

DOCKET 1142

DATE OF HEARING	August 5, 2013
NAME	Keith Bernier
DESCRIPTION OF PROPERTY	12 Dielman Road
CAUSE FOR APPEAL	Relief from the decision of the Building Official for a retaining wall with violates Section IV, F, (3) & (4) of Zoning Ordinance 1175.
RULING OF THE BOARD	The meeting was continued to allow the applicant to consider a plan revision.

MINUTES OF MEETING  
ZONING BOARD OF ADJUSTMENT  
Monday, August 5, 2013

DOCKET 1142  
12 Dielman

A meeting of the Zoning Board of Adjustment was held at 4:00 p.m. on Monday, August 5, 2012, at City Hall.

The following members of the board were present:

Ms. Robbye Toft, Vice-Chair  
Ms. Liza Forshaw  
Ms. Laura Gerdes Long  
Mr. Fred Goebel  
Mr. John Shillington

Also present were: Mayor Nancy Spewak; Mr. Michael W. Wooldridge, Assistant to the Mayor / City Clerk; Mr. Michael Gartenberg, Building Official.

Vice-Chair Toft called the meeting to order. Notice of Public Hearing, as follows:

**NOTICE OF PUBLIC HEARING  
ZONING BOARD OF ADJUSTMENT  
CITY OF LADUE, MISSOURI  
DOCKET NUMBER 1142**

Notice is hereby given that the Zoning Board of Adjustment of the City of Ladue, St. Louis County, Missouri, will hold a public hearing on a petition submitted by Keith Bernier, 12 Dielman Road, St. Louis, MO 63124, requesting relief from the ruling of the Building Official who declined to issue a permit for a retaining wall which violates Section IV, f, (3) of Zoning Ordinance 1175.

The hearing will be held at 4:00 p.m. on Monday, August 5, 2013, at the City Hall, 9345 Clayton Road.

The hearing will be public and anyone interested in the proceedings will be given the opportunity to be heard.

Pursuant to Section 610.022 RSMo., the Zoning Board of Adjustment could vote to close the public meeting and move to executive session to discuss matters relating to litigation, legal actions and/or communications from the City Attorney as provided under section 610.021 (1) RSMo.

Stanley Walch, Chairman  
Zoning Board of Adjustment

(Transcript attached as part of the minutes)

Ms. Toft continued the meeting for the applicant to consider a plan revision.

  
Robbye Toft, Vice-Chair

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ZONING BOARD OF ADJUSTMENT  
CITY OF LADUE  
LADUE, MISSOURI

IN THE MATTER OF:            )  
  )  
KEITH BERNIER                 ) Docket No. 1142  
12 DIELMAN ROAD             )  
LADUE, MISSOURI 63124       )

Monday, August 5, 2013

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ZONING BOARD OF ADJUSTMENT  
CITY OF LADUE  
LADUE, MISSOURI

IN THE MATTER OF:            )  
  )  
KEITH BERNIER                    ) Docket No. 1142  
12 DIELMAN ROAD                )  
LADUE, MISSOURI 63124         )

BE IT REMEMBERED that on the 5th day of August, 2013, hearing was held before the Zoning Board of Adjustment of the City of Ladue, Missouri, at Ladue City Hall, 9345 Clayton Road, in the City of Ladue, State of Missouri 63124, regarding the above-entitled matter before Bobbie L. Lubber, Certified Court Reporter, Registered Professional Reporter, Certified Shorthand Reporter, a Notary Public within and for the State of Missouri, and the following proceedings were had.

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A P P E A R A N C E S:

BOARD MEMBERS:

- Ms. Robbye Toft, Chairman
- Ms. Liza Forshaw
- Mr. Fred Goebel
- Ms. Laura Gerdes Long
- Mr. John Shillington

Also Present:

- Mr. Michael Wooldridge, City Clerk
- Mr. Michael W. Gartenberg, Building Official
- Mr. Dan Burke, Attorney for Applicant
- Mr. Keith Bernier, Applicant
- Ms. Susan Dexter
- Ms. Susan Opdycke
- Mr. Martin Kerckhoff
- Ms. Diane Kerckhoff
- Ms. Delane Schnarr
- Mr. Mark Steele
- Mayor Nancy Spewak
- Former Mayor Anthony Bommarito

Court Reporter:  
Bobbie L. Luber  
Registered Professional Reporter #9209  
Missouri CCR #621  
Illinois CSR #084.004673  
Bobbie Luber, LLC  
P.O. Box 31201  
St. Louis, MO 63131  
(314) 993-0911

1                   (The Meeting of the Zoning Board of  
2 Adjustment of the City of Ladue was called to order at  
3 4:00 p.m.)

4                   CHAIRPERSON TOFT: Good afternoon, and  
5 welcome to the Ladue Zoning Board of Adjustment. My  
6 name is Robbye Toft. We have one case. I'm going to  
7 start with some general procedural matters that will  
8 be incorporated into the record of the zoning appeal  
9 that we will hear today, which is Docket Number 1142.

10                   I would first like to introduce to every  
11 one the members of the board seated today. To my far  
12 right is Mr. Fred Goebel. To my immediate right is  
13 Ms. Liza Forshaw. To my left is Mr. John Shillington.  
14 And to my far left is Laura Long. We also have in  
15 attendance today Mr. Mike Wooldridge, who is City  
16 Clerk, and Mr. Michael Gartenberg from the Building  
17 Office.

18                   The Code of Ordinances of the City of Ladue  
19 is incorporated into the record by reference in Docket  
20 Number 1142.

21                   We just had former Mayor Bommarito joining  
22 us. I don't see Mayor Spewak, but she will probably  
23 be joining us shortly.

24                   The Zoning Code of the City of Ladue,  
25 Ordinance 1175 as amended, will be used by the board

1 as the basis for reaching a decision in the one case  
2 that we have today, and it will be marked as Exhibit A  
3 and included in the record of the docket number I just  
4 read.

5 As part of the record in the appeal we will  
6 hear this afternoon I will explain our process. The  
7 appellant in each appeal is given the opportunity to  
8 present reasons why he or she feels that a variance is  
9 warranted based on practical difficulty or undue  
10 hardship. Reasons of economic consideration or  
11 self-inflicted hardship will not be considered by the  
12 board. The board may have questions of the appellant.  
13 Following that, any member of the audience who wishes  
14 to address the cause will be heard.

15 We will ask anybody who believes that he or  
16 she may wish to speak to the board, we will ask that  
17 you all be sworn in at the beginning of the case. If  
18 you decide not to offer any testimony that's fine, but  
19 to be expeditious we will swear in everybody at one  
20 time, and we will ask that you give your name and  
21 spell it for the court reporter.

22 After the members of the audience have had  
23 an opportunity to be heard, the portion of the hearing  
24 for public comment will be closed and the board will  
25 discuss the matter amongst itself, and may ask

1 additional questions of either the city staff or the  
2 appellant.

3           After the discussion, I will ask if any  
4 member of the board wishes to propose a motion to  
5 approve the requested variance. If a motion is  
6 proposed and seconded the board will then vote on that  
7 motion. Otherwise, if there is no motion to grant a  
8 variance, I will ask the board to vote on whether the  
9 requested variance should be granted. Four out of  
10 five members of the board must vote in the affirmative  
11 in order to approve a variance.

12           Finally, I should tell everyone, that the  
13 members of the board have visited the site for which  
14 the variance is sought in this afternoon's hearing.  
15 Since we know what the site looks like the appellant  
16 should not describe the physical characteristics of  
17 the site to us.

18           I will now open the hearing in this one  
19 case, which is Docket Number 1142 concerning a  
20 retaining wall which violates Section IV,F,(3) of  
21 Ordinance 1175. First, I would ask -- this is for  
22 Mr. Kevin Bernier.

23           MR. BERNIER: Keith Bernier.

24           CHAIRPERSON TOFT: Keith Bernier. I  
25 apologize. Number 12 Dielman Road, requesting relief

1 from the building official who declined to issue a  
2 permit for a retaining wall which violates Section  
3 IV,F,(3) of Zoning Ordinance 1175.

4 I would ask at this time if Mr. Gartenberg  
5 would please explain the reason or reasons why the  
6 plans were disapproved so that the audience and the  
7 board will have a clear understanding of the issues in  
8 this case.

9 MR. GARTENBERG: Yes, I would. The  
10 proposed improvement is a retaining wall that is being  
11 proposed in the rear yard of the property. Some of  
12 our zoning requirements relative to that state that it  
13 must be located at least 15 feet from the property  
14 line. The proposed wall does not appear be 15 feet  
15 from the property line. And in that range of 15 to 30  
16 feet from the property line it would have a maximum  
17 height of thee feet, and this proposed wall exceeds  
18 that three foot clearance as well.

19 CHAIRPERSON TOFT: Thank you. The  
20 following documents will be included in the record as  
21 exhibits of this appeal. The public notice of this  
22 hearing will be marked as Exhibit B.

23 The May 30, 2013, denial letter from the  
24 building official will be marked as Exhibit C.

25 The list of residents to whom the notice of

1 public hearing have been sent will be marked as  
2 Exhibit D.

3 The appellant's letter requesting the  
4 variance, which was undated, and any other letters of  
5 support or opposition to the request for variance will  
6 be marked as Exhibit E.

7 Mr. Wooldridge, did we have any letters in  
8 favor of or against the requested variance?

9 MR. WOOLDRIDGE: No, I don't.

10 CHAIRPERSON TOFT: The entire file  
11 pertaining to the application, will be -- including  
12 memoranda from the staff of the City of Ladue and  
13 consultants to the Zoning Board of Adjustment will be  
14 marked as Exhibit F.

15 There being no further additional letters  
16 from the public that were received, we would at this  
17 time ask if either the appellant or any members of the  
18 public who would wish to speak, they might think they  
19 would like to speak, if they would come forward now,  
20 please be sworn in and provide our court reporter with  
21 both your name and the spelling of it, please.

22 (At this time members of the audience were  
23 sworn in by the court reporter.)

24 CHAIRPERSON TOFT: At this time I would  
25 like to ask if the appellant would like to present his

1 case.

2 MR. BURKE: Certainly. Good afternoon. My  
3 name is Dan Burke. I'm with Armstrong Teasdale. I'm  
4 here on behalf of Jennifer and Keith Bernier. I have  
5 some materials to hand out. I apologize for the  
6 timing of these. They are probably duplicates, but in  
7 case they are not.

8 I also have some late-arriving letters of  
9 support from neighbors, which I would also like to  
10 pass out and give each of you a copy. If you received  
11 them earlier they would be included in the packet. I  
12 apologize for the extra papers.

13 CHAIRPERSON TOFT: Counsel, before you  
14 begin, I will mark this August 2, 2013, letter as  
15 Exhibit G. And I will read it into the record.

16 MR. BURKE: Thank you.

17 CHAIRPERSON TOFT: This is to the Zoning  
18 Board of Adjustment, Ladue City Hall, 9345 Clayton  
19 Road, St. Louis, Missouri 63124, from Camaryn and  
20 George Robbins of 9393 Ladue Road, St. Louis, Missouri  
21 63124 regarding 12 Dielman Road, variance request of  
22 Keith and Jennifer Bernier.

23 Dear Mr. Welch, and that should be Walch.  
24 We are writing to express our support for Keith and  
25 Jennifer Bernier's application for a variance of

1 Section IV-F(3) of Ordinance 1175. As neighbors  
2 impacted by the Berniers' plans, we encourage the  
3 Board of Adjustment to grant their request.

4 The Berniers' proposal to construct a  
5 retaining wall has benefits outside their own  
6 property, including screening their property (both  
7 visually and aurally), properly retaining storm water  
8 within their property, and improving the general  
9 aesthetics of our neighborhood. We commend the  
10 Berniers for seeking neighborhood input prior to their  
11 project and for proactively addressing concerns  
12 neighbors might have, which this variance would allow.

13 We strongly encourage the board to allow  
14 the Berniers to improve their property, and our  
15 neighborhood, by granting the requested variance.

16 Sincerely, Camaryn Robbins and George Robbins.

17 MR. BURKE: I'm going to do it again with  
18 another letter of support.

19 CHAIRPERSON TOFT: Okay. Thank you.

20 I will read this into the record also.

21 It's dated August 2, 2013. Zoning Board of  
22 Adjustment, Ladue City Hall, 9345 Clayton Road,  
23 St. Louis, Missouri 63124. Regarding 12 Dielman Road.

24 Dear Mr. Welch (sic). We are writing to  
25 express our support for Keith and Jennifer Bernier's

1 application for a variance of Section IV-F(3) of  
2 Ordinance 1175. As neighbors impacted by the  
3 Bernier's plans, we encourage the Board of Adjustment  
4 to grant their request.

5 Am I correct that I would be reading these  
6 verbatim, the same letters?

7 MR. BURKE: I'm not sure if they are  
8 verbatim, but they should be very close.

9 CHAIRPERSON TOFT: I think they appear to  
10 be, but just in case they aren't, there might a word  
11 or two difference, I will read it.

12 The Berniers' proposal to construct a  
13 retaining wall has benefits outside their own  
14 property, including screening their property (both  
15 visually and aurally), properly retaining storm water  
16 within their property, and improving the general  
17 aesthetic of our neighborhood. We commend the  
18 Berniers' for seeking neighborhood input prior to  
19 their project and for proactively addressing concerns  
20 neighbors might have, which this variance would allow.

21 We strongly encourage the board to allow  
22 the Berniers to improve their property, and our  
23 neighborhood, by granting the requested variance.

24 Sincerely, Mark Tuck. Is that correct?

25 AUDIENCE: Yes.

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MR. BURKE: Number 4 Terry Lane.

CHAIRPERSON TOFT: Number 4 Terry Lane?

MR. BURKE: Yes. I' sorry. That was not included in there.

CHAIRPERSON TOFT: There are some initials here that don't mean anything to me. Do you know who those initials belong to?

MR. BURKE: I'm sorry, I don't.

CHAIRPERSON TOFT: Jason Stalpanke -- Stairanke (phonetic).

MS. OPDYCKE: That's his initials.

CHAIRPERSON TOFT: And, again, there are two initials.

MR. BURKE: I think they intended to print their names and sign it.

CHAIRPERSON TOFT: This is from the two individuals who live at Number 4 Terry Lane?

MR. BURKE: That's my impression, yes.

CHAIRPERSON TOFT: Okay. Are there any other letters?

MR. BURKE: No.

CHAIRPERSON TOFT: Thank you. You may proceed.

MR. BURKE: Thank you. Sorry for the interruption.

1           Some of this section -- and some of this  
2 you probably already know really well. Section 9, tab  
3 3 of the City Ordinances empowers the Board of  
4 Adjustment to grant variances both in yard and fence  
5 requirements, which this, perhaps, would be included  
6 in the yard requirement for the rear yard, and also  
7 under subsection H-10 you are empowered to grant  
8 variances of the strict application if it's in harmony  
9 of the general purpose and intent of the code and to  
10 alleviate some demonstrable or unusual hardship or  
11 difficulty so great to warrant such a variation, at  
12 the same time properly protect the surrounding  
13 property.

14           Section 4 F of the code, which is the one  
15 here at issue today, we respectfully request variances  
16 of subsection 3. Also subsection 4 would be  
17 appropriate given there is an existing retaining wall  
18 of the property which would be within 20 feet.

19           Also included in the package just for  
20 evidence purposes, the Notice of Public Hearing, and  
21 engineering plans, which I believe you already have  
22 copies of. It shows more detail of the planned wall.  
23 Also present here today is the landscaper. He can  
24 answer more detailed questions about why this was  
25 necessary, what purposes it would serve.

1           You have been to the site, and so the  
2 picture of the existing site does not add much. As  
3 you saw when you were out there -- I will bring this  
4 up just for a little visual aid. You can see the  
5 slope.

6           Because of the slope there is no vegetation  
7 established right now. I am told by our landscaping  
8 experts and the designers of the wall that without a  
9 retaining wall, good screening vegetation, trees  
10 particularly, would not survive and be able to be  
11 established, and as a result there is not much  
12 screening between the house, the existing pool that is  
13 on the property and the neighbors along Terry Lane,  
14 and for my client's benefit of course. But we feel  
15 these improvements primarily, or at least equally,  
16 benefit the property. They may not want to see a  
17 swimming pool at all times, and they would prefer the  
18 house be screened. Some of the neighbors will speak  
19 to that today.

20           As importantly, or more importantly, due to  
21 the slope and the proximity to Terry Lane, storm water  
22 runoff is an issue. It's a steep slope, and so  
23 erosion is an issue also. If we are able to put a  
24 retaining wall as planned, that would retain some of  
25 the storm water on the property, vegetation would use

1 the storm water rather than let it go onto Terry Lane,  
2 and that could prevent dirt, mud, silt, sediment,  
3 whatever is going down on Terry Lane.

4 MR. GOEBEL: I'm sorry, I'm having a hard  
5 time reconciling the drawing that you gave us, which  
6 is the same as the drawing we received in our packet  
7 from the city, with what we saw on the site.

8 This drawing doesn't indicate any decks.  
9 It doesn't look like the same shape of the pool. Is  
10 there a more recent one that reflects what is actually  
11 constructed? This is not a round pool that is within  
12 sight, and there is no deck here indicated at all. Do  
13 you have something that reflects what was built?

14 MR. BURKE: We do not have anything newer  
15 than that. This is the plans for the entire project.

16 MS. SCHNARR: I have it. Well, I'm not the  
17 pool contractor, I'm a landscape contractor, but I  
18 happen to have had this in my file for a while. It's  
19 more of a rectangular pool. I do believe the only  
20 change I'm aware of that occurred is when this pool  
21 decking and the pool is shifted this way ten feet.

22 MR. GOEBEL: I guess I would ask maybe if  
23 our building department has a set of construction  
24 drawings, or permanent drawings that we can reconcile;  
25 the location of this pool and the fence and the

1 retaining wall in relationship to the street is sort  
2 of the core issues that we are dealing with. And  
3 without accurate dimensions and clarity of what is  
4 built versus what is requested, I don't see how we can  
5 really -- it's hard to proceed. But thank you for  
6 bringing this up.

7 Do you want to give us a minute here.

8 MS. SCHNARR: Let me see if I have  
9 anything.

10 MR. GOEBEL: Legal counsel, have you seen  
11 this document?

12 MR. BURKE: That document, no.

13 MR. GARTENBERG: These are the department  
14 documents for the storm water. The area in question  
15 is back here. There is a large drawing of that  
16 portion of the property, it has been reversed.

17 Terry Lane is back here, and here is the  
18 home. But the pool does have a shape here. This is a  
19 retaining wall which needs to be two feet in height,  
20 according to this plan. And the property line is  
21 showing as being here.

22 CHAIRPERSON TOFT: The retaining wall that  
23 is existing that is supposed to be two feet in height,  
24 are you able to tell us where that is in relation to  
25 the property line?

1 MR. GARTENBERG: Approximately 15 feet from  
2 the eastern property line.

3 MS. FORSHAW: Isn't the existing retaining  
4 wall more than two feet in height?

5 MR. GARTENBERG: Well, the portion that is  
6 exposed. To the best of my knowledge it's not  
7 completed, this actually includes a fence and  
8 restoration of this hillside. It's my hope that the  
9 intention of the contractor is to backfill against  
10 that wall so it complies with this approved set.

11 CHAIRPERSON TOFT: Mr. Gartenberg, can you  
12 show us when this permit was granted where the fence,  
13 I'm going to call it the pool fence, was proposed?

14 MR. GARTENBERG: It was proposed a little  
15 more than ten feet from the property line. Somewhere  
16 between 10 and 15 feet. So it would be down that  
17 hillside.

18 CHAIRPERSON TOFT: And what was the height  
19 of the fence and material?

20 MR. GARTENBERG: Sure. Actually it shows  
21 up right here. It's required to have certain heights  
22 to meet pool area requirements. It's approximately  
23 four feet in height. It's an extruded aluminum.

24 CHAIRPERSON TOFT: So it's an open fence?

25 MR. GARTENBERG: It's an open fence. And

1 as I indicated, it's located at or near the bottom of  
2 the embankment.

3 MS. FORSHAW: So the retaining wall would  
4 be --

5 MR. GARTENBERG: Pardon me. I apologize.  
6 That is not correct. That is not correct. It's  
7 located at least ten feet from the property line, and  
8 so it would be somewhere up on that embankment. Along  
9 the hillside, or at the top of the hillside.

