> <p>14 maximum of up to 15 vehicles for the property; is</p> <p>15 that correct?</p> <p>16 A Yes. That's -- that's correct.</p> <p>17 Q Okay. And would you also accept a</p> <p>18 condition of up to a maximum of 19 staff, as is</p> <p>19 being requested?</p> <p>20 A Yes.</p> <p>21 THE COURT: And that included management</p> <p>22 and you, correct?</p> <p>23 MR. ALFARO: Yes. Yeah. Right now, we</p> <p>24 are 12, you know, but it's because it's wintertime</p> <p>25 getting to us right now. So we flitter between 12</p>	<p>71</p> <p>1 A Yes. Yes.</p> <p>2 Q Okay. And they've remained up?</p> <p>3 A Yeah, they -- they're up</p> <p>4 Q Okay. And is it also true, though, that</p> <p>5 you are not asking or needing a business sign that</p> <p>6 says Axcobar at the property? You -- you don't</p> <p>7 want that or asking for that?</p> <p>8 A No. No. No.</p> <p>9 Q Okay. And Mr. Alfaro, I -- I talked</p> <p>10 about a few conditions, but you saw the Staff</p> <p>11 Report where they give you recommendation of</p> <p>12 approval and conditions of approval, and the</p> <p>13 Planning Board accepted those. You're familiar</p> <p>14 with those, correct?</p> <p>15 A Yes. Yes.</p> <p>16 Q If you're fortunate enough to be</p> <p>17 approved, and the Hearing Examiner gives you</p> <p>18 conditions of approval, you know -- and you will</p> <p>19 comply with those, correct?</p> <p>20 A Definitely, yes.</p> <p>21 MR. HUGHES: Okay. Those would be my</p> <p>22 questions for Mr. Alfaro --</p> <p>23 THE COURT: Okay.</p> <p>24 MR. HUGHES: -- Madam Hearing Examiner.</p> <p>25 THE COURT: I'm just going to go back</p>
<p>70</p> <p>1 and, you know --</p> <p>2 MR. HUGHES: Right.</p> <p>3 MR. ALFARO: -- 15.</p> <p>4 BY MR. HUGHES:</p> <p>5 Q And then, you want a little bit of --</p> <p>6 A Yeah.</p> <p>7 Q -- potential growth, but 19 is max, and</p> <p>8 you're --</p> <p>9 A Yeah.</p> <p>10 Q -- you'd be happy with that, correct?</p> <p>11 A But, right now, we are -- you know, even</p> <p>12 in the summertime, we are max 15 right now --</p> <p>13 Q Yeah.</p> <p>14 A -- including all the management and us</p> <p>15 and from me -- counting me below. And then, you</p> <p>16 know, of course, wintertime just get slow, you</p> <p>17 know? So we -- we kind of short that -- or we kind</p> <p>18 of have more -- we have a crew working one day and</p> <p>19 then another crew working one day and we might have</p> <p>20 the same (indiscernible) because of the job is not</p> <p>21 enough to cover the whole --</p> <p>22 Q Okay. Okay. And is it true that part</p> <p>23 of the advertisement -- publication of this</p> <p>24 application, that you have had the signs onsite for</p> <p>25 several months talking about this hearing?</p>	<p>72</p> <p>1 really quickly to Staff's conditions.</p> <p>2 MR. HUGHES: Okay. This is on Page 3 of</p> <p>3 Exhibit 32, I believe.</p> <p>4 THE COURT: The Staff Report says,</p> <p>5 Within three months of the approval of the</p> <p>6 conditional use, you must obtain -- obtain a</p> <p>7 written lease agreement or license to use the</p> <p>8 restroom facilities of the existing house. Do you</p> <p>9 -- I thought you owned the existing house?</p> <p>10 MR. HUGHES: It -- it -- it -- he does.</p> <p>11 Let me -- I'll try to explain -- oh, sorry.</p> <p>12 THE COURT: Can he do --</p> <p>13 MR. HUGHES: Oh, yeah.</p> <p>14 THE COURT: I need you to do it. Do you</p> <p>15 own the existing house?</p> <p>16 MR. ALFARO: Yes. You know, the -- the</p> <p>17 property --</p> <p>18 MR. HUGHES: Yeah.</p> <p>19 MR. ALFARO: -- is close enough, so I</p> <p>20 think it will be like a lease from Axcobar to</p> <p>21 Melvin, which is the same --</p> <p>22 THE COURT: Oh, okay.</p> <p>23 MR. ALFARO: So it's -- it's the same.</p> <p>24 You know, like, nothing's been in that house over</p> <p>25 there, you know, so, like -- but the purpose right</p>

Transcript of Hearing
Conducted on November 20, 2023

19 (73 to 76)

<p>73</p> <p>1 now to rebuild it is to have the bathroom in there. 2 THE COURT: So it would be a lease 3 between -- 4 MR. ALFARO: The company. 5 THE COURT: -- you and the company? 6 MR. ALFARO: Yeah, that's -- it's -- 7 THE COURT: Okay. 8 BY MR. HUGHES: 9 Q I -- I think Staff was just concerned 10 that if you leased it -- is it true that your plan 11 is to have either your company, staff, or family -- 12 A Family members mostly. 13 Q -- use the residence -- 14 A Yes. 15 Q -- or live in the residence? 16 A But they will know the condition of -- 17 Q Yeah. 18 A -- having access to use the bathroom. 19 MR. HUGHES: I think Staff just want to 20 make sure he doesn't rent it out to somebody he 21 doesn't know that well, and then they preclude him 22 from using the restroom -- 23 THE COURT: I understand. Okay. That's 24 -- 25 MR. HUGHES: -- which I think is a very</p>	<p>75</p> <p>1 is right now. As Mike say, we -- we have, like, a 2 -- like, a porch, but it's not a -- considered to 3 be in -- into the 19 -- 760 -- 82 -- 4 THE COURT: It's not -- the septic isn't 5 sized for the porch -- 6 MR. ALFARO: Yeah. Yeah, it's not -- 7 THE COURT: -- the septic is sized by 8 bedroom. 9 MR. ALFARO: Yeah. Yes, of course. So 10 that doesn't count, but that's what am I say. If 11 we can expand it at least to have, you know, the 12 same roof coverage as a -- a -- a available, you 13 know -- 14 THE COURT: I guess what I'm getting at 15 is, if you're operating now, how long can the porta 16 pot stay there? 17 MR. ALFARO: For construction? 18 THE COURT: Because what -- 19 MR. HUGHES: Yeah. 20 THE COURT: What we don't want to have 21 is no bathroom facilities -- 22 MR. HUGHES: Right. 23 THE COURT: -- on the site, so that's 24 why I'm asking, how long will the permanent 25 bathrooms, and how long can the porta pot stay</p>
<p>74</p> <p>1 fair point. 2 THE COURT: That's what I -- okay. Now, 3 I understand. And also, how soon -- are the 4 bathrooms workable now? I mean, you're operating 5 now, correct? 6 MR. HUGHES: Yeah. 7 MR. ALFARO: Yes. We have a portable, 8 you know, green bathroom over there, you know, that 9 is used for when it was -- 10 MR. HUGHES: Not the residence. 11 MR. ALFARO: -- not in the resident, you 12 know? So -- 13 THE COURT: Okay. When are the 14 residents going to be ready? Is the residence -- 15 MR. ALFARO: Well, as soon as they give 16 us approval, they might give us some time, and then 17 we have to do all these -- you know, we are working 18 on the loan, you know -- 19 THE COURT: Okay. 20 MR. ALFARO: -- so we can get some loans 21 for the reconstruction of the house and all that. 22 We are -- we already get that running, and so 23 depending of if you give us some -- you know, to 24 expand the house, we do a -- a drawing with a 25 bigger house, or we just keep the same size as it</p>	<p>76</p> <p>1 there? 2 MR. ALFARO: I think if we're going to 3 run into construction, you know, that is kind of -- 4 we need to have that for -- even for the 5 construction or for the company. Right now, we are 6 using for the -- you know, for the guys, but then 7 sometimes they come and clean out, and nothing is 8 there, you know? 9 MR. HUGHES: Can I just clarify a little 10 bit, and then -- 11 THE COURT: Yeah. Yeah. 12 MR. HUGHES: So it -- as you kind of -- 13 you see, it's a little bit of a chicken and egg. 14 So he's prepared to do the renovations of the 15 house, which are fairly significant, but he's 16 hoping to see if he'll get his approval first. If 17 he gets his approval, he's going to move in, you 18 know, right away. He's been getting quotes for the 19 house, and also -- 20 THE COURT: Well, what about this as a 21 condition? At no time can there be no bathroom 22 facilities on this site; either porta potty or -- 23 you either have to have portable restrooms or 24 bathrooms. 25 MR. HUGHES: I -- I think that's</p>

Transcript of Hearing
Conducted on November 20, 2023

20 (77 to 80)

<p>77</p> <p>1 understandable, because I think -- especially once 2 he starts construction, my understanding is that 3 they can have the portable while the house is being 4 renovated, and then once the house is renovated, 5 they'll -- they'll have the bathroom. 6 THE COURT: Okay. But do you object to 7 having that as a condition? 8 MR. HUGHES: I -- I don't see any 9 problem with that. 10 MR. ALFARO: No. No. 11 MR. HUGHES: No. Thank you. 12 MR. ALFARO: No; it has to be there. 13 It's been there. 14 THE COURT: I'll just say sanitary 15 facilities, temporary or permanent, be on the site. 16 Okay. That -- that was my question. 17 MR. HUGHES: Thank you. 18 THE COURT: Anything else? 19 MR. HUGHES: Nothing from us. Thank you. 20 THE COURT: Okay. 21 MR. HUGHES: I don't think I need to do 22 a closing unless -- 23 THE COURT: No, no. Thank you. Okay. 24 So let's talk a little bit about timing of you 25 getting the revised site plan just showing --</p>	<p>79</p> <p>1 expansion of bedrooms proposed beyond the three. 2 MR. HUGHES: And I -- and I guess -- 3 maybe I could put Mr. Alfaro back on there. We've 4 had discussions with TPS that we have to work with 5 them if there's any -- they -- they've indicated 6 there can be a small increase to the square 7 footage, but that it would be small, and that's why 8 we -- I was saying around a thousand square feet. 9 They would sign off on the design of the plan and 10 the size of it, but I think if we -- if -- if -- if 11 you were to -- 12 THE COURT: Well, I'll do this. 13 MR. HUGHES: Yeah. 14 THE COURT: You put -- you have to show 15 what you're going to build on the plan -- 16 MR. HUGHES: Okay. 17 THE COURT: -- because DPS -- the 18 enforcement section will come out and say -- 19 MR. HUGHES: Right. 20 THE COURT: -- this isn't showing on the 21 plan. So unless you come back and amend the plan, 22 which is not worth it at this moment -- 23 MR. HUGHES: Right. 24 THE COURT: -- because we have time to 25 put it on there --</p>
<p>78</p> <p>1 -- just showing the possible 2 expansion levels of -- 3 MR. NORTON: If it's -- can I just kind 4 of work through this, just so I understand this? 5 If we have it shown on the plan right now with the 6 porch and the stoop, is there any more that we have 7 to do? 8 MR. HUGHES: Well, I think what I had 9 asked for was up to a thousand square feet, so if 10 that -- if that box we have there, or whatever -- 11 MR. NORTON: I'm showing a -- a total -- 12 I've -- I've already worked through this with Park 13 and Planning Staff. I have the square footage as 14 shown on the drawings, 1,100 square feet. 15 THE COURT: Right, but -- but we don't 16 know if the septic is sized -- 17 MR. NORTON: Well, the septic is sized 18 -- you're absolutely right, what you were telling 19 me here, right, earlier. Septic is sized -- this 20 house has only existing two bedrooms, if I'm not 21 mistaken. 22 MR. ALFARO: Yeah, it's -- 23 MR. NORTON: Minimum sizing for a 24 residential house is three bedrooms, so you have to 25 meet that, to start with. There's no -- there's no</p>	<p>80</p> <p>1 MR. HUGHES: Right. Yeah. 2 THE COURT: But my -- I can put a 3 condition saying you need approval for DPS, for the 4 footprint shown on the plan. 5 MR. NORTON: We'll say it as renovated -- 6 MR. HUGHES: Yeah. So I think I -- 7 MR. NORTON: Okay. 8 MR. HUGHES: I guess what I'm hearing, 9 either -- Mr. Norton, either you're saying you 10 believe this is 1100 and the design works, or we -- 11 we look at it in the next 10 days or whatever, and 12 you do a slight tweak to the design. What do you 13 think is more appropriate? 14 MR. NORTON: That -- well, that's why I 15 was thinking through this, because I can -- no 16 matter what we do, since the record is going to be 17 open, I can just -- or we can box in, and we'll 18 just show and call out the thousand square feet -- 19 THE COURT: Okay. 20 MR. NORTON: -- to be done. 21 THE COURT: And then -- 22 MR. NORTON: Whether it's existing or 23 proposed, we'll just make sure it's -- 24 THE COURT: And then you're comfortable 25 with the condition --</p>

