

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
TOWN OF BARRINGTON PLANNING BOARD

PUBLIC HEARING IN RE:

**PRELIMINARY PLAN/
COMPREHENSIVE PERMIT
APPLICATION: PALMER POINTE
NEIGHBORHOOD**

The matter pertaining to **EAST BAY COMMUNITY DEVELOPMENT CORPORATION, APPLICANT** in the above-entitled cause, before Geraldine M. Meenan, RPR, a Notary Public in and for the State of Rhode Island, at Barrington Town Hall, 283 County Road, Barrington, Rhode Island, on June 7, 2016, at 7:00 p.m.

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APPEARANCES:

MEMBERS OF THE BOARD:

Lawrence P. Trim, Jr., Chairman
Paul C. Dulchinos, Vice Chair
Richard E. Simms.
Lang

Anne Galbraith, Board Member
O'Grady.
Edgar G. Adams, Secretary

ALSO PRESENT:

Philip Hervey, AICP Town Planner
Mary Ann Rosenlof, Administrative Assistant

Andrew M. Teitz, Esquire ACIP, Town Solicitor
Ursillo, Teitz & Ritch, Ltd.

FOR THE APPLICANT:

Christian F. Capizzo, Esquire
Schechtman Halperin Savage, LLP

FOR THE ABUTTERS/CODDER

J. William W. Harsch, Esquire

1 would like to introduce the development team to the
2 Planning Board.

3 MR. CHAIRMAN: Sure. And even after you do that, we
4 appreciate anytime you can intervene if we're not asking
5 the right person, or sort of act as the quarterback.

6 MR. CAPIZZO: Certainly. That will be my role
7 tonight to make sure that you're getting your questions
8 answered from the Board and directing the questions or
9 furthering a response from the development team in
10 regards to the questions that you may have.

11 As you may have seen from the submissions from the
12 applicant that were submitted to the solicitor and to
13 Mr. Hervey on May 23, we narrowed, or we identified, I
14 should say, three major concerns that were put forth by
15 the public, those being environmental and health impacts
16 of Dieldrin and arsenic; Number 2, traffic and pedestrian
17 safety; and Number 3, the town's ability to manage the
18 development's onsite infrastructure including public
19 roads, surface and subsurface storm water systems, and
20 public and open space.

21 That will be the goal tonight, to answer questions
22 related to those, and any other questions that you may
23 have as it relates to the technical aspects of this
24 project.

25 With that, I'd like to introduce the development

1 team. What I'm going to do, some of these members have
2 been previously qualified as experts, and I'm going to
3 just ask a couple of questions so you understand what
4 their background and experience is and ask that they be
5 qualified as experts in a specific area so you can direct
6 your questions appropriately. And as the Chair
7 referenced, I will facilitate the questions to the right
8 individuals, if necessary.

9 So if we could start, I'd like to introduce, from
10 Fuss & O'Neill we have three individuals present tonight.
11 The first individual is Shawn Martin.

12 Shawn, if you could just come up, identify yourself
13 and your area of expertise as well as your training and
14 experience.

15 MR. MARTIN: Yes. I have 21 years of professional
16 experience in civil engineering and design primarily in
17 the field of urban redevelopment, brownfields
18 redevelopment projects in particular, and I have a
19 Bachelor's Degree in environmental and civil engineering.
20 I have been providing land development professional peer
21 review services to planning boards throughout the state,
22 in Rhode Island and Massachusetts, and, again, I am
23 experienced not only in designing but also developing
24 these types of projects.

25 MR. CAPIZZO: What licenses do you hold, Mr. Martin?

1 MR. MARTIN: I'm a professional civil engineer.

2 MR. CAPIZZO: Have you testified before?

3 MR. MARTIN: Yes. I've testified in front of the
4 Barrington Planning Board and Zoning Board in the past.

5 MR. CAPIZZO: And how many times have you testified
6 before this Planning Board as well as other planning
7 boards?

8 MR. MARTIN: More than 30 times.

9 MR. CAPIZZO: And as it relates to brownfields?

10 MR. MARTIN: Not in Barrington in particular except
11 for this particular project site.

12 MR. CAPIZZO: How long have you held your position
13 for at Fuss & O'Neill?

14 MR. MARTIN: I've been with Fuss & O'Neill for 15
15 years.

16 MR. CAPIZZO: And, again, just for the Board, your
17 area of specialty?

18 MR. MARTIN: My area of specialty is civil
19 engineering with a focus on storm water management and
20 brownfields and urban renewal, urban redevelopment
21 projects.

22 MR. CAPIZZO: I would ask the Board that he be
23 qualified in that area of specialty.

24 Next individual from Fuss & O'Neill is Derek Hug. If
25 you could identify yourself for the record and your area

1 of expertise.

2 MR. HUG: My name is Derek Hug with Fuss & O'Neill.
3 I'm a registered professional engineer with 18 years
4 experience. I am also a registered professional traffic
5 operations engineer, and my area of expertise is traffic
6 and transportation engineering.

7 MR. CAPIZZO: Have you previously testified at the
8 first hearing in this matter?

9 MR. HUG: Yes.

10 MR. CAPIZZO: How long have you been currently
11 employed by Fuss & O'Neill?

12 MR. HUG: Also for 15 years.

13 MR. CAPIZZO: And if you could give the Board your
14 training experience as a traffic engineer.

15 MR. HUG: I've been doing this for 18 years. I got
16 a degree from the University of Rhode Island in 1998.

17 MR. CAPIZZO: And how many times have you testified
18 before?

19 MR. HUG: A couple of dozen.

20 MR. CAPIZZO: And on what matters have you testified
21 before?

22 MR. HUG: Always traffic or transportation
23 engineering.

24 MR. CAPIZZO: Before what Boards have you testified?

25 MR. HUG: Planning boards, zoning boards, court

1 cases as well.

2 MR. CAPIZZO: Did you perform the traffic study in
3 this matter?

4 MR. HUG: Yes, I did.

5 MR. CAPIZZO: I would ask that Derek be qualified as
6 an expert in traffic engineering.

7 Sam, come on up. This is Samuel Hemenway with
8 Fuss & O'Neill. Sam, if you could identify yourself for
9 the record and your area of expertise.

10 MR. HEMENWAY: My name is Sam Hemenway; I'm a civil
11 engineer with Fuss & O'Neill. My expertise is in
12 infrastructure and utility design primarily, civil site
13 engineering.

14 MR. SIMMS: Sorry, can you speak up.

15 MR. HEMENWAY: Civil and site engineering primarily,
16 infrastructure in utility design.

17 MR. CAPIZZO: If you could be a little bit more
18 specific when you say infrastructure; what area?

19 MR. HEMENWAY: Primarily that relate to roadway
20 designs, construction plans and engineering storm water
21 management and utility infrastructure designs, water and
22 wastewater facilities.

23 MR. CAPIZZO: And what services do you provide on
24 this project?

25 MR. HEMENWAY: I was a project engineer for this

1 project with direct supervision of the roadway and
2 drainage design.

3 MR. CAPIZZO: And you previously testified in this
4 matter?

5 MR. HEMENWAY: Yes, I did.

6 MR. CAPIZZO: And have you testified before before
7 planning boards, zoning, or courts?

8 MR. HEMENWAY: Yes, I have.

9 MR. CAPIZZO: And in what capacity?

10 MR. HEMENWAY: As a professional expert civil
11 engineer. Again, I've been a registered civil engineer
12 for over 20 years, practicing in most municipalities in
13 Rhode Island.

14 MR. CAPIZZO: Where did you receive your training
15 and experience?

16 MR. HEMENWAY: I got a Bachelor of civil engineering
17 from Georgia Tech.

18 MR. CAPIZZO: I would ask that Mr. Hemenway be
19 qualified as an expert in infrastructure and civil
20 engineering, site infrastructure, storm water and
21 roadway.

22 Paul, come on up, please. Paul Attemann, if you
23 could identify yourself for the record, your company and
24 your area of specialty.

25 MR. ATTEMANN: Paul Attemann, Senior Associate with

1 Union Studio Architecture and Community Design. I've
2 been with the firm since 2002, and I've been a registered
3 architect since 2006. I've been in architecture and
4 community planning for the better part of 18 years. I've
5 testified before planning boards, zoning boards,
6 technical review committees, historic boards in Rhode
7 Island and Massachusetts a good two dozen times. I also
8 serve on the town of Warren Zoning Board of Review. I'm
9 the vice chair.

10 MR. CAPIZZO: How long have you been on the Zoning
11 Board of Review for?

12 MR. ATTEMANN: Five years.

13 MR. CAPIZZO: Could you tell us what your academic
14 experience is in this area.

15 MR. ATTEMANN: I have a Bachelor of Fine Arts and
16 Bachelor of Architecture from RISD, '93-1994.

17 MR. CAPIZZO: What services did you perform on this
18 matter?

19 MR. ATTEMANN: I was a project architect overseeing
20 the architecture design and also community planning with
21 Donald Powers, the principal.

22 MR. CAPIZZO: And you testified before previously on
23 this matter, is that correct?

24 MR. ATTEMANN: Yes.

25 MR. CAPIZZO: I would ask again that the Board

1 accept Mr. Attemann as an expert in architecture and
2 community design.

3 Francis Spinella, come on up. If you could identify
4 yourself for the record, your company, and what your role
5 is on this project.

6 MR. SPINELLA: Sure. Francis Spinella, FJS
7 Associates. We were founded in 1993. We work in the
8 affordable housing development area. I am a consultant
9 that works with a lot of nonprofits throughout the state
10 and southern New England.

11 MR. CAPIZZO: Have you testified before planning
12 boards or zoning boards or courts in this capacity?

13 MR. SPINELLA: Yes. Probably more than half of the
14 communities in the State of Rhode Island, plus Superior
15 Court, Supreme Court.

16 MR. CAPIZZO: And in what capacity did you testify?

17 MR. SPINELLA: As a development consultant.

18 MR. CAPIZZO: When you say development consultant,
19 could you give the Board just some specifics as to what
20 that entails as a development consultant, or what
21 services you provided on this.

22 MR. SPINELLA: Sure. As the development -- for this
23 development and a lot of other affordable housing
24 developments, I act as the primary development officer to
25 coordinate not only permitting but acquisition, finance,

1 and construction, through the end of construction.

2 MR. CAPIZZO: And have you testified previously in
3 this matter?

4 MR. SPINELLA: I have.

5 MR. CAPIZZO: At Master Plan approval?

6 MR. SPINELLA: At every approval, yes.

7 MR. CAPIZZO: How many projects similar to this
8 Palmer Pointe project have you worked on in the State of
9 Rhode Island?

10 MR. SPINELLA: Probably 20.

11 MR. CAPIZZO: In what capacity?

12 MR. SPINELLA: As development consultant and primary
13 developer.

14 MR. CAPIZZO: And your academic?

15 MR. SPINELLA: I have a Bachelor of Arts from
16 Providence College in 1987.

17 MR. CAPIZZO: I would ask that the Board accept
18 Mr. Spinella as an expert in the specialty of development
19 consultant.

20 MR. SPINELLA: And affordable housing.

21 MR. CAPIZZO: And affordable housing.

22 MR. TEITZ: I'm going to just step in here and say
23 I'm kind of concerned about that as an expertise element.
24 I understand he has a lot of experience as a consultant,
25 but you're not really presenting a sort of issue of an

1 opinion testimony of expertise on this, just as a
2 consultant. It doesn't seem to fit the aspects of an
3 expert. There's no certification, there's no education.
4 There's experience, but not a particular issue.

5 MR. CAPIZZO: May I further inquire of this witness,
6 then, Mr. Chair?

7 MR. CHAIRMAN: Sure.

8 MR. CAPIZZO: Mr. Spinella, if you could, you've
9 heard what the solicitor's concerns were. If you could
10 please address those concerns in regards to your training
11 and experience.

12 MR. SPINELLA: Sure. I've actually been qualified
13 by this Board, by this Town Council, by the Superior
14 Court, Supreme Court, and almost every other planning
15 board that I've been before, every planning board I've
16 been before, which is more than half of them in the State
17 as an affordable housing expert, which is what I've been
18 doing for 25 years.

19 MR. CAPIZZO: And what training and experience have
20 you received in regards to that, that type of consultant
21 work?

22 MR. SPINELLA: Successful projects for the past 25
23 years.

24 MR. CAPIZZO: And when you say successful projects,
25 if you could just explain.

1 MR. SPINELLA: Certainly, certainly. So from
2 inception through construction, projects that get
3 permitted, financed, and built in the affordable housing
4 working almost exclusively with nonprofits, housing
5 authorities, and the like.

6 MR. CAPIZZO: You say you've testified previously
7 and qualified as an expert in which courts?

8 MR. SPINELLA: Superior Court of Rhode Island and
9 Supreme Court in Rhode Island.

10 MR. CAPIZZO: And, again, in what capacity?

11 MR. SPINELLA: As an affordable housing expert.

12 MR. SIMMS: I'm curious as to how he would have
13 testified or been certified as an expert in Supreme
14 Court. It's a non-litigation court, it's a court of
15 appeal. He certainly wouldn't testify in the Supreme
16 Court. I assume you didn't mean you testified.

17 MR. SPINELLA: No, but I was accepted at the
18 Superior Court level, and then when we went to Supreme
19 Court, it was accepted that I was an expert in the
20 negotiations at Supreme Court.

21 MR. CAPIZZO: You did not testify before the Supreme
22 Court?

23 MR. SPINELLA: No, I did not.

24 MR. CAPIZZO: But your testimony was accepted by the
25 Supreme Court. Did you attend the oral arguments?

1 MR. SPINELLA: And have been, yeah, before the
2 Supreme Court.

3 MR. SIMMS: Maybe we're nitpicking, but, I mean,
4 they don't accept your testimony, they consider it. And
5 they either consider it positively or negatively when you
6 get to that level. I would agree in terms of testifying
7 with --

8 MR. SPINELLA: In the Supreme Court --

9 MR. SIMMS: Excuse me. I would agree with you,
10 certainly being qualified as an expert if you say before
11 the Superior Court without a problem, but I don't follow
12 it to the Supreme Court level, but maybe that's academic.

13 MR. CAPIZZO: And just for clarification, your role
14 in assisting this Board with the questions they may have,
15 what type of questions may you be able to answer for this
16 Board in your role as a consultant?

17 MR. SPINELLA: Anything regarding the finance, the
18 affordable housing piece, and just the overall
19 coordination. Not with regard to engineering or design
20 or any of that.

21 MR. CAPIZZO: Again, I would move to have this
22 individual, Mr. Spinella, accepted as an expert as a
23 development consultant. Thank you.

24 So that is, I believe, all of the applicant's
25 witnesses that will be available tonight for questions

1 from the Board. What I would like to do is either, when
2 we can start with what I think is one of the bigger
3 concerns that was relayed by the public comment was the
4 environmental, the significant -- concerns about
5 significant negative environmental impact that this site
6 and this development may have on the community, and if
7 that is okay with the Planning Board, I will proceed with
8 addressing the environmental impacts of the site.

9 MR. CHAIRMAN: Sure. The matter of how you want to
10 address them, I'm going to leave that up to you.

11 MR. CAPIZZO: So what I will do is I will have
12 Mr. Shawn Martin, who assisted with the responses as it
13 relates to the significant, quote, environmental and
14 health impacts of Dieldrin and arsenic that was based on
15 the testimony that was provided through public comment as
16 well as through the testimony of, I believe it was a
17 Mr. Nickelson, Mr. Diebold, and Ms. Hahn-Sweet at the
18 last hearing. What I would like to do to introduce,
19 before we start into the record -- Mr. Chair, if I may
20 approach --

21 MR. CHAIRMAN: Sure.

22 MR. CAPIZZO: -- the town administrator as well as
23 you. What I am providing you is a copy for the Planning
24 Board members. I would ask that this be introduced into
25 evidence (handing document to Chair). This project is

1 actually being -- the environmental aspect of this
2 project is being coordinated through, and I have a copy
3 for Mr. Harsch as well if there's an extra copy over
4 there.

5 (MS. GALBRAITH HANDING DOCUMENT TO MR. CAPIZZO, WHO
6 HANDED IT TO MR. HARSCH)

7 MR. CAPIZZO: The environmental component of this
8 project is being coordinated through the targeted
9 brownfields assessment program through U.S. EPA. The
10 individual involved with this matter is a James P. Byrne,
11 Environmental Scientist with U.S. EPA Region 1. He is
12 leading this project on behalf of EPA and working with
13 Nobis, which is an EPA contractor, to deal with the
14 environmental aspects of this matter.

15 It's my understanding that Mr. Harsch, along with
16 the members of, I believe it's Codder, met with Mr. Byrne
17 last week to discuss their concerns related to the
18 environmental aspects of arsenic and Dieldrin.

19 This document that I provided and asked to be
20 introduced into the record is an e-mail from Mr. James P.
21 Byrne, Environmental Scientist, U.S. EPA Region 1 in New
22 England. Based on a conversation that I had with him
23 this morning about EPA and his involvement on this
24 matter, and asked for him to provide -- there's two
25 e-mails, an e-mail from me to Jim requesting that he

1 provide information to the Planning Board as to EPA's
2 involvement with this matter, what their timetables are,
3 their investment in this project, and what his opinion is
4 in regards to the site. And the fact that he is working
5 with DEM, Cynthia Gianfrancesco (phonetic), in regards to
6 this site.

7 Specifically, I want to draw the Board's attention
8 to the second paragraph of Mr. Byrne's e-mail where he
9 states for the record, 'Although the site is contaminated
10 and needs to be cleaned up in order to be reused safely,
11 in my opinion this site does not compare to the risks of
12 more serious contaminated sites such as EPA Superfund
13 sites. In that site investigation is not complete as of
14 yet. We cannot accurately determine what final
15 remediation will be at this point in time. It is my
16 experience, however, that sites of this nature can be
17 effectively remediated and reused in a safe manner with
18 the easily implemented appropriate remediation
19 technologies and other tools, such as environmental land
20 use restrictions, or ELUR. In that the site is being
21 reused for residential purposes, it will be cleaned to
22 the strictest standards under Rhode Island DEM
23 regulations.' And he references meeting with Mr. Harsch
24 and a group of Barrington residents.

25 So I would ask that that be marked as one of the

1 applicant's exhibits. And, Mr. Hervey, I can provide the
2 exhibit sticker for that. I'm not sure what exhibit
3 number that will be. I believe it will be --

4 MR. HERVEY: I'll figure it out.

5 MR. CAPIZZO: Okay. With that I would ask that
6 Shawn Martin, who went through the responses of the
7 public comment and from the public hearing as well as the
8 questions that were posed by the Board to address the
9 environmental as well as the --

10 MR. CHAIRMAN: Excuse me, I have just a quick
11 question. I don't know if anybody else has any questions
12 about this exhibit. How's the relationship work with --
13 this person is not functioning as a consultant, they are
14 actually United States government, right?

15 MR. CAPIZZO: It's actually a great question, and I
16 think Mr. Martin will be able to address where Mr. Byrne
17 fits in this relationship with DEM and what their role is
18 with DEM and EPA and how they've contracted Nobis to
19 mediate this site, and I think he can answer that
20 question.

21 MR. MARTIN: Good evening, again; Shawn Martin,
22 Fuss & O'Neill. Just to begin with a presentation, I'd
23 like to revisit some history on the project and as far as
24 the environmental investigation component is concerned.

25 Back in 2013 East Bay Community Development

1 Corporation filed for a targeted brownfields assessment
2 grant from DEM, which issued through EPA and was
3 subsequently awarded a grant to do an initial Phase 1
4 environmental site assessment. In 2014 that
5 environmental site assessment was completed, and the
6 results of that report were included in the development
7 application and Preliminary Plan. Subsequent to that
8 report, further investigation was identified as
9 necessary, and East Bay Community Redevelopment received
10 a subsequent grant to continue that investigation, and
11 that investigation was completed as a Phase 2
12 environmental site assessment conducted by Nobis, which
13 is the report that's also included in your application
14 materials, and that has been referred to under past
15 testimony before you.

16 The two primary issues or environmental concerns
17 that were raised in the Nobis report and subsequent
18 voluntary letter that was actually prepared by DEM and
19 submitted to this Board also with the application, the
20 voluntary procedure letter. The Phase 2 investigation
21 identified two major environmental concerns, the first
22 being the presence of arsenic exceeding residential
23 exposure criteria levels, and also --

24 MR. SIMMS: Excuse me, say that again, the presence
25 of what?

1 MR. MARTIN: Arsenic. And the other constituent was
2 Dieldrin, a pesticide. I'm sorry. Some of this
3 testimony I understand will be new to this Board member.
4 So as a result of that Phase 2 investigation, DEM
5 reviewed it and determined in this voluntary procedure
6 letter that the SIR, the Site Investigation Report, was
7 completed substantially in conformance with DEM
8 regulations, but required further investigation to ensure
9 that there was adequate identification of the limits of
10 Dieldrin-contaminated soils. And also to identify any
11 further arsenic-contaminated soils that may be present.
12 And the reason for the site investigation is to identify
13 what methods of cleanup or remediation are warranted, and
14 also to the next stage ultimately to clean up the site.

15 And as I had testified in front of the Board before,
16 there are two methods of cleanup that have been
17 identified so far in the Nobis report that are of
18 interest right now, and that's been considered in this
19 development plan. The first is the encapsulation of the
20 arsenic-containing soils. And the encapsulation method,
21 it may sound like a way of just glossing over what may be
22 an environmental issue, but really this is the
23 methodology that's developed in the RI-DEM regulations,
24 the remediation regulations they have adopted, latest
25 amendment in 2011. And in essence what it does is that

1 they identify soil management strategies, how to manage
2 the soil during a cleanup activity, and also how to
3 permanently protect or prevent human exposure or exposure
4 of the soils to the environment. And encapsulation is a
5 method to do that, is to prevent human exposure to that
6 soil containing arsenic.

7 The soil cap that we are contemplating for this
8 project, and which, again, we're not at the stage of the
9 remediation plan, but it's to encapsulate it with clean
10 soil fill materials that are imported to the site to
11 encapsulate it with paved surfaces like concrete
12 sidewalks or asphalt pavement roadways and building
13 slabs. Those sorts of things would qualify as a clean
14 cap.

15 And as far as the Dieldrin contamination, the method
16 that is being contemplated is actually removal and
17 disposal from the site. Now, to do that, further
18 investigation is necessary. And we concur with what the
19 abutters' testimony and Codder's testimony is in effect
20 is that further investigation is required. But, in fact,
21 DEM has already stated that that is the case; further
22 investigation is necessary, and those investigations will
23 be funded by EPA as were the prior investigations through
24 DEM's program to further delineate the limits or boundary
25 of the Dieldrin-containing soils. And the reason for

1 that is simply that there aren't enough soil borings and
2 test data to specifically limit accurately the amount of
3 Dieldrin-containing soil. There is an understanding of
4 the location in a general manner of where it is on the
5 site, but further investigation is needed so that they
6 can identify how much volume of soil needs to be removed,
7 and then proceed with the remedial action work plan.

8 So that's a plan that's developed and identifies the
9 process for removing these Dieldrin-containing soils.

10 The EPA is actually planning on continuing with its
11 investigation in July of this year; I believe I testified
12 to that fact at the last meeting. Their plan following
13 that further investigation is to prepare a remedial
14 action work plan, which is a publicly-available document
15 that actually is open for public input before the final
16 implementation. And point of fact, even though the work
17 is done by EPA's contractor and not East Bay CDC, the
18 plan still must be approved by the Rhode Island
19 Department of Environmental Management before
20 implementation, so that's a -- even though it sounds like
21 the EPA might be the -- have a more primary role in this
22 case, really they're the mechanism for actually
23 remediating this site, so they're paying for the
24 assessment fees for the project. The ultimate
25 remediation, once a remedial action work plan is

1 approved, is that East Bay CDC as the party that will be
2 responsible for cleanup, will have to implement that in
3 terms of all the terms and conditions of the remedial
4 action work plan and the remediation regulations under
5 the DEM auspices.

6 MR. CAPIZZO: Shawn, can you explain to the Board
7 what the remedial action work plan, what it actually is,
8 what that process is with DEM? Not specific, I guess,
9 just in a general sense so they understand when you refer
10 to it as a document or a process, they may not know what
11 it is, or they may, but if you could just clarify that
12 for them.

13 MR. MARTIN: To be more specific, the site
14 investigation or the additional amended site
15 investigation will be done in July and will inform the
16 remedies that will be implemented. Although I've talked
17 about them in a conceptual manner as encapsulation of
18 arsenic-containing soils and removal of
19 Dieldrin-containing soils, the plan that describes how
20 this is going to happen is the remedial action work plan.
21 It tells you -- it includes a soil management plan. It's
22 for handling and disposal of soils, personal protection
23 for construction site workers, so it includes things like
24 dust control and erosion and sedimentation controls.
25 Probably a step beyond what is normally required on a

1 construction site.

2 MR. SIMMS: Who puts that plan together, Shawn,
3 after the -- after July, is it Fuss & O'Neill or is it
4 EPA?

5 MR. MARTIN: No, no, that would still be Nobis under
6 contract through EPA. So EPA will handle that phase of
7 the project.

8 MR. SIMMS: Did you get the EPA involved in this
9 process?

10 MR. MARTIN: Well, what triggered the process was
11 that East Bay CDC requested a grant to conduct the
12 Phase 1 site assessment, and that's where the EPA funds
13 DEM's targeted brownfields assessment program, and in
14 turn, once they award the money to conduct the work, East
15 Bay CDC went along, did the Phase 1. The results said,
16 we recommend, based on past land uses and what we
17 observed at the site, that additional investigations be
18 done.

19 MR. SIMMS: Is it because it's an East Bay -- you
20 said EPA is paying for this.

21 MR. MARTIN: Correct.

22 MR. SIMMS: So tax dollars are paying for this.

23 MR. MARTIN: Ultimately.

24 MR. SIMMS: Which they wouldn't do as a private
25 enterprise looking to develop this land, I assume. Is

1 this because it's the East Bay -- what is it?

2 MR. MARTIN: There are eligible entities that can
3 apply for brownfields grants, either for assessment or
4 clean up. And sometimes they're municipalities, cities
5 and towns, or they're nonprofits, but a lot of times
6 entities will not wait for a grant to arrive, they're
7 not -- a Phase I assessment is not an expensive
8 undertaking, it's only about two or three thousand
9 dollars typically, but I think East Bay CDC also wanted
10 to take advantage of the program that was available.

11 MR. SIMMS: Well, assuming they will, but also the
12 cleanup work, this remedial work, it sounds like it would
13 not be inexpensive.

14 MR. MARTIN: Correct.

15 MR. SIMMS: And you're stating that EPA is going to
16 be paying for this remedial work to be done.

17 MR. MARTIN: EPA is paying for the planned
18 development, so the procedures that describe how the site
19 needs to be remediated --

20 MR. SIMMS: Okay. But then the actual work --

21 MR. MARTIN: The actual construction, encapsulation,
22 soil disposal, will be East Bay CDC's responsibility.

23 MR. CHAIRMAN: Shawn, I have another question, too,
24 just to kind of understand the relationship again. So
25 the EPA, again, I guess I'm thinking about the question

1 as I'm saying it, so my apologies. Once the EPA has sort
2 of their arms around this, or this has been identified as
3 an issue, the contamination of the site, does anybody
4 have the option of saying, oh, never mind, we don't want
5 to do anything. I mean, to what degree is this now --
6 the plan is going to be developed and somebody has to do
7 it?

8 MR. MARTIN: Good question. It's too late for that
9 to happen. You know, once the site investigation starts
10 and the reportable release is identified such as the
11 exceedances and arsenic and Dieldrin, that brings
12 East Bay CDC into the program. So they will be
13 responsible for the cleanup activities. They can't say,
14 sorry, we changed our mind.

15 MR. LANG: So just to clarify that, too, I guess so
16 Phase 2 of the investigation to further investigate how
17 the contamination is, you kind of blended it in with the
18 remedial action plan with that, or they're going to do
19 the investigation in July, release the kind of findings,
20 and part of the findings is additional remediation plan,
21 or that's a separate piece of that?

22 MR. MARTIN: Yeah, the site investigation report
23 will -- they'll build off of what's been done already.
24 They'll supplement it with additional data, and that will
25 be used to help refine the ultimate remedies that will be

1 proposed. Now, DEM is requiring at least two in addition
2 to the no action. You see that a lot of times. So we
3 don't want to just see no action and then one other,
4 remedial alternatives. That's the typical process.

5 And, again, DEM has a pivotal role in this whole
6 process in that even the site investigation report, the
7 reason you saw the voluntary procedure letter is that the
8 SIR, if I can refer to it that way, was done and
9 submitted to DEM for review to make sure that it complied
10 with their standards. So they would even issue comments
11 back to EPA and say, hey, you have to address these items
12 as you move forward. And you've seen that in the letter
13 as well. But I think you may have also seen some
14 reference to it in a discussion here, is that there is a
15 soil stockpile that's along the edge of the wetlands,
16 it's soil and other debris that's been pushed into the
17 wetland areas prior to East Bay CDC's acquisition of the
18 property. Our goal is to take that soil material out of
19 the wetland areas and restore that as well. That soil
20 material before it's used or disposed of needs to be
21 tested and made sure that it's not containing any other
22 constituents, and that's what's referred to in this
23 letter.

24 I think even, I apologize, Jim Byrne mentions in his
25 e-mail, but in any case, those soils creating that berm

1 at the lower part of the site to the east are going to
2 have to be sampled as well in addition to further
3 refining the area of the Dieldrin-containing soils.

4 The other matter, when I talked about some of the
5 site history and final Phase 1 of our site assessment, at
6 that time in 2013 DEM was made aware that the proposed
7 use would be residential, because the concept plan that
8 the Board had seen way back at pre-application and Master
9 Plan was the one that was submitted to DEM to request a
10 grant to do the assessment. So DEM has been well-aware
11 since that time about the intended use of the project. I
12 know it was implied by some of the testimony that -- it
13 was an insinuation that perhaps DEM and EPA are not aware
14 of what the intended use is, and really, all of what
15 you've seen before you is a result of the intended use,
16 but also that these reportable amounts of contamination
17 are a result of residential exposure, they're not some
18 industrial site contamination levels that you would
19 consider. So this has all been presented to both DEM and
20 EPA.

21 MR. CHAIRMAN: Shawn, one quick question again.

22 MR. MARTIN: Sure.

23 MR. CHAIRMAN: I know we're peppering you with
24 stuff. So if this application was for a different
25 project, you still have a process that you have to go

1 through with the State, would that have resulted in
2 determining that there was contamination on the site,
3 whether it was suspected or not, and then would you be
4 locked into a process, or is the process completely
5 dependent on funding from the Federal government as part
6 of a --

7 MR. MARTIN: No, the obligation remains. Once an
8 owner has knowledge of a reportable release, they have to
9 notify DEM, make an application and notify DEM. At this
10 point, East Bay CDC is in the DEM program. And what was
11 also described to the Board last time was that there will
12 be an environmental land use restriction, and there is
13 testimony that an E-L-U-R, ELUR, environmental land use
14 restriction, is uncommon for this type of land use, and I
15 will unequivocally say that that's not true. ELURs are
16 placed to actually help protect land owners, future land
17 owners and users from altering the soils, from actually
18 protecting others abutting the site from improper use of
19 the property. So they get recorded with the deed,
20 they're in the land evidence records. So that's another
21 piece of the puzzle that would be part of this project.

22 MR. CAPIZZO: Shawn, can you just describe for the
23 Board, maybe not for this project, but for other projects
24 that you've worked on in your experience, what a typical
25 ELUR is. I know you said it gets reported with the

1 property for different sites to put future owners on
2 notice, but if you could just give them an idea of what
3 an ELUR is.

4 MR. MARTIN: Particularly what an ELUR is it
5 actually describes some of the environmental conditions
6 of the property, and actually goes along with soil
7 management. The soil management plan is, it's part of
8 the ELUR. Any future alterations of the property, so in
9 the event of an encapsulated site where you have a clean
10 soil cover or other encapsulation of soils, it would
11 describe how an entity conducting those activities would
12 have to notify DEM and follow certain procedures in
13 accordance with the remediation regulations on how to
14 manage soil, dispose of soil, minimize human exposure and
15 all those sorts of things. It's a pretty common measure
16 for protecting -- it doesn't have to be residential,
17 commercial, industrial, it really doesn't matter, but
18 it's just another tool that's for health protection
19 reasons.

20 MR. CHAIRMAN: Does anybody else have -- I just
21 thank you for your patience, because I think it's a
22 pretty important part that we have to try to understand
23 as we go forward.

24 You looked like you were going to ask a question.

25 MR. DULCHINOS: Yeah. I thought I heard the answer

1 but then I was in and out. Is there a point -- now
2 you're going to get -- you'll get grant money that will
3 help pay for the remediation?

4 MR. MARTIN: No.

5 MR. DULCHINOS: No. The grant is strictly to
6 determine the plan for remediation. Remediation -- the
7 cost of doing the remediation would be upon the CDC for
8 the overall, they'd have to figure out --

9 MR. MARTIN: That's correct.

10 MR. DULCHINOS: So is there a point at which the
11 cleanup would exceed the economic feasibility of doing
12 this project overall?

13 MR. MARTIN: Not based on the information that's
14 been provided by Nobis so far. And in fact, when we --
15 we worked with East Bay CDC and their site contractor,
16 Nationwide Construction, to help them develop costs to
17 build this project, so they used our drawings, but also
18 carried things like clean soil and encapsulating the
19 entire site through the wetlands, into the wetlands.
20 Well, not into the wetlands. Up to that wetland edge as
21 I've described. So all of that restoration activity,
22 everything would need a clean soil cap, and that was
23 considered in their budgeting for this project.

24 MR. DULCHINOS: Oh, okay. So encapsulation is what,
25 putting down a layer of clay or something impervious?

1 MR. MARTIN: No, no, it's usually a marker, a
2 barrier. I wouldn't call it necessarily a barrier, but
3 it's typically been a filter type of fabric or a
4 landscape type of fabric to demarcate where the clean
5 soil ends, and then the clean soil material starts.

6 MR. DULCHINOS: So there will be a certain amount of
7 removal of the top soil, then there will be clean soil
8 brought in but on top of a barrier or some sort of mesh.

9 MR. MARTIN: Correct. And that would go for any
10 piece of the property, really. One exception is when you
11 deal with asphalt and concrete and stuff like that.

12 MR. DULCHINOS: That already encapsulates.

13 MR. MARTIN: You'd have the hard material, and then
14 you would have a clean fill material under that like
15 gravel or something.

16 MR. SIMMS: Shawn, as a result of the site
17 investigation that's taken place so far, what's the
18 opinion as to the source of this contamination?

19 MR. MARTIN: It's believed that the release of the
20 Dieldrin was from the use of pesticides at the property.
21 And arsenic, there's -- some of the samples exceeded the
22 state limits, but it hasn't been alluded to that was
23 associated with a particular land use, although it is
24 common to some pesticides. It can be found in
25 pesticides, so -- or at least the pesticides that --

1 plant materials.

2 MR. DULCHINOS: Not in the fertilizer?

3 MR. MARTIN: No, pesticides typically. And you find
4 them a lot in orchards, apple orchards and those sorts of
5 things.

6 MR. SIMMS: What was that, you found them a lot in
7 what?

8 MR. MARTIN: Apple orchards from the pesticide
9 sprays. There certainly had been apple orchards in the
10 Hampden Meadows.

11 MR. SIMMS: So, Chris, would it be safe to say that
12 East Bay CDC wasn't aware of this at the time they
13 purchased this property?

14 MR. MARTIN: I can answer. Yeah, in reality,
15 there's -- a lot of times the trigger for this
16 investigation is bank financing, or in this case, Rhode
17 Island Housing, they require a Phase 1 environmental site
18 assessment to be done before they'll release funds to
19 purchase, so it was a condition, probably part of the
20 purchase and sales agreement.

21 MR. SIMMS: Okay. That's interesting.

22 MR. MARTIN: But it was part of their due diligence.
23 They wanted to make sure --

24 MR. SIMMS: So even with that due diligence and that
25 coming to the fore, it didn't ballocks this deal.

1 MR. MARTIN: No, because there was a fairly good
2 understanding of what risks might be present and how that
3 could be managed. The Dieldrin was a surprise.

4 MR. SIMMS: So you could clean this up.

5 MR. MARTIN: Correct.

6 MR. SIMMS: And you are. Are you confident that you
7 can clean this up, Shawn?

8 MR. MARTIN: Well, that's just it. Part of this
9 project, some of the positives I've tried to describe,
10 and they haven't been considered by, I think, the other
11 parties, is that the soil materials that are in the
12 wetlands will be removed. Two hundred feet of coastal
13 buffer will be restored. The site will be remediated.
14 The soils that exist today that exceed residential
15 exposure levels will be encapsulated and protected from
16 human exposure. And the highest risk material or the
17 scariest sounding material on the site, the Dieldrin,
18 will actually be removed from the site. And we ask that
19 the Board consider that this remediation work through the
20 DEM is not unlike the CRMC or the DEM water quality or
21 DOT, and that is a State permitting or approval process.
22 So we're asking that -- we're making the Board aware of
23 the process and what's happening and trying to give as
24 much detail about it as possible. But ultimately the
25 plan will be approved by DEM, and the owner, East Bay

1 CDC, will be required to implement it. And so we ask
2 that this be incorporated into the final plan approval
3 just as all the other state permits, which this project
4 needs to obtain.