10 The toe of the slope is really the edge of  
11 the pavement, and goes up from there. With the  
12 limited grading information here, it's impossible to  
13 say how far up the hillside it would be, but it's  
14 clearly up near the top.

15 MR. BURKE: This does not show the proposed  
16 retaining wall with building permits.

17 MR. GARTENBERG: It wasn't submitted at the  
18 time of the application for the pool.

19 MR. GOEBEL: Are there topographic grades  
20 on there, Mike, for the top of the deck or anything  
21 like that?

22 MR. GARTENBERG: There are spot elevations  
23 for the top of the deck. There are lines that run  
24 through there as well. They are quite light. But the  
25 deck itself shows as being roughly 98.5 feet. And the

1 retaining wall that's being proposed at the deepest  
2 corner, the lowest corner, the base of that wall would  
3 be 96 feet. So a difference of 2 and a half feet.  
4 For the other portion of it, it appears it is 97 feet.  
5 It will be presumably a little higher. So that the  
6 height of the wall, the exposed wall will be less.

7 MR. BURKE: That's the existing retaining  
8 wall.

9 MR. GARTENBERG: Well, that's the permitted  
10 retaining wall. I don't know whether the existing  
11 complies with this or not.

12 MR. BURKE: But the proposed is a different  
13 wall.

14 MR. GOEBEL: So, the drawing in this packet  
15 shows grades to the north sloping down at some pretty,  
16 you know, relaxed flat slope. It doesn't show it back  
17 to the north at all. So, I mean this retaining wall  
18 has no correlation with that, including the deck on it  
19 that comes much further this way, and the grades must  
20 be steeper in here than what the drawing suggests, and  
21 so the retaining wall I don't think can physically do  
22 what is shown on this drawing.

23 CHAIRPERSON TOFT: And for the purpose of  
24 the record, Fred, you are saying what is shown is a  
25 fairly relaxed grade is what was attached, included in

1 our packet, versus the swimming pool drawing. I won't  
2 call it the as-built, but closer to the as-built.

3 MR. GOEBEL: Right, where Mike says the  
4 deck elevation is 98.5. If we look at this drawing,  
5 that same area is at elevation 96. So, it slopes down  
6 between two -- roughly two and a half feet, but in  
7 reality it does not. It's held very high. So there  
8 is more slope that the retaining wall would have to  
9 make up if the grades are held high.

10 CHAIRPERSON TOFT: So our record is clear.  
11 The requested variance, the retaining wall and the  
12 requested variance had more grade to deal with than is  
13 accurately reflected in the Aspen drawing that was  
14 attached to our packet.

15 MR. GOEBEL: I believe that's the case.

16 CHAIRPERSON TOFT: You are saying roughly  
17 two feet or more?

18 MR. GOEBEL: At least two and a half feet.

19 MS. FORSHAW: Can one of you tell me how --  
20 how far the applicant wishes to exceed the existing  
21 restrictions of the ordinance both in height and  
22 setback?

23 MR. BURKE: What's the highest point of the  
24 retaining wall?

25 MR. BERNIER: It would --

1                   CHAIRPERSON TOFT:  If you are going to  
2 answer and be on the record, if you would be kind  
3 enough to stand and announce yourself.  Otherwise we  
4 have a record and we don't know who is speaking.

5                   MR. BERNIER:  Keith Bernier.  I believe the  
6 requirements are for a three foot, and the retaining  
7 wall person thought we were building a four foot wall  
8 to be able to accommodate that.  I'm sorry, sir, when  
9 you said the difference was --

10                  MR. GOEBEL:  Well, if I look at this, this  
11 contour is 96.  And the deck comes out somewhere to in  
12 here somewhere.  And so that deck is a 98.  And this  
13 contour is a 96.  The wall has to -- the height you  
14 are covering is an additional two and a half feet.  It  
15 doesn't drop off.  It maintains the same height on  
16 that deck.

17                  MR. BERNIER:  I believe the reason when  
18 this happened, what you are saying here, this was done  
19 before the pool was put in.  And so that had a  
20 different shape than what you saw on the other  
21 diagram.

22                  When they put the pool in there was a water  
23 line that ran there.  They had to move a few feet.  
24 That's probably the difference.

25                  MR. GOEBEL:  Okay.  I'm just trying to

1 understand.

2 MR. BERNIER: I think that's why it didn't  
3 necessarily match up right.

4 MR. BURKE: These are the plans that were  
5 used, that were submitted with the variance request,  
6 and that's why this is what is included in your packet  
7 rather than updated.

8 CHAIRPERSON TOFT: Mr. Goebel is an  
9 architect, and you understand his concern. What you  
10 are saying is you are talking about maybe a four foot  
11 wall and what he is saying to you, that given the new  
12 location of the pool you are looking at more like a  
13 six-foot exposure.

14 MR. GOEBEL: Yes. Whatever these heights  
15 are at the lower end, roughly two and a half feet, or  
16 the lower grades steepen, or something has to change.  
17 It probably doesn't do this, and it probably doesn't  
18 curve back like that. You would have to actually take  
19 these grades, and reconcile them with that plan and  
20 then see --

21 CHAIRPERSON TOFT: And that hasn't been  
22 done.

23 MR. GOEBEL: Well, no. I think it's  
24 probably too much to do it at this meeting.

25 MR. STEELE: I'm Mark Steele with Omni Land

1 Care. I think what I'm hearing, with this wall we are  
2 not trying to get to the grade of the deck. We are  
3 going to decrease. We were going to go with the four  
4 foot wall and whatever we can get that grade to go to,  
5 it still would be a lot better to get something  
6 established than what it is. We didn't plan on the  
7 wall going all the way up to the top of the pool.

8 MR. GOEBEL: No. We understand that.

9 To your other question, how close is it?  
10 Based on this drawing at the corner here, I'm sorry,  
11 at the south end the wall looks like it's about three  
12 feet away from the property line. And in the center  
13 it's about six feet. So the new wall would be  
14 proposed from the property line with those dimensions.  
15 Property line is not the same as the edge of curb  
16 which we saw. The edge of curb looks like it's back  
17 another five feet from the property line. And so the  
18 property line is like five feet up the hill of where  
19 we were standing.

20 CHAIRPERSON TOFT: Yes. And so that the  
21 retaining wall would be actually closer to the edge of  
22 the road than to the property line.

23 MR. GOEBEL: Ask me that again.

24 CHAIRPERSON TOFT: The proposed retaining  
25 wall would be closer to the road edge than to the

1 property line, am I correct, Mr. Gartenberg?

2 MR. GARTENBERG: I didn't understand your  
3 question.

4 CHAIRPERSON TOFT: The retaining wall -- if  
5 we use the roadway as a visual guide, the retaining  
6 wall would be fairly close to the edge of the roadway  
7 than it is the property line; is that correct?

8 MR. GOEBEL: I think it's the other way. I  
9 think it's -- the retaining wall is about 11 feet away  
10 from the edge of the pavement, which would put it  
11 right underneath the fence. I'm sorry. This is the  
12 property line. The edge of the roadway is out here  
13 somewhere. So the edge of the roadway is there, the  
14 retaining wall would be in here someplace.

15 MR. GARTENBERG: Let me try this, if I can.  
16 This is shown as being the center of the roadway.

17 CHAIRPERSON TOFT: Yes.

18 MR. GARTENBERG: And the edge of the  
19 roadway is this solid line.

20 CHAIRPERSON TOFT: Yes.

21 MR. GARTENBERG: This is the property line,  
22 this dark line. The retaining wall is actually  
23 proposed here. So the city requirement is relative to  
24 the property line, not the edge of the roadway, not  
25 the current edge of the roadway.

1                   CHAIRPERSON TOFT:  And so if I understand,  
2  we are talking about it being about three feet from  
3  the property line on the south end, and about four  
4  feet from the property line on the north end.

5                   MR. GARTENBERG:  Approximately.

6                   CHAIRPERSON TOFT:  Okay.  You may proceed.

7                   MR. BURKE:  Thank you.  I think you covered  
8  a lot of the ground, actually, with the questions, but  
9  to show you why we are trying to do this is for  
10 screening purposes and here are some renderings.  
11 Again, these may have been done, I'm not sure of the  
12 date of these so they might have been done prior.  But  
13 to give you a general idea of the screening.

14                  MR. GOEBEL:  Do you know where the edge of  
15 curb is on that drawing?

16                  MS. SCHNARR:  This is not the property  
17 line.  This is the property line.  This would be the  
18 street curb.

19                  MR. GOEBEL:  That's the edge of the road  
20 and that's lawn?

21                  MR. BURKE:  Yes.

22                  MS. SCHNARR:  Yes.

23                  MR. GOEBEL:  You are putting some grass  
24 from the edge of the curb -- or the edge of the  
25 pavement.

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MS. SCHNARR: Up to --

MR. GOEBEL: To the property line.

MS. SCHNARR: To the property line. This could be planted with something other than turf. But at this point this would be back here, close to the walk here, and this is all the shrubs above the wall. Just a little idea of wall here. This line is the existing pool.

MR. GOEBEL: Deck.

MS. SCHNARR: Deck. Yeah, it's a deck. It is the deck right here. This is the cap of that wall.

MR. GOEBEL: I see.

MS. SCHNARR: This is the retaining wall that we are proposing to do to help with these trees. This would be below it. These shrubs are below this wall here. And the buffer area along the street.

MR. BURKE: On page 2 of the plan it has an edge, and has got a space.

CHAIRPERSON TOFT: Did you intend to mark these as exhibits?

MR. BURKE: I can.

MR. GOEBEL: Can you show me there on that drawing where you think the fence is in relation to -- where is the fence on there?

MS. SCHNARR: This is already on the one

1 plan that I showed you. And this is the proposed  
2 fence.

3 MR. GOEBEL: So, all the plantings are on  
4 the outside of the fence.

5 MS. SCHNARR: All this is to show what  
6 would happen on the outside of the fenced area. This  
7 is also a bed area inside here, and no plans have been  
8 made for that at this point. This I made for the  
9 Berniers to show to their neighbors what they were  
10 doing with the hillside that would be showing.

11 MR. GOEBEL: Thank you.

12 MR. GARTENBERG: If I'm understanding this  
13 correctly, at the northern end of the retaining wall  
14 the intention is to have two retaining walls that are  
15 terraced, that which is a part of the swimming pool  
16 permit, plus the one that is being proposed.

17 MS. SCHNARR: Right. That's the steepest  
18 area also.

19 MR. BURKE: I don't know if it shows the  
20 property line here, but it helps the end of the  
21 swimming pool and this is the separate one. That's  
22 two within 20 feet of the same yard.

23 MR. GARTENBERG: So, this is presumably the  
24 wall that is already permitted with the swimming pool.

25 MR. BURKE: The swimming pool wall.

1 MR. GARTENBERG: And this is the proposed.

2 MS. SCHNARR: Yes.

3 CHAIRPERSON TOFT: Can we mark the black  
4 and white as H, and the colored rendering as I?

5 MR. GOEBEL: Before you leave that, you  
6 mentioned the 20 feet. Are you referring to one of  
7 the provisions in the zoning ordinance?

8 MR. BURKE: Yes.

9 MR. GOEBEL: Because the only provision I  
10 see there related to 20 feet, is if there are two or  
11 more retaining walls they have to be separated by 20  
12 foot horizontal distance.

13 MR. BURKE: Right.

14 MR. GOEBEL: Those aren't separated by a 20  
15 foot horizontal distance.

16 MR. BURKE: Right. We would request a  
17 variance.

18 MR. GOEBEL: From that provision as well?

19 MR. BURKE: Yes. Because even though this  
20 one doesn't run directly along with it the whole way,  
21 because this portion of it does, better safe than  
22 sorry, and so we would ask that.

23 CHAIRPERSON TOFT: Do you have smaller  
24 versions of those?

25 MR. BURKE: I can get you smaller versions

1 of those. I just have these.

2 CHAIRPERSON TOFT: Wouldn't we prefer  
3 smaller versions for the record, smaller versions of  
4 the exhibits?

5 MR. WOOLDRIDGE: No. I will keep those.

6 CHAIRPERSON TOFT: The black and white as  
7 H, and the color as I, please. If you wouldn't mind  
8 if people refer to those, that you refer to that.  
9 Otherwise our record doesn't make much sense.

10 MR. BURKE: Would you like this included as  
11 well?

12 CHAIRPERSON TOFT: Is it a different  
13 photograph from the one we have?

14 MR. BURKE: It should not be. Well, it may  
15 be. Since you drove by I don't need it.

16 CHAIRPERSON TOFT: I will leave it to you  
17 to decide if you want to put it in the record or not.

18 MR. BURKE: Okay. I will go ahead and mark  
19 this J.

20 CHAIRPERSON TOFT: That's fine.

21 (Deposition Exhibit Nos. H, I, J, Drawings,  
22 were then marked for identification.)

23 MR. BURKE: I will put these back up.

24 CHAIRPERSON TOFT: Counsel, if you can  
25 clarify for the record now that we have marked these.

1 The retaining wall that you are proposing is shown on  
2 Exhibit H?

3 MR. BURKE: Correct.

4 CHAIRPERSON TOFT: And is there something  
5 on that exhibit that you can describe for us so the  
6 record will reflect where on the exhibit that  
7 retaining wall is here?

8 MR. BURKE: Sure. It is labeled retaining  
9 wall. It's in-between the proposed lines of  
10 vegetation to the east of the pool.

11 CHAIRPERSON TOFT: And the existing  
12 retaining wall that edges the pool deck, where is that  
13 reflected in Exhibit H?

14 MR. BURKE: I believe it looks like it's  
15 in-between --

16 MS. SCHNARR: Do you need some help?

17 MR. BURKE: I'm not sure this is this  
18 as-built.

19 MS. SCHNARR: This is the retaining wall  
20 that was built by the pool contractor.

21 MR. BURKE: Do you know if it's exactly as  
22 it shows up here, or does this predate the shift of  
23 the pool?

24 MS. SCHNARR: It predated the shift, but it  
25 really did not change.

1                   MR. BURKE: It just got shifted. So this  
2 is not an as-built drawing? It's a rendering for  
3 planning purposes that was Exhibit I. And so although  
4 they don't accurately reflect the location of the  
5 existing -- now existing retaining wall, it shows  
6 roughly the shape of it. And that is in-between the  
7 pool and the proposed vegetation.

8                   CHAIRPERSON TOFT: You may continue.

9                   MR. BURKE: There is not much else to tell  
10 you. Basically with all that background we  
11 respectfully request a variance of Sections IV F 3 and  
12 4 of the code to permit erosion and storm water  
13 control preventing runoff onto Terry Lane, to allow  
14 for landscaping establishment for screening,  
15 benefiting the owners and also neighbors and passersby  
16 on Terry Lane, and also allow a safer fencing around  
17 the existing pool so it's not on a steep slope, but on  
18 top of a retaining wall with a lesser slope.

19                   As we have discussed, and you can see there  
20 is a very steep slope existing on the property at this  
21 time, and this retaining wall would allow us to  
22 improve the appearance of it, and improve the safety,  
23 and lessen the impact of the existing improvements,  
24 such as the pool, and the permitted improvement  
25 lessens the impact of those on the neighborhood.

1                   CHAIRPERSON TOFT: You have under tab 8 two  
2 photographs. One of a past retaining wall with what  
3 looks like to be a swimming pool in the background,  
4 and some other things. Can you tell us what the  
5 purpose of those are?

6                   MR. BURKE: Sure. They are labeled under  
7 tab 8 within your packets, but, I'm sorry, I did not  
8 explain those. They are pictures of similar completed  
9 retaining walls that Omni has done, just to give you  
10 an idea of what the construction materials -- of what  
11 the completed project might look like, subject to any  
12 comments you would have, obviously.

13                   CHAIRPERSON TOFT: Was any consideration  
14 given to a retaining wall with planting pockets so  
15 that it would be a green wall as opposed to a cast  
16 wall that the neighbors would be seeing?

17                   MR. BURKE: Do you know if that was  
18 considered?

19                   MS. SCHNARR: I wouldn't have considered  
20 it. It's just my personal thing. They are not  
21 attractive. There is more room to plant. I'm  
22 planting in front of this retaining wall with large  
23 trees and shrubs. I don't think small pockets on the  
24 wall would make it a better evergreen wall.

25                   MR. STEELE: The maintenance on those is

1 really high sometimes in order to keep them watered  
2 and stuff like that. Our whole thing of this is to  
3 reduce runoff maintenance watering and establish good  
4 plant material. The less of a slope we have, we have  
5 a lot more options as far as evergreen material and  
6 stuff to keep water on them.

7           The steeper the slope, you know, you get a  
8 summer like last summer that's very difficult and  
9 ongoing watering to maintain those.

10           We have worked around Ladue a lot. We deal  
11 with a lot of storm water runoff and everything else.  
12 We are part of the Deer Creek watershed people, and so  
13 we try to reduce runoff, reduce the amount of  
14 irrigation that's needed, and plant the right things  
15 that are established, you know, that grow well here.

16           Retaining walls aren't our favorites, but  
17 one thing we do is we hide them. We will use them if  
18 necessary. You can go up and down Ladue Road and see  
19 some places where they have tried to establish ground  
20 covers, and it's taken ten years. It washes out  
21 before it really gets something established.

22           CHAIRPERSON TOFT: What, if anything,  
23 happens -- I noticed the application says this is to  
24 reduce storm water. What, if anything, are you doing  
25 with storm water that would benefit the residents on

1 Terry Lane and Ladue Road?

2 MR. STEELE: The benefit of reducing that  
3 runoff, you know, the less water, that's an asphalt  
4 road and there is no storm sewers there. The less  
5 water you get going under the road.

6 MS. SCHNARR: Level ground takes on more  
7 water. If you have that steep slope and it's left  
8 there, the water runoff is faster. And it doesn't  
9 give the water time to soak into that level ground  
10 area. So, a lot of the water that's going to be  
11 coming from the pool decking is going to come off into  
12 that level area and seep down into the ground better.  
13 It's just less runoff.

14 Plus, you have -- the plant material itself  
15 is going to help hold that hillside. There is a  
16 variety of ground cover proposed that's a very good  
17 ground cover for erosion control. Again, it's just a  
18 way to prevent mulch and soil and more water that runs  
19 all the way down to the end of Terry Lane. So all  
20 that plant material --

21 CHAIRPERSON TOFT: There is no French drain  
22 or any other system intended to divert the water?

23 MS. SCHNARR: No.

24 MR. GOEBEL: We need to be clear about  
25 that. This is a structural retaining wall for soil.

1 This is not designed to hold water. There is no  
2 detention in it. In fact, the whole concept of these  
3 retaining walls is to allow the water to pass through,  
4 because the weight of water is tremendous.

5 MS. SCHNARR: I think it slows the water.

6 CHAIRPERSON TOFT: We can only have one  
7 person talking at a time. Mr. Goebel is speaking.

8 MR. GOEBEL: This has rock backfill and has  
9 a drainage pipe below it to make sure that the water  
10 is not held by the wall. It will topple a simple wall  
11 like this in no time. Structures are intended really  
12 to detain water are a whole different category of  
13 work. It may have come characteristics in terms of  
14 filtration, but it will not eliminate storm drainage  
15 coming down that hill. It's still headed that way.

16 MS. SCHNARR: I don't want to sound like it  
17 is a way to retain water. But it does slow it down  
18 significantly. And, yes, the wall does provide, you  
19 know -- there needs to be filtration. And we  
20 understand that also. We are not trying to make it  
21 sound like we are trying to retain water. It's the  
22 retaining wall itself with the plant material and the  
23 rock and everything does slow down the speed of the  
24 water. And so it's soaking in, the plants are getting  
25 the water they need to get established on that

1 hillside. And it does reduce the speed of the water  
2 traveling down that area.

3 CHAIRPERSON TOFT: Did you have anything  
4 further?

5 MR. BURKE: I think that's it at this time.

6 CHAIRPERSON TOFT: Okay. Would any member  
7 of the audience at this time wish to comment on the  
8 application? If so -- would you please come forward.

9 MS. OPDYCKE: My name is Susan Opdycke. I  
10 live with my mother at 6 Terry Lane. And I support  
11 whatever it takes to keep that dirt from coming down  
12 the street.

13 Last week it rained two inches overnight,  
14 and you can still, perhaps you noticed today, there is  
15 a long streak of mud going down and sort of settling  
16 in the pool in Number 8 Terry Lane, which is not  
17 represented here.