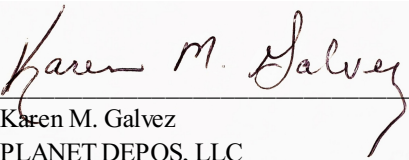

Transcript of Hearing
Conducted on November 20, 2023

21 (81 to 84)

<p>81</p> <p>1 MR. HUGHES: Yes.</p> <p>2 THE COURT: -- saying that subject --</p> <p>3 that this has --</p> <p>4 MR. NORTON: Subject to DPS.</p> <p>5 THE COURT: -- has to be approved by DPS?</p> <p>6 MR. NORTON: Yes. I think that's the</p> <p>7 best way to do it.</p> <p>8 THE COURT: Okay.</p> <p>9 MR. HUGHES: Yes.</p> <p>10 MR. NORTON: That way we're -- everyone</p> <p>11 is 100 percent clear.</p> <p>12 THE COURT: So you're going to get a new</p> <p>13 plan to me. How soon do you think you can do that?</p> <p>14 I have to leave the record open for a minimum of 10</p> <p>15 days because we don't -- we cite to -- we have to</p> <p>16 cite to the transcript, and we don't get the</p> <p>17 transcript for 10 business days.</p> <p>18 MR. NORTON: It won't be --</p> <p>19 THE COURT: No; 10 calendar days. I'm</p> <p>20 sorry.</p> <p>21 MR. NORTON: It won't be Thursday.</p> <p>22 THE COURT: Huh?</p> <p>23 MR. NORTON: It won't be Thursday.</p> <p>24 MR. HUGHES: Thanksgiving.</p> <p>25 THE COURT: Oh, my gosh.</p>	<p>83</p> <p>1 THE COURT: I'm required under the</p> <p>2 Zoning Board --</p> <p>3 MR. NORTON: No. Understood.</p> <p>4 THE COURT: -- and I can't --</p> <p>5 MR. NORTON: Understood.</p> <p>6 THE COURT: I would love not to have</p> <p>7 that provision in there, but I don't, so --</p> <p>8 MR. NORTON: That Tuesday.</p> <p>9 MR. HUGHES: Tuesday?</p> <p>10 MR. NORTON: Yes. I think, close of</p> <p>11 business Tuesday.</p> <p>12 THE COURT: So you'll get a revised</p> <p>13 plan, and why don't you submit it to --</p> <p>14 MR. HUGHES: Staff?</p> <p>15 THE COURT: Who's your Staff, Josh Penn</p> <p>16 (phonetic)?</p> <p>17 MR. HUGHES: Josh Penn and Mark Beil</p> <p>18 (phonetic) have been working together, so yeah.</p> <p>19 And we've been in close contact on this topic with</p> <p>20 them for over a year. It's been a -- yeah. So we</p> <p>21 absolutely --</p> <p>22 THE COURT: So Tuesday, 11-28, you'll</p> <p>23 get the revised plan to myself and to the Planning</p> <p>24 Department?</p> <p>25 MR. NORTON: Okay.</p>
<p>82</p> <p>1 MR. HUGHES: Right. So we have</p> <p>2 Thanksgiving.</p> <p>3 MR. NORTON: I think we can have it to</p> <p>4 you next week. That's not a problem.</p> <p>5 THE COURT: Okay. Well --</p> <p>6 MR. NORTON: I just wanted to make sure.</p> <p>7 THE COURT: Okay. Well, it would have</p> <p>8 -- it -- give me a date, because I have to --</p> <p>9 MR. HUGHES: Can you do it by next</p> <p>10 Tuesday or Wednesday?</p> <p>11 MR. NORTON: Wednesday of next --</p> <p>12 Wednesday, I'll -- I --</p> <p>13 THE COURT: Is the 29th.</p> <p>14 MR. HUGHES: If today date is the 20th,</p> <p>15 yeah, the 29th.</p> <p>16 MR. NORTON: 28th. I don't want to --</p> <p>17 THE COURT: Now -- now, remember I have</p> <p>18 to send it back to --</p> <p>19 MR. HUGHES: To Staff?</p> <p>20 THE COURT: -- Staff.</p> <p>21 MR. NORTON: At -- at -- Park and</p> <p>22 Planning Staff?</p> <p>23 MR. HUGHES: Yes.</p> <p>24 MR. NORTON: That's why I -- I'm</p> <p>25 thinking --</p>	<p>84</p> <p>1 MR. HUGHES: Yes.</p> <p>2 THE COURT: And I'll ask them if they</p> <p>3 can -- okay. Wait a minute. Twenty-three. I'll</p> <p>4 ask them -- now, I need to give them -- I'm going</p> <p>5 to give them Thanksgiving and the -- I'll ask them</p> <p>6 if they can get back to me by --</p> <p>7 MR. HUGHES: No, we'll be past</p> <p>8 Thanksgiving, but, still, they might need a few</p> <p>9 days, right?</p> <p>10 THE COURT: Yeah, just -- if they can</p> <p>11 get back to me by -- I'll say December 4th, but</p> <p>12 they usually get back -- my guess is they'll get</p> <p>13 back earlier.</p> <p>14 MR. HUGHES: Okay.</p> <p>15 MR. NORTON: Yeah. I -- I -- yes,</p> <p>16 that's correct. I -- I did actually -- I spoke</p> <p>17 with Park and Planning Staff in October, and I said</p> <p>18 the house is not anticipated to be expanded beyond</p> <p>19 1,180 square feet, is what I said.</p> <p>20 THE COURT: It's just got to be shown on</p> <p>21 the plan --</p> <p>22 MR. NORTON: Yeah. I -- I believe that</p> <p>23 --</p> <p>24 THE COURT: -- or DP -- or you'll get --</p> <p>25 DPS is pretty --</p>

Transcript of Hearing
Conducted on November 20, 2023

22 (85 to 88)

<p>85</p> <p>1 MR. HUGHES: Yes. Absolutely.</p> <p>2 THE COURT: Okay. So then -- so the</p> <p>3 record will close on December 4th, and then I have</p> <p>4 30 days to write the decision, so the decision</p> <p>5 would be due January 3rd.</p> <p>6 MR. HUGHES: Sounds good. Thank you.</p> <p>7 THE COURT: 1-3-24. Oh, my gosh.</p> <p>8 MR. HUGHES: Yeah. Here we come.</p> <p>9 THE COURT: Okay. Anything else, Mr.</p> <p>10 Hughes?</p> <p>11 MR. HUGHES: No. Thank you.</p> <p>12 THE COURT: Okay. Well, was it that --</p> <p>13 of course, he's going to say it wasn't that bad.</p> <p>14 It was a pleasure to have you. Thank you for</p> <p>15 coming. With that, we're going to go off the</p> <p>16 record.</p> <p>17 MR. HUGHES: Thank you.</p> <p>18 (Off the record at 10:45 a.m.)</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>87</p> <p>1 CERTIFICATE OF TRANSCRIBER</p> <p>2 I, Karen M. Galvez, do hereby certify</p> <p>3 that this transcript was prepared from the digital</p> <p>4 audio recording of the foregoing proceeding; that</p> <p>5 said proceedings were reduced to typewriting under</p> <p>6 my supervision; that said transcript is a true and</p> <p>7 accurate record of the proceedings to the best of</p> <p>8 my knowledge, skills, and ability; and that I am</p> <p>9 neither counsel for, related to, nor employed by</p> <p>10 any of the parties to the case and have no</p> <p>11 interest, financial or otherwise, in its outcome.</p> <p>12</p> <p>13 </p> <p>14</p> <p>15</p> <p>16 Karen M. Galvez</p> <p>17 PLANET DEPOS, LLC</p> <p>18 November 30, 2023</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>86</p> <p>1 CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC</p> <p>2 I, Brendon Cuenca, the officer before</p> <p>3 whom the foregoing proceedings were taken, do</p> <p>4 hereby certify that any witness(es) in the</p> <p>5 foregoing proceedings were fully sworn; that the</p> <p>6 proceedings were recorded by me and thereafter</p> <p>7 reduced to typewriting by a qualified</p> <p>8 transcriptionist; that said digital audio recording</p> <p>9 of said proceedings are a true and accurate record</p> <p>10 to the best of my knowledge, skills, and ability;</p> <p>11 and that I am neither counsel for, related to, nor</p> <p>12 employed by any of the parties to this case and</p> <p>13 have no interest, financial or otherwise, in its</p> <p>14 outcome.</p> <p>15</p> <p>16 </p> <p>17</p> <p>18</p> <p>19 BRENDON CUENCA, NOTARY PUBLIC</p> <p>20 FOR THE STATE OF MARYLAND</p> <p>21 November 30, 2023</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