5 MS. GALBRAITH: Shawn, can you --

6 MR. ADAMS: Are there regular --

7 MS. GALBRAITH: Go ahead, Edgar.

8 MR. ADAMS: Are there regular inspections of the
9 work as it's done by DEM?

10 MR. MARTIN: Yes. We often during an implementation
11 phase will do inspections specifically to ensure that the
12 remedial action work plan practices are being implemented
13 properly. The risk for an owner not complying is DEM
14 inspection and enforcement. This is certainly a property
15 that's abutting other residential uses, and I think DEM
16 is also well aware that this is a sensitive site for that
17 reason, and that they will be watching this one closely
18 as will be the abutting residents.

19 MR. LANG: So there's ongoing, I guess, review.

20 MR. MARTIN: Monitoring.

21 MR. LANG: And also at the end of the completion is
22 there a certificate?

23 MR. MARTIN: That's correct. A closure report, yup.
24 So there's a multiple step process that, you know, you do
25 the cleanup and then you do the closure certifying that

1 it's been done and documenting that the work has been
2 done in accordance with the approved wrap.

3 MR. SIMMS: You will be supervising that, Fuss &
4 O'Neill; who will be actually doing the remedial work?

5 MR. MARTIN: It's not clear at this time. My hope
6 is that we'd be -- since we will be working on the site
7 construction and helping observe that, that we will also
8 be allowed to do that as well. Up to this phase it's
9 been funded through EPA and they use their contractors.

10 MS. GALBRAITH: That was my question, just about
11 oversight during implementation.

12 MR. CHAIRMAN: Does anybody else have another
13 question? I have one last one, hopefully it doesn't --
14 so asking the same question maybe a slightly different
15 way. So if a scenario were to happen that, you know,
16 there's an investigation, a determination has been made,
17 a process starts in terms of, you know, what remediation,
18 and then all the reports are in, and then somebody
19 decides, this is interesting, it goes in a drawer, we
20 decided not to do anything on the project. Can that
21 happen once we now know this exists? Is it dependent on
22 whether somebody chooses to go forward?

23 MR. MARTIN: Sure. The owner could ignore it for a
24 period of time and nothing could happen at the property.
25 But once soils are exposed or any activity is going to

1 happen at the site, so if East Bay CDC went to sell the
2 property, they wouldn't transfer their liability or
3 responsibilities, okay? And any activities that happen
4 on the property will still have to be managed in
5 accordance with the approved wrap. So if your concern is
6 that what if they just want to ignore it, yes, the
7 enforcement, DEM enforcement is the remedy in that case.

8 MR. CHAIRMAN: Is there criteria for a site that's
9 being left, not being used, do you know?

10 MR. MARTIN: You mean they decide not to do
11 anything?

12 MR. CHAIRMAN: Right. For instance when we --

13 MR. MARTIN: Sometimes they can languish for years
14 if there are no activities to occur.

15 MR. CHAIRMAN: For instance, when we, on the
16 building side of things when we find items, we may not
17 necessarily have to remove it, but we can't leave it as a
18 hazard to the public.

19 MR. MARTIN: Right. What happens in this instance
20 is, if they ever wanted to develop the property and they
21 didn't follow the remedial procedures, they didn't follow
22 the closure report requirements and all that stuff, they
23 wouldn't be able to occupy the land legally. But to your
24 point, what happens sometimes is, as you know, especially
25 eight years ago or so, and even further, if there was an

1 investigation done and there was a significant amount of
2 remediation, it's possible that the project could be
3 shelved for a period of time before DEM starts to inquire
4 about when the actual cleanup work is going to happen.
5 But it is something that DEM would have to enforce.

6 MR. CHAIRMAN: Thank you.

7 MR. CAPIZZO: Shawn, if you could just, I think to
8 the Chair, to the Chair's point, the targeted brownfields
9 assessment grant and the purpose of that grant is what,
10 for EPA?

11 MR. MARTIN: Well, we use the term assessment; it's
12 to identify if there are any environmental issues on the
13 property. The ultimate goal of the program is to clean
14 up these sites and to put them back into beneficial use.
15 So whereas you might have a contaminated site that would
16 limit any real use, especially for residential uses or
17 any other contemplated use, until the cleanup is done,
18 it's going to be hard to find buyers to actually purchase
19 these properties and development them and invest in them.
20 So this is the whole point of the brownfields program is
21 to ultimately clean up the site, but they recognize, they
22 being DEM and EPA, that the way to clean up a site is to
23 allow a development to occur on sites that have these
24 levels of contamination from past land uses.

25 MR. CAPIZZO: Is it correct that those developments

1 will not get essentially developed unless they fall
2 within the criteria of DEM approving this project?

3 MR. MARTIN: Well, that's -- once an issue has been
4 identified, yes, that's correct. If an -- I want you to
5 consider this: That if somebody, if a private developer
6 bought this property, paid cash for it, didn't have bank
7 financing, didn't do a site investigation, they could
8 develop the property and no one would ever know that
9 there's contamination on the property. That's a very
10 real scenario that it does occur when it's
11 privately-funded.

12 MR. SIMMS: That's interesting, only because of the
13 requirements of the funding of this did -- like a private
14 party, cash, it had cash.

15 MR. CAPIZZO: And it's, to Shawn's point, on other
16 developments that I've worked on with private financing,
17 banks will not sign, they will not finance a project,
18 construction loan, or a land purchase unless they have
19 some type of due diligence. The property that they're
20 going to be basically financing is going to have a,
21 basically, it's -- well, there's no such thing as a clean
22 property, but a clean bill of health from DEM or EPA.

23 MR. SIMMS: Well, as the applicant, then, I mean,
24 were you shocked and dismayed and taken aback with the
25 results of the soil investigation?

1 MR. MARTIN: No, not shocked. The arsenic was a
2 presumption, just because it's very common to find
3 exceedances above seven parts per million; it's very
4 common. So we had to, I think, as part of our due
5 diligence is find out whether this was financially
6 feasible to do, is to assume that there would be
7 exceedances of arsenic. The Dieldrin we didn't know
8 about, but...

9 MR. CAPIZZO: I think in the e-mail that I provided
10 you from Mr. Byrne from the EPA, we discussed that on the
11 phone call today, just about his assessment of the site,
12 and he relayed the same to Mr. Harsch, in fact, and to
13 the residents, and I had referenced it on the record, I
14 won't refer to it again, but it's in that second
15 paragraph as to the contaminations that have been
16 determined relating to the arsenic and the Dieldrin. It
17 wasn't -- not shocking to the conscience. As he said, in
18 the last, when I say he, the last sentence said, sites of
19 this nature can be effectively remediated and reused in a
20 safe manner with the easily implemented and appropriation
21 remediation technologies.

22 MR. SIMMS: And assuming that's what the applicant
23 wanted to hear so they could go forward.

24 MR. MARTIN: Right.

25 MR. SIMMS: Without it costing God only knows.

1 Okay.

2 MR. MARTIN: If I may, I'd like to move on,
3 Mr. Chairman, there's one other topic that I'd like to
4 address while I'm up here, if I could. One was the
5 responsibility of the town to maintain the infrastructure
6 for the project. As I testified before, the roadway is
7 going to be a public roadway and it will be maintained by
8 the town; it will be plowed, swept; not too frequently,
9 you know. And replaced in the future at some time when
10 it deteriorates. The public sewer in the street is going
11 to be a town-owned facility. So those sorts of things
12 will be the responsibility of the town to own, operate,
13 maintain.

14 And in addition, the storm water system, there's a
15 conventional system, there's catch basins and storm
16 drains within the roadway, and those are connected to a
17 bio-retention basin that's to the east of the property,
18 so just outside the coastal buffer zone. That is being
19 proposed to be maintained as infrastructure, too. This
20 is exactly how the Sweetbriar project was set up and
21 approved.

22 I want to clarify that one thing that East Bay CDC
23 is offering to do and is included in the storm water
24 operation and maintenance plan which was modeled after
25 the Sweetbriar project, was to conduct the normal routine

1 maintenance of the bio-retention basin, and that would
2 include removing trash from the facility, mowing, and
3 removing those sorts of things, those types, and debris
4 from the basin. So kind of that routine weekly
5 maintenance would be done by East Bay CDC, but if there
6 are any major issues with the basin in the future, those
7 would be the responsibility of the town. And that's
8 consistent with any public utility that's used by the
9 public.

10 MR. CHAIRMAN: So you're saying the onsite
11 structures that are used for dealing with --

12 MR. MARTIN: The roadway runoff.

13 MR. CHAIRMAN: Yeah. Even though they're on the
14 property.

15 MR. MARTIN: Correct.

16 MR. CHAIRMAN: They're not in the roadway.

17 MR. MARTIN: That's correct.

18 MR. CHAIRMAN: I'm not familiar with that.

19 MR. MARTIN: What's that?

20 MR. CHAIRMAN: I said I'm not familiar with that so
21 much myself.

22 MR. MARTIN: The storm water basins, when you look
23 back at your drawings, are located on the east side of
24 the site, and even though they're not within the public
25 roadway, there are easements to allow access, there's

1 reasonable access. And in fact, there's frontage, the
2 open space lot parcel 6 that provides easy access for the
3 public works to get in there and do any maintenance that
4 may be required in the future. But this is, I would say,
5 exactly the model that was used at Sweetbriar, and our
6 contention is that when you put in a drainage system,
7 especially, you know, anything that's in the roadway,
8 obviously, but the treatment system is a component of
9 that drainage system, it's not something that is
10 specifically private use. It's something to manage the
11 runoff from the roadway system, and it's a requirement of
12 DEM as well. Just as if we have to put in sewers, those
13 are, obviously, owned and operated by the DPW. Bristol
14 County Water requires us to put in water mains that meet
15 with their specifications, but they're not private,
16 they're public. So in that way we're contesting that the
17 public drainage -- the drainage system, at least as it
18 relates to the public storm drains, pipes, and the
19 bio-retention, which is the treatment system, would be a
20 public utility. The bio-swales and those sorts of things
21 that are specifically to address runoff from parking lots
22 and the roofs and all those things, you see those on the
23 north and south boundary lines of the project, those
24 would be private, privately-owned, privately-maintained,
25 and the town would have no responsibility whatsoever for

1 them. There are no unique maintenance requirements for
2 these storm water basins or the catch basins, or even the
3 tree filter that's close to Sowams Road.

4 MR. SIMMS: Why are you suggesting that, is that
5 just out of your largesse? And that's fine, that's a
6 perfectly good reason, that's part of humanity, but
7 usually there's another reason.

8 MR. MARTIN: If this was a completely private
9 development, like if it was a Shaw's Plaza or something
10 like that, and it had a storm water basin, certainly it
11 would be a private project, but in this case it's part of
12 the public infrastructure, it's an essential component to
13 it. So we're contesting that it's a public utility.

14 MR. SIMMS: Well, if I understand what you're
15 saying, it's going to be the same setup as Sweetbriar in
16 terms of maintaining it.

17 MR. MARTIN: Correct.

18 MR. SIMMS: And the applicant, then, has no
19 obligation to maintain or mow or that, but you're
20 suggesting with this application, you would be willing to
21 do that. Not major issues or repairs, but the regular
22 maintenance.

23 MR. MARTIN: That's correct. And that's the same
24 situation that occurs today at Sweetbriar.

25 MR. SIMMS: Oh, it is the same situation. Was that

1 a -- that wasn't a requirement of Sweetbriar, was it?

2 MR. MARTIN: Yup. The draft easement of operations
3 and maintenance plan was included in this application
4 package as well, and we just used the template that was
5 approved for Sweetbriar.

6 MR. SIMMS: Because you weren't here during
7 Sweetbriar, were you?

8 MR. MARTIN: I was here for the last part of
9 Sweetbriar.

10 MR. SIMMS: Not when it started, though. I don't
11 remember seeing you.

12 MR. MARTIN: When we redesigned it, I was pulled.

13 MR. CHAIRMAN: Just a quick question on that. Would
14 this have been something that if somebody makes a request
15 and it's an agreement or it's kind of like a right for
16 those sorts of things in terms of who has to maintain, or
17 who has ownership of those things. I mean, when somebody
18 calls something a utility I expect it to be attached to
19 some sort of public system like if you were dealing with
20 a storm drainage and it was connected to town storm, then
21 I can sort of understand that, and I guess that's where
22 I'm having a little bit of confusion.

23 MR. MARTIN: I think what we're going to have to
24 accept in the future, and it's not too far off, that even
25 the town's conventional systems where in this particular

1 neighborhood there are no storm drains. The roads drain
2 right into the Palmer River without any treatment
3 whatsoever. At some point in time we're going to start
4 to see implementation of storm water treatment systems in
5 municipalities' DOTs, and those sort of things. The
6 catch basin to pipe to drain is not going to be
7 acceptable anymore. It doesn't meet EPA's standards. It
8 doesn't meet DEM's standards.

9 MR. CHAIRMAN: We're seeing it already in private --
10 private developers are taking responsibility for those.

11 MR. MARTIN: You're seeing it a little bit, even at
12 the town beach you're going to start seeing it at other
13 projects where it's going to have to be -- it's not just
14 going to be a conveyance system, it's going to be a
15 treatment system, and it's all going to be part of the
16 public infrastructure. So our roadways right now are
17 contributing polluted runoff to the waters. We're going
18 to have to implement treatment systems, and that's kind
19 of the case I'm trying to make.

20 The other comment was related to the open space
21 access, and we've provided a 20-foot corridor that's
22 actually part of Lot 6 that has frontage on the proposed
23 public road. That would provide convenient access to the
24 open space area should the town wish to do anything in
25 particular with it. This project only proposes to

1 restore that coastal buffer zone and all those areas
2 within Parcel 6 that are outside of the wetlands. There
3 are no proposed programs or activities or structures or
4 anything at this time. That's something that the town
5 would have to decide on whether they want to do something
6 with this property in the future, and if so would have to
7 request approval through an assent issued by CRMC. But
8 as such, it's been past practice and policy to create
9 open space parcels that are intended to protect our water
10 resources, and in this case, the land trust would be an
11 appropriate entity to accept this piece of land. But
12 it's not guaranteed, we haven't discussed this with them
13 or negotiated, we're simply offering it as a public open
14 space to the town. There would be no specific or special
15 maintenance requirements, and, in fact, the coastal
16 buffer is supposed to be maintained in a natural state.

17 A certain small portion of the buffer that's outside
18 of Parcel 6 will be a managed buffer. I think I
19 described that last time. You'll have a transition zone
20 between lawn areas around the house to a less maintained
21 vegetated area and to natural coastal buffer, and that's
22 consistent with Coastal Resources Management policies.

23 I think I've hit on everything.

24 MR. CAPIZZO: Are there any other questions?

25 MR. MARTIN: Any questions about the coastal buffer,

1 the restoration, those activities, environmental side of
2 things?

3 MR. SIMMS: No.

4 MR. CHAIRMAN: No.

5 MR. CAPIZZO: Before Shawn steps down, one
6 housekeeping matter. Shawn, for the record, I'm showing
7 you a document that's on Fuss & O'Neill letterhead with
8 your signature on it dated May 3, 2016. Please look at
9 that document and tell me if you recognize that document.

10 MR. MARTIN: Yes.

11 MR. CAPIZZO: And then I'm looking at another
12 document, e-mail document from you --

13 MR. MARTIN: Right.

14 MR. CAPIZZO: -- to Phil Hervey on May 3, 2016?

15 MR. MARTIN: That's correct.

16 MR. CAPIZZO: Could you please inform the Board what
17 this letter is and the purpose of this letter.

18 MR. MARTIN: The purpose of the letter was to
19 propose phasing of the project. As you know there are
20 two market rate homes that exist today on Sowams Road,
21 and what we're asking is that those homes be separated to
22 a Phase I part of the project so that East Bay CDC is
23 able to sell those as market rate units and continue with
24 the second phase of the project following the sale of
25 those homes.

1 Now, it doesn't necessarily mean that the sale of
2 those homes will occur before the rest of the development
3 actually happens, but we're asking that the Board approve
4 the project to be built in those phases. I mentioned in
5 the letter those homes are located at 91 and 97 Sowams
6 Road.

7 MR. CAPIZZO: And this letter dated May 3, 2016 from
8 Shawn Martin to Philip Hervey, Barrington Town Planner,
9 was e-mailed to Mr. Hervey; however, it was not
10 introduced into the record. So I would just ask that
11 this document be moved into the record as part of the
12 applicant conditions, and I'll provide a copy to
13 Mr. Hervey, and I have a copy for the Board as well, as
14 an exhibit.

15 MR. CHAIRMAN: What's the date of that letter?

16 MR. MARTIN: May 3.

17 MR. CAPIZZO: May 3. If I may approach,
18 Mr. Chairman?

19 MR. TEITZ: Just for the record, that is in the
20 packet of material of the Planning Board.

21 MR. CAPIZZO: Thank you. It just wasn't formally
22 introduced at the last hearing, so I just wanted to make
23 sure that you had that in front of you.

24 MR. DULCHINOS: Those two units are above the 40,
25 right?

1 MR. MARTIN: Yes.

2 MR. DULCHINOS: They're part of the 40 count.

3 MR. MARTIN: Yeah, it makes up the 42 total.

4 MR. DULCHINOS: Normally with a comprehensive permit
5 affordable, they can't be phased. Market rate and
6 affordable within it have to be done in a way that the
7 affordable is sold actually sometimes with or ahead of
8 the others. So that was -- this is an exception, then?

9 MR. MARTIN: Yes.

10 MR. DULCHINOS: Now, what parcel of land is
11 attributed to those, are they still R25 or they will
12 not -- the lots --

13 MR. MARTIN: Yeah, they're all in the R25 zone.

14 MR. DULCHINOS: But the actual land that's going to
15 be carved out for those two units, will they still meet
16 the 25,000 square feet?

17 MR. MARTIN: No.

18 MR. DULCHINOS: They're not.

19 MR. MARTIN: Those parcels are less than 25,000
20 square feet.

21 MR. DULCHINOS: What was the total amount of
22 buildable acreage out of the 8.7? Because I know you've
23 answered it in the past and I --

24 MR. MARTIN: Before I answer that, I would love to
25 look back at my notes just to make sure. We did look

1 back at what was approved in the Master Plan, and the
2 buildable acreage is within a fraction of a percent of
3 what had previously been approved. So the number of
4 units or density hasn't changed since the Master Plan
5 approval, but I can get you that.

6 MR. DULCHINOS: But it's not -- it's obviously
7 somewhat less than the 8.7 acres that's in the... I was
8 just looking at the first letter here and it was saying
9 that 40 units over 8.7 acres.

10 MR. MARTIN: Yeah, I'd prefer to just -- I can get
11 back to the Board this evening.

12 MR. DULCHINOS: Yeah, because then the question
13 would be is, those acreages for those two units that
14 you're carving out and selling, is that part of your
15 building quantity, or -- and now you subtract that out,
16 what are we looking at, you know, of what's actual
17 buildable.

18 MR. MARTIN: When we look at the 42 units, it was
19 based on the overall acreage included in the project,
20 which is those two parcels and all of the land, so
21 looking at the overall density, and we subtracted out all
22 of the wetland areas from those calculations.

23 MR. DULCHINOS: All right. But it's going to feel
24 even more dense because you've got two market rates that
25 are going to be sitting on, let's say, 15,000 square

1 feet, or what -- you didn't tell me the number, but --

2 MR. MARTIN: Well, I think -- there hasn't been any
3 changes in the physical orientation of the buildings or
4 assemblage, and I think it's not going to feel more dense
5 that we extract those out now.

6 MR. DULCHINOS: No, I know, you showed me the plan,
7 but, you know, it's hard to visualize those until you're
8 actually in it, and then you can look at the blueprint
9 and look at the Master Plan and say, that looks right,
10 you get all those pieces in there, but when you actually
11 walk into -- like Sweetbriar feels fairly open, you've
12 got that central area and stuff like that. I'm trying to
13 compare; is it going to feel like a Sweetbriar or is it
14 going to feel a little more densely packed than
15 Sweetbriar?

16 MR. MARTIN: It will feel a little bit more dense in
17 some respects, but it still has that open space area at
18 the very central element when you come into the
19 development. So it kind of creates a little bit more of
20 an open area feel at the interior, and it's not going to
21 feel unlike a lot of the other houses in the neighborhood
22 with respect to how much land it occupies for each
23 structure and how much open space is around the
24 structure. One of the -- as you may recall, one of the
25 things that the Board asked for and that we incorporate

1 into the drawing was to provide that 25-foot complete
2 vegetated buffer even between any parking facilities,
3 never mind buildings. See if this works (using the
4 overhead). And you can see -- this is the old plan
5 (indicating the overhead), and you can see where the --

6 MR. CAPIZZO: Shawn, can you just refer to the
7 record that you're referring to.

8 MR. MARTIN: The old plan, the Master Plan, I'm
9 referring to the parking lots that extend within 25 feet
10 of the property lines. Under the revised plan, those
11 parking lots have been moved back to create that clear
12 25-foot buffer, and that's true on the north and south
13 boundaries. Those are the specific locations that we
14 were asked to incorporate those changes.

15 Also as was testified before, the properties will
16 have stockade, brand new stockade fence, actually, around
17 even the western boundary of the property, so to provide
18 another visual barrier, a sense of security and
19 ownership, too.

20 MR. DULCHINOS: The same number of units?

21 MR. MARTIN: That's correct. The buildings -- oh, I
22 should clarify that. The original Master Plan actually
23 had more units. The Board's decision asked that we
24 reduce the number of units, but -- I wish I had the other
25 subsequent version of this, but I guess the point I want

1 to make is that we took into account trying to loosen up
2 the site. And you can see how there used to be a
3 building in the central park, even though we did have a
4 central green space. That's been enlarged significantly,
5 and even on this plan right here (indicating overhead),
6 it's gone through several variations. And it really,
7 even at the request of Rhode Island Housing to try and
8 make the units more efficient and how much space it
9 occupied, it really has, I think, loosened up the site a
10 little bit, provided more open space feel around the
11 buildings. Then, of course, a large open space to the
12 east.

13 MR. DULCHINOS: The one-bedrooms are the central
14 ones in the center still?

15 MR. MARTIN: I'll have to ask the architect to speak
16 to which of the specific units.

17 MR. ATTEMANN: Mr. Chair, Paul Attemann, Architect.
18 I can answer that. Ultimately in addition, a little more
19 feeling of open space, you will see at the very eastern
20 end there's no more buildings here. Previously in the
21 Master Plan there were two buildings here. These four
22 units here are the one-bedrooms. We have 2 one-bedrooms
23 here, we have one-bedrooms right in here, too
24 (indicating). I should point out that's a total of ten.
25 It's 25 percent of the units are one-bedrooms in the

1 Preliminary Plan. And at Master Plan 25 percent was also
2 proposed and approved. There's seven of those
3 one-bedrooms are on the first floor.

4 MR. DULCHINOS: Some of the one-bedrooms are second
5 floor units?

6 MR. ATTEMANN: For the record, 25 percent of the
7 40 units, of the affordables will be one-bedroom.

8 MR. MARTIN: I had one more Board question that was
9 posed at the last hearing was whether the town planner,
10 Phil Hervey, had received any other additional comments
11 from town departments since our last meeting.

12 (BRIEF PAUSE)

13 MR. CAPIZZO: If the Board does not have any other
14 questions for Mr. Martin or Mr. Attemann, we can move on
15 to --

16 MR. DULCHINOS: I was still waiting for those
17 numbers.

18 MR. CAPIZZO: Oh, I'm sorry.

19 MR. DULCHINOS: Is he going to get them to me?

20 MR. MARTIN: I will. I'm going to take a break
21 here.

22 MR. DULCHINOS: Oh, okay. As long as -- you're not
23 going anywhere.

24 MR. MARTIN: I'll take a short recess here and I'll
25 come back. Mr. Spinella asked that I clarify that one of

1 the reasons that we had submitted the draft easements for
2 the operation of maintenance was that was one of the
3 conditions of approval at Master Plan, also. So I just
4 wanted to point that out. Thank you.

5 MR. CAPIZZO: And just to follow up on Mr. Martin's
6 request, Mr. Hervey, were there any other comments
7 received from the town?

8 MR. HERVEY: Subsequent to the Pare comments, no, no
9 more comments.

10 MR. CAPIZZO: Okay. Thank you.

11 MS. GALBRAITH: I have one question; I'm not sure if
12 it's for the architect or maybe for Frank. If you could
13 explain just the thinking behind the laundry room and
14 office, and I don't believe there's anything like that at
15 Sweetbriar, is there? Or it's a new concept? It's more
16 of a programming question than an architect question.

17 MR. SPINELLA: Frank Spinella again. I can
18 certainly speak to the thought and then Paul can speak to
19 where it is and what it is. The current management is
20 being done by East Bay CDC from their Bristol office of
21 Sweetbriar. With both developments being in Barrington,
22 they would have -- by a part-time property manager, and
23 so in this development, there would be a full-time
24 property manager managed -- who would manage both sites.
25 So that's the concept and the thought of why it's there.

1 And there'd also be a maintenance part of that
2 office. It's a small office, but there would be a
3 maintenance for, you know, plows and lawn equipment and
4 that sort of thing. And you can talk to why it's where
5 it is.

6 MS. GALBRAITH: Um-hm. And I guess the other
7 question is, is there the capability of laundry to be
8 installed in any of the units or is it only laundry --

9 MR. SPINELLA: That's definitely a me question.
10 Rhode Island Housing doesn't allow for laundry use in the
11 finance of development. Since Sweetbriar they actually
12 had them in, because at the time of the -- the low-income
13 housing tax credit investor required it, but the Rhode
14 Island Housing guidelines do not allow us to put them in
15 individual units unless they're handicapped units. The
16 handicapped units have them because the handicapped folks
17 can't get out to do their laundry, but everyone else it's
18 required to be in a central location.

19 MR. HERVEY: I was going to add, I thought Paul was
20 going to add about this, but there is a very similar
21 building at Sweetbriar, the same function.

22 MR. ATTEMANN: Yes, there is. I forget the street.
23 It's the one that goes to Bay View.

24 MR. HERVEY: Bella.

25 MR. ATTEMANN: Yes. It's a smaller, white

1 neoclassical building. It has an office management and a
2 small laundry facility next to the maintenance garage.

3 MR. CAPIZZO: If there are no other questions for
4 Mr. Spinella and Mr. Attemann, I'd like to move on to
5 the -- I believe we've addressed at least the
6 environmental and health impacts of Dieldrin and arsenic
7 through Mr. Martin as well as the other issues or
8 concerns we identified and the town's ability to manage
9 the onsite infrastructure related to storm water.
10 Subsurface -- excuse me, and subsurface and surface storm
11 water, and public and open space.

12 I have Derek Hug, traffic -- specialist in traffic
13 engineering, who will provide some responses to his
14 traffic study, as well as pedestrian safety, and some of
15 the comments that were received through the public
16 hearing process, as well as any questions that the Board
17 may have as it relates to the traffic study and
18 pedestrian safety. So with that, I would ask that Derek
19 please approach and identify himself for the record.

20 MR. HUG: Again, Derek Hug, Fuss & O'Neill. I'm
21 going to address three or four comments that we received.
22 We have several comments that generally had the same
23 general themes. The first issue is the timing of the
24 traffic counts. This is something that came up several
25 times, and I believe I addressed earlier, but I want to

1 clarify.

2 So these counts were -- the manual turning movement
3 counts were done December 22. There were some comments
4 about the fact that it was right before Christmas. At
5 the time of those counts school was still in session, and
6 because this area doesn't have a great deal of retail,
7 there's, you know, some retail right along County Road,
8 but there's no major shopping centers or malls or
9 anything of that sort in the neighborhood, that the
10 traffic volumes are not going to be greatly affected by
11 the presence of the upcoming holiday.

12 Second is the assumption of a zero percent growth
13 rate for traffic and the inclusion of the American
14 Tourister traffic volumes. The zero percent growth rate
15 is essentially just a background growth rate, which is
16 something that is provided to us by Statewide -- Rhode
17 Island Statewide Planning. And according to Rhode Island
18 Statewide Planning models, traffic growth in this general
19 area is anticipated to decrease by 0.8 percent, which I
20 would suggest, keep it as it is, and not shrink it at all.

21 But step aside from the background traffic growth,
22 we apply any known upcoming developments in the area of
23 the traffic study, and this in this case did include the
24 American Tourister development. There was some -- there
25 seems to be some question in the comments as to whether

1 or not those traffic volumes were included. They were.

2 Next there was some confusion about the number of
3 vehicle trips. There is a town report called Housing for
4 Barrington's Future that indicates a potential for
5 somewhere between 235 and 251 vehicle trips generated on
6 an average weekday, and that there was a conflict between
7 those numbers and what the traffic study indicated, which
8 is a peak hour trip generation of 29 or 30 trips during
9 those peak hours. And there is no actual conflict there.
10 The 235 and 251 vehicle trips are all day for a 24-hour
11 period trips, versus the 29 -- the 30 vehicle trips is
12 just for the peak hour, one hour of the day. And that is
13 what is analyzed in our traffic study.

14 MR. CAPIZZO: Derek, if you could explain to the
15 Board why it's analyzed like that, or why you analyzed it
16 like that.

17 MR. HUG: Well, we analyzed for the peak hour but
18 really it's for the peak 15 minutes of the peak hours of
19 the day. So we did the morning peak hour between 7 and 9
20 a.m., and the afternoon peak hour between 4 and 6 p.m.
21 So that ideally captures the busiest time of the day, so
22 that's how they, you know, that's how the analysis
23 program works. We don't do the average of the day, we do
24 the peaks, the daily peaks, to try to capture when we
25 anticipate there could be the biggest traffic difficulty.

1 And, finally, there's the issue of pedestrian
2 access. And I think everybody is in agreement that this
3 area as well as most areas of Barrington are primarily
4 auto-dependent areas, and that is true of this site, that
5 is true of Sweetbriar, and it is true of most everywhere
6 in town. The nearest bus route is about a half a mile
7 away. We all know that. And traditionally, the use of
8 public transit is only frequently used by pedestrians who
9 are located within a quarter of a mile. It's often
10 referred to as a pedestrian shed. Even if a sidewalk is
11 constructed, and in order to build a sidewalk, this would
12 require right-of-way actions, therefore, it would have to
13 be undertaken by the town, it couldn't be undertaken
14 probably by a developer. It is unlikely that there would
15 be significant use of the -- of a bus stop by
16 pedestrians. It would be a little more accessible if one
17 were to bike to it, that would be within the, what they
18 call a bicycle shed, which is usually a mile, or a mile
19 and a half.

20 It is worth noting that at the Sweetbriar
21 development, there is essentially approximately one
22 vehicle per unit at that site, and that the future
23 residents of this development are certainly going to be
24 aware of their own transportation options, or lack
25 thereof, and the site environs and what is available to

1 them. It's also worth noting that if -- for the disabled
2 and senior citizens who are most likely to be those
3 without transportation options at this -- in this
4 development, there are a couple of other options for
5 transportation needs. That includes services provided by
6 the senior center, and also services provided by RIDE
7 that can meet many of the transportation needs for
8 anybody at the site that does not have access to a
9 vehicle.

10 With that I'll take any questions.

11 MR. CHAIRMAN: I have a quick question. Is access
12 to public transportation just a preference by Rhode
13 Island Housing, or is it -- or is it something that
14 they -- and this is something I think that Frank will be
15 able to respond to.

16 MR. SPINELLA: Mr. Chair, Frank Spinella. Within a
17 half a mile of the site is the requirement, and the site
18 is certainly within a half a mile.

19 MS. GALBRAITH: Derek, can you just clarify the peak
20 hours what you looked at, because you mentioned 7 to 9,
21 you were looking at the figures were peak hour?

22 MR. HUG: Yeah. So the morning peak hour --

23 MS. GALBRAITH: It's like 29 or 30, that's peak
24 hour.

25 MR. HUG: Correct.

1 MR. LANG: It was confirmed that school was not --
2 was in session.

3 MR. HUG: Correct.

4 MR. LANG: The two-day period, 21st and 28th.

5 MR. HUG: The manual traffic counts were done on the
6 22nd. The automatic traffic recorder was put down in
7 order to capture the 22nd, but they don't -- they don't
8 stand out there at midnight and put it down and have it
9 start counting at midnight and then pull it up at the
10 following midnight. So they put it down on the 21st in
11 the street, and then they pulled it up on the 23rd in
12 order to capture the 22nd.

13 The primary use for the automatic traffic recorder
14 isn't so much the traffic volumes, we usually just use
15 that as a gut check of the manual traffic counts that we
16 take. The real reason we put those out there is to
17 actually capture the traffic travel speeds out there so
18 that way we can do our site distance analysis, because
19 that is something that cannot be captured on a manual
20 turning movement count.

21 MR. CAPIZZO: Derek, although the Board may not
22 already know this, but could you just summarize what your
23 conclusions were at it relates to the traffic study and
24 how this project would impact the traffic flow.

25 MR. HUG: Yeah. As noted in the traffic study, the

1 conclusion was that with the 29/30 trips during the peak
2 hour, there would be -- there would be no noticeable
3 impacts to the existing traffic travel delays within the
4 study area. And that conclusion was concurred to by the
5 Pare reviewing engineer, Pare Engineering, and John
6 Shevlin who conducted that peer review of the traffic
7 study.

8 MR. CHAIRMAN: Any other questions?

9 MR. ADAMS: I guess I have a quick question. Are
10 there sidewalks leading to Sowams Road in the project?

11 MR. HUG: Derek Hug again. No, there are not
12 sidewalks leading to -- there are sidewalks going to
13 Sowams Road within the development?

14 MR. MARTIN: Yes.

15 MR. HUG: But not along Sowams Road down to
16 County Road.

17 MR. ADAMS: It's a little hard to tell on the
18 graphic; I'm sorry.

19 MR. ATTEMANN: (Indicating on the overhead) So they
20 go down --

21 (MULTIPLE SPEAKERS)

22 MR. CAPIZZO: Derek, there were -- you were present
23 for the -- you've been present at both hearings, is that
24 correct?

25 MR. HUG: Correct.

1 MR. CAPIZZO: And you testified at the first
2 hearing, you sat through public comment at the first
3 hearing and through the second hearing, and you heard
4 Ms. Hahn-Sweet testify about pedestrian safety. I know
5 you addressed it just briefly. There may be other
6 questions from the Board, but we had a conversation
7 before this about pedestrian safety. If you could just
8 relay what your thoughts were in regards to that in the
9 project itself.

10 MR. HUG: Yeah. As we -- as I sort of discussed a
11 little bit here, I don't -- I believe most residents here
12 who are going to choose to live here are going to
13 understand that the site is essentially auto-dependent.
14 And if they understand that and they don't have access to
15 a car, they will at least know what their options are.
16 If they choose to use the public transportation, they do
17 need to find the bus stop. There's a couple of different
18 routes they can use. They can go down Sowams Road, and
19 that is, you know, obviously there's no sidewalks there,
20 it would be great if there were, but there aren't. They
21 can also cross over, just south of the site they can
22 cross over to New Meadow Road where there are sidewalks
23 to get down to the bus stops over on County Road, which
24 is -- it's about an extra tenth of a mile, if they want
25 to do that, if it's more comfortable for them.

1 MR. SIMMS: Based upon the, I guess the planned
2 development that we're looking at, how many vehicles,
3 then, do you anticipate, additional and extra vehicles do
4 you anticipate then being added to that particular spot
5 on Sowams Road on a regular basis for the residents?
6 You've indicated that the residents that have lived there
7 will be auto-dependent, obviously, for the reasons that
8 you've stated. So how many additional autos that are
9 going to be in that section of Sowams as a result of this
10 development?

11 MR. HUG: So during the peak hour which was --
12 during the morning peak hour was 29, 29 trips, both
13 coming from, and 30 in the afternoon peak hour.

14 MR. SIMMS: What actual -- okay, not in terms of the
15 time of them being present, but just in terms of the
16 introduction of them. Like if we had a, you know, a
17 residential development that had six houses, six
18 single-family houses, there might be six, eight, ten
19 vehicles added to that area.

20 MR. HUG: Okay.

21 MR. SIMMS: So that's the gist of my question. How
22 many additional vehicles on that analogy are we then
23 introducing to Sowams as a result?

24 MR. HUG: Based on vehicle ownership rates at
25 Sweetbriar, it's approximately one per unit, so it would

1 be about 40 --

2 MR. SIMMS: Forty units? So approximately one per
3 unit. So we'll have 40, give or take, vehicles.

4 MR. HUG: Yeah, 45 to 50, call it.

5 MS. GALBRAITH: You're building 80 parking spaces,
6 right? How many parking spaces in the --

7 MR. HUG: 83.

8 MR. ADAMS: I'm having trouble reading the plans
9 here. Is the sidewalk connecting to Sowams Road on the
10 development only on the north side of the driveway?

11 MR. HUG: Yes.

12 MR. ADAMS: Okay. I was looking on the south and
13 not finding it, so...

14 MS. GALBRAITH: So you're saying owner, you
15 anticipate auto ownership to be about one per unit but
16 you're building spaces for about two per unit?

17 MR. HUG: Yes.

18 MS. GALBRAITH: And what's the thinking behind that?

19 MR. MARTIN: Shawn Martin. The parking tabulation
20 has been designed in accordance with the zoning
21 requirements. We also provided some additional on-street
22 parking.