18 So the longer it goes on, and we are  
19 supposed to be heading into several days of storms,  
20 I'm concerned about what will happen in that time  
21 frame with the dirt rolling away.

22 I know as things are planted, and my own  
23 home is on a hill, and it takes a lot of work to keep  
24 things, you know, the ground from eroding and keep  
25 things growing there.

1                   And so I would hope that whatever you all  
2 decide to do in terms of the retaining wall, in terms  
3 of whatever is required by law, a fence to keep a  
4 swimming pool safe, all of those things get covered,  
5 but right now I know my mom is real concerned about  
6 all the dirt washing down Terry Lane.

7                   CHAIRPERSON TOFT: Where is your house in  
8 relation to the home at issue?

9                   MS. OPDYCKE: It is across the street and  
10 down the hill one.

11                   CHAIRPERSON TOFT: To the north?

12                   MS. OPDYCKE: To the north.

13                   CHAIRPERSON TOFT: Okay. Would you be  
14 looking at this retaining wall from your home?

15                   MS. OPDYCKE: We can see -- our house is  
16 sort of split between 12 and whatever the next house  
17 down on Dielman Road is. And so, yes, we look and we  
18 can see a lot of the pool area and the house.

19                   CHAIRPERSON TOFT: And the residents who  
20 would be directly across the street, are they here?

21                   MS. OPDYCKE: That's Mark Tuck and Jason.  
22 Though their house is directly across.

23                   CHAIRPERSON TOFT: Thank you. Is there any  
24 other member of the audience who wishes to speak?  
25 Would you be kind enough to give the court reporter

1 your name before you start speaking?

2 MR. KERCKHOFF: I'm Martin Kerckhoff. I  
3 live at 26 Dielman Road.

4 Let me explain a little bit about the  
5 addresses that have come up here. It's a little  
6 confusing. There are four Dielman Road addresses that  
7 are also Terry Lane addresses. I'm 26 Dielman, and  
8 I'm also Number 7 Terry Lane. The Berniers are --

9 MR. BERNIER: 12 Dielman.

10 MR. KERCKHOFF: 12 Dielman. Number 3 Terry  
11 Lane. You can move the mailbox around and change your  
12 address. The Dexters here, as well as Mr. Tuck, live  
13 directly behind, across Terry Lane, and so they see it  
14 more than anyone else. They also see the current mud  
15 running down the lane.

16 The other letters you got were from the  
17 Robbins, which is a Ladue Road mailing address. They  
18 can also be a Terry Lane address, and they would be  
19 Number 1, the immediate next-door neighbor on the  
20 south to the Berniers.

21 And so I, too, am speaking out in favor of  
22 the application. They have received permission to put  
23 in a pool. The pool is in. A retaining wall is  
24 necessary, or it's exactly like this one or something  
25 else, a retaining wall somewhere has got to be built.

1 I think in order to be consistent you really need to  
2 allow them to protect the property as well as any land  
3 or soil that might come down. It's going to beautify  
4 our neighborhood. It's going to improve property  
5 values. My only concern is that the County Assessor  
6 may use that as comp for taxes next time. Other than  
7 that I have no objection at all.

8 I think it's going to be an asset to the  
9 lane, to the neighborhood, to the whole city. I would  
10 urge you to grant the petition. Thank you.

11 CHAIRPERSON TOFT: Thank you.

12 MRS. KERCKHOFF: I'm Diane Kerckhoff. I'm  
13 the other half of Martin. We have been living in the  
14 same house for 54 years now on Terry Lane. I came as  
15 a bride to that house. And so this is such an  
16 improvement over the shrubby gnarling trees and weeds  
17 and everything else that had been on that property for  
18 the longest time. And I really look forward to having  
19 something this beautiful there. And I can understand  
20 why they do need a variance because it's a very odd  
21 shape with the way the ground falls off. And they  
22 really do need to get the support they need so the  
23 children can have a swimming pool. I'm very much in  
24 favor.

25 CHAIRPERSON TOFT: Thank you. Is there

1 anyone else, any member of the audience who wishes to  
2 address this case? Seeing that there are none I will  
3 then close the public portion of the meeting unless I  
4 have an objection from any member of the board.

5 MS. FORSHAW: I still have questions. I  
6 don't know if you care which portion we do that in.

7 CHAIRPERSON TOFT: Do you want to address  
8 the applicant?

9 MS. FORSHAW: Yes.

10 CHAIRPERSON TOFT: Why don't you go ahead,  
11 and we will wait to close it.

12 MS. FORSHAW: I still need a clear summary  
13 of what variances you are requesting, and how many  
14 feet of variance you need in each case. It looks to  
15 me as though you are looking for variances for three  
16 different issues, the setback, the height, and the  
17 distance between the two retaining walls; is that  
18 correct?

19 MR. BURKE: Correct.

20 MS. FORSHAW: Okay. Is the required  
21 setback under the ordinance looks to be 15 feet. How  
22 big of a setback are you asking for?

23 MR. BURKE: The required setback is 15  
24 feet.

25 MS. FORSHAW: Is that right?

1 MR. GARTENBERG: Yes, with a retaining  
2 wall.

3 MR. BURKE: The shortest distance between  
4 the property line and the wall is three feet; correct?

5 MS. FORSHAW: So you are looking to be  
6 about 11 or 12 feet closer to the property line than  
7 the ordinance allows; right?

8 MR. BURKE: Correct.

9 MS. FORSHAW: Okay. Then there is the  
10 issue of the height variance. The ordinance says that  
11 the height of the retaining wall is not supposed to  
12 exceed 36 inches. What height are you asking for?

13 MR. BURKE: Four feet at the highest.

14 MS. FORSHAW: All right. So that's one  
15 foot over what the ordinance allows. Okay. And  
16 finally the distance between the two retaining walls  
17 is supposed to be 20 feet, and what are you asking  
18 for?

19 MR. BURKE: We need to consult the plans  
20 that were submitted in one of the exhibits.

21 MR. BERNIER: Can I ask you just one  
22 question under the ordinance? This is Keith Bernier.  
23 I just have a question.

24 CHAIRPERSON TOFT: You can ask us. We will  
25 see if we can get it addressed.

1 MR. BERNIER: The retaining wall that we  
2 pulled from Section F, it says the retaining wall in a  
3 side rear yard may be up to 36 inches provided the  
4 setback is at least one half of the distance required  
5 for principal building. Did I interpret that right?  
6 The principal ones were six feet off of the property  
7 line.

8 MR. GARTENBERG: The setback for -- the  
9 principal structure, the primary structure.

10 MR. BERNIER: So that's not off the  
11 property line?

12 MR. GARTENBERG: It is, but it would be 30  
13 feet. The primary structure must maintain a 30-foot  
14 setback on the rear property line.

15 MS. FORSHAW: That's the house.

16 MR. BERNIER: Maybe I misunderstood.

17 MR. GARTENBERG: What tab do you have?

18 CHAIRPERSON TOFT: 30 feet is a minimum  
19 rear yard setback in that -- in the C district.

20 MR. GARTENBERG: This is making reference  
21 to the principal building, the primary structure of  
22 the house. The setback for the house is 30 feet on  
23 the rear property line.

24 MR. BERNIER: I was looking at number 2  
25 where it says 6 feet from the property line, but

1 that's not permanent structure.

2 MR. GARTENBERG: Number 2, this has been  
3 defined as a rear yard.

4 MR. BERNIER: Correct. I was  
5 misinterpreting it. I was taking that line off of  
6 number 2. And -- but that's where it was three feet.  
7 But that's off the principal structure. That's where  
8 my mistake was. That makes sense.

9 MR. GARTENBERG: I'm not understanding what  
10 you were doing, but as long as you understand the  
11 answer.

12 MR. BERNIER: That's what I asked. The  
13 principal structure rather than the property line.

14 MS. FORSHAW: Okay. I still need an answer  
15 on the number of feet between the two retaining walls  
16 that you are asking for.

17 MR. BURKE: Do we have that?

18 MS. SCHNARR: I don't know that I have that  
19 exact number at this point. This is -- between these  
20 two walls I'm thinking those are probably six feet  
21 apart.

22 MR. BURKE: So it would be a variance of,  
23 say, 15 feet from the requirement, just to be  
24 cautious.

25 CHAIRPERSON TOFT: Are your questions

1 answered?

2 MS. FORSHAW: Yes.

3 CHAIRPERSON TOFT: All right. Unless there  
4 is any objection from a member of the board I will  
5 close the public portion immediately. Is there any  
6 objection? Okay. All right.

7 Which member would like to start the  
8 discussion?

9 MR. GOEBEL: I have one or two questions --  
10 I will -- for our building department. At some height  
11 as retaining walls get taller there is a barrier fence  
12 required at the top. Do you know what that height is?

13 MR. GARTENBERG: I believe it's three or  
14 four feet. If there is an adjacent fall concern. I  
15 think three or four feet.

16 CHAIRPERSON TOFT: Would that apply in this  
17 case?

18 MR. GOEBEL: I don't think it would,  
19 because this is a fence immediately above it. I guess  
20 the point is, as these retaining walls get taller  
21 there is a safety concern for that.

22 CHAIRPERSON TOFT: For falls?

23 MR. GOEBEL: Yes. I couldn't remember what  
24 that height is. The only thing I would say in our  
25 discussion here among ourselves is if this is only six

1 feet or so between the two retaining walls, then they  
2 really don't have enough room to install this  
3 according to their details. So -- because you can't  
4 undermine the upper wall when you build the lower  
5 wall. So as they get closer together, I'm not sure  
6 you can stabilize it properly. And that's a  
7 construction problem, not necessarily for us.

8 I just sense a lack of thorough details.  
9 We don't know what the expanse of these walls do.  
10 There is a lot left to the imagination. I think it's  
11 important consideration for what the design of this  
12 wall is and what these heights are to make sure that  
13 what we approve is actually actionable or clear enough  
14 for our building department so they know what it is  
15 that has been approved. So it could leave a lot to  
16 the imagination to approve a variance that has this.

17 I guess I'm not persuaded as to the  
18 benefits of a grade retaining wall to the issue of  
19 storm water controls. I understand it has some  
20 filtration concern. If there is a concern about water  
21 running on the street right now, I would add that we  
22 did not observe any siltation fences in place, which  
23 would be common during construction, or straw hay  
24 bales, that would prevent storm water while it's under  
25 construction. They may be out of the way temporarily

1 or something.

2 CHAIRPERSON TOFT: I thought there was.

3 MR. WOOLDRIDGE: There was.

4 CHAIRPERSON TOFT: I thought there was.

5 MS. SCHNARR: There is.

6 MR. GOEBEL: Maybe there is some temporary  
7 provisions. But I wouldn't, again, hold that out as a  
8 reason for a retaining wall, because they do a very  
9 poor job of that. And for the storm water, among the  
10 neighbors, but, I mean, you can't really tell from  
11 this what it is that they are going to build based on  
12 not having that plan reconciled with that floor plan  
13 that we looked at before. So, you know, I'm concerned  
14 about that. That's initial comments.

15 CHAIRPERSON TOFT: My concern is we don't  
16 have -- we have drawings. Mr. Gartenberg, did that  
17 actually request what was built, or was that before  
18 the pool was shifted; do you know?

19 MR. GARTENBERG: My understanding of the  
20 scenario is that the plan for the retaining wall that  
21 we are looking at today was developed before the  
22 swimming pool plan was perfected and submitted and  
23 permitted. So that the discrepancy that exists  
24 between those two plans are the result of the plan we  
25 are looking at today not having been updated to

1 reflect that swimming pool information.

2 CHAIRPERSON TOFT: My concern is if we are  
3 talking about six feet, and with the gravel needed, I  
4 don't know what plans can realistically determine that  
5 because I don't know if there is going to be enough  
6 dirt back there to support it. It's one thing to draw  
7 a nice tall evergreen on a drawing. It's another  
8 thing if there is going to be enough soil and depth to  
9 support a root structure of something like that.

10 I will just throw that out, because this is  
11 your first zoning hearing here. I mean, there are a  
12 number of ways to try to address it.

13 You know, one is we just don't have enough  
14 information, we don't feel we can grant a variance  
15 with considerable restrictions that maybe the property  
16 owner doesn't feel that it's tenable. And then I  
17 guess the third would be to continue the case until we  
18 can get drawings that actually reflect the existing  
19 pool, decking, and the existing retaining wall and put  
20 it in place with an actual -- to the actual dimensions  
21 to reflect the retaining wall that's being requested.

22 I agree with you, I don't know that we have  
23 ever been -- I would add, I cannot remember a case  
24 where we have been asked to allow a retaining wall  
25 within the required setback where that retaining wall

1 would face the front yard and the drive of other  
2 residences.

3 MR. GOEBEL: I just suspect this is a lot  
4 more retaining wall. It doesn't look like it needs  
5 new engineering information. But I suspect by the  
6 time they reconcile this concept with their wall it  
7 will get to be considerably taller than what we think.

8 I mean, with all respect to the attorney  
9 representing them, it needs to be done by someone that  
10 will work through the topography and terrain, and so  
11 when we say it's a reasonable compromise or not, that  
12 it's based on a clear understanding of how they are  
13 going to construct it, again so that our building  
14 department would know what to do. On the other hand,  
15 whether it's reasonable or not is, you know, in  
16 general concept we can determine here today.

17 In terms of a design for it, I think it's  
18 going to be a lot bigger wall than what this drawing  
19 indicates.

20 CHAIRPERSON TOFT: My concern is we may  
21 grant a variance and then find that all the lovely  
22 screening that's appealing to the neighbors can't  
23 survive in that design. And so they are going to be  
24 looking at a lot of retaining wall and a lot of fence,  
25 which makes the whole feel of a lovely colored drawing

1 go by the wayside.

2 MS. LONG: If I can chime in, kind of going  
3 back to the criteria. One is the substantial  
4 deviations of going high, an additional foot. You are  
5 talking about three feet. I'm no mathematician, but  
6 that's pretty substantial.

7 And, also, the request that the two --  
8 distance between the two walls being very much off  
9 from what they are supposed to be, I can put it that  
10 way. I have concerns about that.

11 And also something else I thought about  
12 when I was looking at it, and we have the pictures, is  
13 whether the difficulty can be obviated by some other  
14 method that might be feasible.

15 I just think there is a lot of  
16 guesstimating here, that there might be some  
17 alternative that does not require a variance there.

18 So those are my opinions.

19 MR. SHILLINGTON: Correct me if I'm wrong.  
20 I thought our duty was to be concerned with undue  
21 hardship and practical difficulties. I don't see  
22 either of those at the moment.

23 CHAIRPERSON TOFT: Well, is storm water  
24 runoff to the people on Terry Lane, is that a  
25 practical difficulty? I don't know, quite frankly. I

1 thought the practical difficulty applied to the parcel  
2 of land itself as opposed to the effect on adjacent  
3 improvement.

4 MS. FORSHAW: I think we could consider  
5 runoff as an issue in our determinations. Practical  
6 difficulty, I don't see why not.

7 But I guess I have real questions whether  
8 we have clear enough plans to go on here to grant a  
9 variance. It seems to me a continuance to enable you  
10 all to update your plans, I don't know if it would be  
11 a good idea.

12 CHAIRPERSON TOFT: You have heard the  
13 discussion, and you run the risk that if we call for a  
14 vote on it, bear in mind four out of five people have  
15 to vote in favor of the variance, that your request  
16 could very well fail, and that would kick you out six  
17 months, which is not something that you or the  
18 neighbors want.

19 I think that if you were to request a  
20 continuance, that if you could come back to us with  
21 drawings that would show the existing retaining wall  
22 with the swimming pool, and give us a very clear  
23 indication of where the proposed retaining wall would  
24 be in relation to the existing retaining wall with  
25 height, so you could examine -- I know they are not

1 inexpensive, but actually come up with a rendering of  
2 plant material that could be supported in that space  
3 so that we could have a clear understanding.

4 I'm the old person on this board in terms  
5 of longevity. And I can think of no case in the eight  
6 or so years that I have been doing this where we have  
7 granted a retaining wall variance where that retaining  
8 wall was facing neighbors, because we really do try to  
9 respect how much retaining wall people have to look at  
10 because nobody wants it done to them.

11 And to grant a variance in this case where,  
12 while it's not a primary factor, it's effectively what  
13 your neighbors would be looking at. I think you have  
14 to be careful and make sure that there could be  
15 vegetation that could soften that so we wouldn't have  
16 an offensive amount of retaining wall staring people  
17 in the face.

18 MR. BURKE: We respectfully request to  
19 continue this hearing so we can come back with some  
20 more detailed plans and try to address some of the  
21 concerns you have.

22 CHAIRPERSON TOFT: Is any reason why I  
23 cannot grant that request?

24 MR. WOOLDRIDGE: No. The 3rd of next  
25 month.

1                   CHAIRPERSON TOFT:  Is there any member of  
2 the board who would have an objection to granting a  
3 continuance to allow -- is it possible that the  
4 homeowners could be on the September 3rd docket?  
5 That's the Tuesday after Labor Day.  The 3rd of  
6 September.  So this would allow you to get on that  
7 docket.  And I know you will do everything you can to  
8 keep the sediment from spilling out onto Terry Lane.  
9 And I know the siltation fences are hard to keep up,  
10 particularly on that slope, but to the extent you can  
11 do that, that would be great.

12                   MR. WOOLDRIDGE:  We will need all the  
13 revised plans by two weeks from today.

14                   MR. BURKE:  Two weeks from today.

15                   MR. GARTENBERG:  If I may ask two things.  
16 As far as the immediate needs, the silt fence is  
17 there.  Please put that at the edge of the disturbed  
18 area.  There is a good amount of the disturbed area  
19 that is outside the fence, and the neighbors are  
20 likely to see it work their way in and become a part  
21 of their yards.

22                   Secondly, in the information that you will  
23 be submitting, if you will please confirm topographic  
24 information is accurate both reflective of the  
25 swimming pool permit which the property owner has

1 received from the city, and the existing conditions  
2 which exist out there. That would eliminate any of  
3 the discrepancies that we are seeing here.

4 I actually thought that the project was  
5 being proposed for a single wall, an extension of the  
6 wall that was already there. There was a lot of room  
7 for interpretation or misinterpretation of these  
8 documents.

9 MR. BURKE: Okay. Would it be helpful for  
10 us, once we have these revised plans, to give them to  
11 the staff separately in advance of the next meeting?

12 MR. GARTENBERG: Submit them. I would be  
13 happy to look at them.

14 MR. BURKE: Okay. We will do that.

15 CHAIRPERSON TOFT: All right. That being  
16 the case, we will continue Case Number 1142 to the  
17 docket of September 3rd, 2013.

18 That being done we will adjourn this  
19 meeting.

20 MAYOR SPEWAK: Would you please ask that it  
21 be reflected in the record that I arrived at 4:05 to  
22 the meeting.

23 CHAIRPERSON TOFT: I said you were coming,  
24 and we will formally note your presence. Thank you,  
25 Madam Mayor.

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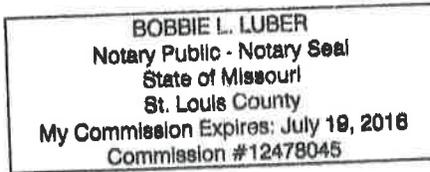
CERTIFICATE OF REPORTER

I, Bobbie L. Luber, Registered Professional Reporter, Certified Court Reporter, and Notary Public within and for the State of Missouri, do hereby certify that the meeting aforementioned was held on the time and in the place previously described.

IN WITNESS WHEREOF, I have hereunto set my hand and seal.