A			
ability	acres	after	75:6, 75:9,
86:10, 87:8	12:9, 58:19	65:16, 65:23,	75:17, 76:2,
able	across	66:6	77:10, 77:12,
24:19, 31:2,	56:2	afternoon	78:22, 79:3
31:6	actual	42:24, 51:2	all
about	24:1, 58:14	afternoons	10:25, 12:22,
7:11, 8:8,	actually	62:15	18:25, 19:1,
9:24, 12:5,	6:24, 12:20,	afterwards	19:18, 19:22,
12:7, 16:9,	12:23, 15:8,	51:14	23:12, 25:12,
17:20, 20:19,	16:1, 16:22,	again	27:5, 36:18,
25:14, 28:11,	23:13, 37:16,	19:4, 42:24,	38:1, 38:10,
28:21, 30:21,	45:22, 50:5,	46:7, 56:1, 64:7	43:2, 43:7,
31:9, 33:4,	84:16	agency	43:15, 45:4,
33:7, 33:8,	add	29:12	51:4, 53:15,
35:8, 39:18,	39:18, 39:22	ago	58:5, 58:8,
39:24, 40:1,	addition	5:21, 9:9	58:13, 58:21,
40:18, 45:9,	32:21	agree	61:5, 61:21,
45:10, 46:12,	additional	38:9	64:8, 67:17,
46:15, 48:23,	25:14, 29:16,	agreed	68:5, 70:14,
49:1, 52:15,	59:23	38:7, 45:5	74:17, 74:21
53:20, 56:5,	address	agreeing	allow
56:14, 66:17,	10:12, 56:20,	64:16	6:20, 21:3,
70:25, 71:10,	57:4	agreement	28:5
76:20, 77:24	adequate	2:13, 53:17,	allowing
absolutely	27:2, 45:6	72:7	51:15
20:7, 20:9,	adjacent	ahead	allows
78:18, 83:21,	19:12	9:21, 11:5,	28:13
85:1	adjusting	18:1, 22:19,	almost
accept	6:19, 61:23	34:23, 54:23,	18:19, 45:25,
13:24, 69:13,	adjustment	60:13	62:20
69:17	6:3	alfaro	along
accepted	administrative	1:5, 4:5, 5:5,	11:19, 18:19,
71:13	1:2, 2:5, 3:13	5:10, 29:3,	23:3, 23:5,
accepting	adminstrative	41:9, 41:13,	40:7, 57:14
11:8, 16:3	3:11	42:5, 48:1,	already
access	adopted	49:21, 50:25,	27:1, 32:19,
20:24, 22:13,	14:17	51:7, 59:6,	32:24, 64:4,
22:15, 53:7,	advantage	60:10, 60:11,	67:20, 74:22,
73:18	62:13	60:12, 60:16,	78:12
accommodated	adverse	60:22, 63:9,	also
21:8	57:14, 57:15	63:22, 65:7,	3:10, 12:21,
accommodates	advertisement	68:11, 69:23,	20:16, 23:4,
22:8	70:23	70:3, 71:9,	23:6, 37:2,
accurate	aerial	71:22, 72:16,	37:6, 37:12,
86:9, 87:7	4:12, 11:16,	72:19, 72:23,	39:13, 45:5,
acre	12:12, 46:8	73:4, 73:6,	46:25, 48:13,
12:15	affirmed	74:7, 74:11,	49:8, 49:23,
	10:8, 60:17	74:15, 74:20,	50:14, 51:7,

<p>57:11, 57:17, 57:24, 61:14, 67:13, 69:6, 69:17, 71:4, 74:3, 76:19 alter 55:9 alternative 50:7, 54:11 although 21:18, 33:21 always 8:1 amateur 43:16 amend 79:21 among 33:6 analysis 57:18 another 29:12, 70:19 answer 30:25 anticipated 84:18 any 5:13, 5:16, 9:23, 11:1, 15:18, 15:23, 25:14, 25:20, 26:20, 27:18, 29:13, 35:8, 39:17, 39:21, 47:4, 52:15, 53:14, 56:10, 60:1, 63:7, 68:25, 69:3, 77:8, 78:6, 79:5, 86:4, 86:12, 87:10 anybody 15:15 anymore 52:2 anyone 5:14, 7:22,</p>	<p>13:11, 47:19 anything 8:11, 29:9, 42:15, 68:11, 77:18, 85:9 anyway 32:3 apartment 67:6 apologize 10:4, 16:22, 41:18 appear 13:10 applicant 3:3, 11:11, 15:22, 16:5, 58:25, 59:24, 60:20 application 1:5, 40:18, 45:6, 46:22, 46:25, 61:16, 68:21, 69:11, 70:24 appropriate 80:13 approval 4:20, 6:1, 6:17, 28:5, 29:13, 32:13, 33:18, 33:25, 34:17, 49:6, 50:12, 54:17, 69:13, 71:12, 71:18, 72:5, 74:16, 76:16, 76:17, 80:3 approve 31:18, 50:12 approved 22:13, 23:21, 26:12, 27:15, 55:17, 69:12, 71:17, 81:5 approving 24:2, 25:4 approximately 30:11</p>	<p>arborist 41:14, 42:17, 42:25 arborists 59:18 architect 8:25 architecture 10:18 area 4:12, 12:5, 12:7, 12:8, 12:21, 12:23, 12:25, 13:18, 13:21, 15:3, 18:21, 19:6, 26:4, 29:19, 30:20, 55:4, 55:9, 55:18, 58:18 areas 19:2, 22:5, 58:22 aren't 51:4 around 21:2, 21:6, 23:8, 23:14, 46:10, 55:4, 66:22, 79:8 arrive 66:19 arriving 66:21 arrow 19:17 ashton 49:9, 49:14 asked 6:16, 17:5, 78:9 asking 30:5, 30:18, 34:1, 46:22, 47:1, 63:23, 63:24, 68:20, 68:23, 71:5, 71:7, 75:24</p>	<p>asphalt 19:2 associated 22:5 audio 86:8, 87:4 available 36:8, 52:3, 52:7, 75:12 avenue 2:6 away 76:18 axcobar 1:6, 5:5, 41:14, 61:12, 71:6, 72:20</p> <hr/> <p>B</p> <hr/> <p>b 3:6 back 7:2, 11:15, 12:20, 21:4, 21:6, 21:7, 21:14, 23:12, 23:15, 31:25, 36:23, 40:6, 40:10, 40:15, 40:21, 42:18, 42:24, 64:2, 67:9, 67:20, 68:24, 71:25, 79:3, 79:21, 82:18, 84:6, 84:11, 84:12, 84:13 bad 64:12, 85:13 basically 21:15, 42:3, 42:6, 42:11, 42:21 bathroom 51:4, 73:1, 73:18, 74:8, 75:21, 76:21, 77:5</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

bathrooms 74:4, 75:25, 76:24 became 29:8 because 7:25, 15:14, 27:16, 27:21, 28:1, 29:18, 31:2, 32:5, 33:18, 34:17, 34:21, 37:13, 41:17, 43:23, 51:14, 57:17, 62:16, 63:13, 64:2, 66:1, 69:24, 70:20, 75:18, 77:1, 79:17, 79:24, 80:15, 81:15, 82:8 bedroom 75:8 bedrooms 78:20, 78:24, 79:1 been 49:15, 49:20, 55:1, 72:24, 76:18, 77:13, 83:18, 83:19, 83:20 before 1:15, 2:13, 9:8, 51:13, 61:3, 86:2 behalf 3:3 behanna 3:11 behind 22:1 beil 83:17 being 10:8, 10:21, 13:11, 20:12, 28:14, 29:6,	59:14, 60:17, 69:19, 77:3 believe 12:16, 15:23, 16:11, 25:22, 30:11, 30:19, 39:19, 44:23, 55:16, 55:22, 55:24, 55:25, 56:18, 58:24, 59:15, 72:3, 80:10, 84:22 below 47:9, 47:10, 70:15 benham 49:24, 50:14 beside 68:12 besides 25:15 best 21:17, 21:22, 81:7, 86:10, 87:7 better 17:16, 62:6, 62:14, 63:1, 63:2 between 23:9, 44:4, 69:25, 73:3 beyond 79:1, 84:18 bigger 74:25 bit 12:7, 16:8, 17:16, 19:10, 19:23, 20:19, 29:3, 40:1, 41:7, 45:9, 48:7, 48:23, 49:1, 62:9, 64:16, 66:1, 66:17, 67:23, 70:5, 76:10, 76:13, 77:24	board 4:20, 6:1, 23:22, 24:2, 25:4, 71:13, 83:2 both 22:5, 37:16 bought 66:8, 66:9, 66:12 boundary 15:1, 15:5 box 42:12, 42:25, 78:10, 80:17 brakes 63:8, 63:16 break 62:20 breaks 51:13, 62:15 brendon 1:25, 2:13, 86:2, 86:19 brief 66:23 briefing 42:10 bring 28:10, 49:13 broadly 54:3 brook 23:9 brother 65:15, 66:5 brought 50:6, 50:9 build 79:15 building 2:7 buildings 58:21 bulb 26:13 bullet 53:24	bump 29:20 business 10:12, 29:7, 41:14, 61:6, 61:9, 65:10, 65:12, 65:21, 66:10, 71:5, 81:17, 83:11 businesses 51:16 busy 64:5 button 20:3 buy 61:19 bypass 8:15 <hr/> C <hr/> calendar 81:19 call 8:17, 8:19, 64:13, 80:18 called 5:14, 14:10, 45:13 calling 5:4 came 50:10 can't 8:22, 9:16, 17:22, 29:11, 29:12, 30:24, 31:16, 33:18, 44:23, 52:2, 66:4, 83:4 canby 3:5, 5:10 canopy 35:9, 35:15, 35:19, 37:12 capacity 36:8, 52:10 car 42:7, 67:7
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>care 41:25, 42:10, 43:1, 44:5, 65:10 carpool 67:2 cars 67:16 case 5:4, 5:15, 9:17, 29:11, 59:23, 86:12, 87:10 cases 59:11 catch 64:10, 64:13, 64:21 catch-up 66:23 cause 57:12 center 20:22, 21:11 certainly 15:20, 48:18 certificate 86:1, 87:1 certify 86:4, 87:2 changes 27:12, 27:18, 66:4 character 40:5, 55:9 characteristics 58:1 charitable 56:17 chart 40:16 chasing 66:6 check 24:21, 56:5 chicken 76:13 chipping 42:14</p>	<p>church 64:24, 64:25 circle 21:25 circulate 21:6, 21:14 circulation 21:1, 22:8 cite 81:15, 81:16 city 10:15 clarify 76:9 clean 76:7 clear 12:22, 30:21, 81:11 client 64:13, 64:16 client's 51:8 clients 51:15, 68:3, 68:7, 68:8, 68:10 close 31:1, 53:12, 72:19, 83:10, 83:19, 85:3 closely 54:8 closing 77:22 code 28:13, 37:4, 58:14 codes 38:2 combination 57:14 come 20:18, 42:4, 42:6, 42:8, 42:18, 42:23, 44:8, 47:13, 47:14, 51:15,</p>	<p>51:21, 60:8, 64:14, 67:5, 67:6, 67:9, 67:20, 69:4, 69:7, 76:7, 79:18, 79:21, 85:8 comes 67:16 comfortable 80:24 coming 85:15 commercial 20:17, 21:8, 21:12, 21:15, 21:21, 27:3, 45:23 community 25:18 commute 42:8 companies 41:25, 59:17 company 21:13, 44:5, 58:9, 63:2, 73:4, 73:5, 73:11, 76:5 compatible 25:18 completely 19:4, 41:20 compliance 35:9, 35:15, 37:3, 38:1, 39:11, 39:15 comply 54:1, 71:19 component 23:7 compost 68:25 concerned 52:14, 73:9 concerns 54:6 concur 35:22, 39:14,</p>	<p>55:14, 57:8, 57:11 concurred 37:18, 55:8 condition 6:14, 13:1, 28:5, 33:22, 53:15, 63:14, 69:13, 69:18, 73:16, 76:21, 77:7, 80:3, 80:25 conditional 1:6, 4:13, 5:6, 11:20, 12:16, 16:12, 20:10, 23:1, 26:6, 26:11, 27:8, 27:22, 37:11, 37:22, 40:22, 42:1, 49:5, 55:17, 55:18, 55:23, 55:25, 56:2, 72:6 conditions 5:25, 53:16, 71:10, 71:12, 71:18, 72:1 confused 43:12 conservation 16:24, 22:9, 22:21, 23:1, 23:11, 23:14, 23:19, 24:2, 25:3, 25:5, 37:6, 37:13 consider 6:3, 6:19, 28:5, 31:8 considered 75:2 construction 75:17, 76:3, 76:5, 77:2 consult 49:23 consultation 15:24</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