23 MS. GALBRAITH: You think the zoning -- do you think
24 the zoning requirements are asking too much, if you think
25 only one car per unit is typical? Would you --

1 MR. MARTIN: On an average daily use, one car, as
2 you said, per unit is pretty common, but people have
3 visitors, parties, and things like that so you have
4 additional parking that would be available to the
5 visitors. I think the way this has been laid out is to
6 allow for that flexibility, that would be to accommodate
7 what would normally be needed to serve the development
8 itself, but also some flexibility. And do I think the
9 standards are good?

10 MS. GALBRAITH: Leading question.

11 MR. MARTIN: They're pretty good.

12 MR. HUG: Anything else for me?

13 MR. CHAIRMAN: Any other questions? Thank you.

14 MR. CAPIZZO: For the record, Christian Capizzo. If
15 there are no other questions of Mr. Hug, I would ask if
16 the Planning Board has any other questions for the
17 development team that we haven't addressed at this point
18 in regards to environmental impacts of Dieldrin and
19 arsenic, the traffic and pedestrian safety, as well as
20 the on-site infrastructure management with the team
21 members here. If there are other questions that you
22 would like to ask, I will make them available for the
23 Planning Board, or any other questions.

24 (Conferring with Mr. Martin) I was just informed by
25 Mr. Martin that he has the information for the Planning

1 Board in regards to the developable acreage.

2 MR. MARTIN: Shawn Martin. The answer is 5.46
3 acres.

4 MR. DULCHINOS: And that includes the two --

5 MR. MARTIN: That includes all the land outside the
6 200-foot CRMC coastal buffer.

7 MR. DULCHINOS: And then what are the -- what's the
8 acreage for the, or the square footage for the two lots
9 that are going to be parceled off for the commercials,
10 for market rate? I guess it's -- is it Lots 4 and 5, is
11 that what it is?

12 MR. MARTIN: Lot 4 is 12,094 square feet or .29
13 acres, or it might be .28, but somewhere around there.
14 Parcel 5 is 0.22 acres.

15 MR. DULCHINOS: 0.22?

16 MR. MARTIN: That's right.

17 MR. DULCHINOS: One is .8 and the other is .22?

18 MR. MARTIN: Nope.

19 MR. DULCHINOS: I'm sorry.

20 MR. MARTIN: Parcel 4 is 0.28.

21 MR. DULCHINOS: I gotcha.

22 MR. MARTIN: And Parcel 5, 0.22.

23 MR. DULCHINOS: I gotcha. All right.

24 MR. ADAMS: I have a question about the curbing. I
25 guess, if I'm correct, there's asphalt curbing is what's

1 being proposed, and I was wondering if somebody could
2 tell us what kind of curbing is used at Sweetbriar and...

3 MR. CAPIZZO: Can have Mr. Martin answer that
4 question.

5 MR. MARTIN: Yes; Shawn Martin. It's asphalt berm,
6 and that was the same used at Sweetbriar.

7 MR. ADAMS: And is the Sweetbriar a public road, and
8 is it maintained by the town?

9 MR. MARTIN: Yes.

10 MR. ADAMS: And how's the asphalt curbing held up?

11 MR. MARTIN: It's held up very well. The asphalt
12 curbing, at least when it's done in a Cape Cod style
13 where it's a flatter profile, tends to resist damage from
14 plows and those sorts of things better than a full curb,
15 traditional curb profile constructed in asphalt. I
16 wouldn't recommend those anywhere.

17 MR. ADAMS: Sorry, just one more thing: Does
18 Sweetbriar have the on-street parking kind of indents
19 that are --

20 MR. MARTIN: Yes. Sweetbriar has parking bays built
21 in the same manner that this project is proposing.

22 MR. CAPIZZO: Are there any other questions from the
23 Planning Board for the development team?

24 MR. CHAIRMAN: Everybody okay?

25 MR. CAPIZZO: If there are no other questions, I

1 want to thank the Board on behalf of the applicant and
2 the development team for its time and for its opportunity
3 to address questions, concerns, and comments, not only of
4 the Board but of the public.

5 At this stage, if all of the questions have been
6 answered by the Board, if there's additional questions,
7 please let me know, but if they've been answered, we'd
8 ask that the Board act on the preliminary application.

9 MR. CHAIRMAN: Okay. Thank you.

10 MR. ADAMS: I just had a note from one of the
11 members of the public who had asked about permeable
12 surface area versus that of the surrounding community. I
13 don't know if we have an ability to kind of, or if that
14 is something that you looked into, how Sweetbriar
15 compares in terms of the amount of permeable surface, or
16 impermeable surface, I guess, relative to the surrounding
17 communities.

18 MR. CAPIZZO: I think Mr. Martin or Mr. Attemann can
19 address this question.

20 MR. MARTIN: We didn't look at the exact pervious or
21 impervious compared to Sweetbriar or even the adjacent
22 neighborhoods. We did at the Master Plan level present
23 to the Board the relative density of the abutting
24 neighborhoods in relation to this particular project. I
25 can say that the parking counts and the way the roadways

1 were designed and those sorts of things are very similar
2 to Sweetbriar.

3 I think Paul Attemann will speak to the building
4 sizes. I think that the buildings are a little bit
5 larger at Sweetbriar, so the relative impervious is a
6 little bit smaller here even though it's a relatively
7 smaller footprint; however, there is no direct comparison
8 to Sweetbriar in that this project proposes a much
9 larger, by comparison, open space piece of land. It's
10 very similar, but I don't know the exact percentage.

11 MR. ATTEMANN: Paul Attemann, for the record. I
12 don't have much more to add other than if you compare,
13 let's say, one dwelling unit in our proposal with about a
14 600 footprint, 600-square foot footprint, dwelling to
15 dwelling, I would say the proposed dwellings at Palmer
16 Pointe are smaller than most residential footprints in
17 neighboring streets, so per dwelling unit I would think
18 that the pervious area of the roof is smaller. But as a
19 total calculation, I can't speak to that. No one has
20 done that calculation.

21 MR. CAPIZZO: Did that address your question,
22 Mr. Adams?

23 MR. ADAMS: I guess it goes to the earlier question
24 about number of cars and the parking that's been
25 provided. You're a couple shy of the required parking?

1 MR. CAPIZZO: What's the number?

2 MR. MARTIN: I will get that information for you.

3 MR. HEMENWAY: We have it (handing document to
4 Mr. Martin).

5 MR. MARTIN: So we're providing 83 parking spaces;
6 the requirement is 72.

7 MR. ADAMS: And again, the logic for supplying more
8 than what's required?

9 MR. MARTIN: One of the concerns of the Board at the
10 past meetings was provision for adequate parking for
11 access to the open space and for visitors, so that is the
12 reason behind providing some of the additional parking.
13 The off-street parking you can see in the calculation are
14 71 spaces and on-street is 12 for the total of 83. I
15 think that was the reasoning behind that. And, in fact,
16 a couple of the parking spaces in the calculation as far
17 as exceedances go for the parking, or the garage
18 structure, the maintenance facility, there's two parking
19 spaces that are in front of the garage store there.
20 We've included those in the calculation. I think -- we
21 think we tried to strike a balance between excess
22 impervious versus meeting the minimum requirements of the
23 Zoning Ordinance and then trying to address the concerns
24 of the Board. We have a little bit narrower road,
25 concern about parties and things like that, and making

1 sure we have adequate on-street parking for those types
2 of conditions.

3 MR. ADAMS: That does seem -- well, there seems to
4 be a lot of -- and I guess that's just me. I mean, it
5 seems like you could do away with a couple of the
6 indents, but nothing major.

7 MR. MARTIN: I can see what you're referring to,
8 even on the south there's one parking bay that's
9 separated from the bay of three.

10 MR. ADAMS: Yeah, the little ones that are going to
11 be a pain to make and a pain to maintain. Keep the big
12 ones.

13 MS. GALBRAITH: My inclination would be to go with
14 our ordinance, which is 72, right? I just in my mind
15 think of apartments in Providence; generally you get one
16 space per -- if you're renting an apartment.

17 MR. MARTIN: I would ask that you don't restrict the
18 parking. This is the minimum required. There is no
19 ordinance that says -- that caps parking. I can see in
20 downtown Providence, for example, regulates maximum
21 parking numbers, because they have better access to
22 public transportation. So the thought is we don't have
23 to provide as much off-street parking because then you'll
24 always have off-street parking that's available. There's
25 a greater mix of use and things like that. In those

1 scenarios and in urban areas, it's more appropriate to
2 cap off-street parking standards. But we feel this is a
3 good balance of what's needed for the development and
4 what's required by the Zoning Ordinance.

5 MR. ATTEMANN: Excuse me; Paul Attemann. Also in
6 comparison to Sweetbriar, this is a similar approach to
7 parking where we have designated parking for the
8 residents as well as -- which meet the zoning
9 requirements and it's an additional on-street parking for
10 visitors.

11 MR. ADAMS: But is the parking in Sweetbriar in
12 excess of what was required by the town?

13 MR. ATTEMANN: I believe it was, as I recall.
14 Correct. I mean, going through both Master Plan
15 approvals for both projects, that's something that boards
16 have continuously asked. They're more concerned -- as
17 much as they're concerned about resident parking, they're
18 concerned about public parking and visitors. Where do
19 the visitors park? When you're having a Super Bowl party
20 or a birthday party, where are they going to park?

21 And towns with public streets, many times, not just
22 for these two projects, but in my experience in
23 Charlestown, Bristol, Providence, everywhere that
24 question comes up, and the Planning Boards would like to
25 see provisions for visitor parking. And that's the

1 charge we took from Master Plan approval to this day.

2 MR. ADAMS: I'm just having trouble squaring your --
3 I bike by Sweetbriar all the time. The rear parking lots
4 are always empty. There may be three cars in the parking
5 lots on the south side during the day, I mean, or on the
6 weekends.

7 MR. CAPIZZO: I think the comments I'm getting from
8 the development team are this was what was proposed
9 before the Master Plan, so I'm not quite sure we can go
10 back and reduce the numbers. As Mr. Martin said, I think
11 they tried to strike a balance between the spots allowed
12 in the development.

13 MR. ADAMS: The density of the development is fixed,
14 the parking wasn't fixed. We can go down, we can't go
15 up.

16 MR. SPINELLA: For the record, Frank Spinella. The
17 proportion is the same as what was originally proposed.
18 We had 52 units, or 50 units total, and now we have 42
19 units total. And proportionally the same number of
20 parking spaces per unit.

21 MS. O'GRADY: What is the breakdown of bedrooms
22 again per unit?

23 MR. SPINELLA: So we have 10 ones.

24 (MR. ATTEMANN HANDING DOCUMENT TO MR. SPINELLA)

25 MR. SPINELLA: Fourteen 3-bedroom units and sixteen

1 two-bedrooms unit and 10 ones, plus the two single-family
2 homes, which are three -- I believe they're three-bedroom
3 homes, the market rate homes in the front.

4 MS. O'GRADY: Those are -- but those are not counted
5 within your --

6 MR. SPINELLA: Well, it's part of the entire
7 development. Of the 42 units, those are two of the
8 units. So of the 40 affordable units, the breakdown I
9 just gave you was what they are.

10 MS. O'GRADY: But that's not included within your
11 calculation for the number of spaces.

12 MR. SPINELLA: I believe it is. We have a parking
13 requirement for the single-family homes as well.

14 MS. GALBRAITH: So I don't know if I'm reading this
15 right, but I'm looking at the motion, I believe this is
16 the motion we passed on August 6, 2013. I'm looking at
17 Page 8, and it says, Item D, it would be 2D on Page 8 of
18 the motion passed. It says, 'The Board will consider
19 relief for off-street parking in evaluating the revised
20 site plan at the Preliminary Plan stage,' which implies
21 to me that we would consider less parking, not -- that we
22 weren't asking for more. That's how I would interpret
23 that.

24 MR. SPINELLA: What number are you looking at?

25 MS. GALBRAITH: I'm looking on Page 8 of, I believe

1 this is the final motion. It might be the draft motion,
2 but I think it's the final motion from August 6, 2013,
3 Page 8, Item 2D, the last sentence. 'The board will
4 consider relief for off-street parking in evaluating the
5 revised site plan required at the Preliminary Plan
6 stage.' So my interpretation of that language is that we
7 would consider less, not more.

8 MR. SPINELLA: Yeah, it's actually on the final
9 recorded decision, it's just -- it is still D but it's on
10 Page 9.

11 MS. GALBRAITH: Okay. I'm sorry.

12 MR. SPINELLA: But, yeah, that is correct, that you
13 would consider. So maybe that the common ground is that
14 we don't build it all but have provisions for it should
15 we need it. And we'd certainly consider those smaller
16 bumps, maybe we don't build those, but have the provision
17 that if we need it. We don't want to build any more
18 parking than they actually need. But if the need arises,
19 then I think as long as we all work together, we can
20 certainly do that.

21 MS. GALBRAITH: I mean, I guess the other option,
22 just thinking out loud here, would be is that if you pull
23 back some of the private lots rather than the on-street
24 spaces, that would be another option, is to pull back
25 some of the spaces from the fence line.

1 MR. SPINELLA: Well, the private lots were actually
2 for the residences, and the on-street lot, the parking
3 spots were designed for guests more than they are for the
4 residences. So that -- I think that Paul can certainly
5 speak to the master planning of it all, but pretty much
6 the lots are so that a resident can leave the parking lot
7 and go right into their unit versus having to walk on the
8 street.

9 MR. CHAIRMAN: Anne, were you talking more about if
10 we were going to do reductions, reduce the lots adjacent
11 to the --

12 MS. GALBRAITH: Well, I guess -- my concern is, I
13 guess, two-fold. One is the overall impervious surface.
14 It is a very dense site, and we've got -- just look at
15 the gray shaded area up there. I'm not saying it's not
16 the right amount, but it is -- it's a large amount of
17 impervious surface. And then the traffic engineer says
18 he based his calculations on the average that's used at
19 Sweetbriar. And I agree with Edgar driving by Sweetbriar
20 a couple of times every day --

21 MR. SPINELLA: Right, we agree.

22 MS. GALBRAITH: It's not overly utilized. It looks
23 like quite a bit of parking space. So you've now got 71
24 off-street spaces. Well, that includes the two for the
25 office, for 40 units, where you're saying the average is

1 one per unit. I'm sure some people will have more, so I
2 guess it's just that maybe we could pull back on some of
3 that.

4 MR. SPINELLA: And it also includes the four spots
5 at the end of the road towards the wetland that were
6 requested to be -- those spots there, for public, for
7 public access.

8 MS. GALBRAITH: Um-hm. And visitors. And I would
9 think there's probably more visitors than -- I don't
10 think there's going to be a huge number of people driving
11 to the site to --

12 MR. SPINELLA: Probably not.

13 MS. GALBRAITH: -- use land that has no access to
14 the river or anything, right? I mean, those, in effect,
15 are going to be visitor spaces.

16 MR. SPINELLA: Yeah. We don't have a problem with
17 reducing some of the parking. I mean, if the Board sees
18 fit, at this stage, you can do it. It only makes our
19 drainage calculations better. It only improves it, and
20 with, I guess, from a legal standpoint, are we -- I mean,
21 the design is complete aside from State permits, so our
22 drainage only gets better if we reduce impervious
23 surface.

24 MS. GALBRAITH: Okay. And we can talk about it
25 further.

1 MR. ADAMS: So what Anne is suggesting would be, you
2 know -- well, I don't know if you were suggesting
3 moving -- losing two on each of the four parking lots?

4 MS. GALBRAITH: My thought would be, my personal
5 thought would be to lose maybe even four spaces or six
6 from the actual private lots just to reduce the
7 impervious surface and the density, and maybe keep the
8 ones on the public street as the visitor ones, more the
9 general spaces. And you were proposing a different
10 approach, but I'm not tied to one.

11 MR. ADAMS: Well, to do it evenly on both sides
12 you'd be removing two on each of those which would be a
13 total of eight. And I was proposing eliminating the
14 small bumps-out, so that would be six.

15 MR. ATTEMANN: Excuse me, Board. I would make a
16 recommendation -- Paul Attemann, sorry -- that if we were
17 considering the elimination of a couple of parking
18 spaces, which we wholeheartedly would agree to, I think,
19 is there are some spaces in the resident parking that we
20 would recommend. For instance, this space here
21 (indicating), that's very close to the building. This
22 space here that's close to the building, and I think that
23 was a struggle in laying this out. This one here. So we
24 could evenly eliminate a few spaces throughout the
25 resident parking to alleviate some tightness that we felt

1 we were trying to --

2 MS. GALBRAITH: That's what I was thinking, yeah.
3 And then I think you've got, you know, everyone still has
4 a reserved space for the resident, and then when you have
5 your Super Bowl party, people are going to be on the
6 street.

7 MR. LANG: In terms of the units, I guess, and
8 somebody occupying a unit, a one-bedroom versus a
9 three-bedroom, is there designated parking saying,
10 one-bedroom gets one space, and a three-bedroom has three
11 spaces or is --

12 MR. ATTEMANN: No, there are two spaces for every
13 apartment. Yeah, I mean, so some would have no cars and
14 some would have two cars, potentially, so it averages out
15 to one and 1.5, I think, is the number that we -- I will
16 say I have never been before a Planning Board that's
17 asked me to reduce parking. So, thank you.

18 MR. DULCHINOS: I don't know, I just would be
19 concerned, though, that if you reduce it too much that, I
20 mean, you're going to have overflow into other areas on
21 the streets and it will make it far worse than, you
22 know --

23 MR. SPINELLA: The engineers have designed it so
24 that the drainage works with following all DEM
25 regulations and such, so if we were to reduce those three

1 spots that are closest to those buildings in those blocks
2 of parking, as Paul suggested, we would be fine with
3 that.

4 MR. DULCHINOS: So what was the total number of
5 spaces you have?

6 MR. SPINELLA: Eighty-three. So if we were to go
7 down to 80 --

8 MR. ADAMS: For 40 units.

9 MR. SPINELLA: That would be -- well, we actually
10 have 42 units, including the single-family homes.

11 MS. GALBRAITH: And that's still eight above our
12 requirements, so I mean, I would be happy with that
13 compromise. I would be willing to go lower but we
14 can discuss, yeah.

15 MR. DULCHINOS: I would say you need at least 70 for
16 the residents alone, because the two- and three-bedrooms,
17 you will probably have two cars, the one-bedrooms, one
18 car.

19 MR. SPINELLA: And four of those spots are for the
20 single-families, so...

21 MR. DULCHINOS: Seventy-four. And then visitors,
22 visitors are always going to park wherever they can.

23 MR. SPINELLA: Anywhere in town, right.

24 MR. DULCHINOS: They're not going to follow the
25 instructions or the rules, they're going to take other

1 people's spots.

2 MR. SPINELLA: As they do everywhere else in the
3 whole state, the whole country.

4 MR. DULCHINOS: I don't think 83 is a huge number.

5 MS. GALBRAITH: Well, he's talking about the
6 driveway.

7 MR. SPINELLA: I think we would be comfortable going
8 down to 80.

9 MS. O'GRADY: I'm confused. Are you referring to
10 the driveway in Lots 4 and 5?

11 MR. SPINELLA: Yeah, those counts.

12 MS. O'GRADY: So you're counting those two bays?

13 MR. SPINELLA: Right.

14 MS. O'GRADY: So two each for those?

15 MR. SPINELLA: Yes.

16 MS. O'GRADY: So you've got two at the office, two
17 there. Or is that six. So if you have 71 and you've got
18 two by the maintenance office, two in each of the
19 single-family homes, you've got 65, really, that are
20 off-street parking spaces for the 40 residential units.

21 MR. SPINELLA: Right.

22 MR. CHAIRMAN: All right. I'm just going to ask if
23 there's any last questions from the community?

24 (RAISED HANDS FROM THE AUDIENCE)

25 MR. CHAIRMAN: Sure. And as you walk up, I'm just

1 going to state a couple of rules again. State your name
2 and your address, and try to keep it to new questions.

3 MR. YOUNG: Good evening, Board; my name is Eric
4 Young, my address is 30 Byway Road. I have a couple of
5 questions. I do have five years of experience as a
6 planning commissioner. I have a Ph.D. in forensic
7 psychology, so I am very familiar with being able to read
8 people and understand the confusion that a lot of you
9 have in this project. I'm working with another project
10 that's going to be coming up across the board here which
11 is on Bay Spring, and it's the six-acre parcel which Bay
12 Spring Realty is looking at developing into a 90-acre, or
13 a 90-bed senior and disabled housing facility site. It's
14 also considered a brownfields site.

15 So I would ask that the Planning Commission
16 understand that a lot of the responses that you give
17 tonight will be directly used towards a lot of new
18 brownfields sites that are coming alive in Barrington
19 now. The idea that this project is sort of the beginning
20 of that dictates a couple of questions I have. One is
21 what is the town of Barrington's stance on future
22 development and site development and site work following
23 the brownfields remediation. So what is in place with
24 the Town of Barrington should a contractor come, not
25 knowing that this is a brownfields site, come into town

1 hall, and ask Bob Speaker for a permit. What protocol is
2 in place to determine that the Building Department
3 identifies this as a brownfields site and dictate a
4 specific protocol in place in writing they could give to
5 the contractor that tells them exactly what they have to
6 do to maybe remediate a fence that is falling down, or a
7 landscaper that wants to dig in the capped ground and
8 plant a tree two feet down if the cap is only 18 inches.
9 Or if there is a break in the asphalt curbing because
10 they didn't want to expend the extra money for concrete
11 curbing and they have to come and patch it, and it's a
12 weekend and there's a water main break, and somebody is
13 coming to bore in a new water main.

14 Right now in the Town of Barrington, there is no
15 protocol in place for anything associated with
16 brownfields future development. So any decisions that
17 are made are going to dictate that process, and I'm
18 guaranteeing that there's going to be two or three more
19 projects up in front of this commission in the next six
20 months. So it would probably be good to think if -- to
21 use this development which is, it sounds to me, being
22 compared to another development that isn't a brownfields
23 site.

24 So you're making comparisons of traffic, impervious
25 and pervious surfaces, based on another site that has not

1 been identified as a brownfields site, which is probably
2 something to consider. Parking, sidewalks.

3 So the next question I have is, working with the
4 state as low-income housing, that the Town of Barrington
5 require projects that are developing to include whether
6 they're single-family residential, high-density
7 residential, whatever they are, that they put sidewalks
8 in on the streets. So that once you implement that
9 policy in place, every project across the board then has
10 a sidewalk. So six projects in a row create that
11 sidewalk all the way to the bus station, and now you get
12 people who are senior and disabled, low income, and you
13 don't have people in wheelchairs trying to get to the bus
14 on the street in traffic.

15 So if you don't use this opportunity to develop
16 those initiatives now and make the decisions to do that,
17 saying, well, we have a sidewalk that gets them to the
18 street. Well, it's not getting them to the street that's
19 the problem, it's getting them to the bus. It's those
20 things that you have to think about, and you have to
21 think a little past it because it's a brownfields site.
22 Brownfields means that there are issues that are involved
23 with capping. Most of the capping on the property sounds
24 like it's probably going to be done with impervious
25 surface. There's probably going to be minimal amount of

1 capping done with soil, according to their plan. So most
2 of the capping is all going to get torn out. What are
3 the Town of Barrington's standards in relation to when
4 you go to give a permit to a contractor who's got to rip
5 out an asphalt parking lot and replace it when it's a
6 brownfields site. Right now there isn't because this is
7 brand new to the Town of Barrington.

8 MR. CHAIRMAN: We'll have the applicant answer that,
9 but I guess right off the bat I would say that the
10 standards that are written in place after the project is
11 closed out would have criteria for how you deal with
12 certain things, but we'll clarify that. And the other
13 question that you asked was about -- so in terms of
14 brownfields sites, are you asking after something has
15 been determined to be a brownfields?

16 MR. YOUNG: After something has been determined to
17 be a brownfields site --

18 MR. CHAIRMAN: Okay.

19 MR. YOUNG: -- what is the protocol in place, the
20 procedures that the Town of Barrington follows to ensure
21 that that property is not disturbed, touched, moved, or
22 anything without the proper people notified, without DEM
23 involvement, because once you pass along on the project
24 and it's incorporated into construction, and it goes
25 through zoning, it goes through planning, and it gets

1 into building, all of a sudden you've got all the earth
2 work done, you've got everything done, you've got
3 buildings done, and then ten years later you have a
4 problem, how is that dealt with when the contractor walks
5 into the office across the hall and says, I need a permit
6 for this. Or the electrician that says, I've got to run
7 some new electrical lines through because we've got a
8 break.

9 MR. CHAIRMAN: I bet you there's a response to that
10 so we'll find that out.

11 MR. DULCHINOS: I know earlier there was a
12 discussion with the ELUR; would that be a document that
13 would -- sounds like it would determine if there's
14 anything that's future construction or if a parking lot
15 has to be pulled up, that sounds like --

16 MR. MARTIN: Shawn Martin. Yeah, that's correct,
17 but the soil management plan stipulates the protocols to
18 manage soils that are regulated. And be clear, the
19 brownfields is a technical term for a site that's been
20 determined to be contaminated with constituents. There
21 are plenty around that we know that exist that we haven't
22 identified.

23 The other comment, just while I'm up here, is the
24 sidewalks. As the Board knows, we've -- what we proposed
25 is to provide a fee in lieu of sidewalks along the

1 frontage of the project, but the Board can decide where
2 to best apply or to build sidewalks in towns through the
3 town councils and the board initiatives to determine
4 where they're most needed.

5 MR. DOYLE: Good evening; Kevin Doyle, Lewis Avenue.
6 One of the concerns besides the numerous ones as a member
7 of Codder that we brought up to the last couple of years
8 with this proposal. One I would like to address today is
9 contamination. As mentioned earlier in the evening there
10 was an e-mail sent back and forth with an attorney and
11 Jim Byrne from the EPA. Jim Byrne was very gracious
12 enough to come down Friday morning and meet with Codder
13 at Bill Harsch's office. And what he told us, as we were
14 told, there's further testing to be done. There's a lot
15 more planning to be done as far as how the remediation is
16 going to take place. But one of the biggest red flags
17 that was raised was, for the eternity of this property,
18 it's going to be under an ELUR. And what that means is
19 any of these nice-looking open spaces and nice backyards
20 and any grassy areas, the residents hopefully will be
21 informed that there is no digging there because, as Jim
22 Byrne stated, one of the biggest concerns is when you go
23 down 18 inches of a capping, whether a dog is digging in
24 a yard or someone is planting a vegetable garden, or
25 whatever like that, you pierce the cap of the chemicals

1 that are being capped. It releases them and it's a
2 danger, it's a violation of the EPA.

3 So the two questions that I have, is whose going to
4 guarantee that that doesn't happen, and is that going to
5 be part of the rental agreement that you can never dig in
6 the yard or plant a shrub or a tree. And also, who's
7 actually going to monitor that in the event that somebody
8 does pierce the cap. Who's responsible for that.

9 Now, I asked that question last night at the Town
10 Council meeting and there was some confusion as far as
11 who was going to be responsible for that, but I believe
12 it was tossed back to the owner of the property who will
13 be responsible to monitor that. Who's going to monitor
14 the owner of the property to see that the observation of
15 this, no activity, digging, or moving of soil or anything
16 like that is happening on this property. So that was a
17 real big red flag that Jim Byrne really said that that is
18 something that's going to go on, as I said, for eternity,
19 not to be repetitive, but it's very much of a concern to
20 the residents because when that does get pierced, that
21 capping, it's certainly a great danger to the people.
22 The residents are right in there with their children,
23 elderly, or whatever like that. But also the abutting
24 properties in the neighborhood.

25 And I don't believe that Hampden Meadows has as many

1 single-family homes that have an ELUR in existence with
2 this kind of a deed-restricted use. Thank you.

3 THE CHAIR: Any other last questions? Okay. I'm
4 going to give you guys a chance to respond.

5 MR. MARTIN: Shawn Martin. As I mentioned
6 previously, the owner of East Bay Community Development
7 Corporation will be responsible for the implementation
8 and compliance with the remedial action work plan, and
9 ultimately the ELUR. There is a yearly annual inspection
10 requirement of the owner to ensure the integrity of the
11 cap and any activities that occur on the project.
12 Obviously, the owner's made aware, and during the wrap
13 approval process about the limitations for activities
14 that occur on the property, and they agree to those
15 limitations and conditions. They're obligated to follow
16 those requirements, and, again, submit an annual
17 inspection that ascertains the integrity of the soil cap,
18 whether there's been any degradation or repairs are
19 necessary. And they're obligated to make those remedies
20 or face action by DEM. And you certainly have residents,
21 each resident is going to be aware of these conditions as
22 well. And as a resident, if they aren't being protected,
23 they are empowered to make those reports to DEM as well
24 and hold the owner accountable, even as a tenant. The
25 residents abutting the property have a vested interest

1 also in ensuring their protection, and they have that
2 remedy as well through the DEM on reporting any incidents
3 or conditions that may occur that are inconsistent with
4 the approved remedial action work plan.

5 MR. SIMMS: Shawn, the purchasers, or the eventual
6 purchasers of the units, as time goes on, assuming the
7 application and everything gets built, is there --

8 MR. MARTIN: There's a disclosure.

9 MR. SIMMS: -- something of record?

10 MR. MARTIN: There's a disclosure.

11 MR. SIMMS: -- that notifies them that this process
12 took place, this remedial action took place --

13 MR. MARTIN: Yes.

14 MR. SIMMS: -- and they're living in this area?

15 MR. MARTIN: That's correct. Yup.

16 MR. SIMMS: So are we of record?

17 MR. MARTIN: Well, yeah. Let me just clarify. They
18 are rentals but there's a disclosure that -- of the
19 conditions that exist at the site, that's correct.

20 MR. SIMMS: Well, a disclosure how, how so, I mean,
21 a disclosure in terms of the purchase --

22 MR. MARTIN: The rental agreement.

23 MR. SIMMS: -- and sale agreements?

24 MR. MARTIN: Yup.

25 MR. SIMMS: Would there actually be something to

1 indicate that of record? I am just wondering.

2 MR. MARTIN: Whether the rental agreement is a --

3 MR. SIMMS: No, no, no, no. Something when you do
4 the title, somebody is going to do a title search and buy
5 this unit, is there going to be something that would be
6 reflective of --

7 MR. MARTIN: They're rentals, there would be no
8 purchase. The disclosure would have to occur during the
9 rental process, and there is an application process to
10 qualify for the rental first.

11 MR. SIMMS: For rental purposes. But there are
12 two -- there's going to be two -- how many of the units
13 are going to be -- like Sweetbriar, there were two units
14 or three that were sold.

15 MS. GALBRAITH: Well, Lots 4 and 5, the two existing
16 homes.

17 MR. SIMMS: Lots 4 and 5.

18 MS. GALBRAITH: Yeah. Were those part of the
19 testing, the site assessment, or are they --

20 MR. MARTIN: Those, you know, I would have to check
21 my records. I don't believe those were included in the
22 testing.

23 MS. GALBRAITH: So -- okay. So those are going to
24 be sold without --

25 MR. MARTIN: Yeah. The testing was --

1 MS. GALBRAITH: It's unknown at this point what the
2 soils are under those --

3 MR. MARTIN: Yeah, the testing was limited, I
4 believe, to the nursery operations area, so the area to
5 the east of those, those were in occupied or residential
6 uses up until the purchase as part of the entire
7 development project. That's probably the reasoning
8 behind that.

9 But, yeah, it's not like a condo where you have a
10 declaration or some other thing, but there would be
11 disclosure or the soil management plan in there. Because
12 I think, as the gentleman just said, sometimes people
13 have pets or they have children and other things, and you
14 start digging around on the site, obviously, it's a
15 rental property, so it's a little bit different. It's a
16 managed property. There's people that go there weekly to
17 maintain, or even more frequently to maintain units, and
18 the site property as well.

19 MR. CHAIRMAN: I have a quick question about that.
20 The adjacent properties, they had houses on them already,
21 right?

22 MR. MARTIN: Um-hm.

23 MR. CHAIRMAN: At least one did, right? But weren't
24 they just recently subdivided from the rest of the
25 property? Weren't they all owned by the same family?

1 MR. MARTIN: The two units on Sowams, 91 and 97?

2 MR. CHAIRMAN: Yes.

3 MR. MARTIN: They were proposed as part of this
4 development, because the old property lines traverse
5 throughout the development, so we're modifying those
6 property lines. At least the rear lot lines. The
7 sidelines exist today in the frontage, but the rear lot
8 lines are changing to separate them from the rental
9 portion of the Sweetbriar development, the affordable
10 housing component.

11 MR. SPINELLA: Frank Spinella, for the record. The
12 question about the two single-family homes and not being
13 tested, when we first received the grant for the --
14 through the EPA and the DEM when we met Cindy
15 Gianfrancesco and Jim Byrne at the site, they said
16 because those two houses were being sold off and
17 subdivided and had always been residential, they were not
18 going to be tested and were not subject to the rest of
19 the site because they weren't used as nursery, just as
20 all the other homes in the Hampden Meadows area wouldn't
21 be tested either.

22 MR. CHAIRMAN: But you understand --

23 MR. MARTIN: Residential transfer.

24 MR. CHAIRMAN: -- my concern was just because at
25 some point they weren't subdivided from the rest of the

1 property, and I didn't know how much of that stuff --

2 MR. SPINELLA: Well, Hampton Meadows' residences all
3 around here. I'm sure if you tested all of those
4 properties, you would find some level of arsenic above
5 the areas, but nobody tested them because they're
6 residential homes.

7 MR. COSTA: Les Costa, 3 Colonial Avenue. In
8 regards to the ELUR being on the record, if Palmer Pointe
9 does come about, will the tenant actually -- will there
10 be something on the tenant's lease whereby they will be
11 made aware of that ELUR, and I don't mean in fine print
12 on the bottom, something that will explain what that ELUR
13 is all about and the potential hazards that that tenant,
14 he or she, may be exposed to. Thank you.

15 MR. CAPIZZO: For the record, Christian Capizzo. I
16 think Mr. Costa make a good point in regards to notifying
17 prospective tenants of what they're actually going to be
18 renting and that they're aware. Whether or not it
19 appears in the lease or in some other type of document, I
20 think there will be every effort made, and I think it's
21 in the interests of the owner of the property to notify
22 the tenants without scaring away tenants, that this land
23 is a brownfields, and that there are rules and that
24 there's an ELUR on the site and that you're not supposed
25 to be digging. Because if you follow the logic through,

1 if the tenant was to dig, then the owner is in violation
2 if DEM does the annual inspection report. So it's in the
3 interests of the owner to protect itself from any type of
4 investigation or inspection or violation from DEM. So
5 I'm not necessarily sure it's -- it's a very good point
6 raised by Mr. Costa, but I don't think it's before this
7 Board, but I think it's something that the property owner
8 will consider when they're renting out these types of
9 properties.

10 MR. CHAIRMAN: And I would just say it's probably
11 more than disclosure, I think that you're going to have
12 to tell them what the condition activities can be, and I
13 think maybe that could be part of the tenant agreement,
14 you know, because people want to, you know, even on
15 properties, rental properties, people want to put up a
16 swing set or they want to do --

17 MS. GALBRAITH: Garden.

18 MR. CHAIRMAN: A garden.

19 MR. CAPIZZO: Sure. And I think it will probably be
20 made clear, you know, and I'm not sure what type of
21 instrument it would appear in, but that any breach of the
22 encapsulation, as you said, if it's, you know, you're
23 digging, you know, want to make a garden or something
24 like that, there's going to be certain restrictions as to
25 what you can do on the property. DEM with the EPA will

1 set what those restrictions are, and that will be
2 contingent on the property owner to make sure that it
3 protect its interests and its own liability by notifying
4 potential tenants, you know, of what they'll need to do,
5 what they can and cannot do.

6 MR. CHAIRMAN: And to protect your tenants as well.

7 MR. CAPIZZO: And to protect your tenants as well,
8 exactly. Exactly. So it is a good point raised by
9 Mr. Costa. How it will be implemented I don't know, and
10 I don't think it's before this Board, but it's something
11 that is obviously going to be under consideration.

12 MR. CHAIRMAN: It's something that we think about --
13 it's something that we just think about in terms of
14 future residents, too.

15 MR. CAPIZZO: Understandably so.

16 Did you have a question, Mr. Lang, before --

17 MR. LANG: I was just saying that I guess, you know,
18 obviously there's regulations around renting to units
19 that have lead contamination.

20 MR. CAPIZZO: Exactly.

21 MR. LANG: Is there a similar type program or policy
22 in place that notifies renters of a brownfields or the
23 ELUR?

24 MR. CAPIZZO: That is actually a great question. I
25 don't know. I can tell you with the lead, I'm very

1 familiar with my time working at the Attorney General's
2 Office and I did some work with the Department of Health.
3 And obviously landlords are, under Rhode Island, under
4 the lead laws, they have to let the tenants know if, you
5 know, depending on what year it is. I think it's either
6 '76 to --

7 MR. LANG: '74?

8 MR. CAPIZZO: '78. I think it's between '74 and '78
9 they have to notify the tenants. Whether -- I don't
10 believe DOH has those requirements for something like
11 that. I don't believe DEM, if you ask DEM, they would --
12 they do not want to get into the business of doing that.
13 I don't know -- Mr. Martin might be able to answer this.
14 Just one second (conferring with Mr. Martin).

15 Mr. Spinella just informed me that they will be
16 notifying the tenants, don't know in what way, shape, or
17 form, but they will be notifying the tenants as it
18 relates to any type of restrictions as to what can be
19 done on the property. But I don't think DEM -- it would
20 be under DEM's jurisdiction to notify tenants or have
21 some type of process similar to what Department of Health
22 has, is my point.