Bobbie L. Luber, RPR, CCR #621



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#084.004673 [1] - 3:23 #621 [2] - 3:22, 54:15 #9209 [1] - 3:22	5 [1] - 1:17 54 [1] - 39:14 5th [1] - 2:15	51:20 addressed [1] - 41:25 addresses [3] - 38:5, 38:6, 38:7 addressing [2] - 10:11, 11:19 adjacent [2] - 44:14, 50:2 adjourn [1] - 53:18 ADJUSTMENT [2] - 1:4, 2:1 Adjustment [9] - 2:17, 4:2, 4:5, 8:13, 9:18, 10:3, 10:22, 11:3, 13:4 advance [1] - 53:11 aesthetic [1] - 11:17 aesthetics [1] - 10:9 aforementioned [1] - 54:7 afternoon [3] - 4:4, 5:6, 9:2 afternoon's [1] - 6:14 agree [1] - 47:22 ahead [2] - 29:18, 40:10 aid [1] - 14:4 alleviate [1] - 13:10 allow [12] - 10:12, 10:13, 11:20, 11:21, 31:13, 31:16, 31:21, 35:3, 39:2, 47:24, 52:3, 52:6 allows [2] - 41:7, 41:15 alternative [1] - 49:17 aluminum [1] - 17:23 amended [1] - 4:25 amount [3] - 33:13, 51:16, 52:18 announce [1] - 21:3 answer [4] - 13:24, 21:2, 43:11, 43:14 answered [1] - 44:1 Anthony [1] - 3:20 apart [1] - 43:21 apologize [4] - 6:25, 9:5, 9:12, 18:5, 5:7, 7:21 appeal [4] - 4:8, 5:5, 5:7, 7:21 appealing [1] - 48:22 appear [2] - 7:14, 11:9 appearance [1] - 31:22 appellant [6] - 5:7, 5:12, 6:2, 6:15, 8:17,	8:25 appellant's [1] - 8:3 Applicant [2] - 3:11, 3:12 applicant [2] - 20:20, 40:8 application [8] - 8:11, 9:25, 11:1, 13:8, 18:18, 33:23, 36:8, 38:22 applied [1] - 50:1 apply [1] - 44:16 appropriate [1] - 13:17 approve [4] - 6:5, 6:11, 45:13, 45:16 approved [2] - 17:10, 45:15 architect [1] - 22:9 area [13] - 16:14, 17:22, 20:5, 26:16, 27:6, 27:7, 27:18, 34:10, 34:12, 36:2, 37:18, 52:18 Armstrong [1] - 9:3 arrived [1] - 53:21 arriving [1] - 9:8 as-built [4] - 20:2, 30:18, 31:2 Aspen [1] - 20:13 asphalt [1] - 34:3 Assessor [1] - 39:5 asset [1] - 39:8 attached [2] - 19:25, 20:14 attendance [1] - 4:15 attorney [1] - 48:8 Attorney [1] - 3:11 attractive [1] - 32:21 audience [7] - 5:13, 5:22, 7:6, 8:22, 36:7, 37:24, 40:1 AUDIENCE [1] - 11:25 August [4] - 1:17, 2:16, 9:14, 10:21 aurally [2] - 10:7, 11:15 aware [1] - 15:20	23:10, 46:11, 48:12 basis [1] - 5:1 BE [1] - 2:15 bear [1] - 50:14 beautiful [1] - 39:19 become [1] - 39:3 become [1] - 52:20 bed [1] - 27:7 begin [1] - 9:14 beginning [1] - 5:17 behalf [1] - 9:4 behind [1] - 38:13 believes [1] - 5:15 belong [1] - 12:7 below [3] - 26:15, 35:9 benefit [4] - 14:14, 14:16, 33:25, 34:2 benefiting [1] - 31:15 benefits [3] - 10:5, 11:13, 45:18 Bernier [8] - 3:12, 6:22, 6:23, 6:24, 9:4, 9:22, 21:5, 41:22 BERNIER [15] - 1:13, 2:10, 6:23, 20:25, 21:5, 21:17, 22:2, 38:9, 41:21, 42:1, 42:10, 42:16, 42:24, 43:4, 43:12 Bernier's [3] - 9:25, 10:25, 11:3 Berniers [6] - 10:10, 10:14, 11:22, 27:9, 38:8, 38:20 Berniers' [4] - 10:2, 10:4, 11:12, 11:18 best [1] - 17:6 better [4] - 23:5, 28:21, 32:24, 34:12 between [15] - 14:12, 17:16, 20:6, 30:9, 30:15, 31:6, 37:16, 40:17, 41:3, 41:16, 43:15, 43:19, 45:1, 46:24, 49:8 big [1] - 40:22 bigger [1] - 48:18 bit [1] - 38:4 black [2] - 28:3, 29:6 board [18] - 4:11, 4:25, 5:12, 5:16, 5:24, 6:4, 6:6, 6:8, 6:10, 6:13, 7:7, 10:13, 11:21, 40:4, 44:4, 51:4, 52:2 BOARD [3] - 1:4, 2:1, 3:2 Board [9] - 2:16, 4:1, 4:5, 8:13, 9:18, 10:3,					
1	6 [2] - 36:10, 42:25 63124 [6] - 1:15, 2:12, 2:19, 9:19, 9:21, 10:23 63131 [1] - 3:24	7 [1] - 38:8	8 [3] - 32:1, 32:7, 36:16	9 [1] - 13:2 9345 [3] - 2:18, 9:18, 10:22 9393 [1] - 9:20 96 [4] - 19:3, 20:5, 21:11, 21:13 97 [1] - 19:4 98 [1] - 21:12 98.5 [2] - 18:25, 20:4 993-0911 [1] - 3:25					
1 [1] - 38:19 10 [1] - 17:16 11 [2] - 24:9, 41:6 1142 [6] - 1:13, 2:10, 4:9, 4:20, 6:19, 53:16 1175 [5] - 4:25, 6:21, 7:3, 10:1, 11:2 12 [9] - 1:14, 2:11, 6:25, 9:21, 10:23, 37:16, 38:9, 38:10, 41:6 15 [8] - 7:13, 7:14, 7:15, 17:1, 17:16, 40:21, 40:23, 43:23	7	8	9	A					
2	9 [1] - 13:2 9345 [3] - 2:18, 9:18, 10:22 9393 [1] - 9:20 96 [4] - 19:3, 20:5, 21:11, 21:13 97 [1] - 19:4 98 [1] - 21:12 98.5 [2] - 18:25, 20:4 993-0911 [1] - 3:25	able [4] - 14:10, 14:23, 16:24, 21:8 above-entitled [1] - 2:19 accommodate [1] - 21:8 according [2] - 16:20, 45:3 accurate [2] - 16:3, 52:24 accurately [2] - 20:13, 31:4 actionable [1] - 45:13 actual [2] - 47:20 add [3] - 14:2, 45:21, 47:23 additional [4] - 6:1, 8:15, 21:14, 49:4 address [8] - 5:14, 38:12, 38:17, 38:18, 40:2, 40:7, 47:12,	2 [7] - 9:14, 10:21, 19:3, 26:17, 42:24, 43:2, 43:6 20 [7] - 13:18, 27:22, 28:6, 28:10, 28:11, 28:14, 41:17 2013 [6] - 1:17, 2:16, 7:23, 9:14, 10:21, 53:17 26 [2] - 38:3, 38:7	3 [4] - 13:3, 13:16, 31:11, 38:10 30 [5] - 7:15, 7:23, 42:12, 42:18, 42:22 30-foot [1] - 42:13 31201 [1] - 3:24 314 [1] - 3:25 36 [2] - 41:12, 42:3 3rd [4] - 51:24, 52:4, 52:5, 53:17	3	4	4 [6] - 12:1, 12:2, 12:17, 13:14, 13:16, 31:12 4:00 [1] - 4:3 4:05 [1] - 53:21		
3	9 [1] - 13:2 9345 [3] - 2:18, 9:18, 10:22 9393 [1] - 9:20 96 [4] - 19:3, 20:5, 21:11, 21:13 97 [1] - 19:4 98 [1] - 21:12 98.5 [2] - 18:25, 20:4 993-0911 [1] - 3:25	able [4] - 14:10, 14:23, 16:24, 21:8 above-entitled [1] - 2:19 accommodate [1] - 21:8 according [2] - 16:20, 45:3 accurate [2] - 16:3, 52:24 accurately [2] - 20:13, 31:4 actionable [1] - 45:13 actual [2] - 47:20 add [3] - 14:2, 45:21, 47:23 additional [4] - 6:1, 8:15, 21:14, 49:4 address [8] - 5:14, 38:12, 38:17, 38:18, 40:2, 40:7, 47:12,	4 [6] - 12:1, 12:2, 12:17, 13:14, 13:16, 31:12 4:00 [1] - 4:3 4:05 [1] - 53:21	5 [1] - 13:2 9345 [3] - 2:18, 9:18, 10:22 9393 [1] - 9:20 96 [4] - 19:3, 20:5, 21:11, 21:13 97 [1] - 19:4 98 [1] - 21:12 98.5 [2] - 18:25, 20:4 993-0911 [1] - 3:25	6 [2] - 36:10, 42:25 63124 [6] - 1:15, 2:12, 2:19, 9:19, 9:21, 10:23 63131 [1] - 3:24	7 [1] - 38:8	8 [3] - 32:1, 32:7, 36:16	9 [1] - 13:2 9345 [3] - 2:18, 9:18, 10:22 9393 [1] - 9:20 96 [4] - 19:3, 20:5, 21:11, 21:13 97 [1] - 19:4 98 [1] - 21:12 98.5 [2] - 18:25, 20:4 993-0911 [1] - 3:25	A
4	9 [1] - 13:2 9345 [3] - 2:18, 9:18, 10:22 9393 [1] - 9:20 96 [4] - 19:3, 20:5, 21:11, 21:13 97 [1] - 19:4 98 [1] - 21:12 98.5 [2] - 18:25, 20:4 993-0911 [1] - 3:25	able [4] - 14:10, 14:23, 16:24, 21:8 above-entitled [1] - 2:19 accommodate [1] - 21:8 according [2] - 16:20, 45:3 accurate [2] - 16:3, 52:24 accurately [2] - 20:13, 31:4 actionable [1] - 45:13 actual [2] - 47:20 add [3] - 14:2, 45:21, 47:23 additional [4] - 6:1, 8:15, 21:14, 49:4 address [8] - 5:14, 38:12, 38:17, 38:18, 40:2, 40:7, 47:12,	5 [1] - 13:2 9345 [3] - 2:18, 9:18, 10:22 9393 [1] - 9:20 96 [4] - 19:3, 20:5, 21:11, 21:13 97 [1] - 19:4 98 [1] - 21:12 98.5 [2] - 18:25, 20:4 993-0911 [1] - 3:25	6 [2] - 36:10, 42:25 63124 [6] - 1:15, 2:12, 2:19, 9:19, 9:21, 10:23 63131 [1] - 3:24	7 [1] - 38:8	8 [3] - 32:1, 32:7, 36:16	9 [1] - 13:2 9345 [3] - 2:18, 9:18, 10:22 9393 [1] - 9:20 96 [4] - 19:3, 20:5, 21:11, 21:13 97 [1] - 19:4 98 [1] - 21:12 98.5 [2] - 18:25, 20:4 993-0911 [1] - 3:25	A	
	able [4] - 14:10, 14:23, 16:24, 21:8 above-entitled [1] - 2:19 accommodate [1] - 21:8 according [2] - 16:20, 45:3 accurate [2] - 16:3, 52:24 accurately [2] - 20:13, 31:4 actionable [1] - 45:13 actual [2] - 47:20 add [3] - 14:2, 45:21, 47:23 additional [4] - 6:1, 8:15, 21:14, 49:4 address [8] - 5:14, 38:12, 38:17, 38:18, 40:2, 40:7, 47:12,	5 [1] - 13:2 9345 [3] - 2:18, 9:18, 10:22 9393 [1] - 9:20 96 [4] - 19:3, 20:5, 21:11, 21:13 97 [1] - 19:4 98 [1] - 21:12 98.5 [2] - 18:25, 20:4 993-0911 [1] - 3:25	6 [2] - 36:10, 42:25 63124 [6] - 1:15, 2:12, 2:19, 9:19, 9:21, 10:23 63131 [1] - 3:24	7 [1] - 38:8	8 [3] - 32:1, 32:7, 36:16	9 [1] - 13:2 9345 [3] - 2:18, 9:18, 10:22 9393 [1] - 9:20 96 [4] - 19:3, 20:5, 21:11, 21:13 97 [1] - 19:4 98 [1] - 21:12 98.5 [2] - 18:25, 20:4 993-0911 [1] - 3:25	A		
	able [4] - 14:10, 14:23, 16:24, 21:8 above-entitled [1] - 2:19 accommodate [1] - 21:8 according [2] - 16:20, 45:3 accurate [2] - 16:3, 52:24 accurately [2] - 20:13, 31:4 actionable [1] - 45:13 actual [2] - 47:20 add [3] - 14:2, 45:21, 47:23 additional [4] - 6:1, 8:15, 21:14, 49:4 address [8] - 5:14, 38:12, 38:17, 38:18, 40:2, 40:7, 47:12,	5 [1] - 13:2 9345 [3] - 2:18, 9:18, 10:22 9393 [1] - 9:20 96 [4] - 19:3, 20:5, 21:11, 21:13 97 [1] - 19:4 98 [1] - 21:12 98.5 [2] - 18:25, 20:4 993-0911 [1] - 3:25	6 [2] - 36:10, 42:25 63124 [6] - 1:15, 2:12, 2:19, 9:19, 9:21, 10:23 63131 [1] - 3:24	7 [1] - 38:8	8 [3] - 32:1, 32:7, 36:16	9 [1] - 13:2 9345 [3] - 2:18, 9:18, 10:22 9393 [1] - 9:20 96 [4] - 19:3, 20:5, 21:11, 21:13 97 [1] - 19:4 98 [1] - 21:12 98.5 [2] - 18:25, 20:4 993-0911 [1] - 3:25	A		
	able [4] - 14:10, 14:23, 16:24, 21:8 above-entitled [1] - 2:19 accommodate [1] - 21:8 according [2] - 16:20, 45:3 accurate [2] - 16:3, 52:24 accurately [2] - 20:13, 31:4 actionable [1] - 45:13 actual [2] - 47:20 add [3] - 14:2, 45:21, 47:23 additional [4] - 6:1, 8:15, 21:14, 49:4 address [8] - 5:14, 38:12, 38:17, 38:18, 40:2, 40:7, 47:12,	5 [1] - 13:2 9345 [3] - 2:18, 9:18, 10:22 9393 [1] - 9:20 96 [4] - 19:3, 20:5, 21:11, 21:13 97 [1] - 19:4 98 [1] - 21:12 98.5 [2] - 18:25, 20:4 993-0911 [1] - 3:25	6 [2] - 36:10, 42:25 63124 [6] - 1:15, 2:12, 2:19, 9:19, 9:21, 10:23 63131 [1] - 3:24	7 [1] - 38:8	8 [3] - 32:1, 32:7, 36:16	9 [1] - 13:2 9345 [3] - 2:18, 9:18, 10:22 9393 [1] - 9:20 96 [4] - 19:3, 20:5, 21:11, 21:13 97 [1] - 19:4 98 [1] - 21:12 98.5 [2] - 18:25, 20:4 993-0911 [1] - 3:25	A		
	able [4] - 14:10, 14:23, 16:24, 21:8 above-entitled [1] - 2:19 accommodate [1] - 21:8 according [2] - 16:20, 45:3 accurate [2] - 16:3, 52:24 accurately [2] - 20:13, 31:4 actionable [1] - 45:13 actual [2] - 47:20 add [3] - 14:2, 45:21, 47:23 additional [4] - 6:1, 8:15, 21:14, 49:4 address [8] - 5:14, 38:12, 38:17, 38:18, 40:2, 40:7, 47:12,	5 [1] - 13:2 9345 [3] - 2:18, 9:18, 10:22 9393 [1] - 9:20 96 [4] - 19:3, 20:5, 21:11, 21:13 97 [1] - 19:4 98 [1] - 21:12 98.5 [2] - 18:25, 20:4 993-0911 [1] - 3:25	6 [2] - 36:10, 42:25 63124 [6] - 1:15, 2:12, 2:19, 9:19, 9:21, 10:23 63131 [1] - 3:24	7 [1] - 38:8	8 [3] - 32:1, 32:7, 36:16	9 [1] - 13:2 9345 [3] - 2:18, 9:18, 10:22 9393 [1] - 9:20 96 [4] - 19:3, 20:5, 21:11, 21:13 97 [1] - 19:4 98 [1] - 21:12 98.5 [2] - 18:25, 20:4 993-0911 [1] - 3:25	A		
	able [4] - 14:10, 14:23, 16:24, 21:8 above-entitled [1] - 2:19 accommodate [1] - 21:8 according [2] - 16:20, 45:3 accurate [2] - 16:3, 52:24 accurately [2] - 20:13, 31:4 actionable [1] - 45:13 actual [2] - 47:20 add [3] - 14:2, 45:21, 47:23 additional [4] - 6:1, 8:15, 21:14, 49:4 address [8] - 5:14, 38:12, 38:17, 38:18, 40:2, 40:7, 47:12,	5 [1] - 13:2 9345 [3] - 2:18, 9:18, 10:22 9393 [1] - 9:20 96 [4] - 19:3, 20:5, 21:11, 21:13 97 [1] - 19:4 98 [1] - 21:12 98.5 [2] - 18:25, 20:4 993-0911 [1] - 3:25	6 [2] - 36:10, 42:25 63124 [6] - 1:15, 2:12, 2:19, 9:19, 9:21, 10:23 63131 [1] - 3:24	7 [1] - 38:8	8 [3] - 32:1, 32:7, 36:16	9 [1] - 13:2 9345 [3] - 2:18, 9:18, 10:22 9393 [1] - 9:20 96 [4] - 19:3, 20:5, 21:11, 21:13 97 [1] - 19:4 98 [1] - 21:12 98.5 [2] - 18:25, 20:4 993-0911 [1] - 3:25	A		
	able [4] - 14:10, 14:23, 16:24, 21:8 above-entitled [1] - 2:19 accommodate [1] - 21:8 according [2] - 16:20, 45:3 accurate [2] - 16:3, 52:24 accurately [2] - 20:13, 31:4 actionable [1] - 45:13 actual [2] - 47:20 add [3] - 14:2, 45:21, 47:23 additional [4] - 6:1, 8:15, 21:14, 49:4 address [8] - 5:14, 38:12, 38:17, 38:18, 40:2, 40:7, 47:12,	5 [1] - 13:2 9345 [3] - 2:18, 9:18, 10:22 9393 [1] - 9:20 96 [4] - 19:3, 20:5, 21:11, 21:13 97 [1] - 19:4 98 [1] - 21:12 98.5 [2] - 18:25, 20:4 993-0911 [1] - 3:25	6 [2] - 36:10, 42:25 63124 [6] - 1:15, 2:12, 2:19, 9:19, 9:21, 10:23 63131 [1] - 3:24	7 [1] - 38:8	8 [3] - 32:1, 32:7, 36:16	9 [1] - 13:2 9345 [3] - 2:18, 9:18, 10:22 9393 [1] - 9:20 96 [4] - 19:3, 20:5, 21:11, 21:13 97 [1] - 19:4 98 [1] - 21:12 98.5 [2] - 18:25, 20:4 993-0911 [1] - 3:25	A		
	able [4] - 14:10, 14:23, 16:24, 21:8 above-entitled [1] - 2:19 accommodate [1] - 21:8 according [2] - 16:20, 45:3 accurate [2] - 16:3, 52:24 accurately [2] - 20:13, 31:4 actionable [1] - 45:13 actual [2] - 47:20 add [3] - 14:2, 45:21, 47:23 additional [4] - 6:1, 8:15, 21:14, 49:4 address [8] - 5:14, 38:12, 38:17, 38:18, 40:2, 40:7, 47:12,	5 [1] - 13:2 9345 [3] - 2:18, 9:18, 10:22 9393 [1] - 9:20 96 [4] - 19:3, 20:5, 21:11, 21:13 97 [1] - 19:4 98 [1] - 21:12 98.5 [2] - 18:25, 20:4 993-0911 [1] - 3:25	6 [2] - 36:10, 42:25 63124 [6] - 1:15, 2:12, 2:19, 9:19, 9:21, 10:23 63131 [1] - 3:24	7 [1] - 38:8	8 [3] - 32:1, 32:7, 36:16	9 [1] - 13:2 9345 [3] - 2:18, 9:18, 10:22 9393 [1] - 9:20 96 [4] - 19:3, 20:5, 21:11, 21:13 97 [1] - 19:4 98 [1] - 21:12 98.5 [2] - 18:25, 20:4 993-0911 [1] - 3:25	A		
	able [4] - 14:10, 14:23, 16:24, 21:8 above-entitled [1] - 2:19 accommodate [1] - 21:8 according [2] - 16:20, 45:3 accurate [2] - 16:3, 52:24 accurately [2] - 20:13, 31:4 actionable [1] - 45:13 actual [2] - 47:20 add [3] - 14:2, 45:21, 47:23 additional [4] - 6:1, 8:15, 21:14, 49:4 address [8] - 5:14, 38:12, 38:17, 38:18, 40:2, 40:7, 47:12,	5 [1] - 13:2 9345 [3] - 2:18, 9:18, 10:22 9393 [1] - 9:20 96 [4] - 19:3, 20:5, 21:11, 21:13 97 [1] - 19:4 98 [1] - 21:12 98.5 [2] - 18:25, 20:4 993-0911 [1] - 3:25	6 [2] - 36:10, 42:25 63124 [6] - 1:15, 2:12, 2:19, 9:19, 9:21, 10:23 63131 [1] - 3:24	7 [1] - 38:8	8 [3] - 32:1, 32:7, 36:16	9 [1] - 13:2 9345 [3] - 2:18, 9:18, 10:22 9393 [1] - 9:20 96 [4] - 19:3, 20:5, 21:11, 21:13 97 [1] - 19:4 98 [1] - 21:12 98.5 [2] - 18:25, 20:4 993-0911 [1] - 3:25	A		
	able [4] - 14:10, 14:23, 16:24, 21:8 above-entitled [1] - 2:19 accommodate [1] - 21:8 according [2] - 16:20, 45:3 accurate [2] - 16:3, 52:24 accurately [2] - 20:13, 31:4 actionable [1] - 45:13 actual [2] - 47:20 add [3] - 14:2, 45:21, 47:23 additional [4] - 6:1, 8:15, 21:14, 49:4 address [8] - 5:14, 38:12, 38:17, 38:18, 40:2, 40:7, 47:12,	5 [1] - 13:2 9345 [3] - 2:18, 9:18, 10:22 9393 [1] - 9:20 96 [4] - 19:3, 20:5, 21:11, 21:13 97 [1] - 19:4 98 [1] - 21:12 98.5 [2] - 18:25, 20:4 993-0911 [1] - 3:25	6 [2] - 36:10, 42:25 63124 [6] - 1:15, 2:12, 2:19, 9:19, 9:21, 10:23 63131 [1] - 3:24	7 [1] - 38:8	8 [3] - 32:1, 32:7, 36:16	9 [1] - 13:2 9345 [3] - 2:18, 9:18, 10:22 9393 [1] - 9:20 96 [4] - 19:3, 20:5, 21:11, 21:13 97 [1] - 19:4 98 [1] - 21			