contact 83:19 context 17:15, 19:11 continue 13:15, 20:14, 37:8, 54:8, 65:17 contracted 56:3 contractor 1:7, 5:7, 20:21, 20:25, 40:9, 40:25, 41:15, 42:1, 42:3, 50:20, 58:11, 59:11 contractors 33:11, 58:15, 59:19 copy 24:4 corner 18:4, 23:4 correct 16:12, 17:14, 17:21, 18:24, 19:13, 20:20, 23:21, 23:24, 26:15, 26:21, 26:23, 27:6, 37:5, 37:22, 38:3, 38:23, 39:2, 39:8, 43:6, 43:7, 43:9, 44:6, 44:7, 44:15, 44:19, 44:20, 44:21, 45:8, 46:23, 46:24, 47:18, 49:14, 49:15, 49:25, 50:1, 50:21, 55:2, 55:12, 57:2, 57:16, 58:2, 58:19, 58:22, 59:6, 61:6, 61:11,	62:1, 63:25, 65:6, 66:10, 67:13, 68:25, 69:15, 69:16, 69:22, 70:10, 71:14, 71:19, 74:5, 84:16 correspondence 4:17 could 7:13, 7:16, 8:15, 11:20, 12:4, 14:2, 16:5, 16:13, 16:22, 17:16, 21:18, 21:23, 24:5, 29:14, 29:17, 29:20, 31:7, 31:8, 34:16, 36:6, 67:23, 79:3 counsel 11:11, 60:20, 86:11, 87:9 count 75:10 counter-clockwise 19:21 counterclockwise 21:7 counting 70:15 county 1:1, 2:4, 2:7, 3:12, 9:2, 42:21, 59:11 course 62:10, 64:8, 66:20, 66:25, 68:4, 70:16, 75:9, 85:13 cover 70:21 coverage 35:9, 35:16, 35:19, 75:12 covered 30:9	credits 37:14 crew 65:20, 70:18, 70:19 crews 47:14, 48:15 crosstalk 17:2, 56:23 cu 5:5 cuenca 1:25, 2:13, 86:2, 86:19 currently 12:11, 20:15, 20:21, 32:11, 40:11, 50:2, 50:13 customer 48:9 customer's 43:8 customers 43:8, 44:8, 69:4 cut 26:8, 68:1	80:11, 81:15, 81:17, 81:19, 84:9, 85:4 dead 22:2 december 84:11, 85:3 decent 62:17 decided 32:7 decision 29:11, 32:5, 32:6, 85:4 defer 29:11, 29:12 define 13:20 defined 13:21, 13:22, 15:1 definitely 62:10, 64:9, 68:18, 71:20 definition 14:1, 59:18 delay 32:5, 62:22 delayed 49:17 delineation 14:18 delivered 44:10 deliveries 69:7 department 50:4, 83:24 depending 42:19, 74:23 depos 87:17 describe 17:5, 17:24, 18:1 design 8:20, 9:5, 10:14, 10:18,
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

49:11, 50:7, 50:13, 79:9, 80:10, 80:12 detail 57:4 detailed 39:21 development 37:23 different 63:15, 67:23, 67:24, 67:25 dig 56:7 digital 86:8, 87:3 dilapidated 12:11, 18:19 direct 59:22 direction 19:20 directly 28:25 discussions 28:11, 69:11, 79:4 distance 4:18, 45:14, 45:20, 45:25 distinction 44:4 distracted 10:3, 10:22, 10:23 document 14:24, 25:1 doing 27:12 done 31:15, 31:22, 39:20, 61:2, 66:23, 68:5, 68:16, 80:20 dorsey 10:14 doubled 45:25	down 16:10, 20:18 dp 33:18, 84:24 dps 32:24, 33:17, 33:23, 33:24, 34:16, 34:21, 49:6, 49:23, 50:3, 52:12, 53:16, 54:16, 79:17, 80:3, 81:4, 81:5, 84:25 dpses 32:17, 32:18 draw 29:18, 36:3, 36:6 drawing 18:3, 19:8, 19:11, 20:10, 23:1, 37:8, 37:11, 49:5, 49:12, 74:24 drawings 78:14 drill 16:10 drive 10:14, 21:4, 21:14, 40:11 driveway 20:15, 45:23 driving 67:12 due 85:5 duly 5:2, 10:8, 60:17 during 6:21, 47:5, 47:19, 48:16, 62:2, 62:5, 64:3, 64:7 <hr/> E <hr/> earlier 52:4, 59:17,	61:22, 61:23, 78:19, 84:13 early 62:12 easement 15:19, 28:23, 53:17 easements 23:14 east 12:15, 22:6, 23:4 effect 32:24, 57:14 effects 57:15 egg 76:13 eighteen 54:22 either 29:5, 73:11, 76:22, 76:23, 80:9 electric 26:2 ellicott 10:14 else 8:11, 77:18, 85:9 emergency 52:6 employed 86:12, 87:9 employee 21:13, 22:3 employees 21:17, 21:20, 21:21, 42:6, 42:23, 50:22 end 5:22, 15:10, 22:2, 48:4, 67:19 enforcement 79:18 engineer 47:7	enough 30:22, 69:12, 70:21, 71:16, 72:19 enter 21:2, 21:4, 24:5 entire 29:8 entrance 20:18, 20:20, 20:25, 23:17, 45:22 environment 50:4 equipment 59:1 especially 77:1 esquire 3:4 essentially 29:19 evaluation 4:18, 45:14, 45:15, 45:20 even 62:17, 64:14, 70:11, 76:4 evenings 42:4 every 64:9 everyone 81:10 everything 8:9, 22:25, 47:21, 68:5 everything's 68:15 examination 4:2, 4:5, 11:11, 60:20 examined 10:10, 60:19 examiner 1:15, 9:8, 23:25, 28:4,
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>57:4, 59:21, 61:23, 71:17, 71:24 exceeded 45:25 except 23:17, 48:4 exception 26:4 excuse 34:15 exercise 46:9 exhibit 4:11, 4:12, 4:13, 4:14, 4:15, 4:16, 4:18, 4:19, 4:20, 6:9, 6:12, 11:16, 11:17, 11:19, 12:14, 14:7, 14:11, 16:11, 16:12, 16:13, 16:15, 16:23, 17:3, 19:14, 24:13, 24:14, 24:15, 25:7, 27:7, 35:13, 35:14, 35:21, 37:7, 37:18, 37:21, 38:6, 38:15, 38:22, 45:10, 45:13, 45:15, 45:16, 46:8, 46:13, 46:14, 48:25, 49:3, 49:5, 54:21, 57:18, 57:20, 57:22, 57:25, 72:3 exhibits 5:21, 38:11, 48:24 existing 12:10, 12:24, 17:6, 17:11, 17:19, 18:18,</p>	<p>19:1, 20:11, 20:15, 20:17, 23:2, 25:21, 26:9, 30:8, 50:3, 72:8, 72:9, 72:15, 78:20, 80:22 exiting 45:22 expand 41:9, 74:24, 75:11 expanded 84:18 expansion 33:6, 78:2, 79:1 expect 54:7 expected 58:8 expecting 54:1 experience 55:13 expert 8:22, 9:1, 10:17, 11:8, 49:11, 50:6, 50:10, 50:14 experts 1:6, 5:6 explain 7:23, 11:21, 12:5, 46:14, 72:11 extend 15:19, 15:20 extensively 37:6 extra 30:11, 62:22</p> <hr/> <p>F</p> <hr/> <p>facilities 27:23, 45:6, 51:16, 72:8, 75:21, 76:22,</p>	<p>77:15 fact 53:11, 57:25, 58:3, 58:5, 59:17 factor 32:3 failing 50:2, 50:9 fair 46:4, 74:1 fairly 46:16, 59:14, 76:15 fall 41:25 familiar 11:15, 24:25, 33:8, 33:13, 45:15, 55:4, 71:13 family 20:13, 73:11, 73:12 far 29:19, 45:21 farm 12:15, 12:17, 56:1, 56:5, 56:19 fascinated 54:10 feet 17:20, 20:19, 23:5, 23:13, 28:7, 28:18, 28:20, 29:15, 30:9, 30:12, 32:10, 33:19, 78:9, 78:14, 79:8, 80:18, 84:19 few 71:10, 84:8 field 49:19, 50:5 figure 10:4, 14:10,</p>	<p>29:14 financial 86:13, 87:11 find 10:22, 14:4, 52:5, 56:23, 58:1 findings 57:9, 57:12 fine 8:3, 26:17, 41:11 finish 65:18, 67:21 fire 22:11, 22:13, 22:15 first 8:18, 10:8, 12:1, 12:6, 60:17, 61:4, 65:15, 66:18, 76:16 fit 59:18, 62:6 fixture 26:14 fixtures 26:20 flat 46:5, 46:6 flatbed 42:25 flexibility 28:9, 28:19, 32:25, 64:18 flipping 46:9 flitter 69:25 floor 10:14 flow 11:23 flushes 52:12 flying 65:24</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

focus 42:22	full 44:5	71:25, 85:15	74:8
folks 13:4	fully 86:5	goes 48:8, 67:8	grinding 65:19, 67:25,
follow 27:17	<hr/> G <hr/>	going 5:14, 6:2,	68:2, 68:13
following 50:8	gain 7:3	12:6, 15:14,	group 67:8, 67:18
follows 10:10, 60:19	galvez 87:2, 87:16	16:6, 17:24,	groups 42:7
footage 29:16, 34:7,	garden 58:25, 59:1	25:24, 26:20,	growth 70:7
36:2, 78:13,	gathered 54:4	28:1, 29:15,	guess 33:10, 33:21,
79:7	gears 58:14	29:16, 29:18,	41:13, 52:9,
footprint 27:19, 28:6,	general 38:10	31:2, 31:5,	52:11, 52:20,
30:12, 30:13,	generally 48:3	35:11, 40:21,	59:4, 63:14,
30:16, 30:20,	getting 32:6, 34:3,	45:10, 50:23,	63:18, 75:14,
32:11, 80:4	46:9, 49:17,	51:4, 58:13,	79:2, 80:8,
foregoing 86:3, 86:5,	69:25, 75:14,	63:4, 65:17,	84:12
87:4	76:18, 77:25	71:25, 74:14,	guidance 35:5
forest 12:22, 12:23,	give 7:2, 9:16,	76:2, 76:17,	guys 40:18, 62:18,
16:24, 19:2,	19:10, 62:12,	79:15, 80:16,	65:4, 66:20,
22:9, 22:21,	71:11, 74:15,	81:12, 84:4,	68:1, 76:6
23:1, 23:3,	74:16, 74:23,	85:13, 85:15	<hr/> H <hr/>
23:7, 23:11,	82:8, 84:4, 84:5	good 24:17, 25:10,	habitable 13:3, 29:6
23:19, 24:2,	gives 71:17	25:12, 26:25,	half 5:20, 7:2, 7:4,
25:3, 25:5,	giving 35:5	27:10, 32:8,	9:9, 62:12,
37:5, 37:12	go 9:21, 10:20,	35:5, 37:17,	62:20
forested 19:4, 40:7	11:4, 13:18,	39:4, 44:16,	hall 10:14
forget 12:16	16:22, 18:1,	46:20, 48:22,	hannan 1:15
fortunate 69:12, 71:16	18:12, 19:14,	51:18, 53:8,	happen 68:3
founder 48:2, 61:11	22:19, 28:15,	60:6, 60:11,	happens 66:19
four 67:7	28:19, 29:16,	60:12, 60:22,	happy 70:10
friday 6:18, 24:1,	31:2, 31:6,	60:23, 63:11,	harm 57:12
24:4, 62:3	34:23, 49:4,	65:3, 66:16,	harmonious 55:8
front 25:22	51:13, 52:2,	85:6	hashed 36:6
fulfill 53:15	54:23, 60:13,	gosh 81:25, 85:7	
	62:17, 64:24,	graduated 65:23	
	65:18, 66:22,	gravel 13:1, 18:21,	
		18:25, 19:1,	
		19:3	
		great 12:2, 16:14,	
		24:16	
		greater 19:9	
		green 15:4, 15:5,	