23 MR. DOYLE: Kevin Doyle, Lewis Avenue. To reference
24 again our conversation with Jim Byrne from the EPA, he
25 thought it was pretty early in the stage of the testing

1 to give any kind of a go-ahead with this kind of a
2 project. Seeing that he said one of the things they did
3 not test on this site was the berm that's on the east
4 side of the -- the very east side abutting the Palmer
5 River, and that was a berm that was put there by
6 Mr. Silveira, the former owner that was pushing back
7 debris for years, was cited two to three times by the DEM
8 for doing so. But they had not even had a chance to test
9 that berm. And he said the other big concern was the hot
10 spots for the Dieldrin, the chemical that's of most
11 concern, because it never goes away. They're going to do
12 some testing of boring holes much closer because they
13 were pretty distant of the ones the tester did, so he
14 says it's really an unknown as far as how contaminated
15 that property actually is, that they have to do more
16 testing, and once again, meet with the proper agencies to
17 form a remediation plan, whether it's going to be total
18 removal of the berm and many of the hot spots on that
19 property. But certainly he thought it was premature to
20 make any decisions on whether or not the remediation plan
21 would be effective or how cost-effective that plan would
22 be. So thank you.

23 MR. COSTA: Once again, Les Costa, 3 Colonial
24 Avenue. If they do testing of that berm, does that mean
25 now the CRMC has to be involved in this process in any

1 way? Thank you.

2 MR. CHAIRMAN: Any other questions? Last question;
3 sure.

4 MR. YOUNG: Eric Young, 30 Byway Road. Is this a
5 hundred percent cap assumption here that you're going to
6 cap the entire property without a remedial action work
7 plan dictated by DEM which shows the hot spots on an
8 overlay map which might have hot spots on it dictate
9 where the capping is? Is this a complete clear-out and a
10 hundred percent cap over the land other than the 200
11 foot --

12 MR. CHAIRMAN: I'll let the applicant respond to
13 that, but I don't think that determination has been made
14 yet.

15 MR. MARTIN: Shawn Martin. No, the determination
16 hasn't been made, but the proposal that you see before
17 you assumes a soil cap for every part of the site outside
18 of the 200 foot -- actually, never mind -- outside of the
19 wetland boundary, and that's where the berm has been
20 disposed. And the berm is getting removed. It's going
21 to be sampled and it's going to be removed. The CRMC
22 will be notified of any sampling that might occur within
23 wetlands. But, again, EPA's contractor is going to be
24 responsible for those notifications and the sampling
25 protocols. The whole idea is to characterize that soil

1 so that it can be removed and disposed of properly, not
2 to leave it there in perpetuity, but to remove it and
3 make the site clean again, and the entire site is
4 effectively being capped. And that is the remedy that is
5 the most common remedy for arsenic-containing soils,
6 particularly at the levels identified at this site. And
7 as I mentioned, the most hazardous material that's been
8 identified is going to be completely removed from the
9 site.

10 MR. CHAIRMAN: And I want to say that maybe
11 Mr. Doyle had a question about whether something should
12 be allowed to go forward until this determination has
13 been made. I want to say that right now we're doing
14 Preliminary Plan, right? What other phases of approval
15 are left after this?

16 MR. MARTIN: The next phase of approval is the final
17 plan through this Board, and at that stage the town's
18 low- to moderate-income housing ordinances require State
19 permits, State and Federal permits, to be obtained at
20 that time. So it's our anticipation that the
21 investigation will continue, the remedial action work
22 plan will be developed with public input. The Coastal
23 Resources will be -- application will be filed. Rhode
24 Island DEM, water quality, certification, and RIPTES
25 Construction site monitor control programs will all

1 review this project further.

2 And as I had stated to the Board in a prior meeting,
3 or meetings, we did meet with the CRMC office, the DEM
4 office of Waste Management and DEM water quality section
5 to kind of coordinate our proposed activities and design
6 development, and it was in consideration with their
7 questions and comments that these plans were prepared.
8 They weren't done in a vacuum, they were done with all
9 due consideration.

10 Some notes, I don't know if you've -- you have the
11 notes provided by DEM from that meeting in your record.
12 I had followed it up with a subsequent e-mail correcting
13 some of the meeting minute notes, but I'm not sure if the
14 Board has that. I brought it with me tonight and can
15 submit it. But it basically gets into the minutiae of
16 what the expectations are moving forward. And the
17 reality, what you see before you, reflects the outcome of
18 that meeting.

19 MR. CHAIRMAN: Thank you.

20 What I'm going to do now is I'm going to close the
21 public input portion of the application, and then we can
22 start talking about putting a motion together.

23 Let's start with maybe comment from the left.

24 MR. LANG: Do you need a motion to close the
25 public --

1 MR. CHAIRMAN: Yes.

2 MR. LANG: Motion to close the public portion of the
3 hearing.

4 MR. DULCHINOS: Second.

5 MR. CHAIRMAN: All in favor?

6 MR. ADAMS: Aye.

7 MR. LANG: Aye.

8 MR. SIMMS: Aye.

9 MR. CHAIRMAN: Aye.

10 MR. DULCHINOS: Aye.

11 MS. GALBRAITH: Aye.

12 MS. O'GRADY: Aye.

13 MR. CHAIRMAN: Anybody against? Okay, the motion
14 passes. Let's start with -- if you don't have anything
15 right now, we can always come back. So we'll start on
16 the left nonetheless.

17 MR. LANG: In reviewing the criteria for approval
18 and denial --

19 MR. HARSCH: Mr. Chairman, excuse me. I've been
20 told --

21 MR. CHAIRMAN: Use the mic, please.

22 MR. HARSCH: William Harsch, Attorney representing
23 the citizens group including Codder. I appreciate the
24 time before the Board. One of the things that was
25 indicated to me was that there would be time for closing

1 arguments. I have not heard closing arguments from the
2 other side, and I certainly have closing arguments on
3 behalf of my client.

4 MR. CHAIRMAN: I just need a little bit of direction
5 from that. I know that you used the term court, and I
6 didn't know to what degree, you know, how this is viewed.

7 MR. TEITZ: I do think we did indicate to them at
8 the previous meeting, and I had indicated to them in a
9 written communication, I'm not sure if I used the word
10 closing argument or closing statement, but I do think we
11 had indicated that there would be an opportunity for
12 that. So I think that would be appropriate at this time,
13 a brief closing statement from both of the parties.

14 MR. CHAIRMAN: Do I have to reopen the public --

15 MR. TEITZ: Just to be formal about it, I think you
16 might as well, just to have a motion to reopen the public
17 hearing for closing statements.

18 MR. LANG: I would like to make a motion to reopen.

19 MR. DULCHINOS: Second.

20 MR. CHAIRMAN: Thank you for bringing that.

21 MR. HARSCH: Thank you, Mr. Chairman. I'm going to
22 ask, given the amount of time that's been taken up by the
23 other side, it's now three hours and a great deal of
24 information has been coming out, a good deal of which is
25 indeed responsive to what we've suggested should be

1 brought out. I don't see how I can cover the new
2 material that has come before this Board tonight. I do
3 have a closing argument. It will take probably ten or
4 fifteen minutes to give it to you. I don't know whether
5 you want to continue tonight or whether you want to give
6 me an opportunity to do so at a subsequent meeting.

7 MR. TEITZ: I would recommend doing it tonight. I'd
8 recommend doing it tonight, let both sides make their
9 closing statements, close the public hearing, and then
10 deliberate. If the -- given the time frame, I know we
11 did extend another month so we have time, but I think we
12 were still trying to shoot for a decision in July. If
13 there's consensus on the Board to direct staff to draft a
14 decision, then we can go forward at that point. If you
15 feel you want to hear more -- if you feel you want to
16 hear more information from either of these sides, my
17 suggestion would be to set a time limit for a final
18 written statement from both parties, which you can then
19 discuss at the July one. But I would suggest at least
20 having the closing statements now or closing the oral
21 part of the public hearing and seeing if you're ready to
22 make a decision.

23 MR. CHAIRMAN: I would like to hear the closing
24 statements tonight, but I want to -- because it's after
25 10:00, I want to make sure the Board is in agreement with

1 that or if there's a suggestion, you know, lengthening
2 the process is needed, then we'll do that. So is this
3 something we have to do in the form of a motion, to agree
4 to go --

5 MR. TEITZ: No. You've opened the hearing, and I
6 think it's in your discretion of the Chair to direct the
7 procedure, and, at least at this point with the closing
8 statements, it's up to you, but that would be my
9 recommendation.

10 MR. CHAIRMAN: So does anybody on the Board have an
11 opinion one way or the other?

12 MR. DULCHINOS: Is the expectation that we will
13 actually vote on a motion tonight, or is it that we will
14 direct for draft to be done for the vote to occur in
15 July?

16 MR. TEITZ: Yes. It is the expectation that there
17 will be discussion, and if not a consensus, then a straw
18 vote tonight to direct staff, but there won't be any
19 formal vote tonight because obviously we want to have a
20 formal written decision prepared in advance.

21 MR. DULCHINOS: Okay. I'm okay with proceeding.

22 MR. CHAIRMAN: Everybody else? Okay.

23 MR. HARSCH: Closing statements, then, Mr. Chairman,
24 in what order? Will I do it or will my brother do it
25 first? From my point of view I would like a five-minute

1 break, please. It's been three hours.

2 MR. CHAIRMAN: Sure. We'll take a five-minute
3 break.

4 (BRIEF RECESS AT 10:15 P.M.)

5 MR. CHAIRMAN: All right, so we're back. And please
6 proceed.

7 MR. HARSCH: Thank you, Mr. Chairman. Please let me
8 know if what I'm saying into the microphone is not clear,
9 because some of the testimony I could not hear, but I did
10 my best.

11 I found myself feeling a little bit like David and
12 Goliath with being here on my own on behalf of Codder. I
13 have appreciated the chance to testify previously, or
14 comment previously.

15 For the record, William Harsch; I'm an attorney, I
16 represent a citizen group which calls itself Codder, and
17 I am also representing the abutter members of Codder.

18 I think probably the best thing for me to do is to
19 try to summarize what I'm going to say to the Board
20 because I heard Mr. Teitz indicate that a closing written
21 memorandum might be in order. And a great deal of the
22 information which came out tonight is beyond the scope of
23 the statement which I had prepared. What I am going to
24 talk about is basically to summarize the evidence which
25 has been offered by my clients to date, which clearly

1 demonstrates that the proposed Palmer Pointe project is
2 not well enough along to merit Preliminary Plan approval
3 by this Board. Some of the issues that came up tonight
4 simply underline that point, one of them being the
5 business of the representations made about Mr. Byrne from
6 the Environmental Protection Agency. From having just
7 met with him, I think it's extremely clear that EPA is
8 taking a significant interest in this, and that simply
9 saying that DEM has the last word is to fail to recognize
10 that DEM is operating a delegated program from EPA. So
11 the last word effectively is Federal statute, Federal
12 law, and the Federal guidance of the DEM staff.

13 As you heard tonight, there are very significant
14 contamination issues with this site. They cannot be
15 glossed over by saying that the state level is .7,
16 because the state level for residential is .04. This is
17 not a background contamination issue, this is a
18 significant on-site concentrated local contamination
19 issue for arsenic and now for Dieldrin as well.

20 I will be discussing the issues of isolation with
21 this project, and I thought it was interesting the
22 comment that this is an auto-dependent development, which
23 seems to me highly inappropriate when you're talking
24 about a truly low-income development.

25 We have safety issues. Again, I heard them bypassed

1 tonight, and I will discuss them for a minute more. I
2 will note that we presented to this Board several
3 highly-qualified experts, including Mr. Nickelson, a
4 Brown University professor and a qualified planner, some
5 of whose questions were answered, but most of whose
6 questions were not answered.

7 I will discuss what you heard a great deal about
8 tonight, and that is despite the way it's being tied up
9 in a red ribbon, the amount of responsibility and cost
10 that is being transferred to the Town of Barrington in
11 the course of this project. I find this unusual in terms
12 of the magnitude and the way it's been kind of tucked
13 away in corners of this project. I find myself wondering
14 whether this is not an appropriations situation. It is
15 not a situation where the Town Council needs to be
16 consulted about programs and expenditures which have not
17 yet been authorized and certainly do not appear in the
18 budget.

19 We have indicated previously, and you heard again
20 tonight, that the basic planning for the Palmer Pointe
21 project is at best incomplete. And I think just as a
22 side comment, one of the risks with low-income housing
23 especially is that it has a very bad history. All you
24 have to do is look at places like South Providence.
25 Low-income people have tended to end up on sites which

1 are not particularly desirable, may be significantly
2 contaminated, and this is one of the reasons why
3 brownfields keeps coming up when we're dealing with
4 finding sites for low-income housing.

5 So, bottom line, it's been shown from the very
6 preliminary surveys that you've heard about that this
7 site is severely contaminated. The EPA is leading the
8 charge in this case, again proving the point of their
9 responsibility. The site assessment is underway but at a
10 relatively early stage, and frankly, the assurances which
11 were given to this Board previously about the relative
12 ease of remediation and the advanced stage of the
13 handling of remediation were, to say the least,
14 inaccurate. The issues which we raised about
15 contamination have led, as this Board has heard for
16 several hours, to an attempt to explain some of the
17 things which never were brought up, such as that a site
18 like this requires a remedial action work plan, that the
19 remedial action work plan is a public process. It is
20 not, in fact, a permit of any kind, it is a process. And
21 it only can be brought before the department for
22 consideration once the full site assessment has been
23 done, which it clearly has not. Obviously any
24 remediation plan to have a chance for approval has to
25 meet the standards for the proposed use. And I think

1 when the gentleman from EPA speaks to the relative ease
2 of remediation, he's not talking about this specific use.
3 The relative density of the site, the high levels of
4 contamination, and, frankly, the cost elements of it,
5 make the remediation a significant problem. And I think
6 they're going to have, frankly, a serious process with
7 DEM. And I heard the gentleman suggest that this Board
8 is making precedent tonight and in its consideration of
9 this project. Because this is placing residential uses
10 on an acknowledged brownfields site. And more than that,
11 it's doing so in the context of low-income housing. And
12 low-income housing doesn't just mean working couples and
13 a young policeman with his wife, that sort of stuff, it
14 also means elderly, it can mean disabled, it can
15 certainly mean children, juveniles, non-drivers. This
16 whole business of, well, this is an auto-dependent
17 community, well, these are low-income people that you're
18 talking about, and to assume that they're going to have
19 cars, I think is a stretch. It's one of the reasons why
20 the definitions of low-income housing do include the
21 requirement for ready access to public transit. So I
22 think that is something that must be taken seriously into
23 account. The conclusion of our expert, Mr. Nickelson,
24 who is well-respected, well-known, and very experienced
25 in exactly these areas of site remediation, remedial

1 action work plans and so forth, is that what was being
2 offered by this developer previously to this Board is
3 basically unworkable. He frankly considers an ELUR on a
4 site as dense as this to be very doubtful; I'll say that.
5 And the proposal offered the Board at the last hearing
6 before all of the discussion tonight was simply based on
7 a very early stage of the site assessment work as you
8 have now heard.

9 We offered in addition to Mr. Nickelson with his
10 direct experience of many years in this -- in the exact
11 area of this business, a senior chemical engineering
12 professor from Brown University, highly-experienced,
13 highly-publicized, and knowledgeable in directly relevant
14 matters including as to the presence of contamination in
15 the environment. This is one of his specialties. And he
16 testified as to the seriousness of the environmental
17 conditions on this site from what little was known at
18 this point. Indeed, Professor Diebold's testimony, in my
19 view, his expert testimony remains unrebutted by the
20 developer despite what you may have heard tonight.

21 I should make clear on the record that the challenge
22 to the credentials of our planning expert, Ashley
23 Hahn-Sweet, is entirely invalid. As a planner, it is an
24 integral part of the planner's training and the planner's
25 day-to-day work to review and evaluate reports such as

1 that of the developer's traffic engineer. It is the
2 planner who evaluates such technical input, forming his
3 opinions, her opinions, and reporting to do the relevant
4 board or commission. Your own planner here performs
5 exactly the same function. So she's highly qualified to
6 give that type of testimony.

7 Among other points, Ms. Hahn-Sweet's testimony
8 demonstrated that in several key respects, the
9 developer's plan in support of this pending application
10 do not address the conditions set forth in your own
11 Master Plan decision. The issues raised by our experts
12 in addition to that fundamental issue of severe
13 contamination included, for example, the following: The
14 isolation of the site from community services. As I
15 said, I think the idea of all this low-income residents
16 including other working adults would have personal
17 vehicles is a stretch. In any event, access to public
18 transportation, as I mentioned, is a basic requirement of
19 housing of this sort.

20 We have offered unrebutted testimony and evidence
21 that walking Sowams Road to the nearest public
22 transportation will be extremely hazardous especially in
23 darkness and bad weather. Again, that is a subject that
24 you heard glossed over not only at prior hearing but
25 again tonight. The fact is that residents of this

1 development, those without automobiles, would have to
2 walk Sowams Road, trotting over to New Meadows, again has
3 its own hazards. And in the case of darkness or bad
4 weather, it would be, frankly, life-threatening. If this
5 were a straight road, brightly lit, that might be a
6 different story, but this is absolutely the opposite, as
7 all of you know.

8 We have also shown by testimony that the likelihood
9 of placing sidewalks, which was kind of brushed into the
10 picture, is beyond unlikely as an alternative, but
11 because of the expense, the narrowness of the
12 right-of-way, the fact that this would be a town cost,
13 not a developer cost. We have amply demonstrated the
14 isolation of this development within the surrounding
15 established neighborhood. It is to be set back from the
16 road behind three unrelated private houses, and separated
17 from the abutting residential property by both drainage
18 swales and fences. Plus it is clearly designed as a
19 dense and inward-looking project. It is not designed,
20 and it cannot be designed, given the site, such as to
21 integrate with the neighborhood. Quite the contrary.

22 I note that Barrington's own plan specifically
23 discourage isolated development. For wealthier
24 residents, this form of development comes as gated
25 communities. This project as presently proposed is a

1 low-income equivalent to a gated community, clearly
2 violating that basic principle of community planning,
3 which, as I mentioned, is already in your plan.

4 We have pointed out in our testimony that critical
5 elements of the project remain without adequate planning
6 at this stage of the review process. I saw the developer
7 again toss the ball on recreational use to the town. We
8 have heard a good deal about, oh, we're going to provide
9 recreational access, public access, but tonight it was,
10 okay, but, it's whatever the town decides it's going to
11 be. So it's another burden on you all and another
12 benefit to them.

13 It's also a fact demonstrated by the evidence and
14 testimony that you heard that this developer has planned
15 to offload to the town a very substantial part of the
16 cost and obligation for maintenance and operation of the
17 development's infrastructure. That includes streets, the
18 aboveground drainage systems, the below-ground drainage
19 systems, and in spite of, or maybe because of some of the
20 unclear testimony you heard tonight, it looks like the
21 ELUR responsibility, the environmental land use
22 restriction, will be passed to the town.

23 You heard testimony at the last hearing of this
24 Board that the developer was not willing to take the ELUR
25 ongoing responsibility. There was a rather thin

1 suggestion that the responsibility would be taken on by
2 the residents. These are low-income renters. That
3 doesn't make any sense. And I can only assume, given the
4 Alphonse-and-Gaston that has taken place, that lengthy
5 infrastructure maintenance of the swales and the
6 underground piping and the detention basins and all the
7 rest of it, and the recreational use of the area, that is
8 going to become a town problem and a town expense. And I
9 think it again demonstrates that what this Board is
10 facing tonight, and that all the information that has
11 been coming out so extensively, it's a decision which
12 will have substantial meaning, not only for this
13 development, but for oncoming developments about which
14 you have already been warned. So you're setting
15 precedent in a community that I would point out has no
16 policy or plan in the area of managing brownfields sites
17 for residential use. This is a one-off, first time.

18 I've been involved in a good number of development
19 projects of all kinds. The one rule that I have is that
20 I will not work for developers. So I take, I grant you,
21 one side of the issue, the side of the issue which is
22 normally being overwhelmed. Hopefully, I'm able to hold
23 my own tonight.

24 My experience tells me that this particular project
25 involves a highly unusual level of walk-away by

1 developer, and a very substantial cost to the cost to the
2 community, as well as a series of subsidies for the
3 project. Very little cost information, if any, has been
4 offered by the developer regarding these additional
5 subsidies, or even justification offered for why these
6 should be obligations undertaken by the town instead of
7 the developer. And as we've discussed, if this kind of
8 burden shifting is accepted by this town for this
9 project, why not the same treatment for the other
10 developments, which you've already been told are on their
11 way.

12 Barrington is commendably out in front on low-mod
13 housing development. It's high on the list of the State
14 reports which show that Barrington is one of only two or
15 three communities that is close to the 10 percent goal.
16 This particular project has serious and unusual
17 demonstrated problems and issues.

18 Indeed, looking back at the Master Plan decision,
19 which was referenced tonight, this Board imposed what I
20 would consider an unusual number of conditions in order
21 to grant Master Plan approval. And because the
22 conditions I would term that Master Plan approval as
23 provisional. But that's just the way I look at it.

24 The developer was given a significant, and I think
25 justified, quote, show me burden. You wanted to see

1 conformance with the numerous conditions which were set
2 down, many of which were suggested by our experts in
3 earlier testimony. The developer has provably not met
4 many of these requirements in a number of respects. So
5 respectfully, I submit that there's no justification for
6 giving this development yet another pass when the
7 existing conditions this Board imposed and its existing
8 concerns have not been fully satisfied. And this town
9 has already shown ample progress in meeting the State
10 program's objectives. It's notable that this project
11 displays many of the problems and issues about which the
12 town was so concerned in the case of its vigorous
13 opposition to Sweetbriar. That project, in fact, met
14 many of the standards which Palmer Pointe simply does
15 not. Some of the objections to that project by the town
16 at that time included a racetrack street layout, which is
17 standing before you; the use of nonconforming curbs,
18 which is part of this proposal; density. And I would
19 point out in regard to density that the prior proposed
20 use of this site for, I think it was seven residences,
21 was rejected as being too dense.

22 And with Sweetbriar there was also a series of
23 issues about compatibility with the surrounding areas.
24 There's no question that the State Housing Appeals Board
25 overruled the decision of the Board, but there's also no

1 question in my mind that there are a lot of
2 dissimilarities between Sweetbriar and this project.
3 Sweetbriar not being on a contaminated site, being near
4 the center of Barrington, being close to bus lines and
5 potential work opportunities and so forth, the standard
6 conditions which you expect.

7 So just to summarize, the areas that I'm just
8 emphasizing by way of reminder to this Board of the
9 things which we've discussed, we've got the contamination
10 issues of which there are several and they're
11 substantial; there's isolation; there's safety; there's
12 the fact that the testimony from the opponents of this
13 project are highly-qualified experts in their field, one
14 of whom is effectively unrebutted; the wholesale transfer
15 of obligations and costs to this community; the
16 incomplete nature of the planning, which has been done in
17 spite of the time which this Board gave the developer to
18 satisfy its requirements; and the risk of repeating past
19 errors with low-income housing, which has tended to be
20 anything but a pleasant appropriate arrangement for less
21 fortunate citizens.

22 I think, with this Board's understanding, I will put
23 off comments on many issues which were raised by
24 tonight's testimony for the memorandum which we will be
25 submitting. I would simply point out again in closing

1 that this is a project which is very green and very much
2 will be setting a precedent for the work which this Board
3 is doing for the coming years on other projects,
4 including one which was mentioned, which is (inaudible)
5 on a brownfields site. The standards which you set in
6 Barrington were dealing with residential uses on
7 brownfields sites, and this project will go forward on
8 future projects as they come to you.

9 Thank you so much for your time and attention and
10 the time and attention which you have given to my
11 clients. Appreciate it.

12 MR. CAPIZZO: For the record, Christian Capizzo on
13 behalf of the East Bay Community Development Corporation.
14 I want to make sure that the Board has time, it being
15 10:37 per my watch, to at least start deliberations
16 tonight. So I will be short.

17 I want to thank the Board as well as the development
18 team that appeared before you at three separate hearings.
19 I want to thank you for the time and the attention that
20 you gave to the testimony provided not only from the
21 development team but for the public comments as well.

22 Based on the evidence submitted at the initial
23 hearing as well as the second hearing and tonight's
24 hearing, we believe that the applicant has satisfied the
25 conditions of the Master Plan, and we took very seriously

1 the charge from the Chair and of the Board to look at the
2 public comments and to address all of the public
3 comments, and we narrowed those concerns down to
4 environmental health, impacts of Dieldrin and arsenic,
5 and you heard from the development team tonight as well
6 as at the April 15, 2016 hearing date.

7 We don't believe, and I think the evidence will
8 support, that there is a significant environmental
9 impact, and I think DEM and EPA supports those
10 conclusions. They have both been involved with this
11 project along with Fuss & O'Neill. You have the
12 attachments that were provided and submitted with the
13 application and submitted with the applicant's memorandum
14 submitted on May 23; Attachments A through H, this being
15 the Fuss & O'Neill summary of consistency of the Master
16 Plan, and I urge you to look at that. Evidence is
17 consistent that we've met the conditions. Nobis'
18 brownfields assessment report; Rhode Island DEM's
19 voluntary procedure letter referenced by Mr. Martin
20 tonight dated February 24; as well as a letter from DEM
21 to Fuss & O'Neill dated March 2, 2016.

22 I'd also encourage you to look at the e-mail that
23 was submitted by the applicant tonight from Mr. Byrne
24 from EPA as a followup to his meeting with the Barrington
25 residents and Codder at Mr. Harsch's office, and that was

1 submitted tonight. And pay particular attention to his
2 comments as this relates to this site and the brownfields
3 targeted assessment.

4 In regards to the traffic and pedestrian safety,
5 Pare, who conducted a peer review on behalf of the town,
6 that was in agreement with traffic studies analysis, and
7 also included, quote, additional traffic is anticipated
8 to have little or no impact for the surrounding roadway
9 and network, and confirm the counts during Christmas will
10 not have a significant impact on the study.

11 And then you also heard extensively from Mr. Martin
12 tonight about the town's ability to manage and develop
13 the on-site infrastructure related to subsurface and
14 surface storm water systems and public open space. This
15 project, you know, has the support of Rhode Island
16 Housing. It has the support of a strong development team
17 in Fuss & O'Neill and FJS and Union Studio. It also has
18 the support of DEM and EPA. It's a unique situation, and
19 we highlighted the contamination as really the biggest
20 concern to public health and safety, as well as whether
21 or not it has significant environmental impact. The
22 State and the Federal lead environmental agencies are for
23 enforcement, regulation and inspection, basically setting
24 the plan of how this site is going to be remediated. So
25 they are setting the game plan to get this site clean so

1 that it can be developed for future use, to, as Mr. Byrne
2 said in his e-mail, strict residential standards.

3 The implementation of what was referred to tonight
4 as a remedial action work plan has yet to be determined,
5 but it will be under the purview of both EPA and DEM, and
6 moving forward with the site it will be up to the EPA and
7 DEM. And as you heard Mr. Martin testify as to the
8 ELURs, annual inspections, which it would be imperative
9 for the applicant as the owner of the development to make
10 sure it's in compliance or face violation from DEM.

11 I do want to comment on Mr. Harsch's witnesses;
12 Ms. Hahn-Sweet, Mr. Diebold, and Mr. Nickelson. You
13 know, we took our job very seriously, I know they did as
14 well, to represent their clients in opposition. But
15 Ms. Hahn is not an engineer. Mr. Nickelson was, but he
16 admitted to you that he didn't review any of the
17 documents from DEM and was not even aware of who
18 conducted the Phase 1 or spoke to anyone at DEM, despite
19 being in business for 35 years, I believe, about this
20 project.

21 Mr. Diebold, I believe his testimony was refuted
22 tonight; however, in regards to the information that he
23 provided to the Board, I thought it was actually helpful.
24 He provided information about arsenic and Dieldrin in a
25 general sense, not as related to this site. I don't

1 know, and I don't believe there was any evidence that he
2 reviewed Nobis' report in depth or that he spoke with
3 anyone from Nobis or from Resource Controls who conducted
4 the Phase 1, or from Fuss & O'Neill, or from Pare. So I
5 do think, although his testimony was informative, I think
6 it was in a general sense as it relates to arsenic and
7 Dieldrin, and we've, I believe, responded to the public
8 comments and concerns and the Board's concerns as it
9 relates to how those issues, or I should say the arsenic
10 and Dieldrin, will be dealt with moving forward with this
11 project.

12 As you know, your focus in the Preliminary Plan is
13 to look at the technical aspects of this matter. I
14 believe that the evidence supports and the testimony
15 supports that we've submitted sufficient information for
16 the Board to deliberate and to approve the applicant's
17 application to move on to the final plan approval.

18 I do agree, we have a lot of work ahead on this
19 project, but we have a great team and we have the support
20 in the overview of DEM and EPA, as least as it relates to
21 contamination, that we proceed accordingly.

22 So based on that and based on the time, what I would
23 do is request that you grant the applicant's application
24 for the Preliminary Plan approval. I have provided on
25 behalf of the applicant transcripts from the two prior

1 hearings. I urge you to review those transcripts. We
2 will provide transcripts of tonight's hearing as well so
3 that all members of the Board can review and deliberate
4 and potentially vote on approval of this project.

5 Again, I thank you for your time and your patience
6 in listening to the testimony of the development team.
7 Thank you.

8 MR. HARSCH: If I may, Mr. Chairman, one final
9 comment.

10 MR. CHAIRMAN: State your name.

11 MR. HARSCH: William Harsch on behalf of Codder and
12 the abutters. The representation that this project has
13 the support of DEM and EPA is incorrect. This project
14 has yet to prove to those agencies that it can satisfy
15 the relevant standards. Thank you.

16 MR. CHAIRMAN: Thank you to all the professionals in
17 the room for responding to the questions and providing
18 some tough questions for each other to respond to.
19 Especially thank you to the residents, because we got a
20 lot of information from you as well.

21 So I will entertain a motion to close the public
22 hearing.

23 MR. DULCHINOS: Motion to close the public hearing.

24 MR. SIMMS: Second.

25 MS. GALBRAITH: Second.

1 THE CHAIRMAN: All in favor?

2 MR. ADAMS: Aye.

3 MR. LANG: Aye.

4 MR. SIMMS: Aye.

5 MR. TRIM: Aye.

6 MR. DULCHINOS: Aye.

7 MS. GALBRAITH: Aye.

8 MS. O'GRADY: Aye.

9 THE CHAIRMAN: Unanimous. Okay. I think let's
10 start with our comments, and I'm hoping you're prepared
11 with some items to start discussing. If nobody is ready
12 I can start, but I will go to my left.

13 MR. ADAMS: Yes. I guess in reviewing the criteria
14 for approval and denial, based on our low- and
15 moderate-housing article, we've heard a lot of discussion
16 based on the environment, health, and safety issues of
17 current residents and the future residents. And in my
18 view, that's the only criteria that we could find for
19 denial. And given that those are -- we're going to treat
20 this like we would any other development proposal by any
21 other developer, I guess we would hold them to the
22 standards required by the State and the Federal
23 government. So I can't see treating this development
24 differently, I guess.

25 I do know that the residential development on

1 brownfields sites is not, you know, such a new thing.
2 It's certainly happening nationwide, so... And certainly
3 with Barrington being built out, I think we will get a
4 lot more of these things coming down the pike, so
5 something to think about. But I can't find compelling
6 reasons to deny based on the testimony and based on the
7 response to the previous plan that was -- the
8 modifications in response to the previous plans.

9 MR. LANG: Yeah, I guess I would second what Edgar
10 is saying in terms of, you know, the compelling reasons,
11 you know, for approval or denial. I'm going off of those
12 standards, kind of looking at the main issue around the
13 environmental impact and safety for the standards are
14 going to be upheld by DEM and EPA. I do have, you know,
15 concerns as well on the overall impact, but I think the
16 final study or Phase 2 will also have additional
17 information, remediation plan back in front of us as well
18 at some point before final approval consideration. So at
19 this point I don't see something that would prevent us
20 from moving -- condition for approval, supplemental
21 approval, preliminary approval.

22 MR. SIMMS: Mr. Chairman, in that this is my first
23 meeting as I had just been appointed to the Board last
24 night, and not privy to the meetings at the Board in
25 April or May, I'm going to abstain on making comments on

1 this very complicated and intricate issue, with your
2 approval.

3 MR. CHAIRMAN: Okay.

4 I feel that there are a number of questions that I
5 have. I think that one of the things that I recognize is
6 that the Phase 2 and whatever results from the public
7 process regarding remediation of the site has to be
8 allowed to continue, and I recognize that that can
9 continue during the next phase of the project.

10 I do have an opinion about things like the sidewalk
11 fee in lieu. I feel like we should leverage that as much
12 as possible into a larger plan for addressing connection
13 of the neighborhoods all along Sowams to the bike path.
14 It's always been one of our intentions. I feel like
15 there's a way to do that, and my personal opinion is that
16 any piece that we can have in place as part of an
17 application needs to be done, and I feel the value of
18 installing the sidewalk is more than the fee in lieu of.
19 That's my personal opinion.

20 I think there are definitely questions about
21 responsibilities of maintenance for items within the
22 roadway versus outside the roadway, and we've exercised
23 that on numerous private projects. I would love for that
24 to be something that would go into more detail along in
25 the approval.

1 One question I have is affordable versus low-income
2 and if there's any difference. I do agree with what has
3 been said by some in attendance tonight that we can't
4 assume that future residents of this project would all
5 have cars. I do think that there are examples of public
6 affordable housing projects all over the state, in rural
7 areas, suburban areas, as well as urban areas, and I
8 think we have to keep that in mind in what we think those
9 standards should be.

10 In terms of the ELUR, I believe that I can
11 understand notification, and I believe in the right of
12 people to understand what their responsibilities are, so
13 however that's taken care of. And I think I want us to
14 get a little bit more of a handle on the waivers that are
15 being asked for during this application.

16 MR. DULCHINOS: Well, I think basically I can't even
17 get past the first item, proposed development is
18 consistent with local needs as identified in the local
19 Comprehensive Community Plan. This project never should
20 have got out of Master Plan. Unfortunately, I wasn't
21 able to attend the meeting and vote on that and express
22 my opposition.

23 So if you look at it against the Comprehensive Plan
24 that was in effect at the time this came before us in
25 2012, it doesn't meet the criteria of what we had already

1 laid out for that parcel of land. It's going to be a
2 hundred percent 60 percent low income versus we had
3 spelled out 35 percent of the units being affordable.
4 Possibly if we count the ten units that are single unit
5 one-bedrooms as being senior, that's only 25 percent of
6 the units where our goal was to have 40 percent of the
7 units for elderly.

8 Density, we blew it out of the water. We're
9 supposed to have five per acre and we're looking at seven
10 or eight units per acre, whether you count the two market
11 rate units in the equation. This even exceeds the
12 density of Sweetbriar, which is six units per acre. Our
13 Comprehensive Plan said that 80 percent of the units
14 would be owner-occupied. These are a hundred percent
15 rental units.

16 We talked about in the Comprehensive Plan wanting
17 intergenerational. Philosophically maybe the best way to
18 do affordable housing, it should be integrated within the
19 community, not act densely in one complex or, you know,
20 housing. I mean, this is going back to the '70s and
21 having, you know, the housing complex where everyone is
22 packed in together, create little pockets of isolated
23 populations.

24 So, I mean, with those reasons alone I think I
25 actually agree with the others as far as the

1 environmental. Those things are going to weigh
2 themselves out, you know. This project actually would
3 remediate a potential brownfields site, so that would be
4 an upside to this, but, frankly, I think we did a
5 disservice by letting this get past master planning
6 because we didn't give our own Comprehensive Plan a
7 chance to defend itself.

8 Basically we're looking at at least ten more units
9 than what our plan had called out for. Our plan had
10 called out for 55 total units, but that was consisting of
11 both the east and west part of the nursery. And looking
12 at the available construction, the area that can be
13 developed, at best you can get 30 units out of the parcel
14 of land which they're producing.

15 So I think for those reasons I can't support this at
16 this stage, and I wouldn't have supported it at Master
17 Plan.

18 MS. GALBRAITH: I would disagree a little bit. I
19 think that the proposal is consistent with the
20 Comprehensive Plan and that it meets the basic tenets of
21 the affordable housing initiatives. It does add the
22 units that would be attractive to seniors, and it is at
23 the Sowams nursery site where we had, you know,
24 specifically identified just a couple of sites in town
25 that we were looking to develop affordable housing at a

1 more dense level, and that was one of the particular
2 sites mentioned.

3 I definitely agree, I think what everyone else has
4 said, the key environmental issues, the remediation, and
5 the drainage. Being so close to the Palmer River, I
6 believe that the proposal would improve the conditions
7 there, and the site will actually be, you know, if I was
8 a neighbor there, there's soils that are not remediated,
9 that I have some trust in DEM and EPA that they will come
10 up with a remediation plan that will improve and cap and
11 protect the citizens appropriately and safely.

12 In terms of safety, you know, there's been a lot of
13 comparisons made to Sweetwater (sic) in terms of traffic,
14 and sidewalk safety. Sweetwater is at least a half mile
15 from a bus line. Sweetwater is probably almost entirely
16 occupied by people who have autos. So I do think, you
17 know, I think we'll be looking at a similar tenant base
18 in this Palmer Pointe development. It is a long walk to
19 the bus, it's certainly within a, you know, an easy bike
20 ride to the bus, but I do believe most people, you know,
21 will go into that situation knowingly and will probably
22 have autos.