<p>10:21, 11:3, 13:3  <b>Bobbie</b> [5] - 2:20, 3:21, 3:23, 54:4, 54:15  <b>Bommarito</b> [2] - 3:20, 4:21  <b>bottom</b> [1] - 18:1  <b>Box</b> [1] - 3:24  <b>bride</b> [1] - 39:15  <b>bring</b> [1] - 14:3  <b>bringing</b> [1] - 16:6  <b>buffer</b> [1] - 26:16  <b>build</b> [2] - 45:4, 46:11  <b>building</b> [10] - 7:1, 7:24, 15:23, 18:16, 21:7, 42:5, 42:21, 44:10, 45:14, 48:13  <b>Building</b> [2] - 3:10, 4:16  <b>built</b> [9] - 15:13, 16:4, 20:2, 30:18, 30:20, 31:2, 38:25, 46:17  <b>Burke</b> [2] - 3:11, 9:3  <b>BURKE</b> [55] - 9:2, 9:16, 10:17, 11:7, 12:1, 12:3, 12:8, 12:14, 12:18, 12:21, 12:24, 15:14, 16:12, 18:15, 19:7, 19:12, 20:23, 22:4, 25:7, 25:21, 26:17, 26:21, 27:19, 27:25, 28:8, 28:13, 28:16, 28:19, 28:25, 29:10, 29:14, 29:18, 29:23, 30:3, 30:8, 30:14, 30:17, 30:21, 31:1, 31:9, 32:6, 32:17, 36:5, 40:19, 40:23, 41:3, 41:8, 41:13, 41:19, 43:17, 43:22, 51:18, 52:14, 53:9, 53:14</p>	<p>47:17, 47:23, 51:5, 51:11, 53:16  <b>cast</b> [1] - 32:15  <b>category</b> [1] - 35:12  <b>cautious</b> [1] - 43:24  <b>CCR</b> [2] - 3:22, 54:15  <b>center</b> [2] - 23:12, 24:16  <b>certain</b> [1] - 17:21  <b>certainly</b> [1] - 9:2  <b>CERTIFICATE</b> [1] - 54:1  <b>Certified</b> [3] - 2:20, 2:21, 54:5  <b>certify</b> [1] - 54:7  <b>Chairman</b> [1] - 3:3  <b>CHAIRPERSON</b> [78] - 4:4, 6:24, 7:19, 8:10, 8:24, 9:13, 9:17, 10:19, 11:9, 12:2, 12:5, 12:9, 12:12, 12:16, 12:19, 12:22, 16:22, 17:11, 17:18, 17:24, 19:23, 20:10, 20:16, 21:1, 22:8, 22:21, 23:20, 23:24, 24:4, 24:17, 24:20, 25:1, 25:6, 26:19, 28:3, 28:23, 29:2, 29:6, 29:12, 29:16, 29:20, 29:24, 30:4, 30:11, 31:8, 32:1, 32:13, 33:22, 34:21, 35:6, 36:3, 36:6, 37:7, 37:11, 37:13, 37:19, 37:23, 39:11, 39:25, 40:7, 40:10, 41:24, 42:18, 43:25, 44:3, 44:16, 44:22, 46:2, 46:4, 46:15, 47:2, 48:20, 49:23, 50:12, 51:22, 52:1, 53:15, 53:23  <b>change</b> [4] - 15:20, 22:16, 30:25, 38:11  <b>characteristics</b> [2] - 6:16, 35:13  <b>children</b> [1] - 39:23  <b>chime</b> [1] - 49:2  <b>CITY</b> [2] - 1:5, 2:2  <b>city</b> [5] - 6:1, 15:7, 24:23, 39:9, 53:1  <b>City</b> [12] - 2:17, 2:18, 3:9, 4:2, 4:15, 4:18, 4:24, 8:12, 9:18, 10:22, 13:3  <b>clarify</b> [1] - 29:25  <b>clarity</b> [1] - 16:3  <b>Clayton</b> [3] - 2:18, 9:18, 10:22</p>	<p><b>clear</b> [9] - 7:7, 20:10, 34:24, 40:12, 45:13, 48:12, 50:8, 50:22, 51:3  <b>clearance</b> [1] - 7:18  <b>clearly</b> [1] - 18:14  <b>Clerk</b> [2] - 3:9, 4:16  <b>client's</b> [1] - 14:14  <b>close</b> [7] - 11:8, 23:9, 24:6, 26:5, 40:3, 40:11, 44:5  <b>closed</b> [1] - 5:24  <b>closer</b> [5] - 20:2, 23:21, 23:25, 41:6, 45:5  <b>Code</b> [2] - 4:18, 4:24  <b>code</b> [3] - 13:9, 13:14, 31:12  <b>color</b> [1] - 29:7  <b>colored</b> [2] - 28:4, 48:25  <b>coming</b> [4] - 34:11, 35:15, 36:11, 53:23  <b>commend</b> [2] - 10:9, 11:17  <b>comment</b> [2] - 5:24, 36:7  <b>comments</b> [2] - 32:12, 46:14  <b>common</b> [1] - 45:23  <b>comp</b> [1] - 39:6  <b>completed</b> [3] - 17:7, 32:8, 32:11  <b>complies</b> [2] - 17:10, 19:11  <b>compromise</b> [1] - 48:11  <b>concept</b> [3] - 35:2, 48:6, 48:16  <b>concern</b> [9] - 22:9, 39:5, 44:14, 44:21, 45:20, 46:15, 47:2, 48:20  <b>concerned</b> [4] - 36:20, 37:5, 46:13, 49:20  <b>concerning</b> [1] - 6:19  <b>concerns</b> [4] - 10:11, 11:19, 49:10, 51:21  <b>conditions</b> [1] - 53:1  <b>confirm</b> [1] - 52:23  <b>confusing</b> [1] - 38:6  <b>consider</b> [1] - 50:4  <b>considerable</b> [1] - 47:15  <b>considerably</b> [1] - 48:7  <b>consideration</b> [3] - 5:10, 32:13, 45:11</p>	<p><b>considered</b> [3] - 5:11, 32:18, 32:19  <b>consistent</b> [1] - 39:1  <b>construct</b> [3] - 10:4, 11:12, 48:13  <b>constructed</b> [1] - 15:11  <b>construction</b> [5] - 15:23, 32:10, 45:7, 45:23, 45:25  <b>consult</b> [1] - 41:19  <b>consultants</b> [1] - 8:13  <b>continuance</b> [3] - 50:9, 50:20, 52:3  <b>continue</b> [4] - 31:8, 47:17, 51:19, 53:16  <b>contour</b> [2] - 21:11, 21:13  <b>contractor</b> [4] - 15:17, 17:9, 30:20  <b>control</b> [2] - 31:13, 34:17  <b>controls</b> [1] - 45:19  <b>copies</b> [1] - 13:22  <b>copy</b> [1] - 9:10  <b>core</b> [1] - 16:2  <b>corner</b> [3] - 19:2, 23:10  <b>correct</b> [13] - 11:5, 11:24, 18:6, 24:1, 24:7, 30:3, 40:18, 40:19, 41:4, 41:8, 43:4, 49:19  <b>correctly</b> [1] - 27:13  <b>correlation</b> [1] - 19:18  <b>counsel</b> [3] - 9:13, 16:10, 29:24  <b>County</b> [1] - 39:5  <b>course</b> [1] - 14:14  <b>court</b> [4] - 5:21, 8:20, 8:23, 37:25  <b>Court</b> [3] - 2:20, 3:21, 54:5  <b>cover</b> [2] - 34:16, 34:17  <b>covered</b> [2] - 25:7, 37:4  <b>covering</b> [1] - 21:14  <b>covers</b> [1] - 33:20  <b>Creek</b> [1] - 33:12  <b>criteria</b> [1] - 49:3  <b>CSR</b> [1] - 3:23  <b>curb</b> [5] - 23:15, 23:16, 25:15, 25:18, 25:24  <b>current</b> [2] - 24:25, 38:14  <b>curve</b> [1] - 22:18</p>	<p style="text-align: center;"><b>D</b></p> <p><b>Dan</b> [2] - 3:11, 9:3  <b>dark</b> [1] - 24:22  <b>date</b> [1] - 25:12  <b>dated</b> [1] - 10:21  <b>days</b> [1] - 36:19  <b>deal</b> [2] - 20:12, 33:10  <b>dealing</b> [1] - 16:2  <b>Dear</b> [2] - 9:23, 10:24  <b>decide</b> [3] - 5:18, 29:17, 37:2  <b>decision</b> [1] - 5:1  <b>deck</b> [15] - 15:12, 18:20, 18:23, 18:25, 19:18, 20:4, 21:11, 21:12, 21:16, 23:2, 26:9, 26:10, 26:11, 30:12  <b>decking</b> [3] - 15:21, 34:11, 47:19  <b>decks</b> [1] - 15:8  <b>declined</b> [1] - 7:1  <b>decrease</b> [1] - 13:23  <b>deepest</b> [1] - 19:1  <b>Deer</b> [1] - 33:12  <b>defined</b> [1] - 43:3  <b>Delane</b> [1] - 3:17  <b>demonstrable</b> [1] - 13:10  <b>denial</b> [1] - 7:23  <b>department</b> [5] - 15:23, 16:13, 44:10, 45:14, 48:14  <b>Deposition</b> [1] - 29:21  <b>depth</b> [1] - 47:8  <b>describe</b> [2] - 6:16, 30:5  <b>described</b> [1] - 54:8  <b>design</b> [3] - 45:11, 48:17, 48:23  <b>designed</b> [1] - 35:1  <b>designers</b> [1] - 14:8  <b>detail</b> [1] - 13:22  <b>detailed</b> [2] - 13:24, 51:20  <b>details</b> [2] - 45:3, 45:8  <b>detain</b> [1] - 35:12  <b>detention</b> [1] - 35:2  <b>determinations</b> [1] - 50:5  <b>determine</b> [2] - 47:4, 48:16  <b>developed</b> [1] - 46:21  <b>deviations</b> [1] - 49:4</p>
<p style="text-align: center;"><b>C</b></p> <p><b>Camaryn</b> [2] - 9:19, 10:16  <b>cannot</b> [2] - 47:23, 51:23  <b>cap</b> [1] - 26:11  <b>care</b> [1] - 40:6  <b>Care</b> [1] - 23:1  <b>careful</b> [1] - 51:14  <b>Case</b> [1] - 53:16  <b>case</b> [17] - 4:6, 5:1, 5:17, 6:19, 7:8, 9:1, 9:7, 11:10, 20:15, 40:2, 40:14, 44:17,</p>				

<p><b>Dexter</b> [1] - 3:13  <b>Dexters</b> [1] - 38:12  <b>diagram</b> [1] - 21:21  <b>Diane</b> [2] - 3:16, 39:12  <b>DIELMAN</b> [2] - 1:14, 2:11  <b>Dielman</b> [9] - 6:25, 9:21, 10:23, 37:17, 38:3, 38:6, 38:7, 38:9, 38:10  <b>difference</b> [4] - 11:11, 19:3, 21:9, 21:24  <b>different</b> [5] - 19:12, 21:20, 29:12, 35:12, 40:16  <b>difficult</b> [1] - 33:8  <b>difficulties</b> [1] - 49:21  <b>difficulty</b> [6] - 5:9, 13:11, 49:13, 49:25, 50:1, 50:6  <b>dimensions</b> [3] - 16:3, 23:14, 47:20  <b>directly</b> [4] - 28:20, 37:20, 37:22, 38:13  <b>dirt</b> [5] - 15:2, 36:11, 36:21, 37:6, 47:6  <b>disapproved</b> [1] - 7:6  <b>discrepancies</b> [1] - 53:3  <b>discrepancy</b> [1] - 46:23  <b>discuss</b> [1] - 5:25  <b>discussed</b> [1] - 31:19  <b>discussion</b> [4] - 6:3, 44:8, 44:25, 50:13  <b>distance</b> [7] - 28:12, 28:15, 40:17, 41:3, 41:16, 42:4, 49:8  <b>district</b> [1] - 42:19  <b>disturbed</b> [2] - 52:17, 52:18  <b>divert</b> [1] - 34:22  <b>docket</b> [4] - 5:3, 52:4, 52:7, 53:17  <b>Docket</b> [5] - 1:13, 2:10, 4:9, 4:19, 6:19  <b>document</b> [2] - 16:11, 16:12  <b>documents</b> [3] - 7:20, 16:14, 53:8  <b>done</b> [9] - 21:18, 22:22, 25:11, 25:12, 32:9, 48:9, 51:10, 53:18  <b>door</b> [1] - 38:19</p>	<p><b>down</b> [18] - 15:3, 17:16, 19:15, 20:5, 33:18, 34:12, 34:19, 35:15, 35:17, 35:23, 36:2, 36:11, 36:15, 37:6, 37:10, 37:17, 38:15, 39:3  <b>drain</b> [1] - 34:21  <b>drainage</b> [2] - 35:9, 35:14  <b>draw</b> [1] - 47:6  <b>drawing</b> [17] - 15:5, 15:6, 15:8, 16:15, 19:14, 19:20, 19:22, 20:1, 20:4, 20:13, 23:10, 25:15, 26:23, 31:2, 47:7, 48:18, 48:25  <b>Drawings</b> [1] - 29:21  <b>drawings</b> [5] - 15:24, 46:16, 47:18, 50:21  <b>drive</b> [1] - 48:1  <b>drop</b> [1] - 21:15  <b>drove</b> [1] - 29:15  <b>due</b> [1] - 14:20  <b>duplicates</b> [1] - 9:6  <b>during</b> [1] - 45:23  <b>duty</b> [1] - 49:20</p>	<p><b>encourage</b> [4] - 10:2, 10:13, 11:3, 11:21  <b>end</b> [7] - 22:15, 23:11, 25:3, 25:4, 27:13, 27:20, 34:19  <b>engineering</b> [2] - 13:21, 48:5  <b>entire</b> [2] - 8:10, 15:15  <b>entitled</b> [1] - 2:19  <b>equally</b> [1] - 14:15  <b>eroding</b> [1] - 36:24  <b>erosion</b> [3] - 14:23, 31:12, 34:17  <b>establish</b> [2] - 33:3, 33:19  <b>established</b> [6] - 14:7, 14:11, 23:6, 33:15, 33:21, 35:25  <b>establishment</b> [1] - 31:14  <b>evergreen</b> [3] - 32:24, 33:5, 47:7  <b>evidence</b> [1] - 13:20  <b>exact</b> [1] - 43:19  <b>exactly</b> [2] - 30:21, 38:24  <b>examine</b> [1] - 50:25  <b>exceed</b> [2] - 20:20, 41:12  <b>exceeds</b> [1] - 7:17  <b>Exhibit</b> [11] - 5:2, 7:22, 7:24, 8:2, 8:6, 8:14, 9:15, 29:21, 30:2, 30:13, 31:3  <b>exhibit</b> [2] - 30:5, 30:6  <b>exhibits</b> [4] - 7:21, 26:20, 29:4, 41:20  <b>exist</b> [1] - 53:2  <b>existing</b> [20] - 13:17, 14:2, 14:12, 16:23, 17:3, 19:7, 19:10, 20:20, 26:8, 30:11, 31:5, 31:17, 31:20, 31:23, 47:18, 47:19, 50:21, 50:24, 53:1  <b>exists</b> [1] - 46:23  <b>expansive</b> [1] - 45:9  <b>expeditious</b> [1] - 5:19  <b>experts</b> [1] - 14:8  <b>explain</b> [4] - 5:6, 7:5, 32:8, 38:4  <b>exposed</b> [2] - 17:6, 19:6  <b>exposure</b> [1] - 22:13  <b>express</b> [2] - 9:24, 10:25  <b>extension</b> [1] - 53:5</p>	<p><b>extent</b> [1] - 52:10  <b>extra</b> [1] - 9:12  <b>extruded</b> [1] - 17:23</p>	<p style="text-align: center;"><b>F</b></p> <p><b>F(3)</b> [2] - 10:1, 11:1  <b>face</b> [2] - 48:1, 51:17  <b>facing</b> [1] - 51:8  <b>fact</b> [1] - 35:2  <b>factor</b> [1] - 51:12  <b>fail</b> [1] - 50:16  <b>fairly</b> [2] - 19:25, 24:6  <b>fall</b> [1] - 44:14  <b>falls</b> [2] - 39:21, 44:22  <b>far</b> [6] - 4:11, 4:14, 18:13, 20:20, 33:5, 52:16  <b>faster</b> [1] - 34:8  <b>favor</b> [4] - 8:8, 38:21, 39:24, 50:15  <b>favorites</b> [1] - 33:16  <b>feasible</b> [1] - 49:14  <b>feet</b> [55] - 7:13, 7:14, 7:16, 7:17, 13:18, 15:21, 16:19, 16:23, 17:1, 17:4, 17:15, 17:16, 17:23, 18:7, 18:25, 19:3, 19:4, 20:6, 20:17, 20:18, 21:14, 21:23, 22:15, 23:12, 23:13, 23:17, 23:18, 24:9, 25:2, 25:4, 27:22, 28:6, 28:10, 40:14, 40:21, 40:24, 41:4, 41:6, 41:13, 41:17, 42:6, 42:13, 42:18, 42:22, 42:25, 43:6, 43:15, 43:20, 43:23, 44:14, 44:15, 45:1, 47:3, 49:5  <b>fence</b> [19] - 13:4, 15:25, 17:7, 17:12, 17:13, 17:19, 17:24, 17:25, 24:11, 26:23, 26:24, 27:2, 27:4, 37:3, 44:11, 44:19, 48:24, 52:16, 52:19  <b>fenced</b> [1] - 27:6  <b>fences</b> [2] - 45:22, 52:9  <b>fencing</b> [1] - 31:16  <b>few</b> [1] - 21:23  <b>file</b> [2] - 8:10, 15:18  <b>filtration</b> [3] - 35:14, 35:19, 45:20  <b>finally</b> [2] - 6:12,</p>	<p>41:16  <b>fine</b> [2] - 5:18, 29:20  <b>first</b> [3] - 4:10, 6:21, 47:11  <b>five</b> [4] - 6:10, 23:17, 23:18, 50:14  <b>flat</b> [1] - 19:16  <b>floor</b> [1] - 46:12  <b>following</b> [3] - 2:23, 5:13, 7:20  <b>foot</b> [10] - 7:18, 21:6, 21:7, 22:10, 22:13, 23:4, 28:12, 28:15, 41:15, 49:4  <b>formally</b> [1] - 53:24  <b>former</b> [1] - 4:21  <b>Former</b> [1] - 3:20  <b>Forshaw</b> [2] - 3:4, 4:13  <b>FORSHAW</b> [15] - 17:3, 18:3, 20:19, 40:5, 40:9, 40:12, 40:20, 40:25, 41:5, 41:9, 41:14, 42:15, 43:14, 44:2, 50:4  <b>forward</b> [3] - 8:19, 36:8, 39:18  <b>four</b> [11] - 6:9, 17:23, 21:7, 22:10, 23:3, 25:3, 38:6, 41:13, 44:14, 44:15, 50:14  <b>frame</b> [1] - 36:21  <b>frankly</b> [1] - 49:25  <b>Fred</b> [3] - 3:5, 4:12, 19:24  <b>French</b> [1] - 34:21  <b>front</b> [2] - 32:22, 48:1</p>
<b>E</b>					
	<p><b>east</b> [1] - 30:10  <b>eastern</b> [1] - 17:2  <b>economic</b> [1] - 5:10  <b>edge</b> [18] - 18:10, 23:15, 23:16, 23:21, 23:25, 24:6, 24:10, 24:12, 24:13, 24:18, 24:24, 24:25, 25:14, 25:19, 25:24, 26:18, 52:17  <b>edges</b> [1] - 30:12  <b>effect</b> [1] - 50:2  <b>effectively</b> [1] - 51:12  <b>eight</b> [1] - 51:5  <b>either</b> [3] - 6:1, 8:17, 49:22  <b>elevation</b> [2] - 20:4, 20:5  <b>elevations</b> [1] - 18:22  <b>eliminate</b> [2] - 35:14, 53:2  <b>embankment</b> [2] - 18:2, 18:8  <b>empowered</b> [1] - 13:7  <b>empowers</b> [1] - 13:3  <b>enable</b> [1] - 50:9</p>				
<b>E</b>					
				<p style="text-align: center;"><b>G</b></p> <p><b>Gartenberg</b> [6] - 3:10, 4:16, 7:4, 17:11, 24:1, 46:16  <b>GARTENBERG</b> [30] - 7:9, 16:13, 17:1, 17:5, 17:14, 17:20, 17:25, 18:5, 18:17, 18:22, 19:9, 24:2, 24:15, 24:18, 24:21, 25:5, 27:12, 27:23, 28:1, 41:1, 42:8, 42:12, 42:17, 42:20, 43:2, 43:9, 44:13, 46:19, 52:15, 53:12  <b>general</b> [6] - 4:7, 10:8, 11:16, 13:9, 25:13, 48:16  <b>George</b> [2] - 9:20, 10:16  <b>Gerdes</b> [1] - 3:6</p>	