hatch 18:21 he'll 76:16 headed 36:12 hear 8:5, 48:1, 50:24, 54:10 heard 61:22, 69:11 hearing 1:14, 1:15, 2:1, 4:11, 5:22, 9:8, 23:25, 28:4, 57:3, 59:21, 61:23, 70:25, 71:17, 71:24, 80:8 hearings 1:2, 2:5, 3:13 heat 62:21 held 2:1 help 41:6, 46:14, 49:14, 62:9 helped 5:20, 49:13 here 5:14, 7:22, 10:3, 10:17, 14:5, 18:12, 19:14, 22:21, 35:5, 49:17, 52:20, 65:15, 66:3, 78:19, 85:8 hereby 86:4, 87:2 hit 20:2 hold 16:21, 18:7, 52:2, 52:13 home 56:17	homes 51:16 honest 9:12 honestly 56:7 hopefully 19:17 hoping 76:16 hot 62:16 hour 7:2, 7:3, 7:4, 47:5, 62:12, 62:19 hours 6:2, 6:21, 42:5, 59:13, 61:24, 62:2, 62:3, 62:20, 63:24 house 12:10, 12:11, 20:11, 25:21, 26:4, 26:5, 26:6, 27:13, 27:20, 30:8, 40:6, 50:3, 56:15, 72:8, 72:9, 72:15, 72:24, 74:21, 74:24, 74:25, 76:15, 76:19, 77:3, 77:4, 78:20, 78:24, 84:18 houses 13:17 how's 14:20 huh 81:22 hundred 20:19 hydrants 53:11	ideal 34:17 identify 5:8 ii 3:11 impact 7:20, 15:15, 52:16, 55:18 impacts 58:5 impervious 29:8 impose 53:15 inches 19:9 include 15:6, 48:12 included 15:8, 15:13, 27:17, 27:21, 69:21 including 70:14 inconsistent 55:10 increase 28:6, 28:12, 28:13, 32:12, 79:6 incremental 36:7 increments 36:20 indicated 79:5 individual 37:13 inherent 57:15, 58:5 innovate 50:5 innovative 4:16, 49:11, 50:10 inside 68:12, 68:14	installation 53:18 integrated 22:25 intended 54:5 interest 86:13, 87:11 interesting 54:18 intersection 13:16 intro 43:24 introduce 5:11 island 21:11 issue 15:23, 47:4 it'll 15:15, 15:17, 52:13 itself 23:17
			J
			jake 63:8, 63:16 january 85:5 job 1:23, 42:20, 70:20 jobs 67:21 join 65:20 josh 83:15, 83:17 jump 63:4 jumped 43:21, 45:3
			K
			karen 87:2, 87:16

<p>keep 7:13, 7:17, 16:6, 21:16, 21:22, 29:24, 74:25 kids 56:18 kind 13:19, 20:22, 33:9, 34:3, 43:7, 51:11, 51:12, 64:6, 64:9, 64:21, 65:23, 67:11, 70:17, 76:3, 76:12, 78:3 knew 52:15 know 9:18, 11:1, 13:8, 24:19, 26:13, 31:6, 31:15, 32:6, 33:3, 42:2, 48:2, 48:5, 48:14, 51:22, 52:1, 54:19, 62:12, 62:14, 62:15, 62:16, 62:19, 62:23, 64:2, 64:7, 64:15, 64:16, 64:17, 64:20, 64:23, 65:15, 65:17, 65:18, 65:21, 65:23, 65:25, 66:1, 66:4, 66:7, 66:21, 66:22, 66:24, 66:25, 67:5, 67:8, 67:9, 67:11, 67:24, 67:25, 68:12, 69:10, 69:24, 70:1, 70:11, 70:16, 70:17, 71:18, 72:16, 72:24,</p>	<p>72:25, 73:16, 73:21, 74:8, 74:12, 74:17, 74:18, 74:23, 75:11, 75:13, 76:3, 76:6, 76:8, 76:18, 78:16 knowledge 86:10, 87:8 <hr/>L<hr/>laid 27:5 land 8:20, 10:13, 12:19, 52:25 landscape 1:7, 4:15, 5:7, 8:25, 10:18, 20:21, 20:25, 23:7, 23:10, 23:13, 33:11, 35:11, 35:12, 37:6, 37:12, 40:9, 41:15, 41:25, 42:1, 42:16, 44:5, 50:20, 56:3, 58:11, 58:15, 59:10, 59:19 landscaping 36:23 large 12:25, 48:11 larger 31:6, 63:15 last 5:20, 49:18, 49:22, 65:19 later 62:23, 64:14 law 29:11, 66:4 lawn 19:6, 42:13 layout 45:3</p>	<p>lead 49:24 learn 65:21 learning 65:13, 65:14 lease 72:7, 72:20, 73:2 leased 73:10 least 6:20, 75:11 leave 42:17, 42:23, 47:15, 81:14 leaving 31:8 left 15:13, 45:23 less 28:18, 34:21, 36:5, 47:4, 51:1 let's 19:18, 33:17, 48:24, 61:8, 77:24 letter 24:1 levels 78:2 license 72:7 licensing 65:22 light 15:4, 25:23 lighting 25:15, 25:16, 25:20, 26:12, 26:20 limited 40:8, 52:10 limits 15:9 line 18:20, 21:5, 23:3, 23:5</p>	<p>lines 12:19, 19:5, 36:7 little 10:2, 12:7, 16:8, 17:15, 17:16, 19:10, 19:23, 20:19, 28:18, 29:3, 39:24, 40:1, 41:7, 45:9, 48:7, 48:23, 49:1, 60:25, 62:9, 62:22, 64:16, 64:20, 66:1, 66:17, 67:23, 70:5, 76:9, 76:13, 77:24 live 67:5, 73:15 living 13:4, 13:11 llc 87:17 loading 47:20 loan 74:18 loans 74:20 location 2:1 long 12:18, 42:20, 50:22, 75:15, 75:24, 75:25 longer 29:8, 62:15 look 16:20, 30:20, 36:18, 38:13, 40:2, 40:11, 40:19, 50:8, 50:16, 57:20, 80:11 looking 12:13, 17:14,</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

40:20, 43:14, 58:4 looks 36:3 loop 21:2, 21:6, 21:7, 21:9, 21:11 lost 22:20 lot 35:19, 48:8, 61:2 loud 63:19 love 83:6 lunch 51:13, 62:18 <hr/> M <hr/> ma'am 8:12, 8:24, 36:1, 63:6 madam 9:7, 23:25, 57:3, 59:21, 71:24 made 24:3, 43:17 maintenance 42:13 make 6:2, 8:13, 27:25, 38:20, 73:20, 80:23, 82:6 makes 36:10, 36:16 management 22:4, 48:13, 69:21, 70:14 manner 55:10 manufacturing 68:25 many 9:14, 49:20,	52:11, 52:12, 55:18 mark 83:17 marked 6:12, 11:17, 12:14, 16:15, 17:3, 24:15, 35:14, 45:16, 49:3 maryland 1:9, 1:16, 2:6, 2:8, 3:7, 10:15, 50:4, 86:20 master 39:7, 39:11, 39:18, 55:11 material 44:14, 44:18 materials 40:25, 41:23, 48:6, 58:25, 69:7 matter 5:19, 80:16 matters 5:16 max 70:7, 70:12 maximum 31:7, 69:14, 69:18 maybe 12:6, 20:19, 54:5, 79:3 mean 16:24, 28:24, 31:15, 33:8, 51:8, 51:19, 52:1, 53:19, 74:4 means 52:1 meet 23:13, 38:5, 50:11, 58:22, 78:25 meeting 47:4, 66:23	meets 45:6 melvin 1:5, 4:5, 5:5, 60:8, 60:16, 72:21 members 46:22, 73:12 memo 49:6, 50:13, 50:16 mentioned 23:19, 66:13, 67:20 met 23:2 method 23:11 michael 4:2, 8:20, 10:7, 10:13 might 48:7, 49:4, 56:5, 70:19, 74:16, 84:8 mike 75:1 miller 3:5, 5:10 millings 19:2 minimum 78:23, 81:14 minor 5:18 minute 59:25, 84:3 minutes 50:25, 51:1 miss 41:10 missed 41:20, 44:23 mistake 43:17 mistaken 49:7, 55:24, 78:21	modification 27:16, 27:21, 28:8 moment 79:22 monday 1:17, 6:18, 62:3 monroe 3:6 montgomery 1:1, 2:4, 3:12, 9:2, 42:21 months 70:25, 72:5 more 19:11, 20:19, 30:16, 31:14, 31:16, 34:18, 35:8, 36:5, 39:21, 41:24, 42:2, 42:18, 42:22, 42:24, 48:14, 49:22, 54:3, 56:10, 57:4, 59:24, 70:18, 78:6, 80:13 morning 7:1, 24:22, 42:5, 42:8, 42:23, 48:4, 51:1, 60:11, 60:12, 60:22, 60:23 most 51:8, 51:14 mostly 73:12 mounts 49:20 mouse 20:22 move 5:21, 76:17 moved 5:24 much 31:6, 60:10
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>mulch 68:25 mulching 42:14 must 72:6 myself 83:23</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>name 10:11, 12:17 nature 40:5 near 53:4 necessary 52:3, 52:8 need 10:25, 30:16, 31:14, 31:16, 31:22, 33:5, 34:4, 34:5, 34:7, 35:7, 53:17, 56:5, 56:18, 60:9, 72:14, 76:4, 77:21, 80:3, 84:4, 84:8 needed 50:20, 51:19 needing 71:5 neighborhood 15:1, 15:5, 15:9, 15:11, 55:10, 57:13 neither 86:11, 87:9 nervous 60:24 net 7:3, 32:12 never 41:13, 65:8 new 10:23, 10:25, 26:14, 26:20,</p>	<p>81:12 next 22:22, 80:11, 82:4, 82:9, 82:11 night 48:18, 48:19 non-daylight 62:4 non-inherent 57:13, 57:15, 58:1 none 5:16, 65:4 north 12:12, 12:24, 13:14, 18:3, 18:23, 19:3, 19:12, 19:17, 19:19, 20:16, 20:17, 21:9, 21:10, 22:7, 23:8, 46:19 northern 18:22 notary 86:1, 86:19 note 8:5, 57:5 nothing 10:9, 60:18, 76:7, 77:19 nothing's 72:24 november 1:17, 23:22, 23:23, 86:21, 87:18 nrifsd 4:14, 17:4, 17:8 number 9:17, 24:13, 47:3, 47:9, 52:15 numbers 47:3</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>object 77:6</p>	<p>objection 15:18 obtain 72:6 obviously 11:1, 33:9 occasion 48:14 occasionally 48:5 october 84:17 office 1:1, 2:4, 2:7, 3:12, 24:3, 47:22, 47:23, 47:25 officer 86:2 offsite 19:12 oh 18:5, 19:24, 24:16, 33:15, 53:19, 57:23, 60:10, 68:23, 72:11, 72:13, 72:22, 81:25, 85:7 once 77:1, 77:4 one 5:18, 5:19, 5:25, 11:13, 16:21, 19:19, 20:6, 20:24, 21:1, 21:24, 28:21, 36:7, 42:7, 48:19, 48:25, 49:22, 51:6, 59:24, 59:25, 60:7, 60:8, 62:19, 63:5, 66:3, 70:18, 70:19 ones 33:11, 63:15, 63:19</p>	<p>only 13:9, 27:11, 29:10, 39:7, 78:20 onsite 21:1, 23:2, 25:15, 33:13, 42:15, 44:8, 44:11, 47:19, 47:21, 47:25, 48:7, 53:4, 70:24 open 16:3, 16:13, 19:6, 29:14, 29:25, 31:8, 80:17, 81:14 open-ended 31:18 opened 65:12 opening 8:14, 8:16 operating 29:7, 29:9, 74:4, 75:15 operation 18:20, 21:16, 44:17, 56:1, 68:20 operational 26:1 operations 11:23, 16:9 operator 48:2 opposition 5:15 other 5:11, 9:23, 27:11, 49:21, 52:6, 59:10 otherwise 86:13, 87:11 out 10:4, 19:23, 19:24, 20:18, 21:7, 21:14,</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