23 The couple of concerns I do have that I probably
24 want to address in the conditions or at least one that
25 I'd look to staff. I'd like to understand more about the

1 impact on that existing lot that will become a corner lot
2 when the road is made. And I know that the applicant
3 explained their thinking and the materials presented to
4 us before tonight about why that existing lot, the one
5 that's not part of the development, will not be impacted
6 in terms of the development rights, but I will ask staff
7 to give us some more information on that.

8 Other concerns that I think I'd like to talk and
9 discuss with the Board in more detail would be the
10 sidewalk issue, the parking issue, and the curbing issue
11 would be my main...

12 MS. O'GRADY: My concerns are mainly with Letter E
13 of the criteria for approval. And Letter E states that
14 there will be no significant negative impacts on the
15 health, safety -- health and safety of current or future
16 residents of the community in areas including but not
17 limited to safe circulation of pedestrian and vehicular
18 traffic, provision of emergency services, sewage
19 disposal, availability of portable water, adequate
20 surface water runoff, and preservation of natural
21 historic and cultural features that contribute to the
22 attractiveness of the community.

23 My concerns, obviously, are mainly with regard to
24 the concern with regard to circulation. I am very
25 uncomfortable with -- I agree with my fellow Board

1 members that in many cases people will have cars in this
2 development, but I do think, as protectors of the
3 community to a certain extent, we have to kind of take
4 into consideration access to bike routes and to
5 transportation routes and bus routes and things like
6 that, and I think -- I'm not comfortable with how that is
7 addressed so far. It doesn't necessarily all fall on the
8 developer, but I think it has to be addressed prior to
9 developing this site.

10 I also have concerns with regard to the remediation,
11 obviously. I would like a little bit more explanation on
12 RI Housing's requirements as far as how they notify the
13 future tenants. Not everybody has the same level of
14 education or the same expertise in these areas, and I'm
15 concerned with putting, you know, people that maybe don't
16 know or have the knowledge of all of these materials, and
17 then having a problem down the road, and I think that's a
18 potential issue for the community.

19 I do also have concerns with regard to the density.
20 I'm fine with the overall layout. You know, we are
21 talking about the impervious situation. We are talking
22 about contamination of the nearby river, so I think we
23 just need to address some more things prior to approving
24 it. I'm not comfortable just yet.

25 MR. CHAIRMAN: Does anybody else have any more

1 comment? Anything that you thought of?

2 MR. DULCHINOS: I just think that in general, you
3 know, we have to think about the precedence that we set.
4 At some point we have to establish being able to stand up
5 for our Comprehensive Plan and say, this is what we're
6 going to execute, this is why we went through the
7 process. You know, you put a foot in the door, and this
8 project is okay for a density of eight units per acre,
9 you know, that becomes precedent that they'll argue
10 against for all future developments with whatever
11 remaining parcels we have that, you know, that will be
12 earmarked for affordable housing in the future.

13 MR. ADAMS: My understanding was that the density
14 was already kind of set by the Court, is that correct?

15 MR. TEITZ: I don't think the density was set by the
16 Court, I think the existing density was found to be
17 allowable. It wasn't found to be in violation. I'm not
18 sure that I would say it was set, but they did consider
19 it within the range of the Comprehensive Plan and the
20 Comprehensive Permit process. It was something that was
21 set with Master Plan that you've already approved.

22 MS. O'GRADY: I'm not sure what anybody else meant
23 by density, but density can mean many things more than
24 just the unit.

25 MR. TEITZ: Such as?

1 MS. O'GRADY: Well, as the amount of pavement all
2 over the place. There's a lot going on there. There
3 doesn't necessarily need to be all of those walkways at
4 the road and the extensions out to the edges. Those
5 types of things could all be cut back.

6 MR. TEITZ: Yeah, but I think in this context, the
7 Court was, and the Board should continue to use the
8 density in the usual planning term of art of dwelling
9 units per area of lot, per lot area, whether you have it
10 as units per acre or per square footage or whatever; I
11 think that's the use that's meant here.

12 I also, since I'm talking I'll say now the things I
13 want to point out and remind you is, the usual practice
14 for your review of subdivisions and land development
15 projects is that at Master Plan stage, the developer
16 doesn't need to have State approvals, but they do need to
17 have their other State and Federal approvals in hand for
18 preliminary. However, with the Comprehensive Permit,
19 it's specifically set forth by statute that they do not
20 need to have those approvals until the final plan.

21 So the fact that EPA and/or DEM approvals are not in
22 hand is not a reason for denial on the preliminary. They
23 can be a condition of final, and if they can't be
24 achieved, they can't be achieved. It's the developer's
25 risk if they don't get them, but it's not something that

1 I think you can specifically deny it on.

2 Now, if you've got overall issues on the health, but
3 if it's an area which has been preempted by State or
4 Federal regulation, and it's pending a future State or
5 Federal permit, I think that's something that you can't
6 use to deny.

7 Some of the other issues, obviously, we were talking
8 about with the density issues, the Comp. Plan
9 consistency, other elements that are not in, specifically
10 in State hands, such as the circulation and the
11 sidewalks, things like that, that's obviously all the
12 stuff for you to consider at this point, and you can
13 apply those concerns even to the Preliminary Plan.

14 MR. CHAIRMAN: Up to the town planner. Do you feel
15 like you have enough to begin to craft --

16 MR. ADAMS: In terms of the unit mix, and the
17 question was brought up regarding the percentage of
18 one-bedrooms, and the fact that it was less than the
19 guidance that we had previously been given for the site,
20 I would -- is that up for discussion, I mean, at this
21 stage?

22 MR. TEITZ: I'm guess I'm going to turn your
23 question, and I didn't bring my full file of the Master
24 Plan, but I think we've got the Master Plan decision
25 here. Did we specify the unit mix in the Master Plan

1 approval?

2 MR. HERVEY: I recall, yeah, we specified 25
3 percent, one-bedroom. I'm not looking at the decision
4 myself, but that's my recollection.

5 MR. TEITZ: So to the extent that we did specify the
6 unit mix in the Master Plan, then it is not up for
7 discussion. And as you go on with your discussion, I'm
8 going to take another look at the Court's decision to try
9 to find you a more specific answer on the question that
10 was asked by Christine about the density issue.

11 MR. CHAIRMAN: Any other comments from the Board?
12 Questions?

13 MR. DULCHINOS: I guess I was going to say,
14 philosophically, you know, as planners having local
15 authority over our own jurisdiction and hopefully being
16 able to plan our communities to best serve the interests
17 of the people of the town, it's important that, you know,
18 we keep that in mind in our decision as well. And if we
19 can't, you know, it would make the point of having a
20 Comprehensive Plan mute if we change it every time a
21 project comes in and adapt it. Then what is the point of
22 having a plan and trying to, you know, figure out how
23 we're going to best use the space in our community. So I
24 just think that, you know, philosophically we need to at
25 some point take a stand as far as what -- how we want to

1 shape our community, how we want it to look, what are the
2 needs of our community, and what projects -- and does it
3 serve the purposes of the community. I think that's the
4 most important thing.

5 MR. CHAIRMAN: It's definitely a really interesting
6 balance that we have in terms of the applicant's right to
7 be able to develop their property and the abutters' right
8 to not have their rights be impinged. And, you know,
9 hopefully our Comprehensive Plan --

10 MR. DULCHINOS: And I think we all -- we weigh the
11 good and the bad, and just making your pros and cons.
12 You know, does it check the block in these areas, and
13 does it meet the criteria or doesn't meet the criteria in
14 these areas. And for me personally, there's just too
15 many in the con area for me to go, you know, to be able
16 to support this.

17 MR. CHAIRMAN: Any other questions or comments?

18 MR. ADAMS: I just wanted to see if there was any
19 sense from the Board to direct Phil regarding the parking
20 issue? I mean, obviously, we could leave it up to the
21 applicant in terms of how that is achieved, is there a
22 reduction, or if that's our recommendation. But I don't
23 know if we can include that as a condition, or I don't
24 know if you want to get a feel for or against that on the
25 Board.

1 MR. CHAIRMAN: We can do that. I would just say
2 that I believe that absolutely we can include things like
3 that as a condition.

4 MR. ADAMS: But in order to give Phil direction on
5 how to approach that.

6 MR. HERVEY: Right now I heard a reduction of three
7 was on the table, but I didn't know if you wanted to go a
8 different direction.

9 MS. GALBRAITH: The applicant offered three, our
10 regs. require 72, and they're providing 83. And they've
11 offered to give up three. I mean, I -- my sense is I can
12 understand Christine's comments. I have the same feeling
13 that the density and the amount of impervious surface on
14 the site is heavy.

15 MR. DULCHINOS: I guess my question, where --

16 MS. GALBRAITH: So I would be up for more. I don't
17 know how the rest of the Board feels. I would be willing
18 to push it further than --

19 MR. DULCHINOS: I mean, if you go down to below 75,
20 then you have really no visitor parking at all, so they
21 would all be parking on the street within the complex,
22 and I think that would add more problems. You know, as
23 it is, I do the slalom down my street every day when I
24 come home, so I would be very leary to cut too much.

25 MR. ADAMS: That assumes that they're parking at two

1 cars per.

2 MS. GALBRAITH: Right.

3 MR. ADAMS: Per dwelling unit.

4 MS. GALBRAITH: Then it calls into question the
5 whole traffic --

6 MR. DULCHINOS: Well, I was counting, with my
7 back-of-the-envelope calculations, was the two- and
8 three-bedrooms would have two cars, and the one-bedrooms
9 would have one car.

10 MS. GALBRAITH: I think a lot of those have kids in
11 them, probably.

12 MR. DULCHINOS: And then if you have a
13 three-bedroom, you might have a kid and next thing you
14 have three cars. I have three cars in my driveway right
15 now, so...

16 MR. CHAIRMAN: I think certainly we can push the
17 envelope. And I think that we'll definitely have
18 probably some more discussion on that when we look at
19 some language. What I want to know from Phil, before we
20 go any further is, do you feel like you have enough to be
21 able to craft some kind of language for us to start
22 considering at the next meeting, and if there are any
23 specific questions that you have of the Board for us to
24 further direct you.

25 MR. HERVEY: I know we had -- just went through the

1 Board's individual comments, but we would also review the
2 comments and flag any additional items that may not have
3 come up with during that brief summary each one went
4 through. I think we could come up with additional items
5 to include in the motion, which at this point seems to be
6 in favor of an approval with conditions. That seems to
7 be the predominant --

8 MR. CHAIRMAN: There are definitely an opinion.
9 There's pushing on both sides. The majority seems to be
10 pushing in favor. If you would feel comfortable crafting
11 some things for us to consider, and then we can tighten
12 it up a lot more during the next meeting, I think I would
13 be in favor of that as well.

14 MR. HERVEY: Right. I mean, it's going to be one
15 motion, it's not going to be two motions. And it's going
16 to be in one direction.

17 MR. CHAIRMAN: As long as I think the things that we
18 stated tonight are --

19 MR. HERVEY: Covered?

20 MR. CHAIRMAN: Are in there, then we will arrive at
21 something I think we can discuss.

22 MR. HERVEY: Something for debate. Right.

23 MR. CHAIRMAN: Absolutely. So are you okay? All
24 set?

25 MR. HERVEY: I think so, yeah.

1 MR. TEITZ: Can I just respond now to that question
2 about the density in the Court case? As I'm reading
3 this, in the discussion of the arguments of the different
4 parties and the Courts of the Comprehensive Plan, the
5 Court gets into the question about how the developer
6 guidance says five units per acre, but also the strategy
7 allows for one step increase, up to 50 percent more.

8 And right at the beginning in the summary of the
9 decision, there is the line from the Court talking about
10 the calculations, and I think the point is the number
11 about 8.87 units per acre comes from before the Planning
12 Board reduced the number. When you granted Master Plan
13 approval, you did not grant the number applied for. You
14 reduced it even then at Master Plan. And as the Court
15 says, 'Accordingly the Board stated that if the total
16 number of units in the proposed development was reduced
17 from 50 to 42, then the density would be 7.45 units per
18 acre, which represents a 49 percent increase over the
19 maximum allowed five units per acre. Since the increase
20 was within the allowed 50 percent one step percentage
21 increase at 42 units, the development would be in line
22 with the local needs in the plan. The Board also found
23 that the mix of unit types was consistent with the
24 developer guidance and should be maintained.

25 So I would say, then, that the unit mix and that

1 density at 42 is something that was both approved at
2 Master Plan and upheld by the Court. So I think that's
3 something that you can't change at this point.

4 MR. CHAIRMAN: Thank you.

5 UNIDENTIFIED SPEAKER: Do you have a citation for
6 that case?

7 MR. TEITZ: No, it's a Superior Court. It's a
8 Superior Court case from Judge Procaccini filed
9 October 1, 2014. It's Codder's case. It's Codder 02-806
10 versus East Bay Community Development Corporation.

11 UNIDENTIFIED SPEAKER: And he gives instructions
12 with regard to future --

13 MR. TEITZ: I'm giving you the citation of it, I'm
14 not engaging in debate with you, sir.

15 UNIDENTIFIED SPEAKER: I think you're wrong.

16 MR. TEITZ: Just for the record, let me also give
17 the case number. Again, it's their case, obviously, but
18 it's PC2013-4355. Decision by Justice Procaccini filed
19 October 1, 2014, Providence County Superior Court.

20 And I know we sent it to all the members on the
21 Board, all the then current members of the Board at the
22 time, and those obviously got it as well.

23 MR. CHAIRMAN: Thank you.

24 All right. And I don't know what I need to do to go
25 formally from 6.1 to 6.2, but that's what we're going to

1 be doing right now. Thank you very much.

2 MR. TEITZ: Well, no, could we continue the matter.
3 I know you've closed the public part of the hearing, but
4 can you continue the matter to the July meeting for
5 decision, for a draft and consideration of a draft
6 decision?

7 MR. CHAIRMAN: Can I have a motion?

8 MS. GALBRAITH: Make a motion to continue the
9 meeting to our July, regular July meeting for continued
10 discussion.

11 MR. TEITZ: Continue the matter. Continue this
12 matter, not the meeting.

13 MS. GALBRAITH: Continue the matter for further
14 discussion on a decision at our July meeting.

15 MR. TEITZ: For the record let's just state the date
16 of the July meeting is --

17 MS. GALBRAITH: July 5.

18 MR. TEITZ: July 5; Tuesday, July 5.

19 MS. GALBRAITH: Yes, Tuesday, July 5.

20 MR. TEITZ: Everybody agrees that that's the date?

21 MR. LANG: Second.

22 MR. CHAIRMAN: All in favor?

23 MR. ADAMS: Aye.

24 MR. LANG: Aye.

25 MR. SIMMS: Aye.

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MR. TRIM: Aye.

MR. DULCHINOS: Aye.

MS. GALBRAITH: Aye.

MS. O'GRADY: Aye.

MR. CHAIRMAN: Against? Nope. Thank you very much.

(HEARING CLOSED AT 11:19 P.M.)

C E R T I F I C A T I O N

I, Geraldine M. Meenan, Notary Public, do hereby certify that the succeeding pages, 1 through 147, are a true and accurate transcript of my stenographic notes taken on June 7, 2016.

In witness whereof, I have hereunto set my hand and seal this 13th day of June 2016.

Geraldine M. Meenan, RPR
Court Reporter

My commission expires: 4/1/2020

70:10, 71:23, 72:7, 73:3, 73:10, 74:11, 75:2, 75:13, 80:1, 80:11, 82:8, 104:6, 127:2, 127:13, 136:13, 138:16, 140:18, 141:4, 141:25, 142:3, 146:23
adams [1] - 71:22
Adams [1] - 149:6
adapt [1] - 139:21
add [5] - 56:19, 56:20, 71:12, 132:21, 141:22
added [2] - 65:4, 65:19
addition [6] - 26:1, 27:2, 40:14, 53:18, 113:9, 114:12
additional [18] - 22:14, 23:17, 25:20, 25:24, 54:10, 65:3, 65:8, 65:22, 66:21, 67:4, 70:6, 72:12, 74:9, 118:4, 123:7, 128:16, 143:2, 143:4
address [19] - 11:10, 14:10, 17:8, 17:16, 26:11, 40:4, 42:21, 57:21, 70:3, 70:19, 71:21, 72:23, 84:2, 84:4, 89:8, 114:10, 122:2, 133:24, 135:23
addressed [7] - 1:20, 57:5, 57:25, 64:5, 67:17, 135:7, 135:8
addressing [2] - 14:8, 129:12
adequate [5] - 19:9, 72:10, 73:1, 116:5, 134:19
adjacent [3] - 70:21, 78:10, 94:20
Administrative [1] - 149:9
administrator [1] - 14:22
admitted [1] - 124:16
adopted [1] - 19:24
adults [1] - 114:16
advance [1] - 107:20
advanced [1] - 111:12
advantage [1] - 24:10
affected [1] - 58:10
affordable [20] - 9:8, 9:23, 10:20, 10:21, 11:17, 12:3, 12:11, 13:18, 49:5, 49:6,

49:7, 76:8, 95:9, 130:1, 130:6, 131:3, 131:18, 132:21, 132:25, 136:12
affordables [1] - 54:7
afternoon [2] - 59:20, 65:13
agencies [3] - 100:16, 123:22, 126:14
Agency [1] - 109:6
ago [1] - 36:25
agree [12] - 13:6, 13:9, 78:19, 78:21, 80:18, 91:14, 107:3, 125:18, 130:2, 131:25, 133:3, 134:25
agreement [9] - 32:20, 44:15, 60:2, 90:5, 92:22, 93:2, 97:13, 106:25, 123:6
agreements [1] - 92:23
agrees [1] - 146:20
ahead [4] - 34:7, 49:7, 100:1, 125:18
AICP [1] - 149:9
alive [1] - 84:18
alleviate [1] - 80:25
allow [5] - 37:23, 41:25, 56:10, 56:14, 67:6
allowable [1] - 136:17
allowed [6] - 35:8, 75:11, 102:12, 129:8, 144:19, 144:20
allows [1] - 144:7
alluded [1] - 31:22
almost [3] - 11:14, 12:4, 133:15
alone [2] - 82:16, 131:24
Alphonse [1] - 117:4
Alphonse-and-Gaston [1] - 117:4
ALSO [1] - 149:8
alterations [1] - 29:8
altering [1] - 28:17
alternative [1] - 115:10
alternatives [1] - 26:4
amended [1] - 22:14
amendment [1] - 19:25
American [2] - 58:13, 58:24
amount [12] - 21:2, 31:6, 37:1, 49:21, 70:15, 78:16, 86:25,

105:22, 110:9, 137:1, 141:13
amounts [1] - 27:16
ample [1] - 119:9
amply [1] - 115:13
analogy [1] - 65:22
analysis [3] - 59:22, 62:18, 123:6
analyzed [4] - 59:13, 59:15, 59:17
AND [1] - 148:1
and.. [1] - 69:2
Andrew [1] - 149:10
Ann [1] - 149:9
anne [1] - 78:9
Anne [2] - 80:1, 149:5
annual [4] - 91:9, 91:16, 97:2, 124:8
answer [12] - 2:21, 13:15, 17:19, 29:25, 32:14, 49:24, 53:18, 68:2, 69:3, 87:8, 99:13, 139:9
answered [6] - 2:8, 49:23, 70:6, 70:7, 110:5, 110:6
anticipate [4] - 59:25, 65:3, 65:4, 66:15
anticipated [2] - 58:19, 123:7
anticipation [1] - 102:20
anytime [1] - 2:4
apartment [2] - 73:16, 81:13
apartments [1] - 73:15
apologies [1] - 25:1
apologize [1] - 26:24
appeal [1] - 12:15
Appeals [1] - 119:24
appear [2] - 97:21, 110:17
APPEARANCES [1] - 149:1
appeared [1] - 121:18
apple [3] - 32:4, 32:8, 32:9
applicant [16] - 1:3, 2:12, 38:23, 39:22, 43:18, 48:12, 70:1, 87:8, 101:12, 121:24, 122:23, 124:9, 125:25, 134:2, 140:21, 141:9
APPLICANT [2] - 148:15, 149:12
applicant's [6] - 13:24, 17:1, 122:13, 125:16, 125:23, 140:6

application [19] - 18:7, 18:13, 18:19, 27:8, 27:24, 28:9, 43:20, 44:3, 70:8, 92:7, 93:9, 102:23, 103:21, 114:9, 122:13, 125:17, 125:23, 129:17, 130:15
APPLICATION [1] - 148:9
Application [1] - 1:3
applied [1] - 144:13
apply [4] - 24:3, 58:22, 89:2, 138:13
appointed [1] - 128:23
appreciate [3] - 2:4, 104:23, 121:11
appreciated [1] - 108:13
approach [6] - 14:20, 48:17, 57:19, 74:6, 80:10, 141:5
appropriate [6] - 1:24, 16:18, 46:11, 74:1, 105:12, 120:20
appropriately [2] - 3:6, 133:11
appropriation [1] - 39:20
appropriations [1] - 110:14
approval [3] - 10:5, 10:6, 33:21, 34:2, 46:7, 50:5, 55:3, 75:1, 91:13, 102:14, 102:16, 104:17, 109:2, 111:24, 118:21, 118:22, 125:17, 125:24, 126:4, 127:14, 128:11, 128:18, 128:20, 128:21, 129:2, 129:25, 134:13, 139:1, 143:6, 144:13
approvals [5] - 74:15, 137:16, 137:17, 137:20, 137:21
approve [2] - 48:3, 125:16
approved [13] - 21:18, 22:1, 33:25, 35:2, 36:5, 40:21, 44:5, 50:1, 50:3, 54:2, 92:4, 136:21, 145:1
approving [2] - 38:2, 135:23
April [3] - 1:13, 122:6, 128:25

architect [5] - 8:3, 8:19, 53:15, 55:12, 55:16
Architect [1] - 53:17
Architecture [2] - 8:1, 8:16
architecture [3] - 8:3, 8:20, 9:1
area [39] - 3:5, 3:13, 4:17, 4:18, 4:23, 4:25, 5:5, 6:9, 6:18, 7:24, 8:14, 9:8, 27:3, 45:24, 46:21, 51:12, 51:17, 51:20, 58:6, 58:19, 58:22, 60:3, 63:4, 65:19, 70:12, 71:18, 78:15, 92:14, 94:4, 95:20, 113:11, 117:7, 117:16, 132:12, 137:9, 138:3, 140:15
areas [2] - 26:17, 26:19, 46:1, 46:20, 50:22, 60:3, 60:4, 74:1, 81:20, 89:20, 96:5, 112:25, 119:23, 120:7, 130:7, 134:16, 135:14, 140:12, 140:14
argue [1] - 136:9
argument [2] - 105:10, 106:3
arguments [5] - 12:25, 105:1, 105:2, 144:3
arises [1] - 77:18
arms [1] - 25:2
arrangement [1] - 120:20
arrive [2] - 24:6, 143:20
arsenic [23] - 2:16, 14:14, 15:18, 18:22, 19:1, 19:11, 19:20, 20:6, 22:18, 25:11, 31:21, 39:1, 39:7, 39:16, 57:6, 67:19, 96:4, 102:5, 109:19, 122:4, 124:24, 125:6, 125:9
arsenic-containing [3] - 19:20, 22:18, 102:5
arsenic-contaminated [1] - 19:11
art [1] - 137:8
article [1] - 127:15
Arts [2] - 8:15, 10:15
ascertains [1] - 91:17

Ashley [1] - 113:22
aside [2] - 58:21, 79:21
aspect [1] - 15:1
aspects [6] - 1:14, 2:23, 11:2, 15:14, 15:18, 125:13
asphalt [9] - 20:12, 31:11, 68:25, 69:5, 69:10, 69:11, 69:15, 85:9, 87:5
assemblage [1] - 51:4
assent [1] - 46:7
assessment [22] - 15:9, 18:1, 18:4, 18:5, 18:12, 21:24, 23:12, 23:13, 24:3, 24:7, 27:5, 27:10, 32:18, 37:9, 37:11, 39:11, 93:19, 111:9, 111:22, 113:7, 122:18, 123:3
Assistant [1] - 149:9
assisted [1] - 14:12
assisting [1] - 13:14
Associate [1] - 7:25
associated [2] - 31:23, 85:15
Associates [1] - 9:7
assume [6] - 12:16, 23:25, 39:6, 112:18, 117:3, 130:4
assumes [2] - 101:17, 141:25
assuming [3] - 24:11, 39:22, 92:6
assumption [2] - 58:12, 101:5
assurances [1] - 111:10
AT [2] - 108:4, 147:6
attached [1] - 44:18
attachments [1] - 122:12
Attachments [1] - 122:14
Attemann [9] - 7:22, 7:25, 53:17, 54:14, 70:18, 71:3, 71:11, 74:5, 80:16
attemann [2] - 9:1, 57:4
ATTEMANN [16] - 7:25, 8:12, 8:15, 8:19, 8:24, 53:17, 54:6, 56:22, 56:25, 63:19, 71:11, 74:5, 74:13, 75:24, 80:15, 81:12
attempt [1] - 111:16

attend [2] - 12:25, 130:21
attendance [1] - 130:3
attention [5] - 16:7, 121:9, 121:10, 121:19, 123:1
Attorney [2] - 99:1, 104:22
attorney [3] - 1:7, 89:10, 108:15
attractive [1] - 132:22
attractiveness [1] - 134:22
attributed [1] - 49:11
ATWELLS [1] - 148:23
AUDIENCE [1] - 83:24
August [2] - 76:16, 77:2
auspices [1] - 22:5
authorities [1] - 12:5
authority [1] - 139:15
authorized [1] - 110:17
auto [6] - 60:4, 64:13, 65:7, 66:15, 109:22, 112:16
auto-dependent [5] - 60:4, 64:13, 65:7, 109:22, 112:16
automatic [2] - 62:6, 62:13
automobiles [1] - 115:1
autos [3] - 65:8, 133:16, 133:22
availability [1] - 134:19
available [8] - 13:25, 21:14, 24:10, 60:25, 67:4, 67:22, 73:24, 132:12
AVENUE [1] - 148:23
Avenue [4] - 89:5, 96:7, 99:23, 100:24
average [5] - 59:6, 59:23, 67:1, 78:18, 78:25
averages [1] - 81:14
award [1] - 23:14
awarded [1] - 18:3
aware [12] - 27:6, 27:10, 27:13, 32:12, 33:22, 34:16, 60:24, 91:12, 91:21, 96:11, 96:18, 124:17
aye [3] - 104:6, 127:3, 146:25
Aye [18] - 104:7, 104:8, 104:9, 104:10, 104:11,

104:12, 127:2, 127:4, 127:5, 127:6, 127:7, 127:8, 146:23, 146:24, 147:1, 147:2, 147:3, 147:4

B

Bachelor [4] - 7:16, 8:15, 8:16, 10:15
Bachelor's [1] - 3:19
back-of-the-envelope [1] - 142:7
background [4] - 3:4, 58:15, 58:21, 109:17
backyards [1] - 89:19
bad [4] - 110:23, 114:23, 115:3, 140:11
balance [4] - 72:21, 74:3, 75:11, 140:6
ball [1] - 116:7
ballocks [1] - 32:25
bank [2] - 32:16, 38:6
banks [1] - 38:17
barrier [4] - 31:2, 31:8, 52:18
BARRINGTON [1] - 148:1
Barrington [21] - 4:4, 4:10, 16:24, 48:8, 55:21, 60:3, 84:18, 84:24, 85:14, 86:4, 87:7, 87:20, 110:10, 118:12, 118:14, 120:4, 121:6, 122:24, 128:3, 148:16, 148:16
Barrington's [4] - 59:4, 84:21, 87:3, 115:22
base [1] - 133:17
based [17] - 14:14, 15:22, 23:16, 30:13, 50:19, 65:1, 65:24, 78:18, 85:25, 113:6, 121:22, 125:22, 127:14, 127:16, 128:6
basic [4] - 110:20, 114:18, 116:2, 132:20
basin [6] - 40:17, 41:1, 41:4, 41:6, 43:10, 45:6
basins [5] - 40:15, 41:22, 43:2, 117:6
basis [1] - 65:5
bat [1] - 87:9

bay [2] - 73:8, 73:9
BAY [1] - 148:14
Bay [28] - 1:10, 17:25, 18:9, 21:17, 22:1, 23:11, 23:15, 23:19, 24:1, 24:9, 24:22, 25:12, 26:17, 28:10, 30:15, 32:12, 33:25, 36:1, 40:22, 41:5, 47:22, 55:20, 56:23, 84:11, 91:6, 121:13, 145:10
bays [2] - 69:20, 83:12
beach [1] - 45:12
become [2] - 117:8, 134:1
becomes [1] - 136:9
bedroom [8] - 54:7, 76:2, 81:8, 81:9, 81:10, 139:3, 142:13
bedrooms [15] - 53:13, 53:22, 53:23, 53:25, 54:3, 54:4, 75:21, 76:1, 82:16, 82:17, 131:5, 138:18, 142:8
begin [2] - 17:22, 138:15
beginning [2] - 84:19, 144:8
behalf [8] - 15:12, 70:1, 105:3, 108:12, 121:13, 123:5, 125:25, 126:11
behind [6] - 55:13, 66:18, 72:12, 72:15, 94:8, 115:16
bella [1] - 56:24
below [2] - 116:18, 141:19
below-ground [1] - 116:18
beneficial [1] - 37:14
benefit [1] - 116:12
berm [9] - 26:25, 69:5, 100:3, 100:5, 100:9, 100:18, 100:24, 101:19, 101:20
best [8] - 89:2, 108:10, 108:18, 110:21, 131:17, 132:13, 139:16, 139:23
bet [1] - 88:9
better [5] - 8:4, 69:14, 73:21, 79:19, 79:22
between [10] - 46:20, 52:2, 59:5, 59:6, 59:19, 59:20, 72:21, 75:11, 99:8, 120:2
beyond [3] - 22:25,

108:22, 115:10
bicycle [1] - 60:18
big [3] - 73:11, 90:17, 100:9
bigger [1] - 14:2
biggest [4] - 59:25, 89:16, 89:22, 123:19
bike [5] - 60:17, 75:3, 129:13, 133:19, 135:4
Bill [1] - 89:13
bill [1] - 38:22
bio [4] - 40:17, 41:1, 42:19, 42:20
bio-retention [3] - 40:17, 41:1, 42:19
bio-swales [1] - 42:20
birthday [1] - 74:20
bit [17] - 6:17, 44:22, 45:11, 51:16, 51:19, 53:10, 64:11, 71:4, 71:6, 72:24, 78:23, 94:15, 105:4, 108:11, 130:14, 132:18, 135:11
blended [1] - 25:17
blew [1] - 131:8
block [1] - 140:12
blocks [1] - 82:1
blueprint [1] - 51:8
board [7] - 11:15, 77:3, 84:10, 86:9, 89:3, 114:4
Board [114] - 1:6, 1:14, 1:17, 1:22, 1:23, 2:2, 2:8, 4:4, 4:6, 4:16, 4:22, 5:13, 8:8, 8:11, 8:25, 9:19, 10:17, 11:13, 13:14, 13:16, 14:1, 14:7, 14:24, 16:1, 17:8, 18:19, 19:3, 19:15, 22:6, 27:8, 28:11, 28:23, 33:19, 33:22, 47:16, 48:3, 48:13, 48:20, 50:11, 51:25, 54:8, 54:13, 57:16, 59:15, 62:21, 64:6, 67:16, 67:23, 68:1, 69:23, 70:1, 70:4, 70:6, 70:8, 70:23, 72:9, 72:24, 76:18, 79:17, 80:15, 81:16, 84:3, 88:24, 89:1, 97:7, 98:10, 102:17, 103:2, 103:14, 104:24, 106:2, 106:13, 106:25, 107:10, 108:19, 109:3, 110:2,

111:11, 111:15,
112:7, 113:2, 113:5,
116:24, 117:9,
118:19, 119:7,
119:24, 119:25,
120:8, 120:17,
121:2, 121:14,
121:17, 122:1,
124:23, 125:16,
126:3, 128:23,
128:24, 134:9,
134:25, 137:7,
139:11, 140:19,
140:25, 141:17,
142:23, 144:12,
144:15, 144:22,
145:21, 149:5
BOARD [2] - 148:1,
149:2
Board's [5] - 16:7,
52:23, 120:22,
125:8, 143:1
boards [11] - 3:21, 4:7,
5:25, 7:7, 8:5, 8:6,
9:12, 74:15
Boards [2] - 5:24,
74:24
Bob [1] - 85:1
bore [1] - 85:13
boring [1] - 100:12
borings [1] - 21:1
bottom [2] - 96:12,
111:5
bought [1] - 38:6
boundaries [1] - 52:13
boundary [4] - 20:24,
42:23, 52:17, 101:19
Bowl [2] - 74:19, 81:5
brand [2] - 52:16, 87:7
breach [1] - 97:21
break [6] - 54:20,
85:9, 85:12, 88:8,
108:1, 108:3
breakdown [2] -
75:21, 76:8
brief [2] - 105:13,
143:3
BRIEF [2] - 54:12,
108:4
briefly [1] - 64:5
brightly [1] - 115:5
bring [1] - 138:23
bringing [1] - 105:20
brings [1] - 25:11
Bristol [3] - 42:13,
55:20, 74:23
brother [1] - 107:24
brought [7] - 31:8,
89:7, 103:14, 106:1,
111:17, 111:21,

138:17
Brown [2] - 110:4,
113:12
brownfields [35] -
3:17, 4:9, 4:20, 15:9,
18:1, 23:13, 24:3,
37:8, 37:20, 84:14,
84:18, 84:23, 84:25,
85:3, 85:16, 85:22,
86:1, 86:21, 86:22,
87:6, 87:14, 87:15,
87:17, 88:19, 96:23,
98:22, 111:3,
112:10, 117:16,
121:5, 121:7,
122:18, 123:2,
128:1, 132:3
brushed [1] - 115:9
budget [1] - 110:18
budgeting [1] - 30:23
buffer [11] - 33:13,
40:18, 46:1, 46:16,
46:17, 46:18, 46:21,
46:25, 52:2, 52:12,
68:6
build [7] - 25:23,
30:17, 60:11, 77:14,
77:16, 77:17, 89:2
buildable [3] - 49:22,
50:2, 50:17
Building [1] - 85:2
building [12] - 20:12,
36:16, 50:15, 53:3,
56:21, 57:1, 66:5,
66:16, 71:3, 80:21,
80:22, 88:1
buildings [9] - 51:3,
52:3, 52:21, 53:11,
53:20, 53:21, 71:4,
82:1, 88:3
built [5] - 12:3, 48:4,
69:20, 92:7, 128:3
bumps [2] - 77:16,
80:14
bumps-out [1] - 80:14
burden [3] - 116:11,
118:8, 118:25
bus [12] - 60:6, 60:15,
64:17, 64:23, 86:11,
86:13, 86:19, 120:4,
133:15, 133:19,
133:20, 135:5
busiest [1] - 59:21
business [5] - 99:12,
109:5, 112:16,
113:11, 124:19
but.. [1] - 39:8
buy [1] - 93:4
buyers [1] - 37:18
bypassed [1] - 109:25

Byrne [10] - 26:24,
89:11, 89:22, 90:17,
95:15, 99:24, 109:5,
122:23, 124:1
byrne [5] - 15:10,
15:16, 15:21, 17:16,
39:10
byrne's [1] - 16:8
Byway [2] - 84:4,
101:4

C

calculation [6] -
71:19, 71:20, 72:13,
72:16, 72:20, 76:11
calculations [5] -
50:22, 78:18, 79:19,
142:7, 144:10
cannot [5] - 16:14,
62:19, 98:5, 109:14,
115:20
cap [14] - 20:7, 20:14,
30:22, 74:2, 85:8,
89:25, 90:8, 91:11,
91:17, 101:5, 101:6,
101:10, 101:17,
133:10
capability [1] - 56:7
capacity [5] - 7:9,
9:12, 9:16, 10:11,
12:10
Cape [1] - 69:12
CAPIZZO [94] - 1:5,
2:6, 3:25, 4:2, 4:5,
4:9, 4:12, 4:16, 4:22,
5:7, 5:10, 5:13, 5:17,
5:20, 5:24, 6:2, 6:5,
6:17, 6:23, 7:3, 7:6,
7:9, 7:14, 7:18, 8:10,
8:13, 8:17, 8:22,
8:25, 9:11, 9:16,
9:18, 10:2, 10:5,
10:7, 10:11, 10:14,
10:17, 10:21, 11:5,
11:8, 11:19, 11:24,
12:6, 12:10, 12:24,
13:13, 13:21, 14:11,
14:22, 15:5, 15:7,
17:5, 17:15, 22:6,
28:22, 37:7, 37:25,
38:15, 39:9, 46:24,
47:5, 47:11, 47:14,
47:16, 48:7, 48:17,
48:21, 52:6, 54:13,
54:18, 55:5, 55:10,
57:3, 59:14, 62:21,
63:22, 64:1, 67:14,
69:3, 69:22, 69:25,
70:18, 71:21, 72:1,