<p><b>given</b> [4] - 5:7, 13:17, 22:11, 32:14  <b>gnarling</b> [1] - 39:16  <b>GOEBEL</b> [35] - 15:4, 15:22, 16:10, 18:19, 19:14, 20:3, 20:15, 20:18, 21:10, 21:25, 22:14, 22:23, 23:8, 23:23, 24:8, 25:14, 25:19, 25:23, 26:2, 26:9, 26:12, 26:22, 27:3, 27:11, 28:5, 28:9, 28:14, 28:18, 34:24, 35:8, 44:9, 44:18, 44:23, 46:6, 48:3  <b>Goebel</b> [4] - 3:5, 4:12, 22:8, 35:7  <b>grade</b> [5] - 19:25, 20:12, 23:2, 23:4, 45:18  <b>grades</b> [6] - 18:19, 19:15, 19:19, 20:9, 22:16, 22:19  <b>granting</b> [1] - 18:12  <b>grant</b> [11] - 6:7, 10:3, 11:4, 13:4, 13:7, 39:10, 47:14, 48:21, 50:8, 51:11, 51:23  <b>granted</b> [3] - 6:9, 17:12, 51:7  <b>granting</b> [3] - 10:15, 11:23, 52:2  <b>grass</b> [1] - 25:23  <b>gravel</b> [1] - 47:3  <b>great</b> [2] - 13:11, 52:11  <b>green</b> [1] - 32:15  <b>ground</b> [9] - 25:8, 33:19, 34:6, 34:9, 34:12, 34:16, 34:17, 36:24, 39:21  <b>grow</b> [1] - 33:15  <b>growing</b> [1] - 36:25  <b>guess</b> [5] - 15:22, 44:19, 45:17, 47:17, 50:7  <b>guesstimating</b> [1] - 49:16  <b>guide</b> [1] - 24:5</p>	<p>54:10  <b>happy</b> [1] - 53:13  <b>hard</b> [3] - 15:4, 16:5, 52:9  <b>hardship</b> [4] - 5:10, 5:11, 13:10, 49:21  <b>harmony</b> [1] - 13:8  <b>hay</b> [1] - 45:23  <b>headed</b> [1] - 35:15  <b>heading</b> [1] - 36:19  <b>hear</b> [2] - 4:9, 5:6  <b>heard</b> [3] - 5:14, 5:23, 50:12  <b>hearing</b> [9] - 2:16, 5:23, 6:14, 6:18, 7:22, 8:1, 23:1, 47:11, 51:19  <b>Hearing</b> [1] - 13:20  <b>height</b> [18] - 7:17, 16:19, 16:23, 17:4, 17:18, 17:23, 19:6, 20:21, 21:13, 21:15, 40:16, 41:10, 41:11, 41:12, 44:10, 44:12, 44:24, 50:25  <b>heights</b> [3] - 17:21, 22:14, 45:12  <b>held</b> [5] - 2:16, 20:7, 20:9, 35:10, 54:7  <b>help</b> [3] - 26:14, 30:16, 34:15  <b>helpful</b> [1] - 53:9  <b>helps</b> [1] - 27:20  <b>hereby</b> [1] - 54:6  <b>hereunto</b> [1] - 54:10  <b>hide</b> [1] - 33:17  <b>high</b> [4] - 20:7, 20:9, 33:1, 49:4  <b>higher</b> [1] - 19:5  <b>highest</b> [2] - 20:23, 41:13  <b>hill</b> [4] - 23:18, 35:15, 36:23, 37:10  <b>hillside</b> [6] - 17:8, 17:17, 18:9, 18:13, 27:10, 34:15, 36:1  <b>hold</b> [3] - 34:15, 35:1, 46:7  <b>home</b> [4] - 16:18, 36:23, 37:8, 37:14  <b>homeowners</b> [1] - 52:4  <b>hope</b> [2] - 17:8, 37:1  <b>horizontal</b> [2] - 28:12, 28:15  <b>house</b> [12] - 14:12, 14:18, 37:7, 37:15, 37:16, 37:18, 37:22, 39:14, 39:15, 42:15, 42:22</p>	<p style="text-align: center;"><b>I</b></p> <p><b>I'</b> [1] - 12:3  <b>idea</b> [4] - 25:13, 26:7, 32:10, 50:11  <b>identification</b> [1] - 29:22  <b>Illinois</b> [1] - 3:23  <b>imagination</b> [2] - 45:10, 45:16  <b>immediate</b> [3] - 4:12, 38:19, 52:16  <b>immediately</b> [2] - 44:5, 44:19  <b>impact</b> [2] - 31:23, 31:25  <b>impacted</b> [2] - 10:2, 11:2  <b>important</b> [1] - 45:11  <b>importantly</b> [2] - 14:20  <b>impossible</b> [1] - 18:12  <b>impression</b> [1] - 12:18  <b>improve</b> [5] - 10:14, 11:22, 31:22, 39:4  <b>improvement</b> [4] - 7:10, 31:24, 39:16, 50:3  <b>improvements</b> [2] - 14:15, 31:23  <b>improving</b> [2] - 10:8, 11:16  <b>IN</b> [3] - 1:11, 2:8, 54:10  <b>in-between</b> [3] - 30:9, 30:15, 31:6  <b>inches</b> [3] - 36:13, 41:12, 42:3  <b>included</b> [9] - 5:3, 7:20, 9:11, 12:4, 13:5, 13:19, 19:25, 22:6, 29:10  <b>includes</b> [1] - 17:7  <b>including</b> [4] - 8:11, 10:6, 11:14, 19:18  <b>incorporated</b> [2] - 4:8, 4:19  <b>indicate</b> [1] - 15:8  <b>indicated</b> [2] - 15:12, 18:1  <b>indicates</b> [1] - 48:19  <b>indication</b> [1] - 50:23  <b>individuals</b> [1] - 12:17  <b>inexpensive</b> [1] - 51:1  <b>inflicted</b> [1] - 5:11  <b>information</b> [6] -</p>	<p>18:12, 47:1, 47:14, 48:5, 52:22, 52:24  <b>initial</b> [1] - 46:14  <b>initials</b> [4] - 12:5, 12:7, 12:11, 12:13  <b>input</b> [2] - 10:10, 11:18  <b>inside</b> [1] - 27:7  <b>install</b> [1] - 45:2  <b>intend</b> [1] - 26:19  <b>intended</b> [3] - 12:14, 34:22, 35:11  <b>intent</b> [1] - 13:9  <b>intention</b> [2] - 17:9, 27:14  <b>interpret</b> [1] - 42:5  <b>interpretation</b> [1] - 53:7  <b>interruption</b> [1] - 12:25  <b>introduce</b> [1] - 4:10  <b>irrigation</b> [1] - 33:14  <b>issue</b> [8] - 7:1, 13:15, 14:22, 14:23, 37:8, 41:10, 45:18, 50:5  <b>issues</b> [3] - 7:7, 16:2, 40:16  <b>IT</b> [1] - 2:15  <b>itself</b> [5] - 5:25, 18:25, 34:14, 35:22, 50:2  <b>IV</b> [3] - 10:1, 11:1, 31:11  <b>IV,F,(3)</b> [2] - 6:20, 7:3  <b>IV-F(3)</b> [2] - 10:1, 11:1</p>	<p><b>Kerckhoff</b> [4] - 3:15, 3:16, 38:2, 39:12  <b>Kevin</b> [1] - 6:22  <b>kick</b> [1] - 50:16  <b>kind</b> [3] - 21:2, 37:25, 49:2  <b>knowledge</b> [1] - 17:6</p>
<p style="text-align: center;"><b>H</b></p> <p><b>H-10</b> [1] - 13:7  <b>half</b> [7] - 19:3, 20:6, 20:18, 21:14, 22:15, 39:13, 42:4  <b>Hall</b> [3] - 2:18, 9:18, 10:22  <b>hand</b> [3] - 9:5, 48:14,</p>	<p style="text-align: center;"><b>L</b></p> <p><b>labeled</b> [2] - 30:8, 32:6  <b>Labor</b> [1] - 52:5  <b>lack</b> [1] - 45:8  <b>LADUE</b> [6] - 1:5, 1:6, 1:15, 2:2, 2:3, 2:12  <b>Ladue</b> [15] - 2:17, 2:18, 4:2, 4:5, 4:18, 4:24, 8:12, 9:18, 9:20, 10:22, 33:10, 33:18, 34:1, 38:17  <b>land</b> [2] - 39:2, 50:2  <b>Land</b> [1] - 22:25  <b>landscape</b> [1] - 15:17  <b>landscaper</b> [1] - 13:23  <b>landscaping</b> [2] - 14:7, 31:14  <b>lane</b> [2] - 38:15, 39:9  <b>Lane</b> [23] - 12:1, 12:2, 12:17, 14:13, 14:21, 15:1, 15:3, 16:17, 31:13, 31:16, 34:1, 34:19, 36:10, 36:16, 37:6, 38:7, 38:8, 38:11, 38:13, 38:18, 39:14, 49:24, 52:8  <b>large</b> [2] - 16:15, 32:22  <b>last</b> [2] - 33:8, 36:13  <b>late</b> [1] - 9:8  <b>late-arriving</b> [1] - 9:8  <b>Laura</b> [2] - 3:6, 4:14  <b>law</b> [1] - 37:3  <b>lawn</b> [1] - 25:20  <b>least</b> [5] - 7:13, 14:15, 18:7, 20:18, 42:4  <b>leave</b> [3] - 28:5, 29:16, 45:15  <b>left</b> [4] - 4:13, 4:14, 34:7, 45:10  <b>legal</b> [1] - 16:10  <b>less</b> [5] - 19:6, 33:4, 34:3, 34:4, 34:13  <b>lessen</b> [1] - 31:23  <b>lessens</b> [1] - 31:25  <b>lesser</b> [1] - 31:18</p>	<p style="text-align: center;"><b>J</b></p> <p><b>Jason</b> [2] - 12:9, 37:21  <b>Jennifer</b> [4] - 9:4, 9:22, 9:25, 10:25  <b>job</b> [1] - 46:9  <b>John</b> [2] - 3:7, 4:13  <b>joining</b> [2] - 4:21, 4:23</p>	<p style="text-align: center;"><b>K</b></p> <p><b>keep</b> [9] - 29:5, 33:1, 33:6, 36:11, 36:23, 36:24, 37:3, 52:8, 52:9  <b>KEITH</b> [2] - 1:13, 2:10  <b>Keith</b> [9] - 3:12, 6:23, 6:24, 9:4, 9:22, 9:24, 10:25, 21:5, 41:22  <b>KERCKHOFF</b> [3] - 38:2, 38:10, 39:12</p>	

<p><b>letter</b> [4] - 7:23, 8:3, 9:14, 10:18</p> <p><b>letters</b> [7] - 8:4, 8:7, 8:15, 9:8, 11:6, 12:20, 38:16</p> <p><b>level</b> [3] - 34:6, 34:9, 34:12</p> <p><b>light</b> [1] - 18:24</p> <p><b>likely</b> [1] - 52:20</p> <p><b>limited</b> [1] - 18:12</p> <p><b>line</b> [39] - 7:14, 7:15, 7:16, 16:20, 16:25, 17:2, 17:15, 18:7, 21:23, 23:12, 23:14, 23:15, 23:17, 23:18, 23:22, 24:1, 24:7, 24:12, 24:19, 24:21, 24:22, 24:24, 25:3, 25:4, 25:17, 26:2, 26:3, 26:7, 27:20, 41:4, 41:6, 42:7, 42:11, 42:14, 42:23, 42:25, 43:5, 43:13</p> <p><b>lines</b> [2] - 18:23, 30:9</p> <p><b>list</b> [1] - 7:25</p> <p><b>live</b> [4] - 12:17, 36:10, 38:3, 38:12</p> <p><b>living</b> [1] - 39:13</p> <p><b>Liza</b> [2] - 3:4, 4:13</p> <p><b>LLC</b> [1] - 3:23</p> <p><b>located</b> [3] - 7:13, 18:1, 18:7</p> <p><b>location</b> [3] - 15:25, 22:12, 31:4</p> <p><b>LONG</b> [1] - 49:2</p> <p><b>longest</b> [1] - 39:18</p> <p><b>longevity</b> [1] - 51:5</p> <p><b>look</b> [9] - 15:9, 20:4, 21:10, 32:11, 37:17, 39:18, 48:4, 51:9, 53:13</p> <p><b>looked</b> [1] - 46:13</p> <p><b>looking</b> [10] - 22:12, 37:14, 40:15, 41:5, 42:24, 46:21, 46:25, 48:24, 49:12, 51:13</p> <p><b>looks</b> [7] - 6:15, 23:11, 23:16, 30:14, 32:3, 40:14, 40:21</p> <p><b>Louis</b> [4] - 3:24, 9:19, 9:20, 10:23</p> <p><b>lovely</b> [2] - 48:21, 48:25</p> <p><b>lower</b> [3] - 22:15, 22:16, 45:4</p> <p><b>lowest</b> [1] - 19:2</p> <p><b>Luber</b> [5] - 2:20, 3:21, 3:23, 54:4, 54:15</p>	<p style="text-align: center;"><b>M</b></p> <p><b>Madam</b> [1] - 53:25</p> <p><b>mailbox</b> [1] - 38:11</p> <p><b>mailing</b> [1] - 38:17</p> <p><b>maintain</b> [2] - 33:9, 42:13</p> <p><b>maintains</b> [1] - 21:15</p> <p><b>maintenance</b> [2] - 32:25, 33:3</p> <p><b>mark</b> [4] - 9:14, 26:19, 28:3, 29:18</p> <p><b>Mark</b> [4] - 3:18, 11:24, 22:25, 37:21</p> <p><b>marked</b> [8] - 5:2, 7:22, 7:24, 8:1, 8:6, 8:14, 29:22, 29:25</p> <p><b>Martin</b> [3] - 3:15, 38:2, 39:13</p> <p><b>match</b> [1] - 22:3</p> <p><b>material</b> [7] - 17:19, 33:4, 33:5, 34:14, 34:20, 35:22, 51:2</p> <p><b>materials</b> [2] - 9:5, 32:10</p> <p><b>mathematician</b> [1] - 49:5</p> <p><b>MATTER</b> [2] - 1:11, 2:8</p> <p><b>matter</b> [2] - 2:20, 5:25</p> <p><b>matters</b> [1] - 4:7</p> <p><b>maximum</b> [1] - 7:16</p> <p><b>MAYOR</b> [1] - 53:20</p> <p><b>Mayor</b> [5] - 3:19, 3:20, 4:21, 4:22, 53:25</p> <p><b>mean</b> [5] - 12:6, 19:17, 46:10, 47:11, 48:8</p> <p><b>meet</b> [1] - 17:22</p> <p><b>Meeting</b> [1] - 4:1</p> <p><b>meeting</b> [6] - 22:24, 40:3, 53:11, 53:19, 53:22, 54:7</p> <p><b>member</b> [9] - 5:13, 6:4, 36:6, 37:24, 40:1, 40:4, 44:4, 44:7, 52:1</p> <p><b>MEMBERS</b> [1] - 3:2</p> <p><b>members</b> [6] - 4:11, 5:22, 6:10, 6:13, 8:17, 8:22</p> <p><b>memoranda</b> [1] - 8:12</p> <p><b>mentioned</b> [1] - 28:6</p> <p><b>method</b> [1] - 49:14</p> <p><b>Michael</b> [3] - 3:9, 3:10, 4:16</p> <p><b>might</b> [9] - 8:18, 10:12, 11:10, 11:20,</p>	<p>25:12, 32:11, 39:3, 49:14, 49:16</p> <p><b>Mike</b> [3] - 4:15, 18:20, 20:3</p> <p><b>mind</b> [2] - 29:7, 50:14</p> <p><b>minimum</b> [1] - 42:18</p> <p><b>minute</b> [1] - 16:7</p> <p><b>misinterpretation</b> [1] - 53:7</p> <p><b>misinterpreting</b> [1] - 43:5</p> <p><b>MISSOURI</b> [4] - 1:6, 1:15, 2:3, 2:12</p> <p><b>Missouri</b> [8] - 2:17, 2:19, 2:23, 3:22, 9:19, 9:20, 10:23, 54:6</p> <p><b>mistake</b> [1] - 43:8</p> <p><b>misunderstood</b> [1] - 42:16</p> <p><b>MO</b> [1] - 3:24</p> <p><b>mom</b> [1] - 37:5</p> <p><b>moment</b> [1] - 49:22</p> <p><b>Monday</b> [1] - 1:17</p> <p><b>month</b> [1] - 51:25</p> <p><b>months</b> [1] - 50:17</p> <p><b>mother</b> [1] - 36:10</p> <p><b>motion</b> [4] - 6:4, 6:5, 6:7</p> <p><b>move</b> [2] - 21:23, 38:11</p> <p><b>MR</b> [144] - 6:23, 7:9, 8:9, 9:2, 9:16, 10:17, 11:7, 12:1, 12:3, 12:8, 12:14, 12:18, 12:21, 12:24, 15:4, 15:14, 15:22, 16:10, 16:12, 16:13, 17:1, 17:5, 17:14, 17:20, 17:25, 18:5, 18:15, 18:17, 18:19, 18:22, 19:7, 19:9, 19:12, 19:14, 20:3, 20:15, 20:18, 20:23, 20:25, 21:5, 21:10, 21:17, 21:25, 22:2, 22:4, 22:14, 22:23, 22:25, 23:8, 23:23, 24:2, 24:8, 24:15, 24:18, 24:21, 25:5, 25:7, 25:14, 25:19, 25:21, 25:23, 26:2, 26:9, 26:12, 26:17, 26:21, 26:22, 27:3, 27:11, 27:12, 27:19, 27:23, 27:25, 28:1, 28:5, 28:8, 28:9, 28:13, 28:14, 28:16, 28:18, 28:19, 28:25, 29:5, 29:10, 29:14, 29:18, 29:23, 30:3,</p>	<p>30:8, 30:14, 30:17, 30:21, 31:1, 31:9, 32:6, 32:17, 32:25, 34:2, 34:24, 35:8, 36:5, 38:2, 38:9, 38:10, 40:19, 40:23, 41:1, 41:3, 41:8, 41:13, 41:19, 41:21, 42:1, 42:8, 42:10, 42:12, 42:16, 42:17, 42:20, 42:24, 43:2, 43:4, 43:9, 43:12, 43:17, 43:22, 44:9, 44:13, 44:18, 44:23, 46:3, 46:6, 46:19, 48:3, 49:19, 51:18, 51:24, 52:12, 52:14, 52:15, 53:9, 53:12, 53:14</p> <p><b>MRS</b> [1] - 39:12</p> <p><b>MS</b> [44] - 12:11, 15:16, 16:8, 17:3, 18:3, 20:19, 25:16, 25:22, 26:1, 26:3, 26:10, 26:13, 26:25, 27:5, 27:17, 28:2, 30:16, 30:19, 30:24, 32:19, 34:6, 34:23, 35:5, 35:16, 36:9, 37:9, 37:12, 37:15, 37:21, 40:5, 40:9, 40:12, 40:20, 40:25, 41:5, 41:9, 41:14, 42:15, 43:14, 43:18, 44:2, 46:5, 49:2, 50:4</p> <p><b>mud</b> [3] - 15:2, 36:15, 38:14</p> <p><b>mulch</b> [1] - 34:18</p> <p><b>must</b> [4] - 6:10, 7:13, 19:19, 42:13</p> <p style="text-align: center;"><b>N</b></p> <p><b>name</b> [6] - 4:6, 5:20, 8:21, 9:3, 36:9, 38:1</p> <p><b>names</b> [1] - 12:15</p> <p><b>Nancy</b> [1] - 3:19</p> <p><b>near</b> [2] - 18:1, 18:14</p> <p><b>necessarily</b> [2] - 22:3, 45:7</p> <p><b>necessary</b> [3] - 13:25, 33:18, 38:24</p> <p><b>need</b> [13] - 29:15, 30:16, 34:24, 35:25, 39:1, 39:20, 39:22, 40:12, 40:14, 41:19, 43:14, 52:12</p> <p><b>needed</b> [2] - 33:14, 47:3</p> <p><b>needs</b> [5] - 16:19,</p>	<p>35:19, 48:4, 48:9, 52:16</p> <p><b>neighbor</b> [1] - 38:19</p> <p><b>neighborhood</b> [9] - 10:9, 10:10, 10:15, 11:17, 11:18, 11:23, 31:25, 39:4, 39:9</p> <p><b>neighbors</b> [16] - 9:9, 10:1, 10:12, 11:2, 11:20, 14:13, 14:18, 27:9, 31:15, 32:16, 46:10, 48:22, 50:18, 51:8, 51:13, 52:19</p> <p><b>new</b> [3] - 22:11, 23:13, 48:5</p> <p><b>newer</b> [1] - 15:14</p> <p><b>next</b> [5] - 37:16, 38:19, 39:6, 51:24, 53:11</p> <p><b>next-door</b> [1] - 38:19</p> <p><b>nice</b> [1] - 47:7</p> <p><b>nobody</b> [1] - 51:10</p> <p><b>none</b> [1] - 40:2</p> <p><b>north</b> [5] - 19:15, 19:17, 25:4, 37:11, 37:12</p> <p><b>northern</b> [1] - 27:13</p> <p><b>Nos</b> [1] - 29:21</p> <p><b>Notary</b> [2] - 2:22, 54:5</p> <p><b>note</b> [1] - 53:24</p> <p><b>Notice</b> [1] - 13:20</p> <p><b>notice</b> [2] - 7:21, 7:25</p> <p><b>noticed</b> [2] - 33:23, 36:14</p> <p><b>Number</b> [8] - 4:9, 4:20, 6:19, 12:17, 36:16, 38:8, 38:19, 53:16</p> <p><b>number</b> [11] - 5:3, 6:25, 12:1, 12:2, 38:10, 42:24, 43:2, 43:6, 43:15, 43:19, 47:12</p> <p style="text-align: center;"><b>O</b></p> <p><b>objection</b> [5] - 39:7, 40:4, 44:4, 44:6, 52:2</p> <p><b>observe</b> [1] - 45:22</p> <p><b>obviated</b> [1] - 49:13</p> <p><b>obviously</b> [1] - 32:12</p> <p><b>occurred</b> [1] - 15:20</p> <p><b>odd</b> [1] - 39:20</p> <p><b>OF</b> [7] - 1:4, 1:5, 1:11, 2:1, 2:2, 2:8, 54:1</p> <p><b>offensive</b> [1] - 51:16</p> <p><b>offer</b> [1] - 5:18</p>
---	--	--	--	--