26:1, 27:5, 29:14, 29:18, 29:20, 31:4, 39:21, 48:6, 48:8, 48:12, 49:1, 50:2, 50:3, 55:1, 62:11, 67:5, 67:8, 73:20, 76:7, 79:18, 80:18 outcome 86:14, 87:11 outside 66:5, 68:5, 68:8, 68:16 over 24:4, 30:12, 32:11, 57:1, 58:19, 72:24, 74:8, 83:20 over-concentrati- on 55:20, 55:21, 55:23 own 65:24, 66:10, 72:15 owned 72:9 owner 25:17, 30:24, 31:4, 48:13, 61:12, 61:15 owners 49:21	pages 1:24, 39:25 pain 34:25 papers 40:20 pardon 10:2, 10:21 park 42:16, 66:2, 66:6, 78:12, 82:21, 84:17 parking 21:8, 21:10, 21:12, 21:14, 21:17, 21:20, 21:21, 21:22, 22:1, 22:3, 22:5, 22:6, 22:8, 23:9, 23:12, 23:15, 27:2, 35:19, 42:3, 43:15, 58:21 part 11:9, 23:6, 26:5, 27:22, 29:12, 33:4, 33:9, 61:16, 70:22 particular 43:1 parties 5:8, 86:12, 87:10 past 84:7 patrick 3:4 pattern 18:22 pause 10:25 peak 7:25, 8:1 penn 83:15, 83:17 people 47:12, 47:17,	67:2, 67:20 pepco 12:18, 12:19, 12:22, 12:23, 15:6, 15:13, 15:16, 15:17, 15:19, 15:21, 19:3, 19:6, 21:5, 23:3, 28:22, 55:24, 55:25 percent 81:11 perhaps 12:7, 52:7 perimeter 37:3, 37:19 permanent 47:23, 75:24, 77:15 permission 8:16 permit 1:7 phonetic 83:16, 83:18 photo 11:16 photograph 12:13 photos 4:12 picking 48:6 place 42:16, 43:10, 48:15 places 66:6 plan 4:13, 4:14, 4:15, 11:20, 16:11, 16:12, 16:25, 17:4, 22:13, 23:19, 24:3, 25:5, 26:18, 27:5, 27:8, 27:16,	27:17, 27:21, 27:22, 30:10, 34:6, 34:10, 35:10, 35:12, 37:2, 37:22, 39:7, 39:11, 39:18, 40:22, 43:15, 49:2, 55:11, 65:21, 73:10, 77:25, 78:5, 79:9, 79:15, 79:21, 80:4, 81:13, 83:13, 83:23, 84:21 planet 87:17 planning 4:20, 6:1, 9:1, 9:4, 10:18, 13:23, 15:24, 23:22, 24:2, 25:4, 37:3, 37:19, 48:8, 71:13, 78:13, 82:22, 83:23, 84:17 plans 33:6, 37:16 plant 58:25 planting 37:7 please 7:10, 8:18, 10:11 pleasure 85:14 plus 28:7 point 9:23, 11:1, 16:19, 20:24, 31:3, 46:7, 74:1 pointing 12:12, 20:22 points 39:18
P			
page 4:2, 4:5, 4:11, 6:10, 6:13, 14:2, 14:8, 14:9, 14:10, 38:6, 38:16, 38:17, 38:19, 38:21, 39:1, 57:21, 57:22, 57:25, 72:2			

<p>porch 25:23, 30:9, 75:2, 75:5, 78:6</p> <p>porta 75:15, 75:25, 76:22</p> <p>portable 74:7, 76:23, 77:3</p> <p>portion 21:24</p> <p>position 35:8, 56:25</p> <p>possible 25:19, 28:4, 28:10, 78:1</p> <p>pot 75:16, 75:25</p> <p>potential 28:12, 58:18, 70:7</p> <p>potentially 7:4, 14:3, 28:8, 31:7, 61:23</p> <p>potty 76:22</p> <p>power 12:19, 19:5</p> <p>practices 50:7</p> <p>precedent 33:10</p> <p>preclude 73:21</p> <p>prehearing 11:9</p> <p>preliminary 5:16, 5:19, 50:12</p> <p>prepare 14:23, 66:25, 67:1</p> <p>prepared 14:12, 76:14, 87:3</p> <p>present 3:10</p>	<p>preservation 23:2, 23:8</p> <p>pretend 61:8</p> <p>pretty 46:3, 46:4, 46:5, 48:3, 84:25</p> <p>previously 29:6</p> <p>primarily 13:19</p> <p>prime 47:5</p> <p>prior 10:17, 32:13</p> <p>probably 29:17, 32:4, 41:12, 43:20, 50:21, 54:13</p> <p>problem 27:11, 29:10, 53:14, 77:9, 82:4</p> <p>proceeding 87:4</p> <p>proceedings 86:3, 86:5, 86:6, 86:9, 87:5, 87:7</p> <p>product 69:7</p> <p>products 44:10</p> <p>professionals 51:12</p> <p>project 11:21, 39:5, 49:14</p> <p>properties 51:8</p> <p>property 11:24, 12:5, 12:8, 12:9, 12:11, 12:20, 12:21, 12:23, 13:2, 13:5, 13:6, 13:10,</p>	<p>13:14, 15:4, 15:7, 15:21, 16:4, 16:9, 17:16, 17:19, 18:20, 18:23, 19:3, 19:6, 19:10, 19:13, 20:12, 20:13, 20:23, 21:2, 21:5, 21:25, 22:9, 22:16, 23:3, 23:5, 23:14, 23:16, 26:2, 26:7, 26:22, 28:25, 29:4, 29:8, 39:6, 40:2, 40:4, 40:6, 40:8, 43:2, 43:8, 43:10, 45:23, 49:15, 49:18, 53:7, 53:13, 58:18, 59:1, 61:15, 66:8, 66:13, 68:3, 68:7, 68:14, 69:14, 71:6, 72:17</p> <p>propose 47:19</p> <p>proposed 20:12, 25:16, 32:10, 32:14, 79:1, 80:23</p> <p>provide 23:6</p> <p>provision 83:7</p> <p>public 45:6, 53:6, 53:7, 53:9, 61:2, 86:1, 86:19</p> <p>publication 70:23</p> <p>pull 37:7</p> <p>purpose 72:25</p>	<p>pursuant 2:13</p> <p>put 20:5, 57:17, 79:3, 79:14, 79:25, 80:2</p> <hr/> <p>Q</p> <hr/> <p>qualification 8:23</p> <p>qualified 8:22, 8:24, 9:1, 86:7</p> <p>qualify 10:21</p> <p>question 30:19, 63:11, 77:16</p> <p>questions 19:15, 59:22, 59:23, 60:1, 71:22</p> <p>quick 14:4</p> <p>quickly 6:7, 72:1</p> <p>quiet 48:4, 48:15</p> <p>quite 44:4, 49:17</p> <p>quotes 48:9, 76:18</p> <hr/> <p>R</p> <hr/> <p>r 12:10, 37:23</p> <p>rain 64:3</p> <p>rains 64:7</p> <p>re-approval 32:13</p> <p>read 28:1</p> <p>ready 74:14</p> <p>real 14:4</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