75:7, 96:15, 97:19,
98:7, 98:15, 98:20,
98:24, 99:8, 121:12
cAPIZZO [1] - 12:21
Capizzo [5] - 1:7,
67:14, 96:15,
121:12, 149:13
capped [3] - 85:7,
90:1, 102:4
capping [7] - 86:23,
87:1, 87:2, 89:23,
90:21, 101:9
caps [1] - 73:19
capture [4] - 59:24,
62:7, 62:12, 62:17
captured [1] - 62:19
captures [1] - 59:21
car [5] - 64:15, 66:25,
67:1, 82:18, 142:9
care [1] - 130:13
carried [1] - 30:18
cars [12] - 71:24, 75:4,
81:13, 81:14, 82:17,
112:19, 130:5,
135:1, 142:1, 142:8,
142:14
carved [1] - 49:15
carving [1] - 50:14
case [18] - 20:21,
21:22, 26:25, 32:16,
36:7, 43:11, 45:19,
46:10, 58:23, 111:8,
115:3, 119:12,
144:2, 145:6, 145:8,
145:9, 145:17
cases [2] - 6:1, 135:1
cash [3] - 38:6, 38:14
catch [3] - 40:15, 43:2,
45:6
CDC [16] - 21:17, 22:1,
23:11, 23:15, 24:9,
25:12, 28:10, 30:7,
30:15, 32:12, 34:1,
36:1, 40:22, 41:5,
47:22, 55:20
CDC's [2] - 24:22,
26:17
center [3] - 53:14,
61:6, 120:4
centers [1] - 58:8
central [6] - 51:12,
51:18, 53:3, 53:4,
53:13, 56:18
certain [6] - 29:12,
31:6, 46:17, 87:12,
97:24, 135:3
certainly [24] - 2:6,
12:1, 12:15, 13:10,
32:9, 34:14, 43:10,
55:18, 60:23, 61:18,

77:15, 77:20, 78:4,
90:21, 91:20,
100:19, 105:2,
110:17, 112:15,
128:2, 133:19,
142:16
certificate [1] - 34:22
certification [2] - 11:3,
102:24
certified [1] - 12:13
certify [1] - 150:2
certifying [1] - 34:25
Chair [7] - 1:25, 3:6,
37:8, 53:17, 107:6,
122:1, 149:3
CHAIR [1] - 91:3
chair [6] - 1:5, 1:6,
8:9, 11:6, 14:19,
61:16
Chair's [1] - 37:8
Chair [1] - 14:25
Chairman [9] - 40:3,
48:18, 104:19,
105:21, 107:23,
108:7, 126:8,
128:22, 149:3
CHAIRMAN [82] - 1:2,
2:3, 11:7, 14:9,
14:21, 17:10, 24:23,
27:21, 27:23, 29:20,
35:12, 36:8, 36:12,
36:15, 37:6, 41:10,
41:13, 41:16, 41:18,
41:20, 44:13, 45:9,
47:4, 48:15, 61:11,
63:8, 67:13, 69:24,
70:9, 78:9, 83:22,
83:25, 87:8, 87:18,
88:9, 94:19, 94:23,
95:2, 95:22, 95:24,
97:10, 97:18, 98:6,
98:12, 101:2,
101:12, 102:10,
103:19, 104:1,
104:5, 104:9,
104:13, 104:21,
105:4, 105:14,
105:20, 106:23,
107:10, 107:22,
108:2, 108:5,
126:10, 126:16,
127:1, 127:9, 129:3,
135:25, 138:14,
139:11, 140:5,
140:17, 141:1,
142:16, 143:8,
143:17, 143:20,
143:23, 145:4,
145:23, 146:7,
146:22, 147:5

<p>challenge [1] - 113:21</p> <p>chance [5] - 91:4, 100:8, 108:13, 111:24, 132:7</p> <p>change [2] - 139:20, 145:3</p> <p>changed [2] - 25:14, 50:4</p> <p>changes [2] - 51:3, 52:14</p> <p>changing [1] - 95:8</p> <p>characterize [1] - 101:25</p> <p>charge [3] - 75:1, 111:8, 122:1</p> <p>Charlestown [1] - 74:23</p> <p>check [3] - 62:15, 93:20, 140:12</p> <p>chemical [2] - 100:10, 113:11</p> <p>chemicals [1] - 89:25</p> <p>children [3] - 90:22, 94:13, 112:15</p> <p>choose [2] - 64:12, 64:16</p> <p>chooses [1] - 35:22</p> <p>Chris [1] - 32:11</p> <p>Christian [4] - 1:7, 67:14, 96:15, 121:12</p> <p>christian [1] - 149:13</p> <p>Christine [1] - 139:10</p> <p>Christine's [1] - 141:12</p> <p>Christmas [2] - 58:4, 123:9</p> <p>Cindy [1] - 95:14</p> <p>circulation [3] - 134:17, 134:24, 138:10</p> <p>citation [2] - 145:5, 145:13</p> <p>cited [1] - 100:7</p> <p>cities [1] - 24:4</p> <p>citizen [1] - 108:16</p> <p>citizens [4] - 61:2, 104:23, 120:21, 133:11</p> <p>civil [11] - 3:16, 3:19, 4:1, 4:18, 6:10, 6:12, 6:15, 7:10, 7:11, 7:16, 7:19</p> <p>clarification [1] - 13:13</p> <p>clarify [9] - 22:11, 25:15, 40:22, 52:22, 54:25, 58:1, 61:19, 87:12, 92:17</p> <p>clay [1] - 30:25</p> <p>clean [20] - 19:14,</p>	<p>20:9, 20:13, 24:4, 29:9, 30:18, 30:22, 31:4, 31:5, 31:7, 31:14, 33:4, 33:7, 37:13, 37:21, 37:22, 38:21, 38:22, 102:3, 123:25</p> <p>cleaned [2] - 16:10, 16:21</p> <p>cleanup [10] - 19:13, 19:16, 20:2, 22:2, 24:12, 25:13, 30:11, 34:25, 37:4, 37:17</p> <p>clear [8] - 35:5, 52:11, 88:18, 97:20, 101:9, 108:8, 109:7, 113:21</p> <p>clear-out [1] - 101:9</p> <p>clearly [4] - 108:25, 111:23, 115:18, 116:1</p> <p>client [1] - 105:3</p> <p>clients [3] - 108:25, 121:11, 124:14</p> <p>close [12] - 43:3, 80:21, 80:22, 103:20, 103:24, 104:2, 106:9, 118:15, 120:4, 126:21, 126:23, 133:5</p> <p>closed [2] - 87:11, 146:3</p> <p>CLOSED [1] - 147:6</p> <p>closely [1] - 34:17</p> <p>closer [1] - 100:12</p> <p>closest [1] - 82:1</p> <p>closing [16] - 104:25, 105:1, 105:2, 105:10, 105:13, 105:17, 106:3, 106:9, 106:20, 106:23, 107:7, 107:23, 108:20, 120:25</p> <p>closure [3] - 34:23, 34:25, 36:22</p> <p>Coastal [2] - 46:22, 102:22</p> <p>coastal [7] - 33:12, 40:18, 46:1, 46:15, 46:21, 46:25, 68:6</p> <p>Cod [1] - 69:12</p> <p>Codder [10] - 15:16, 89:7, 89:12, 104:23, 108:12, 108:16, 108:17, 122:25, 126:11, 145:9</p> <p>Codder's [2] - 20:19, 145:9</p> <p>College [1] - 10:16</p>	<p>Colonial [2] - 96:7, 100:23</p> <p>comfortable [5] - 64:25, 83:7, 135:6, 135:24, 143:10</p> <p>coming [10] - 32:25, 65:13, 84:10, 84:18, 85:13, 105:24, 111:3, 117:11, 121:3, 128:4</p> <p>commendably [1] - 118:12</p> <p>comment [15] - 1:15, 1:17, 14:3, 14:15, 17:7, 45:20, 64:2, 88:23, 103:23, 108:14, 109:22, 110:22, 124:11, 126:9, 136:1</p> <p>comments [27] - 1:19, 26:10, 54:10, 55:6, 55:8, 55:9, 57:15, 57:21, 57:22, 58:3, 58:25, 70:3, 75:7, 103:7, 120:23, 121:21, 122:2, 122:3, 123:2, 125:8, 127:10, 128:25, 139:11, 140:17, 141:12, 143:1, 143:2</p> <p>commercial [1] - 29:17</p> <p>commercials [1] - 68:9</p> <p>Commission [1] - 84:15</p> <p>commission [3] - 85:19, 114:4, 150:8</p> <p>commissioner [1] - 84:6</p> <p>committees [1] - 8:6</p> <p>common [7] - 29:15, 31:24, 39:2, 39:4, 67:2, 77:13, 102:5</p> <p>communication [1] - 105:9</p> <p>communities [5] - 9:14, 70:17, 115:25, 118:15, 139:16</p> <p>Community [8] - 1:10, 8:1, 17:25, 18:9, 91:6, 121:13, 130:19, 145:10</p> <p>COMMUNITY [1] - 148:14</p> <p>community [22] - 8:4, 8:20, 9:2, 14:6, 70:12, 83:23, 112:17, 114:14, 116:1, 116:2,</p>	<p>117:15, 118:2, 120:15, 131:19, 134:16, 134:22, 135:3, 135:18, 139:23, 140:1, 140:2, 140:3</p> <p>Comp [1] - 138:8</p> <p>company [2] - 7:23, 9:4</p> <p>compare [3] - 16:11, 51:13, 71:12</p> <p>compared [2] - 70:21, 85:22</p> <p>compares [1] - 70:15</p> <p>comparison [3] - 71:7, 71:9, 74:6</p> <p>comparisons [2] - 85:24, 133:13</p> <p>compatibility [1] - 119:23</p> <p>compelling [2] - 128:5, 128:10</p> <p>complete [4] - 16:13, 52:1, 79:21, 101:9</p> <p>completed [3] - 18:5, 18:11, 19:7</p> <p>completely [3] - 28:4, 43:8, 102:8</p> <p>completion [1] - 34:21</p> <p>complex [3] - 131:19, 131:21, 141:21</p> <p>compliance [2] - 91:8, 124:10</p> <p>complicated [1] - 129:1</p> <p>complied [1] - 26:9</p> <p>complying [1] - 34:13</p> <p>component [5] - 15:7, 17:24, 42:8, 43:12, 95:10</p> <p>comprehensive [1] - 49:4</p> <p>COMPREHENSIVE [1] - 148:8</p> <p>Comprehensive [13] - 130:19, 130:23, 131:13, 131:16, 132:6, 132:20, 136:5, 136:19, 136:20, 137:18, 139:20, 140:9, 144:4</p> <p>compromise [1] - 82:13</p> <p>con [1] - 140:15</p> <p>concentrated [1] - 109:18</p> <p>concept [3] - 27:7, 55:15, 55:25</p> <p>conceptual [1] - 22:17</p> <p>concern [9] - 36:5,</p>	<p>72:25, 78:12, 90:19, 95:24, 100:9, 100:11, 123:20, 134:24</p> <p>concerned [8] - 10:23, 17:24, 74:16, 74:17, 74:18, 81:19, 119:12, 135:15</p> <p>concerns [26] - 2:14, 11:9, 11:10, 14:3, 14:4, 15:17, 18:16, 18:21, 57:8, 70:3, 72:9, 72:23, 89:6, 89:22, 119:8, 122:3, 125:8, 128:15, 133:23, 134:8, 134:12, 134:23, 135:10, 135:19, 138:13</p> <p>conclusion [3] - 63:1, 63:4, 112:23</p> <p>conclusions [2] - 62:23, 122:10</p> <p>concrete [3] - 20:11, 31:11, 85:10</p> <p>concur [1] - 20:18</p> <p>concurred [1] - 63:4</p> <p>condition [6] - 32:19, 97:12, 128:20, 137:23, 140:23, 141:3</p> <p>conditions [21] - 22:3, 29:5, 48:12, 55:3, 73:2, 91:15, 91:21, 92:3, 92:19, 113:17, 114:10, 118:20, 118:22, 119:1, 119:7, 120:6, 121:25, 122:17, 133:6, 133:24, 143:6</p> <p>condo [1] - 94:9</p> <p>conduct [3] - 23:11, 23:14, 40:25</p> <p>conducted [5] - 18:12, 63:6, 123:5, 124:18, 125:3</p> <p>conducting [1] - 29:11</p> <p>Conferring [1] - 67:24</p> <p>conferring [1] - 99:14</p> <p>confident [1] - 33:6</p> <p>confirm [1] - 123:9</p> <p>confirmed [1] - 62:1</p> <p>conflict [2] - 59:6, 59:9</p> <p>conformance [2] - 19:7, 119:1</p> <p>confused [1] - 83:9</p> <p>confusion [4] - 44:22, 59:2, 84:8, 90:10</p> <p>connected [2] - 40:16,</p>
---	---	---	---	---

<p>44:20 connecting [1] - 66:9 connection [1] - 129:12 cons [1] - 140:11 conscience [1] - 39:17 consensus [2] - 106:13, 107:17 consider [17] - 13:4, 13:5, 27:19, 33:19, 38:5, 76:18, 76:21, 77:4, 77:7, 77:13, 77:15, 86:2, 97:8, 118:20, 136:18, 138:12, 143:11 consideration [8] - 98:11, 103:6, 103:9, 111:22, 112:8, 128:18, 135:4, 146:5 considered [4] - 19:18, 30:23, 33:10, 84:14 considering [2] - 80:17, 142:22 considers [1] - 113:3 consistency [2] - 122:15, 138:9 consistent [6] - 41:8, 46:22, 122:17, 130:18, 132:19, 144:23 consisting [1] - 132:10 constituent [1] - 19:1 constituents [2] - 26:22, 88:20 constructed [2] - 60:11, 69:15 Construction [2] - 30:16, 102:25 construction [12] - 6:20, 10:1, 12:2, 22:23, 23:1, 24:21, 35:7, 38:18, 87:24, 88:14, 132:12 consultant [12] - 9:8, 9:17, 9:18, 9:20, 10:12, 10:19, 10:24, 11:2, 11:20, 13:16, 13:23, 17:13 consulted [1] - 110:16 containing [10] - 19:20, 20:6, 20:25, 21:3, 21:9, 22:18, 22:19, 26:21, 27:3, 102:5 contaminated [10] - 16:9, 16:12, 19:10, 19:11, 37:15, 88:20,</p>	<p>100:14, 111:2, 111:7, 120:3 contamination [22] - 20:15, 25:3, 25:17, 27:16, 27:18, 28:2, 31:18, 37:24, 38:9, 89:9, 98:19, 109:14, 109:17, 109:18, 111:15, 112:4, 113:14, 114:13, 120:9, 123:19, 125:21, 135:22 contaminations [1] - 39:15 contemplated [2] - 20:16, 37:17 contemplating [1] - 20:7 contention [1] - 42:6 contesting [2] - 42:16, 43:13 context [2] - 112:11, 137:6 contingent [1] - 98:2 continue [12] - 18:10, 47:23, 102:21, 106:5, 129:8, 129:9, 137:7, 146:2, 146:4, 146:8, 146:11, 146:13 Continue [1] - 146:11 continued [1] - 146:9 continuing [1] - 21:10 continuously [1] - 74:16 contract [1] - 23:6 contracted [1] - 17:18 contractor [8] - 15:13, 21:17, 30:15, 84:24, 85:5, 87:4, 88:4, 101:23 contractors [1] - 35:9 contrary [1] - 115:21 contribute [1] - 134:21 contributing [1] - 45:17 control [2] - 22:24, 102:25 Controls [1] - 125:3 controls [1] - 22:24 convenient [1] - 45:23 conventional [2] - 40:15, 44:25 conversation [3] - 15:22, 64:6, 99:24 conveyance [1] - 45:14 coordinate [2] - 9:25, 103:5</p>	<p>coordinated [2] - 15:2, 15:8 coordination [1] - 13:19 copy [5] - 14:23, 15:2, 15:3, 48:12, 48:13 corner [1] - 134:1 corners [1] - 110:13 Corporation [5] - 1:10, 18:1, 91:7, 121:13, 145:10 CORPORATION [1] - 148:15 Correct [7] - 23:21, 31:9, 33:5, 41:15, 43:17, 62:3, 63:25 correct [19] - 8:23, 24:14, 30:9, 34:23, 37:25, 38:4, 41:17, 43:23, 47:15, 52:21, 61:25, 63:24, 68:25, 74:14, 77:12, 88:16, 92:15, 92:19, 136:14 correcting [1] - 103:12 corridor [1] - 45:21 cost [10] - 30:7, 100:21, 110:9, 112:4, 115:12, 115:13, 116:16, 118:1, 118:3 cost-effective [1] - 100:21 COSTA [2] - 96:7, 100:23 Costa [5] - 96:7, 96:16, 97:6, 98:9, 100:23 costing [1] - 39:25 costs [2] - 30:16, 120:15 Council [3] - 11:13, 90:10, 110:15 councils [1] - 89:3 count [4] - 49:2, 62:20, 131:4, 131:10 counted [1] - 76:4 counting [3] - 62:9, 83:12, 142:6 country [1] - 83:3 counts [9] - 57:24, 58:2, 58:3, 58:5, 62:5, 62:15, 70:25, 83:11, 123:9 County [6] - 42:14, 58:7, 63:16, 64:23, 145:19, 148:16 couple [15] - 3:3, 5:19, 61:4, 64:17, 71:25, 72:16, 73:5, 78:20, 80:17, 84:1, 84:4,</p>	<p>84:20, 89:7, 132:24, 133:23 couples [1] - 112:12 course [2] - 53:11, 110:11 Court [29] - 9:15, 11:14, 12:8, 12:9, 12:14, 12:16, 12:18, 12:19, 12:20, 12:22, 12:25, 13:2, 13:8, 13:11, 13:12, 136:14, 136:16, 137:7, 144:2, 144:5, 144:9, 144:14, 145:2, 145:7, 145:8, 145:19, 150:7 court [4] - 5:25, 12:14, 105:5 Court's [1] - 139:8 Courts [1] - 144:4 courts [3] - 7:7, 9:12, 12:7 cover [2] - 29:10, 106:1 Covered [1] - 143:19 craft [2] - 138:15, 142:21 crafting [1] - 143:10 create [4] - 46:8, 52:11, 86:10, 131:22 creates [1] - 51:19 creating [1] - 26:25 credentials [1] - 113:22 credit [1] - 56:13 criteria [11] - 18:23, 36:8, 38:2, 87:11, 104:17, 127:13, 127:18, 130:25, 134:13, 140:13 critical [1] - 116:4 CRMC [6] - 33:20, 46:7, 68:6, 100:25, 101:21, 103:3 cross [2] - 64:21, 64:22 cultural [1] - 134:21 curb [2] - 69:14, 69:15 curbing [8] - 68:24, 68:25, 69:2, 69:10, 69:12, 85:9, 85:11, 134:10 curbs [1] - 119:17 curious [1] - 12:12 current [4] - 55:19, 127:17, 134:15, 145:21 cut [2] - 137:5, 141:24 Cynthia [1] - 16:5</p>	<p>D daily [2] - 59:24, 67:1 damage [1] - 69:13 danger [2] - 90:2, 90:21 DANIELLE@PREMIERLEGALSUPPORT.COM [1] - 148:24 darkness [2] - 114:23, 115:3 data [2] - 21:2, 25:24 date [6] - 1:16, 48:15, 108:25, 122:6, 146:15, 146:20 dated [4] - 47:8, 48:7, 122:20, 122:21 David [1] - 108:11 day-to-day [1] - 113:25 deal [10] - 15:13, 31:11, 32:25, 58:6, 87:11, 105:23, 105:24, 108:21, 110:7, 116:8 dealing [4] - 41:11, 44:19, 111:3, 121:6 dealt [2] - 88:4, 125:10 debate [2] - 143:22, 145:14 debris [3] - 26:16, 41:3, 100:7 December [1] - 58:3 decide [3] - 36:10, 46:5, 89:1 decided [1] - 35:20 decides [2] - 35:19, 116:10 decision [19] - 52:23, 77:9, 106:12, 106:14, 106:22, 107:20, 114:11, 117:11, 118:18, 119:25, 138:24, 139:3, 139:8, 139:18, 144:9, 145:18, 146:5, 146:6, 146:14 decisions [3] - 85:16, 86:16, 100:20 declaration [1] - 94:10 decrease [1] - 58:19 deed [2] - 28:19, 91:2 deed-restricted [1] - 91:2 defend [1] - 132:7 definitely [6] - 56:9, 129:20, 133:3, 140:5, 142:17, 143:8 definitions [1] -</p>
--	---	---	--	--

<p>112:20 degradation [1] - 91:18 Degree [1] - 3:19 degree [3] - 5:16, 25:5, 105:6 delays [1] - 63:3 delegated [1] - 109:10 deliberate [3] - 106:10, 125:16, 126:3 deliberations [1] - 121:15 delineate [1] - 20:24 DEM [72] - 16:5, 16:22, 17:17, 17:18, 18:2, 18:18, 19:4, 19:7, 19:23, 20:21, 22:5, 22:8, 26:1, 26:5, 26:9, 27:6, 27:9, 27:10, 27:13, 27:19, 28:9, 28:10, 29:12, 33:20, 33:25, 34:9, 34:13, 34:15, 36:7, 37:3, 37:5, 37:22, 38:2, 38:22, 42:12, 81:24, 87:22, 91:20, 91:23, 92:2, 95:14, 97:2, 97:4, 97:25, 99:11, 99:19, 100:7, 101:7, 102:24, 103:3, 103:4, 103:11, 109:9, 109:10, 109:12, 112:7, 122:9, 122:20, 123:18, 124:5, 124:7, 124:10, 124:17, 124:18, 125:20, 126:13, 128:14, 133:9, 137:21 DEM's [5] - 20:24, 23:13, 45:8, 99:20, 122:18 demarcate [1] - 31:4 demonstrated [4] - 114:8, 115:13, 116:13, 118:17 demonstrates [2] - 109:1, 117:9 denial [5] - 104:18, 127:14, 127:19, 128:11, 137:22 dense [8] - 50:24, 51:4, 51:16, 78:14, 113:4, 115:19, 119:21, 133:1 densely [2] - 51:14, 131:19 density [25] - 50:4,</p>	<p>50:21, 70:23, 75:13, 80:7, 86:6, 112:3, 119:18, 119:19, 131:8, 131:12, 135:19, 136:8, 136:13, 136:15, 136:16, 136:23, 137:8, 138:8, 139:10, 141:13, 144:2, 144:17, 145:1 deny [3] - 128:6, 138:1, 138:6 Department [4] - 21:19, 85:2, 99:2, 99:21 department [1] - 111:21 departments [1] - 54:11 dependent [7] - 28:5, 35:21, 60:4, 64:13, 65:7, 109:22, 112:16 depth [1] - 125:2 Derek [11] - 4:24, 5:2, 6:5, 57:12, 57:18, 57:20, 59:14, 61:19, 62:21, 63:11, 63:22 describe [4] - 24:18, 28:22, 29:11, 33:9 described [3] - 28:11, 30:21, 46:19 describes [2] - 22:19, 29:5 design [9] - 3:16, 6:12, 6:16, 7:2, 8:20, 9:2, 13:19, 79:21, 103:5 Design [1] - 8:1 designated [2] - 74:7, 81:9 designed [7] - 66:20, 71:1, 78:3, 81:23, 115:18, 115:19, 115:20 designing [1] - 3:23 designs [2] - 6:20, 6:21 desirable [1] - 111:1 despite [3] - 110:8, 113:20, 124:18 detail [3] - 33:24, 129:24, 134:9 detention [1] - 117:6 deteriorates [1] - 40:10 determination [4] - 35:16, 101:13, 101:15, 102:12 determine [5] - 16:14, 30:6, 85:2, 88:13,</p>	<p>89:3 determined [6] - 19:5, 39:16, 87:15, 87:16, 88:20, 124:4 determining [1] - 28:2 develop [8] - 23:25, 30:16, 36:20, 38:8, 86:15, 123:12, 132:25, 140:7 developable [1] - 68:1 developed [7] - 19:23, 21:8, 25:6, 38:1, 102:22, 124:1, 132:13 developer [20] - 10:13, 38:5, 60:14, 113:2, 113:20, 115:13, 116:6, 116:14, 116:24, 118:1, 118:4, 118:7, 118:24, 119:3, 120:17, 127:21, 135:8, 137:15, 144:5, 144:24 developer's [3] - 114:1, 114:9, 137:24 developers [2] - 45:10, 117:20 developing [4] - 3:23, 84:12, 86:5, 135:9 DEVELOPMENT [1] - 148:15 Development [5] - 1:10, 17:25, 91:6, 121:13, 145:10 development [83] - 1:20, 1:21, 1:24, 2:1, 2:9, 2:25, 3:20, 9:8, 9:17, 9:18, 9:20, 9:22, 9:23, 9:24, 10:12, 10:18, 13:23, 14:6, 18:6, 19:19, 24:18, 37:19, 37:23, 43:9, 48:2, 51:19, 55:23, 56:11, 58:24, 60:21, 60:23, 61:4, 63:13, 65:2, 65:10, 65:17, 66:10, 67:7, 67:17, 69:23, 70:2, 74:3, 75:8, 75:12, 75:13, 76:7, 84:22, 85:16, 85:21, 85:22, 94:7, 95:4, 95:5, 95:9, 103:6, 109:22, 109:24, 115:1, 115:14, 115:23, 115:24, 117:13, 117:18, 118:13, 119:6, 121:17, 121:21, 122:5,</p>	<p>123:16, 124:9, 126:6, 127:20, 127:23, 127:25, 130:17, 133:18, 134:5, 134:6, 135:2, 137:14, 144:16, 144:21 development's [2] - 2:18, 116:17 developments [8] - 9:24, 37:25, 38:16, 55:21, 58:22, 117:13, 118:10, 136:10 dictate [3] - 85:3, 85:17, 101:8 dictated [1] - 101:7 dictates [1] - 84:20 Diebold [3] - 14:17, 124:12, 124:21 Diebold's [1] - 113:18 Dieldrin [25] - 2:16, 14:14, 15:18, 19:2, 19:10, 20:15, 20:25, 21:3, 21:9, 22:19, 25:11, 27:3, 31:20, 33:3, 33:17, 39:7, 39:16, 57:6, 67:18, 100:10, 109:19, 122:4, 124:24, 125:7, 125:10 Dieldrin-containing [5] - 20:25, 21:3, 21:9, 22:19, 27:3 Dieldrin-contaminated [1] - 19:10 difference [1] - 130:2 different [9] - 27:24, 29:1, 35:14, 64:17, 80:9, 94:15, 115:6, 141:8, 144:3 differently [1] - 127:24 difficulty [1] - 59:25 dig [3] - 85:7, 90:5, 97:1 digging [6] - 89:21, 89:23, 90:15, 94:14, 96:25, 97:23 diligence [4] - 32:22, 32:24, 38:19, 39:5 direct [11] - 1:23, 3:5, 7:1, 71:7, 106:13, 107:6, 107:14, 107:18, 113:10, 140:19, 142:24 directing [1] - 2:8 direction [4] - 105:4, 141:4, 141:8, 143:16 directly [2] - 84:17,</p>	<p>113:13 disabled [4] - 61:1, 84:13, 86:12, 112:14 disagree [1] - 132:18 disclosure [8] - 92:8, 92:10, 92:18, 92:20, 92:21, 93:8, 94:11, 97:11 discourage [1] - 115:23 discretion [1] - 107:6 discuss [7] - 15:17, 82:14, 106:19, 110:1, 110:7, 134:9, 143:21 discussed [5] - 39:10, 46:12, 64:10, 118:7, 120:9 discussing [2] - 109:20, 127:11 discussion [12] - 26:14, 88:12, 107:17, 113:6, 127:15, 138:20, 139:7, 142:18, 144:3, 146:10, 146:14 dismayed [1] - 38:24 displays [1] - 119:11 disposal [4] - 20:17, 22:22, 24:22, 134:19 dispose [1] - 29:14 disposed [3] - 26:20, 101:20, 102:1 disservice [1] - 132:5 dissimilarities [1] - 120:2 distance [1] - 62:18 distant [1] - 100:13 disturbed [1] - 87:21 document [13] - 14:25, 15:19, 21:14, 22:10, 47:7, 47:9, 47:12, 48:11, 72:3, 88:12, 96:19 DOCUMENT [2] - 15:5, 75:24 documenting [1] - 35:1 documents [1] - 124:17 dog [1] - 89:23 DOH [1] - 99:10 dollars [2] - 23:22, 24:9 Donald [1] - 8:21 done [33] - 21:17, 22:15, 23:18, 24:16, 25:23, 26:8, 32:18, 34:9, 35:1, 35:2,</p>
--	---	---	---	---

37:1, 37:17, 41:5, 49:6, 55:20, 58:3, 62:5, 69:12, 71:20, 86:24, 87:1, 88:2, 88:3, 89:14, 89:15, 99:19, 103:8, 107:14, 111:23, 120:16, 129:17
door [1] - 136:7
DOT [1] - 33:21
DOTs [1] - 45:5
doubtful [1] - 113:4
down [22] - 30:25, 47:5, 62:6, 62:8, 62:10, 63:15, 63:20, 64:18, 64:23, 75:14, 82:7, 83:8, 85:6, 85:8, 89:12, 89:23, 119:2, 122:3, 128:4, 135:17, 141:19, 141:23
downtown [1] - 73:20
DOYLE [2] - 89:5, 99:23
Doyle [3] - 89:5, 99:23, 102:11
dozen [2] - 5:19, 8:7
DPW [1] - 42:13
draft [7] - 44:2, 55:1, 77:1, 106:13, 107:14, 146:5
drain [2] - 45:1, 45:6
drainage [13] - 7:2, 42:6, 42:9, 42:17, 44:20, 79:19, 79:22, 81:24, 115:17, 116:18, 133:5
drains [3] - 40:16, 42:18, 45:1
draw [1] - 16:7
drawer [1] - 35:19
drawing [1] - 52:1
drawings [2] - 30:17, 41:23
drivers [1] - 112:15
driveway [4] - 66:10, 83:6, 83:10, 142:14
driving [2] - 78:19, 79:10
due [5] - 32:22, 32:24, 38:19, 39:4, 103:9
Dulchinos [1] - 149:3
DULCHINOS [54] - 29:25, 30:5, 30:10, 30:24, 31:6, 31:12, 32:2, 48:24, 49:2, 49:4, 49:10, 49:14, 49:18, 49:21, 50:6, 50:12, 50:23, 51:6, 52:20, 53:13, 54:4,

54:16, 54:19, 54:22, 68:4, 68:7, 68:15, 68:17, 68:19, 68:21, 68:23, 81:18, 82:4, 82:15, 82:21, 82:24, 83:4, 88:11, 104:4, 104:10, 105:19, 107:12, 107:21, 126:23, 127:6, 130:16, 136:2, 139:13, 140:10, 141:15, 141:19, 142:6, 142:12, 147:2
during [16] - 20:2, 34:10, 35:11, 44:6, 59:8, 63:1, 65:11, 65:12, 75:5, 91:12, 93:8, 123:9, 129:9, 130:15, 143:3, 143:12
dust [1] - 22:24
dwelling [6] - 71:13, 71:14, 71:15, 71:17, 137:8, 142:3
dwelling [1] - 71:15

E

e-mail [10] - 15:20, 15:25, 16:8, 26:25, 39:9, 47:12, 89:10, 103:12, 122:22, 124:2
e-mailed [1] - 48:9
e-mails [1] - 15:25
early [3] - 99:25, 111:10, 113:7
earmarked [1] - 136:12
earth [1] - 88:1
ease [2] - 111:12, 112:1
easement [1] - 44:2
easements [2] - 41:25, 55:1
easily [2] - 16:18, 39:20
east [8] - 27:1, 40:17, 41:23, 53:12, 94:5, 100:3, 100:4, 132:11
East [25] - 1:9, 17:25, 18:9, 21:17, 22:1, 23:11, 23:14, 23:19, 24:1, 24:9, 24:22, 25:12, 26:17, 28:10, 30:15, 32:12, 33:25, 36:1, 40:22, 41:5, 47:22, 55:20, 91:6, 121:13, 145:10
EAST [1] - 148:14

eastern [1] - 53:19
easy [2] - 42:2, 133:19
economic [1] - 30:11
Edgar [4] - 34:7, 78:19, 128:9, 149:6
edge [2] - 26:15, 30:20
edges [1] - 137:4
education [2] - 11:3, 135:14
effect [3] - 20:19, 79:14, 130:24
effective [2] - 100:21
effectively [5] - 16:17, 39:19, 102:4, 109:11, 120:14
efficient [1] - 53:8
effort [1] - 96:20
eight [6] - 36:25, 65:18, 80:13, 82:11, 131:10, 136:8
Eighty [1] - 82:6
Eighty-three [1] - 82:6
either [6] - 13:5, 14:1, 24:3, 95:21, 99:5, 106:16
elderly [3] - 90:23, 112:14, 131:7
electrical [1] - 88:7
electrician [1] - 88:6
element [2] - 10:23, 51:18
elements [3] - 112:4, 116:5, 138:9
eligible [1] - 24:2
eliminate [1] - 80:24
eliminating [1] - 80:13
elimination [1] - 80:17
ELUR [20] - 16:20, 28:13, 28:25, 29:3, 29:4, 29:8, 88:12, 89:18, 91:1, 91:9, 96:8, 96:11, 96:12, 96:24, 98:23, 113:3, 116:21, 116:24, 130:10
ELURs [2] - 28:15, 124:8
emergency [1] - 134:18
emphasizing [1] - 120:8
employed [1] - 5:11
empowered [1] - 91:23
empty [1] - 75:4
encapsulate [2] - 20:9, 20:11
encapsulated [2] - 29:9, 33:15
encapsulates [1] -

31:12
encapsulating [1] - 30:18
encapsulation [8] - 19:19, 19:20, 20:4, 22:17, 24:21, 29:10, 30:24, 97:22
encourage [1] - 122:22
end [5] - 10:1, 34:21, 53:20, 79:5, 110:25
ends [1] - 31:5
enforce [1] - 37:5
enforcement [4] - 34:14, 36:7, 123:23
engaging [1] - 145:14
engineer [12] - 4:1, 5:3, 5:5, 5:14, 6:11, 6:25, 7:11, 63:5, 78:17, 114:1, 124:15
Engineering [1] - 63:5
engineering [14] - 3:16, 3:19, 4:19, 5:6, 5:23, 6:6, 6:13, 6:15, 6:20, 7:16, 7:20, 13:19, 57:13, 113:11
engineers [1] - 81:23
England [2] - 9:10, 15:22
enlarged [1] - 53:4
ensure [4] - 19:8, 34:11, 87:20, 91:10
ensuring [1] - 92:1
entails [1] - 9:20
enterprise [1] - 23:25
entertain [1] - 126:21
entire [5] - 30:19, 76:6, 94:6, 101:6, 102:3
entirely [2] - 113:23, 133:15
entities [2] - 24:2, 24:6
entitled [1] - 148:15
entity [2] - 29:11, 46:11
envelope [2] - 142:7, 142:17
environment [3] - 20:4, 113:15, 127:16
environmental [36] - 2:15, 3:19, 14:4, 14:5, 14:8, 14:13, 15:1, 15:7, 15:14, 15:18, 16:19, 17:9, 17:24, 18:4, 18:5, 18:12, 18:16, 18:21, 19:22, 28:12, 28:13, 29:5, 32:17, 37:12, 47:1, 57:6, 67:18,

113:16, 116:21, 122:4, 122:8, 123:21, 123:22, 128:13, 132:1, 133:4
Environmental [4] - 15:11, 15:21, 21:19, 109:6
environs [1] - 60:25
EPA [49] - 15:9, 15:11, 15:12, 15:13, 15:21, 15:23, 16:12, 17:18, 18:2, 20:23, 21:10, 21:21, 23:4, 23:6, 23:8, 23:12, 23:20, 24:15, 24:17, 24:25, 25:1, 26:11, 27:13, 27:20, 35:9, 37:10, 37:22, 38:22, 39:10, 89:11, 90:2, 95:14, 97:25, 99:24, 109:7, 109:10, 111:7, 112:1, 122:9, 122:24, 123:18, 124:5, 124:6, 125:20, 126:13, 128:14, 133:9, 137:21
EPA's [4] - 16:1, 21:17, 45:7, 101:23
equation [1] - 131:11
equipment [1] - 56:3
equivalent [1] - 116:1
Eric [2] - 84:3, 101:4
erosion [1] - 22:24
errors [1] - 120:19
especially [6] - 36:24, 37:16, 42:7, 110:23, 114:22, 126:19
Esquire [3] - 149:10, 149:13, 149:15
essence [1] - 19:25
essential [1] - 43:12
essentially [4] - 38:1, 58:15, 60:21, 64:13
establish [1] - 136:4
established [1] - 115:15
eternity [2] - 89:17, 90:18
evaluate [1] - 113:25
evaluates [1] - 114:2
evaluating [2] - 76:19, 77:4
evening [6] - 1:5, 17:21, 50:11, 84:3, 89:5, 89:9
evenly [2] - 80:11, 80:24
event [3] - 29:9, 90:7, 114:17