<p><b>Office</b> [1] - 4:17  <b>Official</b> [1] - 3:10  <b>official</b> [2] - 7:1, 7:24  <b>old</b> [1] - 51:4  <b>Omni</b> [2] - 22:25, 32:9  <b>once</b> [1] - 53:10  <b>one</b> [27] - 4:6, 4:11, 5:1, 5:19, 6:18, 13:14, 15:10, 20:19, 26:25, 27:16, 27:21, 28:6, 28:20, 29:13, 32:2, 33:17, 35:6, 37:10, 38:24, 41:14, 41:20, 41:21, 42:4, 44:9, 47:6, 47:13, 49:3  <b>ones</b> [1] - 42:6  <b>ongoing</b> [1] - 33:9  <b>OPDYCKE</b> [6] - 12:11, 36:9, 37:9, 37:12, 37:15, 37:21  <b>Opdycke</b> [2] - 3:14, 36:9  <b>open</b> [3] - 6:18, 17:24, 17:25  <b>opinions</b> [1] - 49:18  <b>opportunity</b> [2] - 5:7, 5:23  <b>opposed</b> [2] - 32:15, 50:2  <b>opposition</b> [1] - 8:5  <b>options</b> [1] - 33:5  <b>order</b> [4] - 4:2, 6:11, 33:1, 39:1  <b>ordinance</b> [7] - 20:21, 28:7, 40:21, 41:7, 41:10, 41:15, 41:22  <b>Ordinance</b> [5] - 4:25, 6:21, 7:3, 10:1, 11:2  <b>Ordinances</b> [2] - 4:18, 13:3  <b>otherwise</b> [3] - 6:7, 21:3, 29:9  <b>ourselves</b> [1] - 44:25  <b>outside</b> [5] - 10:5, 11:13, 27:4, 27:6, 52:19  <b>overnight</b> [1] - 36:13  <b>own</b> [3] - 10:5, 11:13, 36:22  <b>owner</b> [2] - 47:16, 52:25  <b>owners</b> [1] - 31:15</p>	<p><b>packet</b> [6] - 9:11, 15:6, 19:14, 20:1, 20:14, 22:6  <b>packets</b> [1] - 32:7  <b>page</b> [1] - 26:17  <b>papers</b> [1] - 9:12  <b>parcel</b> [1] - 50:1  <b>pardon</b> [1] - 18:5  <b>part</b> [4] - 5:5, 27:15, 33:12, 52:20  <b>particularly</b> [2] - 14:10, 52:10  <b>pass</b> [2] - 9:10, 35:3  <b>passersby</b> [1] - 31:15  <b>past</b> [1] - 32:2  <b>pavement</b> [3] - 18:11, 24:10, 25:25  <b>people</b> [6] - 29:8, 33:12, 49:24, 50:14, 51:9, 51:16  <b>perfected</b> [1] - 46:22  <b>perhaps</b> [2] - 13:5, 36:14  <b>permanent</b> [2] - 15:24, 43:1  <b>permission</b> [1] - 38:22  <b>permit</b> [5] - 7:2, 17:12, 27:16, 31:12, 52:25  <b>permits</b> [1] - 18:16  <b>permitted</b> [4] - 19:9, 27:24, 31:24, 46:23  <b>person</b> [3] - 21:7, 35:7, 51:4  <b>personal</b> [1] - 32:20  <b>persuaded</b> [1] - 45:17  <b>pertaining</b> [1] - 8:11  <b>petition</b> [1] - 39:10  <b>phonetic</b> [1] - 12:10  <b>photograph</b> [1] - 29:13  <b>photographs</b> [1] - 32:2  <b>physical</b> [1] - 6:16  <b>physically</b> [1] - 19:21  <b>picture</b> [1] - 14:2  <b>pictures</b> [2] - 32:8, 49:12  <b>pipe</b> [1] - 35:9  <b>place</b> [3] - 45:22, 47:20, 54:8  <b>places</b> [1] - 33:19  <b>plan</b> [10] - 16:20, 22:19, 23:6, 26:17, 27:1, 46:12, 46:20, 46:22, 46:24  <b>planned</b> [2] - 13:22,</p>	<p>14:24  <b>planning</b> [1] - 31:3  <b>plans</b> [15] - 7:6, 10:2, 11:3, 13:21, 15:15, 22:4, 27:7, 41:19, 46:24, 47:4, 50:8, 50:10, 51:20, 52:13, 53:10  <b>plant</b> [7] - 32:21, 33:4, 33:14, 34:14, 34:20, 35:22, 51:2  <b>planted</b> [2] - 26:4, 36:22  <b>planting</b> [2] - 32:14, 32:22  <b>plantings</b> [1] - 27:3  <b>plants</b> [1] - 35:24  <b>plus</b> [2] - 27:16, 34:14  <b>pockets</b> [2] - 32:14, 32:23  <b>point</b> [5] - 20:23, 26:5, 27:8, 43:19, 44:20  <b>pool</b> [44] - 14:12, 14:17, 15:9, 15:11, 15:17, 15:19, 15:20, 15:21, 15:25, 16:18, 17:13, 17:22, 18:18, 20:1, 21:19, 21:22, 22:12, 23:7, 26:8, 27:15, 27:21, 27:24, 27:25, 30:10, 30:12, 30:20, 30:23, 31:7, 31:17, 31:24, 32:3, 34:11, 36:16, 37:4, 37:18, 38:23, 39:23, 46:18, 46:22, 47:1, 47:19, 50:22, 52:25  <b>poor</b> [1] - 46:9  <b>portion</b> [8] - 5:23, 16:16, 17:5, 19:4, 28:21, 40:3, 40:6, 44:5  <b>possible</b> [1] - 52:3  <b>practical</b> [5] - 5:9, 49:21, 49:25, 50:1, 50:5  <b>predate</b> [1] - 30:22  <b>predated</b> [1] - 30:24  <b>prefer</b> [2] - 14:17, 29:2  <b>presence</b> [1] - 53:24  <b>present</b> [3] - 5:8, 8:25, 13:23  <b>Present</b> [1] - 3:8  <b>presumably</b> [2] - 19:5, 27:23  <b>pretty</b> [2] - 19:15, 49:6</p>	<p><b>prevent</b> [3] - 15:2, 34:18, 45:24  <b>preventing</b> [1] - 31:13  <b>previously</b> [1] - 54:8  <b>primarily</b> [1] - 14:15  <b>primary</b> [4] - 42:9, 42:13, 42:21, 51:12  <b>principal</b> [6] - 42:5, 42:6, 42:9, 42:21, 43:7, 43:13  <b>print</b> [1] - 12:14  <b>proactively</b> [2] - 10:11, 11:19  <b>problem</b> [1] - 45:7  <b>procedural</b> [1] - 4:7  <b>proceed</b> [3] - 12:23, 16:5, 25:6  <b>proceedings</b> [1] - 2:23  <b>process</b> [1] - 5:6  <b>Professional</b> [3] - 2:21, 3:22, 54:4  <b>project</b> [5] - 10:11, 11:19, 15:15, 32:11, 53:4  <b>properly</b> [4] - 10:7, 11:15, 13:12, 45:6  <b>property</b> [55] - 7:11, 7:13, 7:15, 7:16, 10:6, 10:8, 10:14, 11:14, 11:16, 11:22, 13:13, 13:18, 14:13, 14:16, 14:25, 16:16, 16:20, 16:25, 17:2, 17:15, 18:7, 23:12, 23:14, 23:15, 23:17, 23:18, 23:22, 24:1, 24:7, 24:12, 24:21, 24:24, 25:3, 25:4, 25:16, 25:17, 26:2, 26:3, 27:20, 31:20, 39:2, 39:4, 39:17, 41:4, 41:6, 42:6, 42:11, 42:14, 42:23, 42:25, 43:13, 47:15, 52:25  <b>proposal</b> [2] - 10:4, 11:12  <b>propose</b> [1] - 6:4  <b>proposed</b> [21] - 6:6, 7:10, 7:11, 7:14, 7:17, 17:13, 17:14, 18:15, 19:1, 19:12, 23:14, 23:24, 24:23, 27:1, 27:16, 28:1, 30:9, 31:7, 34:16, 50:23, 53:5  <b>proposing</b> [2] - 26:14, 30:1  <b>protect</b> [2] - 13:12,</p>	<p>39:2  <b>provide</b> [2] - 8:20, 35:18  <b>provided</b> [1] - 42:3  <b>provision</b> [2] - 28:9, 28:18  <b>provisions</b> [2] - 28:7, 46:7  <b>proximity</b> [1] - 14:21  <b>Public</b> [3] - 2:22, 13:20, 54:5  <b>public</b> [7] - 5:24, 7:21, 8:1, 8:16, 8:18, 40:3, 44:5  <b>pulled</b> [1] - 42:2  <b>purpose</b> [3] - 13:9; 19:23, 32:5  <b>purposes</b> [4] - 13:20, 13:25, 25:10, 31:3  <b>put</b> [10] - 14:23, 21:19, 21:22, 24:10, 29:17, 29:23, 38:22, 47:19, 49:9, 52:17  <b>putting</b> [1] - 25:23</p>
<b>Q</b>				
<p><b>questions</b> [6] - 5:12, 6:1, 13:24, 25:8, 40:5, 43:25, 44:9, 50:7  <b>quite</b> [2] - 18:24, 49:25</p>				
<b>R</b>				
<p><b>rained</b> [1] - 36:13  <b>ran</b> [1] - 21:23  <b>range</b> [1] - 7:15  <b>rather</b> [3] - 15:1, 22:7, 43:13  <b>reaching</b> [1] - 5:1  <b>read</b> [4] - 5:4, 9:15, 10:20, 11:11  <b>reading</b> [1] - 11:5  <b>real</b> [2] - 37:5, 50:7  <b>realistically</b> [1] - 47:4  <b>reality</b> [1] - 20:7  <b>really</b> [13] - 13:2, 16:5, 18:10, 30:25, 33:1, 33:21, 35:11, 39:1, 39:18, 39:22, 45:2, 46:10, 51:8  <b>rear</b> [7] - 7:11, 13:6, 42:3, 42:14, 42:19, 42:23, 43:3  <b>reason</b> [4] - 7:5, 21:17, 46:8, 51:22  <b>reasonable</b> [2] - 48:11, 48:15</p>				