realizing 51:12 really 6:7, 23:16, 63:19, 72:1 rear 23:3, 23:5 reason 28:10, 51:23 rebuild 73:1 recall 38:8 received 24:1 recognize 14:10 recommendation 71:11 recommended 6:1, 6:17 reconstruction 74:21 record 5:8, 5:13, 10:12, 10:16, 11:7, 11:9, 29:13, 29:24, 31:8, 45:11, 80:16, 81:14, 85:3, 85:16, 85:18, 86:9, 87:7 recorded 1:25, 86:6 recording 86:8, 87:4 rectangle 36:4 reduce 6:25, 7:1 reduced 86:7, 87:5 refer 48:24 regularly 67:12 related 86:11, 87:9	relatively 5:18 remain 20:11, 25:24 remained 71:2 remember 8:21, 8:22, 9:20, 14:8, 38:10, 57:21, 82:17 removal 68:20 remove 26:10 renovate 28:2 renovated 20:13, 77:4, 80:5 renovations 76:14 rent 73:20 replace 26:13 report 4:19, 6:10, 13:21, 13:23, 35:22, 37:18, 38:6, 38:8, 38:9, 39:9, 39:19, 39:20, 49:8, 49:10, 50:14, 56:12, 57:5, 57:19, 71:11, 72:4 report's 14:1 reporter 2:14, 5:2, 86:1 request 25:14 requested 59:14, 62:4, 69:19 require 28:8	required 31:25, 46:1, 58:22, 83:1 requirements 22:16, 23:11, 35:16, 35:20, 37:4, 37:19, 37:24, 38:5, 50:11 residence 12:24, 12:25, 13:3, 13:11, 17:19, 18:18, 18:19, 19:11, 20:16, 22:2, 25:15, 26:6, 26:9, 29:5, 33:13, 73:13, 73:15, 74:10, 74:14 resident 74:11 residential 12:10, 13:17, 19:7, 27:3, 40:2, 40:5, 78:24 residents 50:11, 74:14 resolution 24:9, 25:2, 25:4 rest 7:12, 32:5, 62:18 restaurant 62:18 restroom 33:12, 72:8, 73:22 restrooms 76:23 result 55:17, 55:22, 57:13 resume 11:8 retail 69:3	retain 40:3, 40:4 retained 4:10 return 42:19, 42:22, 67:24 review 20:11, 45:7 reviewed 45:21 revised 77:25, 83:12, 83:23 right 8:2, 9:7, 9:10, 12:13, 13:9, 13:12, 15:25, 17:20, 17:21, 18:3, 19:18, 19:22, 20:16, 20:20, 20:21, 25:13, 26:1, 26:18, 27:14, 27:24, 29:9, 30:19, 31:17, 33:20, 34:9, 34:20, 36:14, 41:24, 45:3, 45:4, 45:24, 50:2, 50:13, 51:10, 51:21, 52:23, 53:11, 54:5, 58:13, 61:5, 61:21, 63:14, 66:9, 67:17, 69:23, 69:25, 70:2, 70:11, 70:12, 72:25, 75:1, 75:22, 76:5, 76:18, 78:5, 78:15, 78:18, 78:19, 79:19, 79:23, 80:1, 82:1, 84:9 right-of-way 12:19
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>road 1:8, 5:7, 23:9, 23:17, 40:7, 40:12, 45:24, 46:3, 46:15, 46:16, 66:2</p> <p>roadway 40:7</p> <p>robeson 1:15</p> <p>rockville 1:8, 1:16, 2:8, 3:7</p> <p>roof 30:20, 75:12</p> <p>room 2:7</p> <p>rotate 19:18, 19:21</p> <p>roughly 30:9</p> <p>rules 35:10</p> <p>run 21:16, 61:5, 76:3</p> <p>running 61:9, 66:5, 74:22</p> <p>rural 25:17, 40:4</p> <p>rural-residential 13:19</p>	<p>38:21, 51:5, 66:7, 67:5, 67:7, 67:14, 67:16, 70:20, 72:21, 72:23, 74:25, 75:12</p> <p>sand 49:20</p> <p>sanitary 27:23, 77:14</p> <p>sara 3:11</p> <p>saturation 57:1</p> <p>saturday 63:24, 64:23, 64:25, 65:8</p> <p>saturday's 64:25</p> <p>saturdays 65:5</p> <p>savings 6:21, 7:8, 62:3</p> <p>saw 43:15, 71:10</p> <p>say 17:23, 18:2, 32:10, 36:7, 46:4, 50:19, 52:12, 52:20, 59:3, 59:13, 64:14, 68:2, 68:7, 75:1, 75:10, 77:14, 79:18, 80:5, 84:11, 85:13</p> <p>saying 26:19, 27:17, 33:22, 51:3, 79:8, 80:3, 80:9, 81:2</p> <p>says 25:11, 29:11, 33:18, 34:21, 53:17, 56:7, 71:6, 72:4</p> <p>schedule 62:7, 64:2,</p>	<p>64:6, 64:21</p> <p>scheduled 64:4</p> <p>school 65:16</p> <p>scientist 50:6</p> <p>screen 38:25</p> <p>screened 40:10</p> <p>screening 23:6, 35:20</p> <p>sean 3:4, 5:9, 22:22</p> <p>season 62:16, 64:5</p> <p>second 5:25, 11:13, 16:18, 16:21, 18:10, 63:5</p> <p>section 58:14, 79:18</p> <p>see 12:18, 14:3, 15:1, 16:16, 17:16, 18:5, 18:22, 19:18, 33:17, 45:21, 48:24, 53:24, 57:6, 76:13, 76:16, 77:8</p> <p>seeing 5:16</p> <p>seeking 5:6, 25:17</p> <p>sell 44:18, 58:25</p> <p>send 24:4, 31:24, 82:18</p> <p>sense 36:10, 36:16</p> <p>separate 21:17, 21:22</p> <p>septic 4:16, 28:11, 32:13, 32:17,</p>	<p>33:24, 36:8, 48:23, 49:1, 49:11, 49:19, 49:24, 50:5, 50:7, 50:12, 53:16, 53:21, 54:8, 75:4, 75:7, 78:16, 78:17, 78:19</p> <p>serves 20:15</p> <p>set 23:12, 40:6</p> <p>setback 45:24</p> <p>setbacks 58:22</p> <p>settle 31:9</p> <p>seven 21:12, 22:1, 22:6</p> <p>several 55:2, 70:25</p> <p>short 70:17</p> <p>should 9:18, 32:18, 38:24, 43:24</p> <p>shouldn't 56:11</p> <p>show 14:5, 26:4, 32:9, 32:14, 33:5, 37:2, 37:23, 79:14, 80:18</p> <p>showed 32:12, 34:18</p> <p>showing 46:15, 77:25, 78:1, 78:11, 79:20</p> <p>shown 19:8, 19:9, 21:1, 26:1, 30:10, 30:12, 30:13, 34:4,</p>
<p>S</p>			
<p>safety 22:11, 42:10</p> <p>said 15:10, 27:1, 32:24, 43:7, 52:22, 57:25, 63:16, 84:17, 84:19, 86:8, 86:9, 87:5, 87:6</p> <p>sales 69:3</p> <p>same 19:20, 29:19,</p>			

<p>34:8, 78:5, 78:14, 80:4, 84:20 shows 45:19, 46:16 side 15:21, 21:9, 21:11, 22:4, 26:10, 66:2 sign 32:17, 71:5, 79:9 signature-b7fzp 87:13 signature-mig2k 86:16 significant 19:7, 76:15 signs 70:24 similar 13:1, 29:7, 33:11, 56:15 simple 44:17 simpler 66:1 simplify 21:15 since 54:16, 80:16 single 20:13 sir 37:10, 60:23 site 4:18, 8:25, 9:1, 9:4, 10:18, 11:16, 16:11, 41:3, 44:14, 44:20, 45:13, 45:14, 45:20, 45:25, 47:15, 50:23, 53:4, 55:1, 68:25, 69:3, 69:4, 69:8, 75:23, 76:22, 77:15,</p>	<p>77:25 situation 49:1, 66:7 size 28:13, 74:25, 79:10 sized 75:5, 75:7, 78:16, 78:17, 78:19 sizing 78:23 skills 86:10, 87:8 slight 6:2, 6:3, 28:6, 28:12, 28:13, 29:16, 80:12 slightly 20:18 slow 70:16 small 28:14, 40:5, 79:6, 79:7 snow 68:20 soil 50:6 some 16:3, 23:6, 28:11, 29:12, 32:23, 32:25, 33:10, 33:11, 43:21, 48:5, 48:7, 59:23, 60:5, 60:9, 62:21, 62:23, 63:14, 64:3, 64:18, 67:6, 74:16, 74:20, 74:23 somebody 73:20 something 10:4, 11:19, 24:5, 31:19, 36:9, 52:5,</p>	<p>52:19 sometime 62:20, 64:1 sometimes 62:17, 62:22, 64:11, 64:13, 64:22, 76:7 soon 74:3, 74:15, 81:13 sorry 11:13, 11:14, 13:6, 13:15, 21:13, 21:21, 34:24, 36:24, 42:17, 46:12, 48:25, 53:9, 54:23, 57:23, 72:11, 81:20 sort 44:3, 62:21 sought 50:3 sounds 85:6 south 12:25, 13:7, 13:17, 20:19, 21:6, 21:25, 23:4, 26:10, 28:22, 28:25, 30:10, 46:19, 56:19 southeast 18:4 southern 18:20 spaces 21:10, 21:14, 22:1, 22:7 speak 13:8, 16:5, 22:21, 42:5, 47:6, 49:11, 49:12 speaking 61:3 special 26:4</p>	<p>specialist 3:11 specialize 8:25 specific 39:17 specimen 19:7 spoke 84:16 sponsored 65:22 square 17:20, 28:7, 28:18, 28:19, 29:15, 29:16, 30:9, 30:12, 32:10, 33:19, 34:7, 36:2, 78:9, 78:13, 78:14, 79:6, 79:8, 80:18, 84:19 staff 4:19, 6:10, 13:21, 13:22, 14:1, 14:14, 14:15, 14:17, 14:19, 15:24, 27:2, 32:1, 32:2, 33:2, 35:18, 35:21, 35:22, 37:17, 38:6, 38:8, 38:9, 39:9, 39:14, 39:20, 45:5, 46:22, 47:12, 47:17, 47:21, 48:11, 50:20, 54:4, 55:8, 56:11, 56:19, 56:22, 57:5, 57:17, 57:18, 57:24, 66:18, 69:18, 71:10, 72:4, 73:9, 73:11, 73:19, 78:13,</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

82:19, 82:20, 82:22, 83:14, 83:15, 84:17 staff's 56:25, 57:8, 57:12, 72:1 staggered 42:19, 42:22, 42:24 stand 16:19 standard 37:23, 59:14 start 16:23, 17:1, 17:15, 17:18, 50:8, 62:14, 65:23, 66:20, 78:25 started 41:13, 50:1, 65:13, 65:14, 65:25, 66:7, 66:10 starting 12:6 starts 77:2 state 10:11, 86:20 stated 39:10 statement 8:14, 8:16, 11:10 stay 25:18, 29:18, 48:7, 75:16, 75:25 stick 30:15 still 34:4, 84:8 stipple 18:22 stoop 78:6 stop 11:3	storage 41:22 store 40:25, 44:13 storm 64:22 stormwater 22:4, 22:6, 22:7 straight 46:3, 46:5, 46:6, 46:17 street 3:6, 56:2 strictly 22:3, 42:15 strip 12:18 struggling 51:24 study 7:19 stuff 42:2 stump 65:18, 67:25, 68:2, 68:13 subject 13:2, 13:5, 13:10, 15:4, 43:10, 68:14, 81:2, 81:4 submit 83:13 submitted 20:10 substantially 49:16 suggesting 52:4 suited 63:2 summertime 62:13, 64:5, 70:12 sunday 63:24, 64:6, 64:9, 64:15	sundays 64:1, 64:19 supervision 87:6 supplies 59:1 support 49:19 sure 16:4, 18:14, 18:16, 20:4, 20:7, 24:3, 27:25, 34:23, 38:20, 41:1, 41:5, 41:8, 45:20, 50:18, 56:6, 60:3, 73:20, 80:23, 82:6 surrounding 12:8 surveyors 45:21 swear 9:22, 40:18 switch 58:14 switching 48:6 sworn 5:3, 10:8, 60:17, 86:5 system 4:16, 48:23, 50:2, 50:5, 50:9, 50:10, 54:11	taking 43:10 talk 33:7, 35:8, 41:1, 77:24 talked 33:8, 71:9 talking 11:3, 37:8, 40:18, 53:20, 70:25 talks 56:14 team 53:21 tech 10:3 technology 10:23 tell 11:14, 12:7, 14:2, 16:8, 25:13, 39:23, 40:1, 45:9, 45:18, 46:20, 48:22, 49:1, 62:1, 62:8, 65:9, 66:16 telling 78:18 temporary 77:15 terminology 51:21 tested 49:16, 49:20 testified 10:10, 10:17, 27:1, 44:4, 58:17, 58:24, 59:16, 60:19 testify 10:8, 29:3, 51:7, 60:17, 61:22 testimony 8:5, 32:23, 48:1, 50:24
		T	
		table 37:25, 49:16, 49:18, 58:4 take 10:5, 31:21, 37:13, 39:17, 40:15, 60:5, 62:15, 62:19 taken 86:3	