<p>eventual [1] - 92:5 everywhere [3] - 60:5, 74:23, 83:2 Evidence [1] - 122:16 evidence [9] - 14:25, 28:20, 108:24, 114:20, 116:13, 121:22, 122:7, 125:1, 125:14 exact [3] - 70:20, 71:10, 113:10 exactly [6] - 40:20, 42:5, 85:5, 98:8, 112:25, 114:5 Exactly [2] - 98:8, 98:20 example [2] - 73:20, 114:13 examples [1] - 130:5 exceed [2] - 30:11, 33:14 exceedances [4] - 25:11, 39:3, 39:7, 72:17 exceeded [1] - 31:21 exceeding [1] - 18:22 exceeds [1] - 131:11 except [1] - 4:10 exception [2] - 31:10, 49:8 excess [2] - 72:21, 74:12 exclusively [1] - 12:4 Excuse [3] - 13:9, 74:5, 80:15 excuse [4] - 17:10, 18:24, 57:10, 104:19 execute [1] - 136:6 exercised [1] - 129:22 exhibit [4] - 17:2, 17:12, 48:14 exhibits [1] - 17:1 exist [5] - 33:14, 47:20, 88:21, 92:19, 95:7 existence [1] - 91:1 existing [7] - 63:3, 93:15, 119:7, 134:1, 134:4, 136:16 exists [1] - 35:21 expect [2] - 44:18, 120:6 expectation [2] - 107:12, 107:16 expectations [1] - 103:16 expend [1] - 85:10 expenditures [1] - 110:16 expense [2] - 115:11,</p>	<p>117:8 expensive [1] - 24:7 experience [17] - 3:4, 3:14, 3:16, 5:4, 5:14, 7:15, 8:14, 10:24, 11:4, 11:11, 11:19, 16:16, 28:24, 74:22, 84:5, 113:10, 117:24 experienced [3] - 3:23, 112:24, 113:12 expert [16] - 6:6, 7:10, 7:19, 9:1, 10:18, 11:3, 11:17, 12:7, 12:11, 12:13, 12:19, 13:10, 13:22, 112:23, 113:19, 113:22 expertise [8] - 3:13, 5:1, 5:5, 6:9, 6:11, 10:23, 11:1, 135:14 experts [6] - 3:2, 3:5, 110:3, 114:11, 119:2, 120:13 expires [1] - 150:8 explain [6] - 11:25, 22:6, 55:13, 59:14, 96:12, 111:16 explained [1] - 134:3 explanation [1] - 135:11 exposed [2] - 35:25, 96:14 exposure [8] - 18:23, 20:3, 20:5, 27:17, 29:14, 33:15, 33:16 express [1] - 130:21 extend [2] - 52:9, 106:11 extensions [1] - 137:4 extensively [2] - 117:11, 123:11 extent [2] - 135:3, 139:5 extra [4] - 15:3, 64:24, 65:3, 85:10 extract [1] - 51:5 extremely [2] - 109:7, 114:22</p>	<p>facial [1] - 117:10 fact [18] - 16:4, 20:20, 21:12, 21:16, 30:14, 39:12, 42:1, 46:15, 58:4, 72:15, 111:20, 114:25, 115:12, 116:13, 119:13, 120:12, 137:21, 138:18 fail [1] - 109:9 fairly [2] - 33:1, 51:11 fall [2] - 38:1, 135:7 falling [1] - 85:6 familiar [4] - 41:18, 41:20, 84:7, 99:1 families [1] - 82:20 family [9] - 65:18, 76:1, 76:13, 82:10, 83:19, 86:6, 91:1, 94:25, 95:12 far [15] - 17:23, 19:17, 20:15, 30:14, 31:17, 44:24, 72:16, 81:21, 89:15, 90:10, 100:14, 131:25, 135:7, 135:12, 139:25 favor [6] - 104:5, 127:1, 143:6, 143:10, 143:13, 146:22 feasibility [1] - 30:11 feasible [1] - 39:6 features [1] - 134:21 February [1] - 122:20 Federal [10] - 28:5, 102:19, 109:11, 109:12, 123:22, 127:22, 137:17, 138:4, 138:5 fee [3] - 88:25, 129:11, 129:18 fees [1] - 21:24 feet [7] - 33:12, 49:16, 49:20, 51:1, 52:9, 68:12, 85:8 follow [1] - 134:25 felt [1] - 80:25 fence [3] - 52:16, 77:25, 85:6 fences [1] - 115:18 fertilizer [1] - 32:2 few [1] - 80:24 field [2] - 3:17, 120:13 fifteen [1] - 106:4 figure [3] - 17:4, 30:8, 139:22 figures [1] - 61:21 file [1] - 138:23 filed [4] - 18:1, 102:23,</p>	<p>145:8, 145:18 fill [2] - 20:10, 31:14 filter [2] - 31:3, 43:3 final [15] - 16:14, 21:15, 27:5, 34:2, 77:1, 77:2, 77:8, 102:16, 106:17, 125:17, 126:8, 128:16, 128:18, 137:20, 137:23 finally [1] - 60:1 finance [4] - 9:25, 13:17, 38:17, 56:11 financed [1] - 12:3 financially [1] - 39:5 financing [4] - 32:16, 38:7, 38:16, 38:20 findings [2] - 25:19, 25:20 Fine [1] - 8:15 fine [4] - 43:5, 82:2, 96:11, 135:20 firm [1] - 8:2 first [17] - 1:12, 1:20, 3:11, 5:8, 18:21, 19:19, 50:8, 54:3, 57:23, 64:1, 64:2, 93:10, 95:13, 107:25, 117:17, 128:22, 130:17 fit [2] - 11:2, 79:18 fits [1] - 17:17 five [7] - 8:12, 84:5, 107:25, 108:2, 131:9, 144:6, 144:19 five-minute [2] - 107:25, 108:2 fixed [2] - 75:13, 75:14 FJS [2] - 9:6, 123:17 flag [2] - 90:17, 143:2 flags [1] - 89:16 flatter [1] - 69:13 flexibility [2] - 67:6, 67:8 floor [2] - 54:3, 54:5 flow [1] - 62:24 focus [2] - 4:19, 125:12 fold [1] - 78:13 folks [1] - 56:16 follow [8] - 13:11, 29:12, 36:21, 55:5, 82:24, 91:15, 96:25 followed [1] - 103:12 following [6] - 21:12, 47:24, 62:10, 81:24, 84:22, 114:13 follows [1] - 87:20 followup [1] - 122:24 foot [4] - 71:14,</p>	<p>101:11, 101:18, 136:7 footage [2] - 68:8, 137:10 footprint [3] - 71:7, 71:14 footprints [1] - 71:16 FOR [2] - 149:12, 149:15 fore [1] - 32:25 forensic [1] - 84:6 forget [1] - 56:22 form [4] - 99:17, 100:17, 107:3, 115:24 formal [3] - 105:15, 107:19, 107:20 formally [2] - 48:21, 145:25 former [1] - 100:6 forming [1] - 114:2 forth [6] - 2:14, 89:10, 113:1, 114:10, 120:5, 137:19 fortunate [1] - 120:21 Forty [1] - 66:2 forward [11] - 1:22, 26:12, 29:23, 35:22, 39:23, 102:12, 103:16, 106:14, 121:7, 124:6, 125:10 founded [1] - 9:7 four [7] - 53:21, 57:21, 79:4, 80:3, 80:5, 82:19, 82:21 fourteen [1] - 75:25 fraction [1] - 50:2 frame [1] - 106:10 Francis [2] - 9:3, 9:6 Frank [6] - 55:12, 55:17, 61:14, 61:16, 75:16, 95:11 frankly [6] - 111:10, 112:4, 112:6, 113:3, 115:4, 132:4 frequently [3] - 40:8, 60:8, 94:17 Friday [1] - 89:12 FROM [1] - 83:24 front [8] - 4:3, 19:15, 48:23, 72:19, 76:3, 85:19, 118:12, 128:17 frontage [4] - 42:1, 45:22, 89:1, 95:7 full [4] - 55:23, 69:14, 111:22, 138:23 full-time [1] - 55:23 fully [1] - 119:8 function [2] - 56:21,</p>
	F			
	<p>fabric [2] - 31:3, 31:4 face [2] - 91:20, 124:10 facilitate [1] - 3:7 facilities [2] - 6:22, 52:2 facility [5] - 40:11, 41:2, 57:2, 72:18, 84:13</p>			

<p>114:5 functioning [1] - 17:13 fundamental [1] - 114:12 funded [3] - 20:23, 35:9, 38:11 funding [2] - 28:5, 38:13 funds [2] - 23:12, 32:18 furthering [1] - 2:9 Fuss [18] - 3:10, 4:13, 4:14, 4:24, 5:2, 5:11, 6:8, 6:11, 17:22, 23:3, 35:3, 47:7, 57:20, 122:11, 122:15, 122:21, 123:17, 125:4 future [23] - 28:16, 29:1, 29:8, 40:9, 41:6, 42:4, 44:24, 46:6, 60:22, 84:21, 85:16, 88:14, 98:14, 121:8, 124:1, 127:17, 130:4, 134:15, 135:13, 136:10, 136:12, 138:4, 145:12 Future [1] - 59:4</p>	<p>gated [2] - 115:24, 116:1 general [8] - 21:4, 22:9, 57:23, 58:18, 80:9, 124:25, 125:6, 136:2 General's [1] - 99:1 generally [2] - 57:22, 73:15 generated [1] - 59:5 generation [1] - 59:8 gentleman [3] - 94:12, 112:1, 112:7 Georgia [1] - 7:17 Geraldine [3] - 148:15, 150:2, 150:7 Gianfrancesco [2] - 16:5, 95:15 gist [1] - 65:21 given [9] - 105:22, 106:10, 111:11, 115:20, 117:3, 118:24, 121:10, 127:19, 138:19 glossed [2] - 109:15, 114:24 glossing [1] - 19:21 go-ahead [1] - 100:1 goal [5] - 2:21, 26:18, 37:13, 118:15, 131:6 God [1] - 39:25 Goliath [1] - 108:12 gotcha [2] - 68:21, 68:23 government [3] - 17:14, 28:5, 127:23 gracious [1] - 89:11 grant [15] - 18:2, 18:3, 18:10, 23:11, 24:6, 27:10, 30:2, 30:5, 37:9, 95:13, 117:20, 118:21, 125:23, 144:13 granted [1] - 144:12 grants [1] - 24:3 graphic [1] - 63:18 grassy [1] - 89:20 gravel [1] - 31:15 gray [1] - 78:15 great [9] - 17:15, 58:6, 64:20, 90:21, 98:24, 105:23, 108:21, 110:7, 125:19 greater [1] - 73:25 greatly [1] - 58:10 green [2] - 53:4, 121:1 ground [3] - 77:13, 85:7, 116:18 group [3] - 16:24, 104:23, 108:16</p>	<p>growth [5] - 58:12, 58:14, 58:15, 58:18, 58:21 guarantee [1] - 90:4 guaranteed [1] - 46:12 guaranteeing [1] - 85:18 guess [29] - 22:8, 24:25, 25:15, 34:19, 44:21, 52:25, 56:6, 63:9, 65:1, 68:10, 68:25, 70:16, 71:23, 73:4, 77:21, 78:12, 78:13, 79:2, 79:20, 81:7, 87:9, 98:17, 127:13, 127:21, 127:24, 128:9, 138:22, 139:13, 141:15 guests [1] - 78:3 guidance [4] - 109:12, 138:19, 144:6, 144:24 guidelines [1] - 56:14 gut [1] - 62:15 guys [1] - 91:4</p>	<p>HANDS [1] - 83:24 hands [1] - 138:10 happy [1] - 82:12 hard [4] - 31:13, 37:18, 51:7, 63:17 Harsch [6] - 15:3, 15:15, 104:22, 108:15, 126:11, 149:15 harsch [2] - 16:23, 39:12 HARSCH [8] - 15:6, 104:19, 104:22, 105:21, 107:23, 108:7, 126:8, 126:11 harsch's [1] - 122:25 Harsch's [2] - 89:13, 124:11 hazard [1] - 36:18 hazardous [2] - 102:7, 114:22 hazards [2] - 96:13, 115:3 health [11] - 2:15, 14:14, 29:18, 38:22, 57:6, 122:4, 123:20, 127:16, 134:15, 138:2 Health [2] - 99:2, 99:21 hear [6] - 1:2, 39:23, 106:15, 106:16, 106:23, 108:9 heard [24] - 11:9, 29:25, 64:3, 105:1, 108:20, 109:13, 109:25, 110:7, 110:19, 111:6, 111:15, 112:7, 113:8, 113:20, 114:24, 116:8, 116:14, 116:20, 116:23, 122:5, 123:11, 124:7, 127:15, 141:6 HEARING [2] - 147:6, 148:7 hearing [29] - 1:12, 1:16, 1:23, 5:8, 14:18, 17:7, 48:22, 54:9, 57:16, 64:2, 64:3, 104:3, 105:17, 106:9, 106:21, 107:5, 113:5, 114:24, 116:23, 121:23, 121:24, 122:6, 126:2, 126:22, 126:23, 146:3 hearings [3] - 63:23,</p>	<p>121:18, 126:1 heavy [1] - 141:14 held [3] - 4:12, 69:10, 69:11 help [4] - 25:25, 28:16, 30:3, 30:16 helpful [1] - 124:23 helping [1] - 35:7 Hemenway [3] - 6:7, 6:10, 7:18 HEMENWAY [9] - 6:10, 6:15, 6:19, 6:25, 7:5, 7:8, 7:10, 7:16, 72:3 hereby [1] - 150:2 hereunto [1] - 150:4 Hervey [7] - 2:13, 17:1, 47:14, 48:8, 48:13, 54:10, 149:9 hervey [2] - 48:9, 55:6 HERVEY [11] - 17:4, 55:8, 56:19, 56:24, 139:2, 141:6, 142:25, 143:14, 143:19, 143:22, 143:25 high [3] - 86:6, 112:3, 118:13 high-density [1] - 86:6 highest [1] - 33:16 highlighted [1] - 123:19 highly [7] - 109:23, 110:3, 113:12, 113:13, 114:5, 117:25, 120:13 highly-experienced [1] - 113:12 highly-publicized [1] - 113:13 highly-qualified [2] - 110:3, 120:13 himself [1] - 57:19 historic [2] - 8:6, 134:21 history [3] - 17:23, 27:5, 110:23 hit [1] - 46:23 hm [3] - 56:6, 79:8, 94:22 hold [4] - 3:25, 91:24, 117:22, 127:21 holes [1] - 100:12 holiday [1] - 58:11 home [1] - 141:24 homes [16] - 47:20, 47:21, 47:25, 48:2, 48:5, 76:2, 76:3, 76:13, 82:10, 83:19, 91:1, 93:16, 95:12,</p>
H				
<p>Hahn [6] - 14:17, 64:4, 113:23, 114:7, 124:12, 124:15 Hahn-Sweet [4] - 14:17, 64:4, 113:23, 124:12 Hahn-Sweet's [1] - 114:7 half [7] - 9:13, 11:16, 60:6, 60:19, 61:17, 61:18, 133:14 Hall [1] - 148:16 hall [2] - 85:1, 88:5 Halperin [2] - 1:8, 149:13 Hampden [3] - 32:10, 90:25, 95:20 Hampton [1] - 96:2 hand [3] - 137:17, 137:22, 150:4 HANDED [1] - 15:6 handicapped [3] - 56:15, 56:16 handing [2] - 14:25, 72:3 HANDING [2] - 15:5, 75:24 handle [2] - 23:6, 130:14 handling [2] - 22:22, 111:13</p>				
G				
<p>gALBRAITH [1] - 127:7 Galbraith [1] - 149:5 GALBRAITH [45] - 15:5, 34:5, 34:7, 35:10, 55:11, 56:6, 61:19, 61:23, 66:5, 66:14, 66:18, 66:23, 67:10, 73:13, 76:14, 76:25, 77:11, 77:21, 78:12, 78:22, 79:8, 79:13, 79:24, 80:4, 81:2, 82:11, 83:5, 93:15, 93:18, 93:23, 94:1, 97:17, 104:11, 126:25, 132:18, 141:9, 141:16, 142:2, 142:4, 142:10, 146:8, 146:13, 146:17, 146:19, 147:3 game [1] - 123:25 garage [3] - 57:2, 72:17, 72:19 garden [4] - 89:24, 97:17, 97:18, 97:23 Gaston [1] - 117:4</p>	<p>gated [2] - 115:24, 116:1 general [8] - 21:4, 22:9, 57:23, 58:18, 80:9, 124:25, 125:6, 136:2 General's [1] - 99:1 generally [2] - 57:22, 73:15 generated [1] - 59:5 generation [1] - 59:8 gentleman [3] - 94:12, 112:1, 112:7 Georgia [1] - 7:17 Geraldine [3] - 148:15, 150:2, 150:7 Gianfrancesco [2] - 16:5, 95:15 gist [1] - 65:21 given [9] - 105:22, 106:10, 111:11, 115:20, 117:3, 118:24, 121:10, 127:19, 138:19 glossed [2] - 109:15, 114:24 glossing [1] - 19:21 go-ahead [1] - 100:1 goal [5] - 2:21, 26:18, 37:13, 118:15, 131:6 God [1] - 39:25 Goliath [1] - 108:12 gotcha [2] - 68:21, 68:23 government [3] - 17:14, 28:5, 127:23 gracious [1] - 89:11 grant [15] - 18:2, 18:3, 18:10, 23:11, 24:6, 27:10, 30:2, 30:5, 37:9, 95:13, 117:20, 118:21, 125:23, 144:13 granted [1] - 144:12 grants [1] - 24:3 graphic [1] - 63:18 grassy [1] - 89:20 gravel [1] - 31:15 gray [1] - 78:15 great [9] - 17:15, 58:6, 64:20, 90:21, 98:24, 105:23, 108:21, 110:7, 125:19 greater [1] - 73:25 greatly [1] - 58:10 green [2] - 53:4, 121:1 ground [3] - 77:13, 85:7, 116:18 group [3] - 16:24, 104:23, 108:16</p>	<p>growth [5] - 58:12, 58:14, 58:15, 58:18, 58:21 guarantee [1] - 90:4 guaranteed [1] - 46:12 guaranteeing [1] - 85:18 guess [29] - 22:8, 24:25, 25:15, 34:19, 44:21, 52:25, 56:6, 63:9, 65:1, 68:10, 68:25, 70:16, 71:23, 73:4, 77:21, 78:12, 78:13, 79:2, 79:20, 81:7, 87:9, 98:17, 127:13, 127:21, 127:24, 128:9, 138:22, 139:13, 141:15 guests [1] - 78:3 guidance [4] - 109:12, 138:19, 144:6, 144:24 guidelines [1] - 56:14 gut [1] - 62:15 guys [1] - 91:4</p>	<p>HANDS [1] - 83:24 hands [1] - 138:10 happy [1] - 82:12 hard [4] - 31:13, 37:18, 51:7, 63:17 Harsch [6] - 15:3, 15:15, 104:22, 108:15, 126:11, 149:15 harsch [2] - 16:23, 39:12 HARSCH [8] - 15:6, 104:19, 104:22, 105:21, 107:23, 108:7, 126:8, 126:11 harsch's [1] - 122:25 Harsch's [2] - 89:13, 124:11 hazard [1] - 36:18 hazardous [2] - 102:7, 114:22 hazards [2] - 96:13, 115:3 health [11] - 2:15, 14:14, 29:18, 38:22, 57:6, 122:4, 123:20, 127:16, 134:15, 138:2 Health [2] - 99:2, 99:21 hear [6] - 1:2, 39:23, 106:15, 106:16, 106:23, 108:9 heard [24] - 11:9, 29:25, 64:3, 105:1, 108:20, 109:13, 109:25, 110:7, 110:19, 111:6, 111:15, 112:7, 113:8, 113:20, 114:24, 116:8, 116:14, 116:20, 116:23, 122:5, 123:11, 124:7, 127:15, 141:6 HEARING [2] - 147:6, 148:7 hearing [29] - 1:12, 1:16, 1:23, 5:8, 14:18, 17:7, 48:22, 54:9, 57:16, 64:2, 64:3, 104:3, 105:17, 106:9, 106:21, 107:5, 113:5, 114:24, 116:23, 121:23, 121:24, 122:6, 126:2, 126:22, 126:23, 146:3 hearings [3] - 63:23,</p>	<p>121:18, 126:1 heavy [1] - 141:14 held [3] - 4:12, 69:10, 69:11 help [4] - 25:25, 28:16, 30:3, 30:16 helpful [1] - 124:23 helping [1] - 35:7 Hemenway [3] - 6:7, 6:10, 7:18 HEMENWAY [9] - 6:10, 6:15, 6:19, 6:25, 7:5, 7:8, 7:10, 7:16, 72:3 hereby [1] - 150:2 hereunto [1] - 150:4 Hervey [7] - 2:13, 17:1, 47:14, 48:8, 48:13, 54:10, 149:9 hervey [2] - 48:9, 55:6 HERVEY [11] - 17:4, 55:8, 56:19, 56:24, 139:2, 141:6, 142:25, 143:14, 143:19, 143:22, 143:25 high [3] - 86:6, 112:3, 118:13 high-density [1] - 86:6 highest [1] - 33:16 highlighted [1] - 123:19 highly [7] - 109:23, 110:3, 113:12, 113:13, 114:5, 117:25, 120:13 highly-experienced [1] - 113:12 highly-publicized [1] - 113:13 highly-qualified [2] - 110:3, 120:13 himself [1] - 57:19 historic [2] - 8:6, 134:21 history [3] - 17:23, 27:5, 110:23 hit [1] - 46:23 hm [3] - 56:6, 79:8, 94:22 hold [4] - 3:25, 91:24, 117:22, 127:21 holes [1] - 100:12 holiday [1] - 58:11 home [1] - 141:24 homes [16] - 47:20, 47:21, 47:25, 48:2, 48:5, 76:2, 76:3, 76:13, 82:10, 83:19, 91:1, 93:16, 95:12,</p>

<p>95:20, 96:6 hope [1] - 35:5 hopefully [5] - 35:13, 89:20, 117:22, 139:15, 140:9 hoping [1] - 127:10 hot [4] - 100:9, 100:18, 101:7, 101:8 hour [13] - 59:8, 59:12, 59:17, 59:19, 59:20, 61:21, 61:22, 61:24, 63:2, 65:11, 65:12, 65:13 hours [6] - 59:9, 59:18, 61:20, 105:23, 108:1, 111:16 house [1] - 46:20 housekeeping [1] - 47:6 houses [6] - 51:21, 65:17, 65:18, 94:20, 95:16, 115:16 housing [30] - 9:8, 9:23, 10:20, 10:21, 11:17, 12:3, 12:4, 12:11, 13:18, 56:13, 84:13, 86:4, 95:10, 102:18, 110:22, 111:4, 112:11, 112:12, 112:20, 114:19, 118:13, 120:19, 127:15, 130:6, 131:18, 131:20, 131:21, 132:21, 132:25, 136:12 Housing [8] - 32:17, 53:7, 56:10, 56:14, 59:3, 61:13, 119:24, 123:16 Housing's [1] - 135:12 Hug [5] - 4:24, 5:2, 57:12, 57:20, 63:11 hug [1] - 67:15 HUG [27] - 5:2, 5:9, 5:12, 5:15, 5:19, 5:22, 5:25, 6:4, 57:20, 59:17, 61:22, 61:25, 62:3, 62:5, 62:25, 63:11, 63:15, 63:25, 64:10, 65:11, 65:20, 65:24, 66:4, 66:7, 66:11, 66:17, 67:12 huge [2] - 79:10, 83:4 human [4] - 20:3, 20:5, 29:14, 33:16 humanity [1] - 43:6 hundred [5] - 33:12,</p>	<p>101:5, 101:10, 131:2, 131:14</p> <p style="text-align: center;">I</p> <p>idea [4] - 29:2, 84:19, 101:25, 114:15 ideally [1] - 59:21 identification [1] - 19:9 identified [14] - 2:13, 18:8, 18:21, 19:17, 25:2, 25:10, 38:4, 57:8, 86:1, 88:22, 102:6, 102:8, 130:18, 132:24 identifies [2] - 21:8, 85:3 identify [11] - 3:12, 4:25, 6:8, 7:23, 9:3, 19:10, 19:12, 20:1, 21:6, 37:12, 57:19 ignore [2] - 35:23, 36:6 impact [9] - 14:5, 62:24, 122:9, 123:8, 123:10, 123:21, 128:13, 128:15, 134:1 impacted [1] - 134:5 impacts [8] - 2:15, 14:8, 14:14, 57:6, 63:3, 67:18, 122:4, 134:14 imperative [1] - 124:8 impermeable [1] - 70:16 impervious [12] - 30:25, 70:21, 71:5, 72:22, 78:13, 78:17, 79:22, 80:7, 85:24, 86:24, 135:21, 141:13 impinged [1] - 140:8 implement [4] - 22:2, 34:1, 45:18, 86:8 implementation [7] - 21:16, 21:20, 34:10, 35:11, 45:4, 91:7, 124:3 implemented [5] - 16:18, 22:16, 34:12, 39:20, 98:9 implied [1] - 27:12 implies [1] - 76:20 important [3] - 29:22, 139:17, 140:4 imported [1] - 20:10 imposed [2] - 118:19, 119:7</p>	<p>improper [1] - 28:18 improve [2] - 133:6, 133:10 improves [1] - 79:19 IN [1] - 148:7 inaccurate [1] - 111:14 inappropriate [1] - 109:23 inaudible [1] - 121:4 inception [1] - 12:2 inches [2] - 85:8, 89:23 incidents [1] - 92:2 inclination [1] - 73:13 include [7] - 41:2, 58:23, 86:5, 112:20, 140:23, 141:2, 143:5 included [12] - 18:6, 18:13, 40:23, 44:3, 50:19, 59:1, 72:20, 76:10, 93:21, 114:13, 119:16, 123:7 includes [8] - 22:21, 22:23, 61:5, 68:4, 68:5, 78:24, 79:4, 116:17 including [8] - 2:18, 82:10, 104:23, 110:3, 113:14, 114:16, 121:4, 134:16 inclusion [1] - 58:13 income [18] - 56:12, 86:4, 86:12, 102:18, 109:24, 110:22, 110:25, 111:4, 112:11, 112:12, 112:17, 112:20, 114:15, 116:1, 117:2, 120:19, 130:1, 131:2 incomplete [2] - 110:21, 120:16 inconsistent [1] - 92:3 incorporate [2] - 51:25, 52:14 incorporated [2] - 34:2, 87:24 incorrect [1] - 126:13 increase [4] - 144:7, 144:18, 144:19, 144:21 Indeed [1] - 113:18 indeed [2] - 105:25, 118:18 indents [2] - 69:18, 73:6 indicate [3] - 93:1,</p>	<p>105:7, 108:20 indicated [6] - 59:7, 65:6, 104:25, 105:8, 105:11, 110:19 indicates [1] - 59:4 Indicating [1] - 63:19 indicating [3] - 52:5, 53:5, 80:21 indicating [1] - 53:24 individual [6] - 3:11, 4:24, 13:22, 15:10, 56:15, 143:1 individuals [2] - 3:8, 3:10 industrial [2] - 27:18, 29:17 inexpensive [1] - 24:13 inform [2] - 22:15, 47:16 information [15] - 16:1, 30:13, 67:25, 72:2, 105:24, 106:16, 108:22, 117:10, 118:3, 124:22, 124:24, 125:15, 126:20, 128:17, 134:7 informative [1] - 125:5 informed [3] - 67:24, 89:21, 99:15 infrastructure [16] - 2:18, 6:12, 6:16, 6:18, 6:21, 7:19, 7:20, 40:5, 40:19, 43:12, 45:16, 57:9, 67:20, 116:17, 117:5, 123:13 initial [2] - 18:3, 121:22 initiatives [3] - 86:16, 89:3, 132:21 input [4] - 21:15, 102:22, 103:21, 114:2 inquire [2] - 11:5, 37:3 insinuation [1] - 27:13 inspection [6] - 34:14, 91:9, 91:17, 97:2, 97:4, 123:23 inspections [3] - 34:8, 34:11, 124:8 installed [1] - 56:8 installing [1] - 129:18 instance [4] - 36:12, 36:15, 36:19, 80:20 instead [1] - 118:6 instructions [2] - 82:25, 145:11 instrument [1] - 97:21</p>	<p>integral [1] - 113:24 integrate [1] - 115:21 integrated [1] - 131:18 integrity [2] - 91:10, 91:17 intended [4] - 27:11, 27:14, 27:15, 46:9 intentions [1] - 129:14 interest [3] - 19:18, 91:25, 109:8 interesting [5] - 32:21, 35:19, 38:12, 109:21, 140:5 interests [4] - 96:21, 97:3, 98:3, 139:16 intergenerational [1] - 131:17 interior [1] - 51:20 interpret [1] - 76:22 interpretation [1] - 77:6 intervene [1] - 2:4 intricate [1] - 129:1 introduce [5] - 1:21, 2:1, 2:25, 3:9, 14:18 introduced [4] - 14:24, 15:20, 48:10, 48:22 introducing [1] - 65:23 introduction [1] - 65:16 invalid [1] - 113:23 invest [1] - 37:19 investigate [1] - 25:16 investigation [30] - 16:13, 17:24, 18:8, 18:10, 18:11, 18:20, 19:4, 19:8, 19:12, 20:18, 20:20, 20:22, 21:5, 21:11, 21:13, 22:14, 22:15, 25:9, 25:16, 25:19, 25:22, 26:6, 31:17, 32:16, 35:16, 37:1, 38:7, 38:25, 97:4, 102:21 Investigation [1] - 19:6 investigations [3] - 20:22, 20:23, 23:17 investment [1] - 16:3 investor [1] - 56:13 involved [6] - 15:10, 23:8, 86:22, 100:25, 117:18, 122:10 involvement [3] - 15:23, 16:2, 87:23 involves [1] - 117:25 inward [1] - 115:19 inward-looking [1] -</p>
---	---	--	--	--

<p>115:19 island [24] - 1:9, 3:22, 5:16, 7:13, 8:7, 9:14, 10:9, 12:8, 12:9, 16:22, 21:18, 32:17, 53:7, 56:10, 56:14, 58:17, 61:13, 99:3, 102:24, 122:18, 123:15, 148:16, 148:16 ISLAND [1] - 148:1 isolated [2] - 115:23, 131:22 isolation [4] - 109:20, 114:14, 115:14, 120:11 issue [21] - 10:25, 11:4, 19:22, 25:3, 26:10, 38:3, 57:23, 60:1, 109:17, 109:19, 114:12, 117:21, 128:12, 129:1, 134:10, 135:18, 139:10, 140:20 issued [2] - 18:2, 46:7 issues [23] - 18:16, 37:12, 41:6, 43:21, 57:7, 86:22, 109:3, 109:14, 109:20, 109:25, 111:14, 114:11, 118:17, 119:11, 119:23, 120:10, 120:23, 125:9, 127:16, 133:4, 138:2, 138:7, 138:8 IT [1] - 15:6 item [2] - 76:17, 77:3 item [1] - 130:17 items [6] - 26:11, 36:16, 127:11, 129:21, 143:2, 143:4 itself [5] - 64:9, 67:8, 97:3, 108:16, 132:7</p>	<p>107:15, 146:4, 146:9, 146:14, 146:16, 146:17, 146:18, 146:19 June [3] - 148:17, 150:3, 150:5 JUNE [1] - 1:1 jurisdiction [2] - 99:20, 139:15 Justice [1] - 145:18 justification [2] - 118:5, 119:5 justified [1] - 118:25 juveniles [1] - 112:15</p>	<p>101:10, 116:21, 131:1, 132:14, 137:14 landlords [1] - 99:3 landscape [1] - 31:4 landscaper [1] - 85:7 LANG [18] - 25:15, 34:19, 34:21, 62:1, 62:4, 81:7, 98:17, 98:21, 99:7, 103:24, 104:2, 104:7, 104:17, 105:18, 127:3, 128:9, 146:21, 146:24 Lang [2] - 98:16, 149:4 language [3] - 77:6, 142:19, 142:21 languish [1] - 36:13 large [2] - 53:11, 78:16 larger [3] - 71:5, 71:9, 129:12 largesse [1] - 43:5 last [22] - 14:18, 15:17, 21:12, 28:11, 35:13, 39:18, 44:8, 46:19, 48:22, 54:9, 54:11, 77:3, 83:23, 89:7, 90:9, 91:3, 109:9, 109:11, 113:5, 116:23, 128:23 Last [1] - 101:2 late [1] - 25:8 latest [1] - 19:24 laundry [6] - 55:13, 56:7, 56:8, 56:10, 56:17, 57:2 law [1] - 109:12 lawn [2] - 46:20, 56:3 Lawrence [1] - 149:3 laws [1] - 99:4 layer [1] - 30:25 laying [1] - 80:23 layout [2] - 119:16, 135:20 lead [4] - 98:19, 98:25, 99:4, 123:22 leading [5] - 15:12, 63:10, 63:12, 67:10, 111:7 leary [1] - 141:24 lease [2] - 96:10, 96:19 least [17] - 26:1, 31:25, 42:17, 57:5, 64:15, 69:12, 82:15, 94:23, 95:6, 106:19, 107:7, 111:13,</p>	<p>121:15, 125:20, 132:8, 133:14, 133:24 leave [5] - 14:10, 36:17, 78:6, 102:2, 140:20 led [1] - 111:15 left [5] - 36:9, 102:15, 103:23, 104:16, 127:12 legal [1] - 79:20 LEGAL [1] - 148:22 legally [1] - 36:23 lengthening [1] - 107:1 lengthy [1] - 117:4 Les [1] - 100:23 les [1] - 96:7 less [7] - 46:20, 49:19, 50:7, 76:21, 77:7, 120:20, 138:18 letter [15] - 18:18, 18:20, 19:6, 26:7, 26:12, 26:23, 47:17, 47:18, 48:5, 48:7, 48:15, 50:8, 122:19, 122:20 Letter [2] - 134:12, 134:13 letterhead [1] - 47:7 letting [1] - 132:5 level [10] - 12:18, 13:6, 13:12, 70:22, 96:4, 109:15, 109:16, 117:25, 133:1, 135:13 levels [6] - 18:23, 27:18, 33:15, 37:24, 102:6, 112:3 leverage [1] - 129:11 Lewis [2] - 89:5, 99:23 liability [2] - 36:2, 98:3 licenses [1] - 3:25 lieu [3] - 88:25, 129:11, 129:18 life [1] - 115:4 life-threatening [1] - 115:4 likelihood [1] - 115:8 likely [1] - 61:2 limit [3] - 21:2, 37:16, 106:17 limitations [2] - 91:13, 91:15 limited [2] - 94:3, 134:17 limits [3] - 19:9, 20:24, 31:22 line [5] - 77:25, 111:5, 133:15, 144:9,</p>	<p>144:21 lines [8] - 42:23, 52:10, 88:7, 95:4, 95:6, 95:8, 120:4 list [1] - 118:13 listening [1] - 126:6 lit [1] - 115:5 litigation [1] - 12:14 live [1] - 64:12 lived [1] - 65:6 living [1] - 92:14 LLC [1] - 148:22 LLP [1] - 149:13 loan [1] - 38:18 local [5] - 109:18, 130:18, 139:14, 144:22 located [3] - 41:23, 48:5, 60:9 location [2] - 21:4, 56:18 locations [1] - 52:13 locked [1] - 28:4 logic [2] - 72:7, 96:25 look [20] - 41:22, 47:8, 49:25, 50:18, 51:8, 51:9, 70:20, 78:14, 110:24, 118:23, 122:1, 122:16, 122:22, 125:13, 130:23, 133:25, 139:8, 140:1, 142:18 looked [3] - 29:24, 61:20, 70:14 looking [23] - 23:25, 47:11, 50:8, 50:16, 50:21, 61:21, 65:2, 66:12, 76:15, 76:16, 76:24, 76:25, 84:12, 89:19, 115:19, 118:18, 128:12, 131:9, 132:8, 132:11, 132:25, 133:17, 139:3 looks [3] - 51:9, 78:22, 116:20 loosen [1] - 53:1 loosened [1] - 53:9 lose [1] - 80:5 losing [1] - 80:3 loud [1] - 77:22 love [2] - 49:24, 129:23 low [20] - 56:12, 86:4, 86:12, 102:18, 109:24, 110:22, 110:25, 111:4, 112:11, 112:12, 112:17, 112:20, 114:15, 116:1,</p>
	K			
	<p>keep [6] - 58:20, 73:11, 80:7, 84:2, 130:8, 139:18 keeps [1] - 111:3 Kevin [2] - 89:5, 99:23 key [2] - 114:8, 133:4 kid [1] - 142:13 kids [1] - 142:10 kind [23] - 10:23, 24:24, 25:17, 25:19, 41:4, 44:15, 45:18, 51:19, 69:2, 69:18, 70:13, 91:2, 100:1, 103:5, 110:12, 111:20, 115:9, 118:7, 128:12, 135:3, 136:14, 142:21 kinds [1] - 117:19 knowing [1] - 84:25 knowingly [1] - 133:21 knowledge [2] - 28:8, 135:16 knowledgeable [1] - 113:13 known [3] - 58:22, 112:24, 113:17 knows [2] - 39:25, 88:24</p>			
	L			
	<p>lack [1] - 60:24 laid [2] - 67:5, 131:1 land [29] - 3:20, 16:19, 23:16, 23:25, 28:12, 28:13, 28:14, 28:16, 28:20, 31:23, 36:23, 37:24, 38:18, 46:10, 46:11, 49:10, 49:14, 50:20, 51:22, 68:5, 71:9, 79:13, 96:22,</p>			
J				
<p>James [2] - 15:10, 15:20 Jim [8] - 15:25, 26:24, 89:11, 89:21, 90:17, 95:15, 99:24 job [1] - 124:13 John [1] - 63:5 Jr [1] - 149:3 Judge [1] - 145:8 July [16] - 21:11, 22:15, 23:3, 25:19, 106:12, 106:19,</p>				