<p><b>reasons</b> [3] - 5:8, 5:10, 7:5  <b>received</b> [5] - 8:16, 9:10, 15:6, 38:22, 53:1  <b>recent</b> [1] - 15:10  <b>reconcile</b> [3] - 15:24, 22:19, 48:6  <b>reconciled</b> [1] - 46:12  <b>reconciling</b> [1] - 15:5  <b>record</b> [17] - 4:8, 4:19, 5:3, 5:5, 7:20, 9:15, 10:20, 19:24, 20:10, 21:2, 21:4, 29:3, 29:9, 29:17, 29:25, 30:6, 53:21  <b>rectangular</b> [1] - 15:19  <b>reduce</b> [5] - 33:3, 33:13, 33:24, 36:1  <b>reducing</b> [1] - 34:2  <b>refer</b> [2] - 29:8  <b>reference</b> [2] - 4:19, 42:20  <b>referring</b> [1] - 28:6  <b>reflect</b> [5] - 30:6, 31:4, 47:1, 47:18, 47:21  <b>reflected</b> [3] - 20:13, 30:13, 53:21  <b>reflective</b> [1] - 52:24  <b>reflects</b> [2] - 15:10, 15:13  <b>regarding</b> [3] - 2:19, 9:21, 10:23  <b>Registered</b> [3] - 2:21, 3:22, 54:4  <b>related</b> [1] - 28:10  <b>relation</b> [4] - 16:24, 26:23, 37:8, 50:24  <b>relationship</b> [1] - 16:1  <b>relative</b> [2] - 7:12, 24:23  <b>relaxed</b> [2] - 19:16, 19:25  <b>relief</b> [1] - 6:25  <b>remember</b> [2] - 44:23, 47:23  <b>REMEMBERED</b> [1] - 2:15  <b>rendering</b> [3] - 28:4, 31:2, 51:1  <b>renderings</b> [1] - 25:10  <b>reporter</b> [4] - 5:21, 8:20, 8:23, 37:25  <b>REPORTER</b> [1] - 54:1</p>	<p><b>Reporter</b> [7] - 2:21, 2:22, 3:21, 3:22, 54:5  <b>represented</b> [1] - 36:17  <b>representing</b> [1] - 48:9  <b>request</b> [14] - 8:5, 9:21, 10:3, 11:4, 13:15, 22:5, 28:16, 31:11, 46:17, 49:7, 50:15, 50:19, 51:18, 51:23  <b>requested</b> [9] - 6:5, 6:9, 8:8, 10:15, 11:23, 16:4, 20:11, 20:12, 47:21  <b>requesting</b> [3] - 6:25, 8:3, 40:13  <b>require</b> [1] - 49:17  <b>required</b> [7] - 17:21, 37:3, 40:20, 40:23, 42:4, 44:12, 47:25  <b>requirement</b> [3] - 13:6, 24:23, 43:23  <b>requirements</b> [4] - 7:12, 13:5, 17:22, 21:6  <b>residences</b> [1] - 48:2  <b>residents</b> [3] - 7:25, 33:25, 37:19  <b>respect</b> [2] - 48:8, 51:9  <b>respectably</b> [1] - 13:15  <b>respectfully</b> [2] - 31:11, 51:18  <b>restoration</b> [1] - 17:8  <b>restrictions</b> [2] - 20:21, 47:15  <b>result</b> [2] - 14:11, 46:24  <b>retain</b> [3] - 14:24, 35:17, 35:21  <b>retaining</b> [82] - 6:20, 7:2, 7:10, 10:5, 10:7, 11:13, 11:15, 13:17, 14:9, 14:24, 16:1, 16:19, 16:22, 17:3, 18:3, 18:16, 19:1, 19:7, 19:10, 19:17, 19:21, 20:8, 20:11, 20:24, 21:6, 23:21, 23:24, 24:4, 24:5, 24:9, 24:14, 24:22, 26:13, 27:13, 27:14, 28:11, 30:1, 30:7, 30:8, 30:12, 30:19, 31:5, 31:18, 31:21, 32:2, 32:9, 32:14, 32:22, 33:16, 34:25,</p>	<p>35:3, 35:22, 37:2, 37:14, 38:23, 38:25, 40:17, 41:1, 41:11, 41:16, 42:1, 42:2, 43:15, 44:11, 44:20, 45:1, 45:18, 46:8, 46:20, 47:19, 47:21, 47:24, 47:25, 48:4, 48:24, 50:21, 50:23, 50:24, 51:7, 51:9, 51:16  <b>reversed</b> [1] - 16:16  <b>revised</b> [2] - 52:13, 53:10  <b>RISK</b> [1] - 50:13  <b>ROAD</b> [2] - 1:14, 2:11  <b>road</b> [5] - 23:22, 23:25, 25:19, 34:4, 34:5  <b>Road</b> [13] - 2:18, 6:25, 9:19, 9:20, 9:21, 10:22, 10:23, 33:18, 34:1, 37:17, 38:3, 38:6, 38:17  <b>roadway</b> [8] - 24:5, 24:6, 24:12, 24:13, 24:16, 24:19, 24:24, 24:25  <b>Robbins</b> [4] - 9:20, 10:16, 38:17  <b>Robbye</b> [2] - 3:3, 4:6  <b>rock</b> [2] - 35:8, 35:23  <b>rolling</b> [1] - 36:21  <b>room</b> [3] - 32:21, 45:2, 53:6  <b>root</b> [1] - 47:9  <b>roughly</b> [5] - 18:25, 20:6, 20:16, 22:15, 31:6  <b>round</b> [1] - 15:11  <b>RPR</b> [1] - 54:15  <b>run</b> [3] - 18:23, 28:20, 50:13  <b>running</b> [2] - 38:15, 45:21  <b>runoff</b> [10] - 14:22, 31:13, 33:3, 33:11, 33:13, 34:3, 34:8, 34:13, 49:24, 50:5  <b>runs</b> [1] - 34:18</p>	<p><b>scenario</b> [1] - 46:20  <b>Schnarr</b> [1] - 3:17  <b>SCHNARR</b> [22] - 15:16, 16:8, 25:16, 25:22, 26:1, 26:3, 26:10, 26:13, 26:25, 27:5, 27:17, 28:2, 30:16, 30:19, 30:24, 32:19, 34:6, 34:23, 35:5, 35:16, 43:18, 46:5  <b>screened</b> [1] - 14:18  <b>screening</b> [8] - 10:6, 11:14, 14:9, 14:12, 25:10, 25:13, 31:14, 48:22  <b>seal</b> [1] - 54:11  <b>seated</b> [1] - 4:11  <b>seconded</b> [1] - 6:6  <b>secondly</b> [1] - 52:22  <b>section</b> [3] - 13:1, 13:2, 13:14  <b>Section</b> [5] - 6:20, 7:2, 10:1, 11:1, 42:2  <b>Sections</b> [1] - 31:11  <b>sediment</b> [2] - 15:2, 52:8  <b>see</b> [18] - 4:22, 14:4, 14:16, 16:4, 16:8, 22:20, 26:12, 28:10, 31:19, 33:18, 37:15, 37:18, 38:13, 38:14, 41:25, 49:21, 50:6, 52:20  <b>seeing</b> [3] - 32:16, 40:2, 53:3  <b>seeking</b> [2] - 10:10, 11:18  <b>seep</b> [1] - 34:12  <b>self</b> [1] - 5:11  <b>self-inflicted</b> [1] - 5:11  <b>sense</b> [3] - 29:9, 43:8, 45:8  <b>sent</b> [1] - 8:1  <b>separate</b> [1] - 27:21  <b>separated</b> [2] - 28:11, 28:14  <b>separately</b> [1] - 53:11  <b>September</b> [3] - 52:4, 52:6, 53:17  <b>serve</b> [1] - 13:25  <b>set</b> [3] - 15:23, 17:10, 54:10  <b>setback</b> [11] - 20:22, 40:16, 40:21, 40:22, 40:23, 42:4, 42:8, 42:14, 42:19, 42:22, 47:25</p>	<p><b>settling</b> [1] - 36:15  <b>several</b> [1] - 36:19  <b>sewers</b> [1] - 34:4  <b>shape</b> [5] - 15:9, 16:18, 21:20, 31:6, 39:21  <b>shift</b> [2] - 30:22, 30:24  <b>shifted</b> [3] - 15:21, 31:1, 46:18  <b>SHILLINGTON</b> [1] - 49:19  <b>Shillington</b> [2] - 3:7, 4:13  <b>shortest</b> [1] - 41:3  <b>Shorthand</b> [1] - 2:22  <b>shortly</b> [1] - 4:23  <b>show</b> [8] - 17:12, 18:15, 19:16, 25:9, 26:22, 27:5, 27:9, 50:21  <b>showed</b> [1] - 27:1  <b>showing</b> [2] - 16:21, 27:10  <b>shown</b> [4] - 19:22, 19:24, 24:16, 30:1  <b>shows</b> [7] - 13:22, 17:20, 18:25, 19:15, 27:19, 30:22, 31:5  <b>shrubby</b> [1] - 39:16  <b>shrubs</b> [3] - 26:6, 26:15, 32:23  <b>sic</b> [1] - 10:24  <b>side</b> [1] - 42:3  <b>sight</b> [1] - 15:12  <b>sign</b> [1] - 12:15  <b>significantly</b> [1] - 35:18  <b>silt</b> [2] - 15:2, 52:16  <b>siltation</b> [2] - 45:22, 52:9  <b>similar</b> [1] - 32:8  <b>simple</b> [1] - 35:10  <b>Sincerely</b> [2] - 10:16, 11:24  <b>single</b> [1] - 53:5  <b>site</b> [6] - 6:13, 6:15, 6:17, 14:1, 14:2, 15:7  <b>six</b> [7] - 22:13, 23:13, 42:6, 43:20, 44:25, 47:3, 50:16  <b>six-foot</b> [1] - 22:13  <b>slope</b> [14] - 14:5, 14:6, 14:21, 14:22, 18:10, 19:16, 20:8, 31:17, 31:18, 31:20, 33:4, 33:7, 34:7, 52:10  <b>slopes</b> [1] - 20:5  <b>sloping</b> [1] - 19:15</p>
<p><b>S</b></p>				
<p><b>safe</b> [2] - 28:21, 37:4  <b>safer</b> [1] - 31:16  <b>safety</b> [2] - 31:22, 44:21  <b>saw</b> [4] - 14:3, 15:7, 21:20, 23:16</p>				

<p><b>slow</b> [2] - 35:17, 35:23  <b>slows</b> [1] - 35:5  <b>small</b> [1] - 32:23  <b>smaller</b> [4] - 28:23, 28:25, 29:3  <b>soak</b> [1] - 34:9  <b>soaking</b> [1] - 35:24  <b>soften</b> [1] - 51:15  <b>soil</b> [4] - 34:18, 34:25, 39:3, 47:8  <b>solid</b> [1] - 24:19  <b>someone</b> [1] - 48:9  <b>someplace</b> [1] - 24:14  <b>sometimes</b> [1] - 33:1  <b>somewhere</b> [6] - 17:15, 18:8, 21:11, 21:12, 24:13, 38:25  <b>sorry</b> [9] - 12:3, 12:8, 12:24, 15:4, 21:8, 23:10, 24:11, 28:22, 32:7  <b>sort</b> [3] - 16:1, 36:15, 37:16  <b>sought</b> [1] - 6:14  <b>sound</b> [2] - 35:16, 35:21  <b>south</b> [3] - 23:11, 25:3, 38:20  <b>space</b> [2] - 26:18, 51:2  <b>speaking</b> [4] - 21:4, 35:7, 38:1, 38:21  <b>speed</b> [2] - 35:23, 36:1  <b>spell</b> [1] - 5:21  <b>spelling</b> [1] - 8:21  <b>SPEWAK</b> [1] - 53:20  <b>Spewak</b> [2] - 3:19, 4:22  <b>spilling</b> [1] - 52:8  <b>split</b> [1] - 37:16  <b>spot</b> [1] - 18:22  <b>St</b> [4] - 3:24, 9:19, 9:20, 10:23  <b>stabilize</b> [1] - 45:6  <b>staff</b> [3] - 6:1, 8:12, 53:11  <b>Stairanke</b> [1] - 12:10  <b>Stalpanke</b> [1] - 12:9  <b>stand</b> [1] - 21:3  <b>standing</b> [1] - 23:19  <b>staring</b> [1] - 51:16  <b>start</b> [3] - 4:7, 38:1, 44:7  <b>state</b> [1] - 7:12  <b>State</b> [3] - 2:19, 2:23, 54:6  <b>STEELE</b> [3] - 22:25,</p>	<p>32:25, 34:2  <b>Steele</b> [2] - 3:18, 22:25  <b>steep</b> [4] - 14:22, 31:17, 31:20, 34:7  <b>steepen</b> [1] - 22:16  <b>steeper</b> [2] - 19:20, 33:7  <b>steepest</b> [1] - 27:17  <b>still</b> [6] - 23:5, 35:15, 36:14, 40:5, 40:12, 43:14  <b>storm</b> [16] - 10:7, 11:15, 14:21, 14:25, 15:1, 16:14, 31:12, 33:11, 33:24, 33:25, 34:4, 35:14, 45:19, 45:24, 46:9, 49:23  <b>storms</b> [1] - 36:19  <b>straw</b> [1] - 45:23  <b>streak</b> [1] - 36:15  <b>street</b> [7] - 16:1, 25:18, 26:16, 36:12, 37:9, 37:20, 45:21  <b>strict</b> [1] - 13:8  <b>strongly</b> [2] - 10:13, 11:21  <b>structural</b> [1] - 34:25  <b>structure</b> [8] - 42:9, 42:13, 42:21, 43:1, 43:7, 43:13, 47:9  <b>structures</b> [1] - 35:11  <b>stuff</b> [2] - 33:2, 33:6  <b>subject</b> [1] - 32:11  <b>submit</b> [1] - 53:12  <b>submitted</b> [4] - 18:17, 22:5, 41:20, 46:22  <b>submitting</b> [1] - 52:23  <b>subsection</b> [3] - 13:7, 13:16  <b>substantial</b> [2] - 49:3, 49:6  <b>suggests</b> [1] - 19:20  <b>summary</b> [1] - 40:12  <b>summer</b> [2] - 33:8  <b>support</b> [9] - 8:5, 9:9, 9:24, 10:18, 10:25, 36:10, 39:22, 47:6, 47:9  <b>supported</b> [1] - 51:2  <b>supposed</b> [5] - 16:23, 36:19, 41:11, 41:17, 49:9  <b>surrounding</b> [1] - 13:12  <b>survive</b> [2] - 14:10, 48:23</p>	<p><b>Susan</b> [3] - 3:13, 3:14, 36:9  <b>suspect</b> [2] - 48:3, 48:5  <b>swear</b> [1] - 5:19  <b>swimming</b> [13] - 14:17, 20:1, 27:15, 27:21, 27:24, 27:25, 32:3, 37:4, 39:23, 46:22, 47:1, 50:22, 52:25  <b>sworn</b> [3] - 5:17, 8:20, 8:23  <b>system</b> [1] - 34:22</p> <p style="text-align: center;"><b>T</b></p> <p><b>tab</b> [4] - 13:2, 32:1, 32:7, 42:17  <b>tall</b> [1] - 47:7  <b>taller</b> [3] - 44:11, 44:20, 48:7  <b>taxes</b> [1] - 39:6  <b>Teasdale</b> [1] - 9:3  <b>temporarily</b> [1] - 45:25  <b>temporary</b> [1] - 46:6  <b>ten</b> [4] - 15:21, 17:15, 18:7, 33:20  <b>tenable</b> [1] - 47:16  <b>terms</b> [5] - 35:13, 37:2, 48:17, 51:4  <b>terraced</b> [1] - 27:15  <b>terrain</b> [1] - 48:10  <b>Terry</b> [23] - 12:1, 12:2, 12:17, 14:13, 14:21, 15:1, 15:3, 16:17, 31:13, 31:16, 34:1, 34:19, 36:10, 36:16, 37:6, 38:7, 38:8, 38:10, 38:13, 38:18, 39:14, 49:24, 52:8  <b>testimony</b> [1] - 5:18  <b>THE</b> [2] - 1:11, 2:8  <b>thee</b> [1] - 7:17  <b>thinking</b> [1] - 43:20  <b>third</b> [1] - 47:17  <b>thorough</b> [1] - 45:8  <b>three</b> [10] - 7:18, 21:6, 23:11, 25:2, 40:15, 41:4, 43:6, 44:13, 44:15, 49:5  <b>throw</b> [1] - 47:10  <b>timing</b> [1] - 9:6  <b>today</b> [13] - 4:9, 4:11, 4:15, 5:2, 13:15, 13:23, 14:19, 36:14, 46:21, 46:25, 48:16, 52:13, 52:14</p>	<p><b>toe</b> [1] - 18:10  <b>TOFT</b> [78] - 4:4, 6:24, 7:19, 8:10, 8:24, 9:13, 9:17, 10:19, 11:9, 12:2, 12:5, 12:9, 12:12, 12:16, 12:19, 12:22, 16:22, 17:11, 17:18, 17:24, 19:23, 20:10, 20:16, 21:1, 22:8, 22:21, 23:20, 23:24, 24:4, 24:17, 24:20, 25:1, 25:6, 26:19, 28:3, 28:23, 29:2, 29:6, 29:12, 29:16, 29:20, 29:24, 30:4, 30:11, 31:8, 32:1, 32:13, 33:22, 34:21, 35:6, 36:3, 36:6, 37:7, 37:11, 37:13, 37:19, 37:23, 39:11, 39:25, 40:7, 40:10, 41:24, 42:18, 43:25, 44:3, 44:16, 44:22, 46:2, 46:4, 46:15, 47:2, 48:20, 49:23, 50:12, 51:22, 52:1, 53:15, 53:23  <b>Toft</b> [2] - 3:3, 4:6  <b>together</b> [1] - 45:5  <b>top</b> [7] - 18:9, 18:14, 18:20, 18:23, 23:7, 31:18, 44:12  <b>topographic</b> [2] - 18:19, 52:23  <b>topography</b> [1] - 48:10  <b>topple</b> [1] - 35:10  <b>traveling</b> [1] - 36:2  <b>trees</b> [4] - 14:9, 26:14, 32:23, 39:16  <b>tremendous</b> [1] - 35:4  <b>tried</b> [1] - 33:19  <b>try</b> [5] - 24:15, 33:13, 47:12, 51:8, 51:20  <b>trying</b> [5] - 21:25, 23:2, 25:9, 35:20, 35:21  <b>Tuck</b> [2] - 11:24, 37:21  <b>tuck</b> [1] - 38:12  <b>Tuesday</b> [1] - 52:5  <b>turf</b> [1] - 26:4  <b>two</b> [29] - 11:11, 12:13, 12:16, 16:19, 16:23, 17:4, 20:6, 20:17, 20:18, 21:14, 22:15, 27:14, 27:22, 28:10, 32:1, 36:13, 40:17, 41:16, 43:15,</p>	<p>43:20, 44:9, 45:1, 46:24, 49:7, 49:8, 52:13, 52:14, 52:15</p> <p style="text-align: center;"><b>U</b></p> <p><b>undated</b> [1] - 8:4  <b>under</b> [7] - 13:7, 32:1, 32:6, 34:5, 40:21, 41:22, 45:24  <b>undermine</b> [1] - 45:4  <b>underneath</b> [1] - 24:11  <b>undue</b> [2] - 5:9, 49:20  <b>unless</b> [2] - 40:3, 44:3  <b>unusual</b> [1] - 13:10  <b>up</b> [19] - 14:4, 16:6, 17:21, 18:8, 18:11, 18:13, 18:14, 20:9, 22:3, 23:7, 23:18, 26:1, 29:23, 30:22, 33:18, 38:5, 42:3, 51:1, 52:9  <b>update</b> [1] - 50:10  <b>updated</b> [2] - 22:7, 46:25  <b>upper</b> [1] - 45:4  <b>urge</b> [1] - 39:10</p> <p style="text-align: center;"><b>V</b></p> <p><b>values</b> [1] - 39:5  <b>variance</b> [33] - 5:8, 6:5, 6:8, 6:9, 6:11, 6:14, 8:4, 8:5, 8:8, 9:21, 9:25, 10:12, 10:15, 11:1, 11:20, 11:23, 20:11, 20:12, 22:5, 28:17, 31:11, 39:20, 40:14, 41:10, 43:22, 45:16, 47:14, 48:21, 49:17, 50:9, 50:15, 51:7, 51:11  <b>variances</b> [5] - 13:4, 13:8, 13:15, 40:13, 40:15  <b>variation</b> [1] - 13:11  <b>variety</b> [1] - 34:16  <b>vegetation</b> [6] - 14:6, 14:9, 14:25, 30:10, 31:7, 51:15  <b>verbatim</b> [2] - 11:6, 11:8  <b>versions</b> [4] - 28:24, 28:25, 29:3  <b>versus</b> [2] - 16:4, 20:1  <b>violates</b> [2] - 6:20,</p>
---	---	---	--	---

visited Zoning

<p>7:2  <b>visited</b> [1] - 6:13  <b>visual</b> [2] - 14:4, 24:5  <b>visually</b> [2] - 10:7, 11:15  <b>vote</b> [5] - 6:6, 6:8, 6:10, 50:14, 50:15</p>	<p>15:1, 16:14, 21:22, 31:12, 33:6, 33:11, 33:24, 33:25, 34:3, 34:5, 34:7, 34:8, 34:9, 34:10, 34:18, 34:22, 35:1, 35:3, 35:4, 35:5, 35:9, 35:12, 35:17, 35:21, 35:24, 35:25, 36:1, 45:19, 45:20, 45:24, 46:9, 49:23</p>	<p>7:12, 28:7, 47:11  <b>Zoning</b> [8] - 2:16, 4:1, 4:5, 4:24, 7:3, 8:13, 9:17, 10:21</p>
<p><b>W</b></p>		
<p><b>wait</b> [1] - 40:11  <b>Walch</b> [1] - 9:23  <b>walk</b> [1] - 26:6  <b>wall</b> [107] - 6:20, 7:2, 7:10, 7:14, 7:17, 10:5, 11:13, 13:17, 13:22, 14:8, 14:9, 14:24, 16:1, 16:19, 16:22, 17:4, 17:10, 18:3, 18:16, 19:1, 19:2, 19:6, 19:8, 19:10, 19:13, 19:17, 19:21, 20:8, 20:11, 20:24, 21:7, 21:13, 22:11, 23:1, 23:4, 23:7, 23:11, 23:13, 23:21, 23:25, 24:4, 24:6, 24:9, 24:14, 24:22, 26:6, 26:7, 26:11, 26:13, 26:16, 27:13, 27:24, 27:25, 30:1, 30:7, 30:9, 30:12, 30:19, 31:5, 31:18, 31:21, 32:2, 32:14, 32:15, 32:16, 32:22, 32:24, 34:25, 35:10, 35:18, 35:22, 37:2, 37:14, 38:23, 38:25, 41:2, 41:4, 41:11, 42:1, 42:2, 45:4, 45:5, 45:12, 45:18, 46:8, 46:20, 47:19, 47:21, 47:24, 47:25, 48:4, 48:6, 48:18, 48:24, 50:21, 50:23, 50:24, 51:7, 51:8, 51:9, 51:16, 53:5, 53:6  <b>walls</b> [14] - 27:14, 28:11, 32:9, 33:16, 35:3, 40:17, 41:16, 43:15, 43:20, 44:11, 44:20, 45:1, 45:9, 49:8  <b>wants</b> [1] - 51:10  <b>warrant</b> [1] - 13:11  <b>warranted</b> [1] - 5:9  <b>washes</b> [1] - 33:20  <b>washing</b> [1] - 37:6  <b>water</b> [36] - 10:7, 11:15, 14:21, 14:25,</p>	<p><b>watered</b> [1] - 33:1  <b>watering</b> [2] - 33:3, 33:9  <b>watershed</b> [1] - 33:12  <b>ways</b> [1] - 47:12  <b>wayside</b> [1] - 49:1  <b>weeds</b> [1] - 39:16  <b>week</b> [1] - 36:13  <b>weeks</b> [2] - 52:13, 52:14  <b>weight</b> [1] - 35:4  <b>Welch</b> [2] - 9:23, 10:24  <b>welcome</b> [1] - 4:5  <b>WHEREOF</b> [1] - 54:10  <b>white</b> [2] - 28:4, 29:6  <b>whole</b> [6] - 28:20, 33:2, 35:2, 35:12, 39:9, 48:25  <b>wish</b> [3] - 5:16, 8:18, 36:7  <b>wishes</b> [5] - 5:13, 6:4, 20:20, 37:24, 40:1  <b>WITNESS</b> [1] - 54:10  <b>Wooldridge</b> [3] - 3:9, 4:15, 8:7  <b>WOOLDRIDGE</b> [5] - 8:9, 29:5, 46:3, 51:24, 52:12  <b>word</b> [1] - 11:10  <b>writing</b> [2] - 9:24, 10:24</p>	
<p><b>Y</b></p>		
	<p><b>yard</b> [9] - 7:11, 13:4, 13:6, 27:22, 42:3, 42:19, 43:3, 48:1  <b>yards</b> [1] - 52:21  <b>years</b> [3] - 33:20, 39:14, 51:6  <b>yourself</b> [1] - 21:3</p>	
<p><b>Z</b></p>		
	<p><b>ZONING</b> [2] - 1:4, 2:1  <b>zoning</b> [4] - 4:8,</p>	