Transcript of Hearing
Conducted on November 20, 2023

41

<p>testing 49:16, 49:18 th 82:13, 82:14, 82:15, 82:16 thank 5:9, 5:12, 8:10, 11:4, 11:7, 12:3, 12:4, 13:15, 16:14, 18:11, 18:15, 22:24, 24:17, 25:12, 26:25, 27:10, 31:23, 36:22, 36:25, 39:4, 44:22, 51:18, 60:1, 60:4, 60:6, 60:14, 77:11, 77:17, 77:19, 77:23, 85:6, 85:11, 85:14, 85:17 thanks 60:10 thanksgiving 81:24, 82:2, 84:5, 84:8 themselves 5:8, 19:5 thereafter 86:6 things 42:11, 42:12, 42:20, 43:1, 43:22, 51:7, 52:24, 65:19 think 5:19, 8:15, 9:11, 13:14, 15:22, 16:4, 24:7, 24:12, 25:25, 26:25, 28:12, 28:21, 29:17, 29:20, 30:4, 34:2, 34:18, 36:10, 36:16, 39:19,</p>	<p>43:6, 43:21, 44:3, 46:16, 49:8, 56:4, 56:14, 59:16, 66:13, 67:20, 69:11, 72:20, 73:9, 73:19, 73:25, 76:2, 76:25, 77:1, 77:21, 78:8, 79:10, 80:6, 80:13, 81:6, 81:13, 82:3, 83:10 thinking 16:18, 16:22, 80:15, 82:25 third 53:24 thirty-five 12:2 thought 17:15, 19:10, 22:20, 39:20, 54:4, 72:9 thousand 28:7, 28:19, 29:15, 33:19, 78:9, 79:8, 80:18 three 13:17, 21:13, 64:4, 67:6, 72:5, 78:24, 79:1 threes 42:7 through 6:18, 23:2, 23:14, 34:18, 57:22, 62:3, 78:4, 78:12, 80:15 thursday 23:22, 81:21, 81:23 tied 37:12, 37:16</p>	<p>time 8:1, 10:5, 31:14, 31:16, 31:22, 47:5, 49:22, 51:5, 61:4, 62:23, 66:22, 67:24, 67:25, 74:16, 76:21, 79:24 times 55:2, 67:23 timing 77:24 today 24:5, 29:22, 46:9, 52:4, 69:12, 82:14 together 42:8, 67:3, 67:12, 67:13, 83:18 top 32:11 topic 83:19 total 78:11 towards 67:19 tps 79:4 traditional 49:19, 50:9 traffic 7:19, 21:3, 47:7 trailers 42:11 train 22:20 transcriber 87:1 transcript 30:3, 81:16, 81:17, 87:3, 87:6 transcriptionist 86:8</p>	<p>tree 1:6, 5:5, 37:13, 41:25, 42:10, 43:1, 44:5, 58:8, 59:17, 61:12, 65:10, 68:1 trees 19:8, 19:9 trench 49:19 tried 21:16, 21:22, 49:21, 51:21 tries 21:15 trips 47:5 troubleshooting 48:9 truck 66:3 trucks 42:4, 42:9, 42:10, 42:12, 42:17, 42:23, 42:25, 43:1, 47:14, 63:7, 63:16, 66:5, 66:6 true 46:25, 53:1, 57:24, 61:14, 63:23, 69:2, 69:6, 70:22, 71:4, 73:10, 86:9, 87:6 truth 10:9, 10:10, 60:18, 60:19 try 18:12, 24:5, 64:13, 66:24, 72:11 trying 10:22, 34:25, 40:19, 52:5, 52:12, 56:23,</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

64:10 tucked 23:15, 40:6 tuesday 82:10, 83:8, 83:9, 83:11, 83:22 turn 18:8 turns 23:4 tweak 80:12 twelve 17:2 twenty-three 84:3 two 5:19, 58:19, 62:20, 64:4, 78:20 two-plus-acre 61:15 two-way 21:3 type 40:24, 56:17 types 63:15 typewriting 86:7, 87:5 typical 66:17 typically 48:16, 50:25	78:4 understandable 77:1 understanding 16:3, 25:8, 29:5, 39:6, 39:10, 45:5, 46:21, 47:8, 55:7, 56:25, 59:2, 77:2 understood 83:3, 83:5 unless 19:14, 20:1, 77:22, 79:21 unnecessary 54:13 until 6:18, 6:19, 6:23, 19:4 use 1:7, 4:13, 5:6, 11:20, 12:16, 16:12, 20:10, 23:1, 26:6, 26:11, 27:8, 27:22, 37:11, 37:22, 40:22, 42:1, 49:5, 50:20, 52:25, 55:8, 55:17, 55:25, 56:2, 57:12, 58:1, 58:18, 60:8, 72:6, 72:7, 73:13, 73:18 uses 55:18, 55:23 using 73:22, 76:6 usually 26:8, 26:10, 51:14, 62:14, 66:20, 84:12 utilize 16:10, 51:16 utilized 12:6, 33:12	V variation 54:15 vehicles 21:8, 21:13, 47:1, 47:20, 48:6, 69:14 versed 50:6 viewpoint 39:13 views 40:8 visible 23:16, 40:10	81:10 we'll 11:1, 19:18, 80:5, 80:17, 80:23, 84:7 we're 12:13, 31:2, 31:5, 35:9, 35:11, 37:2, 53:25, 63:23, 76:2, 81:10, 85:15 we've 28:10, 79:3, 83:19 weather 64:12 website 24:20 wednesday 82:10, 82:11, 82:12 week 5:20, 9:8, 62:5, 64:3, 64:7, 82:4 weekend 24:4 weeks 64:4 west 12:18, 12:21, 15:10, 15:15, 15:19, 16:4, 19:4 western 15:21, 21:4 whatever 41:9, 65:19, 78:10, 80:11 whereupon 5:2, 10:6, 60:15 whether 80:22 whole 10:9, 41:21, 60:18, 70:21
U uh-huh 9:6, 13:16, 23:20, 29:1, 46:19 under 83:1, 87:5 understand 10:24, 30:4, 30:7, 35:4, 59:3, 63:19, 73:23, 74:3,		W wait 38:13, 43:18, 67:10, 68:6, 84:3 walked 13:9 want 5:11, 6:22, 8:8, 8:13, 9:22, 13:20, 15:12, 16:10, 16:16, 16:19, 27:25, 30:21, 31:3, 31:15, 31:21, 38:20, 39:18, 49:4, 60:5, 70:5, 71:7, 73:19, 75:20, 82:16 wanted 82:6 water 49:16, 49:18, 53:3, 53:6, 53:7, 53:10, 60:5, 60:9 wave 62:21 way 29:13, 81:7,	

Transcript of Hearing
Conducted on November 20, 2023

43

whoops 46:12 wide 23:5 wife 61:17, 61:18, 61:19, 66:13 wintertime 62:10, 69:24, 70:16 within 15:24, 27:22, 38:11, 39:6, 59:18, 72:5 witness 8:18, 9:23, 59:24 witness (es 86:4 wonder 54:3 wondered 41:16 wood 42:14 wooded 12:21 work 43:7, 43:10, 54:7, 64:15, 65:8, 65:16, 65:18, 67:12, 78:4, 79:4 workable 74:4 workday 66:18 worked 14:13, 14:15, 59:10, 78:12 working 10:3, 16:1, 50:3, 65:6, 65:17, 70:18, 70:19, 74:17, 83:18 works 14:21, 18:13,	18:16, 80:10 worried 9:24 worries 64:14 worth 79:22 wouldn't 32:4 write 85:4 writing 60:1 written 72:7 wrong 20:2 <hr/> Y <hr/> yard 48:3 yeah 6:13, 7:7, 8:3, 9:13, 10:1, 11:6, 13:15, 14:13, 14:15, 14:21, 17:21, 18:1, 18:8, 18:17, 19:25, 22:18, 22:24, 25:3, 29:2, 30:14, 30:22, 31:11, 32:19, 33:16, 34:2, 36:19, 38:1, 38:14, 43:13, 43:16, 43:23, 44:1, 46:4, 46:11, 46:18, 47:11, 47:16, 51:17, 51:25, 52:7, 52:18, 52:21, 53:22, 54:12, 54:15, 54:18, 55:21, 56:4, 56:21, 57:6, 57:7, 57:24, 63:20,	63:21, 65:2, 67:4, 67:14, 68:4, 68:8, 68:10, 68:17, 69:23, 70:6, 70:9, 70:13, 71:3, 72:13, 72:18, 73:6, 73:17, 74:6, 75:6, 75:9, 75:19, 76:11, 78:22, 79:13, 80:1, 80:6, 82:15, 83:18, 83:20, 84:10, 84:15, 84:22, 85:8 year 7:12, 49:18, 49:22, 61:19, 65:9, 83:20 years 49:21 yep 17:25, 54:24, 59:8 yesterday 66:24 <hr/> Z <hr/> zion 1:8, 5:7, 23:9, 40:7, 45:24 zone 12:10, 37:23 zoning 1:1, 2:4, 3:12, 28:12, 37:25, 38:5, 83:2 zoom 19:23, 19:24 <hr/> . <hr/> .5 58:15 .5212 3:8 <hr/> 0 <hr/> 00 6:18, 6:19,	6:20, 6:24, 7:7, 7:9, 62:3, 62:4, 62:5, 63:25 01 9:11 02 5:5 05 66:21 <hr/> 1 <hr/> 1,000 32:10 1,100 78:14 1,180 84:19 1-3 85:7 10 4:13, 11:20, 16:12, 16:13, 16:15, 19:14, 21:10, 27:7, 30:2, 37:21, 49:5, 80:11, 81:14, 81:17, 81:19, 85:18 100 2:6, 81:11 11 4:3, 10:22, 83:22 1100 80:10 12 4:12, 4:14, 16:23, 17:1, 17:3, 17:12, 69:24, 69:25 13 16:24 139 12:15 14 4:15, 35:13, 35:14, 38:6, 38:19
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Transcript of Hearing
Conducted on November 20, 2023

44

<p>15 47:1, 69:14, 70:3, 70:12 150 30:11 16 4:13 17 4:14 18 4:16, 48:25, 49:3, 49:5, 50:18, 54:21 19 46:22, 47:17, 48:12, 51:4, 61:21, 69:18, 70:7, 75:3 1966 56:7</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2.12 12:9, 58:20 20 1:17, 4:18, 45:13, 45:15, 45:16, 82:14 200 2:7, 3:6, 12:10, 37:23 2005 39:6 2006 65:14, 66:1 2009 66:3 2010 65:11, 66:10 20108 1:8, 5:7 2019 61:20, 66:14 2023 1:17, 86:21, 87:18 20850 2:8, 3:7</p>	<p>20882 1:9 21042 10:15 22 57:22 23 1:17, 57:22, 57:25 24 4:20, 5:5, 9:11, 19:9, 85:7 28 82:16, 83:22 29 82:13, 82:15 2nd 10:14, 23:23</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>3.5 58:15 30 6:17, 6:22, 51:1, 62:4, 62:11, 62:14, 85:4, 86:21, 87:18 301.762 3:8 31 11:9 32 1:18, 4:19, 6:11, 6:12, 6:13, 14:6, 14:7, 14:11, 35:21, 37:18, 38:7, 38:22, 57:18, 57:20, 57:22, 57:25, 72:3 35 4:15, 11:16, 11:17, 46:8, 46:14 3: 63:25</p>	<p>3rd 85:5</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>40 4:20, 24:14, 24:15, 25:7 45 4:18, 50:25, 51:1, 85:18 49 4:16 4th 84:11, 85:3</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>5 62:11, 66:21 50 23:5, 23:12, 47:5, 47:10, 66:21 500231 1:23 5146 10:14</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6 6:17, 6:22, 62:4 60 4:6</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>7 6:18, 6:19, 6:24, 7:7, 7:9, 62:3, 62:5, 62:14, 66:21 700 28:7 760 17:20, 75:3 762 30:9 780 17:20</p>	<hr/> <p style="text-align: center;">8</p> <hr/> <p>8 6:20, 7:9, 62:4 800 28:18 82 75:3 87 1:24</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>9 1:18, 63:25 900 30:12, 30:19</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------