<p>117:2, 118:12, 120:19, 127:14, 130:1, 131:2</p> <p>low-income [15] - 56:12, 86:4, 109:24, 110:22, 110:25, 111:4, 112:11, 112:12, 112:17, 112:20, 114:15, 116:1, 117:2, 120:19, 130:1</p> <p>low-mod [1] - 118:12</p> <p>lower [2] - 27:1, 82:13</p> <p>Ltd [1] - 149:11</p>	<p>4:19, 6:21, 20:1, 22:21, 29:7, 55:19, 57:1, 67:20, 88:17, 94:11</p> <p>Management [3] - 21:19, 46:22, 103:4</p> <p>manager [2] - 55:22, 55:24</p> <p>managing [1] - 117:16</p> <p>manner [5] - 16:17, 21:4, 22:17, 39:20, 69:21</p> <p>manual [4] - 58:2, 62:5, 62:15, 62:19</p> <p>map [1] - 101:8</p> <p>March [1] - 122:21</p> <p>marked [1] - 16:25</p> <p>marker [1] - 31:1</p> <p>market [7] - 47:20, 47:23, 49:5, 50:24, 68:10, 76:3, 131:10</p> <p>Martin [24] - 3:11, 3:25, 14:12, 17:6, 17:16, 17:21, 48:8, 54:14, 57:7, 66:19, 67:24, 67:25, 68:2, 69:3, 69:5, 70:18, 75:10, 88:16, 91:5, 99:13, 101:15, 122:19, 123:11, 124:7</p> <p>MARTIN [127] - 3:15, 4:1, 4:3, 4:8, 4:10, 4:14, 4:18, 17:21, 19:1, 22:13, 23:5, 23:10, 23:21, 23:23, 24:2, 24:14, 24:17, 24:21, 25:8, 25:22, 27:22, 28:7, 29:4, 30:4, 30:9, 30:13, 31:1, 31:9, 31:13, 31:19, 32:3, 32:8, 32:14, 32:22, 33:1, 33:5, 33:8, 34:10, 34:20, 34:23, 35:5, 35:23, 36:10, 36:13, 36:19, 37:11, 38:3, 39:1, 39:24, 40:2, 41:12, 41:15, 41:17, 41:19, 41:22, 43:8, 43:17, 43:23, 44:2, 44:8, 44:12, 44:23, 45:11, 46:25, 47:10, 47:13, 47:15, 47:18, 48:16, 49:1, 49:3, 49:9, 49:13, 49:17, 49:19, 49:24, 50:10, 50:18, 51:2, 51:16, 52:8, 52:21, 53:15, 54:8, 54:20, 54:24,</p>	<p>63:14, 66:19, 67:1, 67:11, 68:2, 68:5, 68:12, 68:16, 68:18, 68:20, 68:22, 69:5, 69:9, 69:11, 69:20, 70:20, 72:2, 72:5, 72:9, 73:7, 73:17, 88:16, 91:5, 92:8, 92:10, 92:13, 92:15, 92:17, 92:22, 92:24, 93:2, 93:7, 93:20, 93:25, 94:3, 94:22, 95:1, 95:3, 95:23, 101:15, 102:16</p> <p>Martin's [1] - 55:5</p> <p>Martin [2] - 72:4, 99:14</p> <p>Mary [1] - 149:9</p> <p>Massachusetts [2] - 3:22, 8:7</p> <p>Master [31] - 10:5, 27:8, 50:1, 50:4, 51:9, 52:8, 52:22, 53:21, 54:1, 55:3, 70:22, 74:14, 75:1, 75:9, 114:11, 118:18, 118:21, 118:22, 121:25, 122:15, 130:20, 132:16, 136:21, 137:15, 138:23, 138:24, 138:25, 139:6, 144:12, 144:14, 145:2</p> <p>master [2] - 78:5, 132:5</p> <p>material [10] - 26:18, 26:20, 31:5, 31:13, 31:14, 33:16, 33:17, 48:20, 102:7, 106:2</p> <p>materials [6] - 18:14, 20:10, 32:1, 33:11, 134:3, 135:16</p> <p>matter [21] - 5:8, 6:3, 7:4, 8:18, 8:23, 10:3, 14:9, 15:10, 15:14, 15:24, 16:2, 27:4, 29:17, 47:6, 125:13, 146:2, 146:4, 146:11, 146:12, 146:13, 148:14</p> <p>matters [2] - 5:20, 113:14</p> <p>maximum [2] - 73:20, 144:19</p> <p>Meadow [1] - 64:22</p> <p>Meadows [4] - 32:10, 90:25, 95:20, 115:2</p> <p>Meadows' [1] - 96:2</p> <p>mean [31] - 12:16,</p>	<p>13:3, 25:5, 36:10, 38:23, 44:17, 48:1, 73:4, 74:14, 75:5, 77:21, 79:14, 79:17, 79:20, 81:13, 81:20, 82:12, 92:20, 96:11, 100:24, 112:12, 112:14, 112:15, 131:20, 131:24, 136:23, 138:20, 140:20, 141:11, 141:19, 143:14</p> <p>meaning [1] - 117:12</p> <p>means [3] - 86:22, 89:18, 112:14</p> <p>meant [2] - 136:22, 137:11</p> <p>measure [1] - 29:15</p> <p>mechanism [1] - 21:22</p> <p>mediate [1] - 17:19</p> <p>Meenan [3] - 148:15, 150:2, 150:7</p> <p>meet [13] - 42:14, 45:7, 45:8, 49:15, 61:7, 74:8, 89:12, 100:16, 103:3, 111:25, 130:25, 140:13</p> <p>meeting [24] - 1:21, 16:23, 21:12, 54:11, 72:22, 90:10, 103:2, 103:11, 103:13, 103:18, 105:8, 106:6, 119:9, 122:24, 128:23, 130:21, 142:22, 143:12, 146:4, 146:9, 146:12, 146:14, 146:16</p> <p>meetings [3] - 72:10, 103:3, 128:24</p> <p>meets [1] - 132:20</p> <p>member [2] - 19:3, 89:6</p> <p>Member [1] - 149:5</p> <p>members [15] - 1:6, 1:17, 1:22, 1:23, 1:24, 3:1, 14:24, 15:16, 67:21, 70:11, 108:17, 126:3, 135:1, 145:20, 145:21</p> <p>MEMBERS [1] - 149:2</p> <p>memorandum [3] - 108:21, 120:24, 122:13</p> <p>mentioned [9] - 48:4, 61:20, 89:9, 91:5, 102:7, 114:18,</p>	<p>116:3, 121:4, 133:2</p> <p>mentions [1] - 26:24</p> <p>merit [1] - 109:2</p> <p>mesh [1] - 31:8</p> <p>met [6] - 15:16, 95:14, 109:7, 119:3, 119:13, 122:17</p> <p>method [3] - 19:20, 20:5, 20:15</p> <p>methodology [1] - 19:23</p> <p>methods [2] - 19:13, 19:16</p> <p>mic [1] - 104:21</p> <p>microphone [1] - 108:8</p> <p>midnight [3] - 62:8, 62:9, 62:10</p> <p>might [13] - 21:21, 33:2, 37:15, 65:18, 68:13, 77:1, 99:13, 101:8, 101:22, 105:16, 108:21, 115:5, 142:13</p> <p>mile [8] - 60:6, 60:9, 60:18, 61:17, 61:18, 64:24, 133:14</p> <p>million [1] - 39:3</p> <p>mind [8] - 25:4, 25:14, 52:3, 73:14, 101:18, 120:1, 130:8, 139:18</p> <p>minimal [1] - 86:25</p> <p>minimize [1] - 29:14</p> <p>minimum [2] - 72:22, 73:18</p> <p>minute [4] - 103:13, 107:25, 108:2, 110:1</p> <p>minutes [2] - 59:18, 106:4</p> <p>minutiae [1] - 103:15</p> <p>mix [6] - 73:25, 138:16, 138:25, 139:6, 144:23, 144:25</p> <p>mod [1] - 118:12</p> <p>model [1] - 42:5</p> <p>modeled [1] - 40:24</p> <p>models [1] - 58:18</p> <p>moderate [2] - 102:18, 127:15</p> <p>moderate-housing [1] - 127:15</p> <p>moderate-income [1] - 102:18</p> <p>modifications [1] - 128:8</p> <p>modifying [1] - 95:5</p> <p>money [3] - 23:14, 30:2, 85:10</p> <p>monitor [4] - 90:7,</p>
M				
<p>magnitude [1] - 110:12</p> <p>mail [10] - 15:20, 15:25, 16:8, 26:25, 39:9, 47:12, 89:10, 103:12, 122:22, 124:2</p> <p>mailed [1] - 48:9</p> <p>mails [1] - 15:25</p> <p>main [3] - 85:12, 85:13, 128:12</p> <p>Main [1] - 1:8</p> <p>main.. [1] - 134:11</p> <p>mains [1] - 42:14</p> <p>maintain [7] - 40:5, 40:13, 43:19, 44:16, 73:11, 94:17</p> <p>maintained [7] - 40:7, 40:19, 42:24, 46:16, 46:20, 69:8, 144:24</p> <p>maintaining [1] - 43:16</p> <p>maintenance [17] - 40:24, 41:1, 41:5, 42:3, 43:1, 43:22, 44:3, 46:15, 55:2, 56:1, 56:3, 57:2, 72:18, 83:18, 116:16, 117:5, 129:21</p> <p>major [6] - 2:14, 18:21, 41:6, 43:21, 58:8, 73:6</p> <p>majority [1] - 143:9</p> <p>malls [1] - 58:8</p> <p>manage [8] - 2:17, 20:1, 29:14, 42:10, 55:24, 57:8, 88:18, 123:12</p> <p>managed [5] - 33:3, 36:4, 46:18, 55:24, 94:16</p> <p>management [11] -</p>				

<p>90:13, 102:25 Monitoring [1] - 34:20 month [1] - 106:11 months [1] - 85:20 morning [5] - 15:23, 59:19, 61:22, 65:12, 89:12 most [15] - 7:12, 60:3, 60:5, 61:2, 64:11, 71:16, 86:23, 87:1, 89:4, 100:10, 102:5, 102:7, 110:5, 133:20, 140:4 Motion [1] - 104:2 motion [19] - 76:15, 76:16, 76:18, 77:1, 77:2, 103:22, 103:24, 104:13, 105:16, 105:18, 107:3, 107:13, 126:21, 126:23, 143:5, 143:15, 146:7, 146:8 motions [1] - 143:15 move [7] - 1:22, 13:21, 26:12, 40:2, 54:14, 57:4, 125:17 moved [3] - 48:11, 52:11, 87:21 movement [2] - 58:2, 62:20 moving [6] - 80:3, 90:15, 103:16, 124:6, 125:10, 128:20 mow [1] - 43:19 mowing [1] - 41:2 MR [603] - 1:2, 1:5, 2:3, 2:6, 3:15, 3:25, 4:1, 4:2, 4:3, 4:5, 4:8, 4:9, 4:10, 4:12, 4:14, 4:16, 4:18, 4:22, 5:2, 5:7, 5:9, 5:10, 5:12, 5:13, 5:15, 5:17, 5:19, 5:20, 5:22, 5:24, 5:25, 6:2, 6:4, 6:5, 6:10, 6:14, 6:15, 6:17, 6:19, 6:23, 6:25, 7:3, 7:5, 7:6, 7:8, 7:9, 7:10, 7:14, 7:16, 7:18, 7:25, 8:10, 8:12, 8:13, 8:15, 8:17, 8:19, 8:22, 8:24, 8:25, 9:6, 9:11, 9:13, 9:16, 9:17, 9:18, 9:22, 10:2, 10:4, 10:5, 10:6, 10:7, 10:10, 10:11, 10:12, 10:14,</p>	<p>10:15, 10:17, 10:20, 10:22, 11:5, 11:7, 11:8, 11:12, 11:19, 11:22, 11:24, 12:1, 12:6, 12:8, 12:10, 12:11, 12:12, 12:17, 12:21, 12:23, 12:24, 13:1, 13:3, 13:8, 13:9, 13:13, 13:17, 13:21, 14:9, 14:11, 14:21, 14:22, 15:5, 15:6, 15:7, 17:4, 17:5, 17:10, 17:15, 17:21, 18:24, 19:1, 22:6, 22:13, 23:2, 23:5, 23:8, 23:10, 23:19, 23:21, 23:22, 23:23, 23:24, 24:2, 24:11, 24:14, 24:15, 24:17, 24:20, 24:21, 24:23, 25:8, 25:15, 25:22, 27:21, 27:23, 28:7, 28:22, 29:4, 29:20, 29:25, 30:4, 30:5, 30:9, 30:10, 30:13, 30:24, 31:1, 31:6, 31:9, 31:12, 31:13, 31:16, 31:19, 32:2, 32:3, 32:6, 32:8, 32:11, 32:14, 32:21, 32:22, 32:24, 33:1, 33:4, 33:5, 33:6, 33:8, 34:6, 34:8, 34:10, 34:19, 34:20, 34:21, 34:23, 35:3, 35:5, 35:12, 35:23, 36:8, 36:10, 36:12, 36:13, 36:15, 36:19, 37:6, 37:7, 37:11, 37:25, 38:3, 38:12, 38:15, 38:23, 39:1, 39:9, 39:22, 39:24, 39:25, 40:2, 41:10, 41:12, 41:13, 41:15, 41:16, 41:17, 41:18, 41:19, 41:20, 41:22, 43:4, 43:8, 43:14, 43:17, 43:18, 43:23, 43:25, 44:2, 44:6, 44:8, 44:10, 44:12, 44:13, 44:23, 45:9, 45:11, 46:24, 46:25, 47:3, 47:4, 47:5, 47:10, 47:11, 47:13, 47:14, 47:15, 47:16, 47:18, 48:7, 48:15, 48:16, 48:17, 48:19, 48:21, 48:24, 49:1, 49:2, 49:3, 49:4, 49:9, 49:10, 49:13, 49:14, 49:17,</p>	<p>49:18, 49:19, 49:21, 49:24, 50:6, 50:10, 50:12, 50:18, 50:23, 51:2, 51:6, 51:16, 52:6, 52:8, 52:20, 52:21, 53:13, 53:15, 53:17, 54:4, 54:6, 54:8, 54:13, 54:16, 54:18, 54:19, 54:20, 54:22, 54:24, 55:5, 55:8, 55:10, 55:17, 56:9, 56:19, 56:22, 56:24, 56:25, 57:3, 57:20, 59:14, 59:17, 61:11, 61:16, 61:22, 61:25, 62:1, 62:3, 62:4, 62:5, 62:21, 62:25, 63:8, 63:9, 63:11, 63:14, 63:15, 63:17, 63:19, 63:22, 63:25, 64:1, 64:10, 65:1, 65:11, 65:14, 65:20, 65:21, 66:2, 66:4, 66:7, 66:8, 66:11, 66:12, 66:17, 66:19, 67:1, 67:11, 67:12, 67:13, 67:14, 68:2, 68:4, 68:5, 68:7, 68:12, 68:15, 68:16, 68:17, 68:18, 68:19, 68:20, 68:22, 68:23, 68:24, 69:3, 69:5, 69:7, 69:9, 69:10, 69:11, 69:17, 69:20, 69:22, 69:24, 69:25, 70:9, 70:10, 70:18, 70:20, 71:11, 71:21, 71:23, 72:1, 72:2, 72:3, 72:5, 72:7, 72:9, 73:3, 73:7, 73:10, 73:17, 74:5, 74:11, 74:13, 75:2, 75:7, 75:13, 75:16, 75:23, 75:24, 75:25, 76:6, 76:12, 76:24, 77:8, 77:12, 78:1, 78:9, 78:21, 79:4, 79:12, 79:16, 80:1, 80:11, 80:15, 81:7, 81:12, 81:18, 81:23, 82:4, 82:6, 82:8, 82:9, 82:15, 82:19, 82:21, 82:23, 82:24, 83:2, 83:4, 83:7, 83:11, 83:13, 83:15, 83:21, 83:22, 83:25, 84:3, 87:8, 87:16, 87:18, 87:19, 88:9, 88:11, 88:16, 89:5, 91:5, 92:5, 92:8, 92:9, 92:10,</p>	<p>92:11, 92:13, 92:14, 92:15, 92:16, 92:17, 92:20, 92:22, 92:23, 92:24, 92:25, 93:2, 93:3, 93:7, 93:11, 93:17, 93:20, 94:3, 94:19, 94:22, 94:23, 95:1, 95:2, 95:3, 95:11, 95:22, 95:23, 95:24, 96:2, 96:7, 96:15, 97:10, 97:18, 97:19, 98:6, 98:7, 98:12, 98:15, 98:17, 98:20, 98:21, 98:24, 99:7, 99:8, 99:23, 100:23, 101:2, 101:4, 101:12, 101:15, 102:10, 102:16, 103:19, 103:24, 104:1, 104:2, 104:4, 104:5, 104:6, 104:7, 104:8, 104:9, 104:10, 104:13, 104:17, 104:19, 104:21, 104:22, 105:4, 105:7, 105:14, 105:15, 105:18, 105:19, 105:20, 105:21, 106:7, 106:23, 107:5, 107:10, 107:12, 107:16, 107:21, 107:22, 107:23, 108:2, 108:5, 108:7, 121:12, 126:8, 126:10, 126:11, 126:16, 126:23, 126:24, 127:2, 127:3, 127:4, 127:5, 127:6, 127:13, 128:9, 128:22, 129:3, 130:16, 135:25, 136:2, 136:13, 136:15, 136:25, 137:6, 138:14, 138:16, 138:22, 139:2, 139:5, 139:11, 139:13, 140:5, 140:10, 140:17, 140:18, 141:1, 141:4, 141:6, 141:15, 141:19, 141:25, 142:3, 142:6, 142:12, 142:16, 142:25, 143:8, 143:14, 143:17, 143:19, 143:20, 143:22, 143:23, 143:25,</p>	<p>144:1, 145:4, 145:7, 145:13, 145:16, 145:23, 146:2, 146:7, 146:11, 146:15, 146:18, 146:20, 146:21, 146:23, 146:24, 146:25, 147:1, 147:2, 147:5 MS [58] - 34:5, 34:7, 35:10, 55:11, 56:6, 61:19, 61:23, 66:5, 66:14, 66:18, 66:23, 67:10, 73:13, 75:21, 76:4, 76:10, 76:14, 76:25, 77:11, 77:21, 78:12, 78:22, 79:8, 79:13, 79:24, 80:4, 81:2, 82:11, 83:5, 83:9, 83:12, 83:14, 83:16, 93:15, 93:18, 93:23, 94:1, 97:17, 104:11, 104:12, 126:25, 127:7, 127:8, 132:18, 134:12, 136:22, 137:1, 141:9, 141:16, 142:2, 142:4, 142:10, 146:8, 146:13, 146:17, 146:19, 147:3, 147:4 MULTIPLE [1] - 63:21 multiple [1] - 34:24 municipalities [2] - 7:12, 24:4 municipalities' [1] - 45:5 must [2] - 21:18, 112:22 mute [1] - 139:20</p>
N				
<p>name [6] - 1:7, 5:2, 6:10, 84:1, 84:3, 126:10 narrowed [2] - 2:13, 122:3 narrower [1] - 72:24 narrowness [1] - 115:11 Nationwide [1] - 30:16 nationwide [1] - 128:2 natural [3] - 46:16, 46:21, 134:20 nature [3] - 16:16, 39:19, 120:16 near [1] - 120:3 nearby [1] - 135:22</p>				

<p>nearest [2] - 60:6, 114:21</p> <p>necessarily [6] - 31:2, 36:17, 48:1, 97:5, 135:7, 137:3</p> <p>necessary [5] - 3:8, 18:9, 20:18, 20:22, 91:19</p> <p>need [18] - 30:22, 64:17, 77:15, 77:17, 77:18, 82:15, 88:5, 98:4, 103:24, 105:4, 135:23, 137:3, 137:16, 137:20, 139:24, 145:24</p> <p>needed [5] - 21:5, 67:7, 74:3, 89:4, 107:2</p> <p>needs [12] - 16:10, 21:6, 24:19, 26:20, 34:4, 61:5, 61:7, 110:15, 129:17, 130:18, 140:2, 144:22</p> <p>negative [2] - 14:5, 134:14</p> <p>negatively [1] - 13:5</p> <p>negotiated [1] - 46:13</p> <p>negotiations [1] - 12:20</p> <p>neighbor [1] - 133:8</p> <p>NEIGHBORHOOD [1] - 148:9</p> <p>neighborhood [7] - 1:11, 45:1, 51:21, 58:9, 90:24, 115:15, 115:21</p> <p>neighborhoods [3] - 70:22, 70:24, 129:13</p> <p>neighboring [1] - 71:17</p> <p>neoclassical [1] - 57:1</p> <p>network [1] - 123:9</p> <p>never [8] - 25:4, 52:3, 81:16, 90:5, 100:11, 101:18, 111:17, 130:19</p> <p>New [4] - 9:10, 15:21, 64:22, 115:2</p> <p>new [10] - 19:3, 52:16, 55:15, 84:2, 84:17, 85:13, 87:7, 88:7, 106:1, 128:1</p> <p>next [11] - 4:24, 19:14, 57:2, 59:2, 85:19, 86:3, 102:16, 129:9, 142:13, 142:22, 143:12</p> <p>nice [2] - 89:19</p> <p>nice-looking [1] -</p>	<p>89:19</p> <p>Nickelson [6] - 14:17, 110:3, 112:23, 113:9, 124:12, 124:15</p> <p>night [2] - 90:9, 128:24</p> <p>nitpicking [1] - 13:3</p> <p>Nobis [8] - 15:13, 17:18, 18:12, 18:17, 19:17, 23:5, 30:14, 125:3</p> <p>Nobis' [1] - 125:2</p> <p>nobis' [1] - 122:17</p> <p>nobody [2] - 96:5, 127:11</p> <p>non [2] - 12:14, 112:15</p> <p>non-drivers [1] - 112:15</p> <p>non-litigation [1] - 12:14</p> <p>nonconforming [1] - 119:17</p> <p>nonetheless [1] - 104:16</p> <p>nonprofits [3] - 9:9, 12:4, 24:5</p> <p>normal [1] - 40:25</p> <p>normally [4] - 22:25, 49:4, 67:7, 117:22</p> <p>north [3] - 42:23, 52:12, 66:10</p> <p>notable [1] - 119:10</p> <p>Notary [2] - 148:15, 150:2</p> <p>note [3] - 70:10, 110:2, 115:22</p> <p>noted [1] - 62:25</p> <p>notes [5] - 49:25, 103:10, 103:11, 103:13, 150:3</p> <p>nothing [2] - 35:24, 73:6</p> <p>notice [1] - 29:2</p> <p>noticeable [1] - 63:2</p> <p>notification [1] - 130:11</p> <p>notifications [1] - 101:24</p> <p>notified [2] - 87:22, 101:22</p> <p>notifies [2] - 92:11, 98:22</p> <p>notify [7] - 28:9, 29:12, 96:21, 99:9, 99:20, 135:12</p> <p>notifying [4] - 96:16, 98:3, 99:16, 99:17</p> <p>noting [2] - 60:20,</p>	<p>61:1</p> <p>number [24] - 17:3, 50:3, 51:1, 52:20, 52:24, 59:2, 71:24, 72:1, 75:19, 76:11, 76:24, 79:10, 81:15, 82:4, 83:4, 117:18, 118:20, 119:4, 129:4, 144:10, 144:12, 144:13, 144:16, 145:17</p> <p>Number [2] - 2:16, 2:17</p> <p>numbers [4] - 54:17, 59:7, 73:21, 75:10</p> <p>numerous [3] - 89:6, 119:1, 129:23</p> <p>nursery [4] - 94:4, 95:19, 132:11, 132:23</p>	<p>145:22</p> <p>occupied [4] - 53:9, 94:5, 131:14, 133:16</p> <p>occupies [1] - 51:22</p> <p>occupy [1] - 36:23</p> <p>occupying [1] - 81:8</p> <p>occur [10] - 36:14, 37:23, 38:10, 48:2, 91:11, 91:14, 92:3, 93:8, 101:22, 107:14</p> <p>occurs [1] - 43:24</p> <p>October [2] - 145:9, 145:19</p> <p>OF [3] - 148:1, 148:1, 149:2</p> <p>off-street [8] - 72:13, 73:23, 73:24, 74:2, 76:19, 77:4, 78:24, 83:20</p> <p>offered [9] - 108:25, 113:2, 113:5, 113:9, 114:20, 118:4, 118:5, 141:9, 141:11</p> <p>offering [2] - 40:23, 46:13</p> <p>office [13] - 55:14, 55:20, 56:2, 57:1, 78:25, 83:16, 83:18, 88:5, 89:13, 103:3, 103:4, 122:25</p> <p>Office [1] - 99:2</p> <p>officer [1] - 9:24</p> <p>offload [1] - 116:15</p> <p>often [2] - 34:10, 60:9</p> <p>old [3] - 52:4, 52:8, 95:4</p> <p>on-site [3] - 67:20, 109:18, 123:13</p> <p>on-street [7] - 66:21, 69:18, 72:14, 73:1, 74:9, 77:23, 78:2</p> <p>once [13] - 21:25, 23:14, 25:1, 25:9, 28:7, 35:21, 35:25, 38:3, 86:8, 87:23, 100:16, 100:23, 111:22</p> <p>oncoming [1] - 117:13</p> <p>one [95] - 14:2, 16:25, 26:3, 27:9, 27:21, 31:10, 34:17, 35:13, 38:8, 40:3, 40:4, 40:22, 47:5, 51:24, 53:13, 53:22, 53:23, 53:25, 54:3, 54:4, 54:7, 54:8, 54:25, 55:2, 55:11, 56:23, 59:12, 60:16, 60:21, 65:25, 66:2, 66:15, 66:25, 67:1, 68:17,</p>	<p>69:17, 70:10, 71:13, 71:19, 72:9, 73:8, 73:15, 78:13, 79:1, 80:10, 80:23, 81:8, 81:10, 81:15, 82:17, 84:20, 89:6, 89:8, 89:16, 89:22, 94:23, 99:14, 100:2, 104:24, 106:19, 107:11, 109:4, 110:22, 111:2, 112:19, 113:15, 117:17, 117:19, 117:21, 118:14, 120:13, 121:4, 126:8, 129:5, 129:14, 130:1, 131:5, 131:19, 133:1, 133:24, 134:4, 138:18, 139:3, 142:8, 142:9, 143:3, 143:14, 143:16, 144:7, 144:20</p> <p>one-bedroom [4] - 54:7, 81:8, 81:10, 139:3</p> <p>one-bedrooms [11] - 53:13, 53:22, 53:23, 53:25, 54:3, 54:4, 82:17, 131:5, 138:18, 142:8</p> <p>one-off [1] - 117:17</p> <p>ones [9] - 53:14, 73:10, 73:12, 75:23, 76:1, 80:8, 89:6, 100:13</p> <p>ongoing [2] - 34:19, 116:25</p> <p>onsite [3] - 2:18, 41:10, 57:9</p> <p>open [19] - 2:20, 21:15, 42:2, 45:20, 45:24, 46:9, 46:13, 51:11, 51:17, 51:20, 51:23, 53:10, 53:11, 53:19, 57:11, 71:9, 72:11, 89:19, 123:14</p> <p>opened [1] - 107:5</p> <p>operate [1] - 40:12</p> <p>operated [1] - 42:13</p> <p>operating [1] - 109:10</p> <p>operation [3] - 40:24, 55:2, 116:16</p> <p>operations [3] - 5:5, 44:2, 94:4</p> <p>opinion [9] - 11:1, 16:3, 16:11, 31:18, 107:11, 129:10, 129:15, 129:19,</p>
O				
		<p>O'GRADY [13] - 75:21, 76:4, 76:10, 83:9, 83:12, 83:14, 83:16, 104:12, 127:8, 134:12, 136:22, 137:1, 147:4</p> <p>O'Grady [1] - 149:6</p> <p>O'Neill [18] - 3:10, 4:13, 4:14, 4:24, 5:2, 5:11, 6:8, 6:11, 17:22, 23:3, 35:4, 47:7, 57:20, 122:11, 122:15, 122:21, 123:17, 125:4</p> <p>objections [1] - 119:15</p> <p>objectives [1] - 119:10</p> <p>obligated [2] - 91:15, 91:19</p> <p>obligation [3] - 28:7, 43:19, 116:16</p> <p>obligations [2] - 118:6, 120:15</p> <p>observation [1] - 90:14</p> <p>observe [1] - 35:7</p> <p>observed [1] - 23:17</p> <p>obtain [1] - 34:4</p> <p>obtained [1] - 102:19</p> <p>obviously [19] - 42:8, 42:13, 50:6, 64:19, 65:7, 91:12, 94:14, 98:11, 98:18, 99:3, 107:19, 111:23, 134:23, 135:11, 138:7, 138:11, 140:20, 145:17,</p>		

<p>143:8 opinions [2] - 114:3 opponents [1] - 120:12 opportunities [1] - 120:5 opportunity [5] - 1:18, 70:2, 86:15, 105:11, 106:6 opposite [1] - 115:6 opposition [3] - 119:13, 124:14, 130:22 option [3] - 25:4, 77:21, 77:24 options [4] - 60:24, 61:3, 61:4, 64:15 oral [2] - 12:25, 106:20 orchards [4] - 32:4, 32:8, 32:9 order [8] - 16:10, 60:11, 62:7, 62:12, 107:24, 108:21, 118:20, 141:4 Ordinance [2] - 72:23, 74:4 ordinance [2] - 73:14, 73:19 ordinances [1] - 102:18 orientation [1] - 51:3 original [1] - 52:22 originally [1] - 75:17 outcome [1] - 103:17 outside [7] - 40:18, 46:2, 46:17, 68:5, 101:17, 101:18, 129:22 overall [9] - 13:18, 30:8, 30:12, 50:19, 50:21, 78:13, 128:15, 135:20, 138:2 overflow [1] - 81:20 overhead [3] - 52:5, 53:5, 63:19 overhead [1] - 52:4 overlay [1] - 101:8 overly [1] - 78:22 overruled [1] - 119:25 overseeing [1] - 8:19 oversight [1] - 35:11 overview [1] - 125:20 overwhelmed [1] - 117:22 own [11] - 40:12, 60:24, 98:3, 108:12, 114:4, 114:10, 115:3, 115:22,</p>	<p>117:23, 132:6, 139:15 owned [4] - 40:11, 42:13, 42:24, 94:25 owner [18] - 28:8, 33:25, 34:13, 35:23, 66:14, 90:12, 90:14, 91:6, 91:10, 91:24, 96:21, 97:1, 97:3, 97:7, 98:2, 100:6, 124:9, 131:14 owner's [1] - 91:12 owner-occupied [1] - 131:14 owners [3] - 28:16, 28:17, 29:1 ownership [4] - 44:17, 52:19, 65:24, 66:15</p>	<p>72:17, 72:18, 73:1, 73:8, 73:18, 73:19, 73:21, 73:23, 73:24, 74:2, 74:7, 74:9, 74:11, 74:17, 74:18, 74:25, 75:3, 75:4, 75:14, 75:20, 76:12, 76:19, 76:21, 77:4, 77:18, 78:2, 78:6, 78:23, 79:17, 80:3, 80:17, 80:19, 80:25, 81:9, 81:17, 82:2, 83:20, 86:2, 87:5, 88:14, 134:10, 140:19, 141:20, 141:21, 141:25 part [36] - 8:4, 25:20, 27:1, 28:5, 28:21, 29:7, 29:22, 32:19, 32:22, 39:4, 43:6, 43:11, 44:8, 45:15, 45:22, 47:22, 48:11, 49:2, 50:14, 55:22, 56:1, 76:6, 90:5, 93:18, 94:6, 95:3, 97:13, 101:17, 106:21, 113:24, 116:15, 119:18, 129:16, 132:11, 134:5, 146:3 Part [1] - 33:8 part-time [1] - 55:22 particular [13] - 3:18, 4:10, 4:11, 11:4, 31:23, 44:25, 45:25, 65:4, 70:24, 117:24, 118:16, 123:1, 133:1 Particularly [1] - 29:4 particularly [2] - 102:6, 111:1 parties [6] - 33:11, 67:3, 72:25, 105:13, 106:18, 144:4 parts [1] - 39:3 party [5] - 22:1, 38:14, 74:19, 74:20, 81:5 pass [2] - 87:23, 119:6 passed [3] - 76:16, 76:18, 116:22 passes [1] - 104:14 past [12] - 4:4, 11:22, 18:14, 23:16, 37:24, 46:8, 49:23, 72:10, 86:21, 120:18, 130:17, 132:5 patch [1] - 85:11 path [1] - 129:13 patience [2] - 29:21, 126:5 Paul [13] - 7:22, 7:25,</p>	<p>53:17, 55:18, 56:19, 71:3, 71:11, 74:5, 78:4, 80:16, 82:2, 149:3 PAUSE [1] - 54:12 paved [1] - 20:11 pavement [2] - 20:12, 137:1 Pawtucket [2] - 1:8, 1:9 pay [2] - 30:3, 123:1 paying [5] - 21:23, 23:20, 23:22, 24:16, 24:17 PC2013-4355 [1] - 145:18 peak [16] - 59:8, 59:9, 59:12, 59:17, 59:18, 59:19, 59:20, 61:19, 61:21, 61:22, 61:23, 63:1, 65:11, 65:12, 65:13 peaks [2] - 59:24 pedestrian [10] - 2:16, 57:14, 57:18, 60:1, 60:10, 64:4, 64:7, 67:19, 123:4, 134:17 pedestrians [2] - 60:8, 60:16 peer [3] - 3:20, 63:6, 123:5 pending [2] - 114:9, 138:4 people [21] - 67:2, 79:1, 79:10, 81:5, 84:8, 86:12, 86:13, 87:22, 90:21, 94:12, 94:16, 97:14, 97:15, 110:25, 112:17, 130:12, 133:16, 133:20, 135:1, 135:15, 139:17 people's [1] - 83:1 peppering [1] - 27:23 Per [1] - 142:3 per [27] - 39:3, 60:22, 65:25, 66:2, 66:15, 66:16, 66:25, 67:2, 71:17, 73:16, 75:20, 75:22, 79:1, 121:15, 131:9, 131:10, 131:12, 136:8, 137:9, 137:10, 142:1, 144:6, 144:11, 144:17, 144:19 percent [21] - 50:2, 53:25, 54:1, 54:6, 58:12, 58:14, 58:19, 101:5, 101:10,</p>	<p>118:15, 131:2, 131:3, 131:5, 131:6, 131:13, 131:14, 139:3, 144:7, 144:18, 144:20 percentage [3] - 71:10, 138:17, 144:20 perfectly [1] - 43:6 perform [2] - 6:2, 8:17 performs [1] - 114:4 perhaps [1] - 27:13 period [4] - 35:24, 37:3, 59:11, 62:4 permanently [1] - 20:3 permeable [2] - 70:11, 70:15 permission [1] - 1:25 Permit [3] - 1:3, 136:20, 137:18 PERMIT [1] - 148:8 permit [6] - 49:4, 85:1, 87:4, 88:5, 111:20, 138:5 permits [4] - 34:3, 79:21, 102:19 permitted [1] - 12:3 permitting [2] - 9:25, 33:21 perpetuity [1] - 102:2 person [2] - 2:5, 17:13 personal [5] - 22:22, 80:4, 114:16, 129:15, 129:19 personally [1] - 140:14 pertaining [1] - 148:14 pervious [3] - 70:20, 71:18, 85:25 pesticide [2] - 19:2, 32:8 pesticides [5] - 31:20, 31:24, 31:25, 32:3 pets [1] - 94:13 Ph.D [1] - 84:6 phase [6] - 23:6, 34:11, 35:8, 47:24, 102:16, 129:9 Phase [15] - 18:3, 18:11, 18:20, 19:4, 23:12, 23:15, 24:7, 25:16, 27:5, 32:17, 47:22, 124:18, 125:4, 128:16, 129:6 phased [1] - 49:5 phases [2] - 48:4, 102:14 phasing [1] - 47:19 Phil [5] - 47:14, 54:10, 140:19, 141:4,</p>
	P			
<p>p.m [2] - 59:20, 148:17 P.M [3] - 1:1, 108:4, 147:6 package [1] - 44:4 packed [2] - 51:14, 131:22 packet [1] - 48:20 Page [5] - 76:17, 76:25, 77:3, 77:10 pages [1] - 150:2 paid [1] - 38:6 pain [2] - 73:11 PALMER [1] - 148:9 Palmer [12] - 1:3, 1:11, 10:8, 45:2, 71:15, 96:8, 100:4, 109:1, 110:20, 119:14, 133:5, 133:18 paragraph [2] - 16:8, 39:15 parcel [7] - 42:2, 49:10, 68:14, 68:20, 84:11, 131:1, 132:13 Parcel [3] - 46:2, 46:18, 68:22 parceled [1] - 68:9 parcels [4] - 46:9, 49:19, 50:20, 136:11 Pare [5] - 55:8, 63:5, 123:5, 125:4 park [4] - 53:3, 74:19, 74:20, 82:22 parking [65] - 42:21, 52:2, 52:9, 52:11, 66:5, 66:6, 66:19, 66:22, 67:4, 69:18, 69:20, 70:25, 71:24, 71:25, 72:5, 72:10, 72:12, 72:13, 72:16,</p>				

<p>142:19 philip [1] - 149:9 Philip [1] - 48:8 Philosophically [1] - 131:17 philosophically [2] - 139:14, 139:24 phone [1] - 39:11 phonetic [1] - 16:5 physical [1] - 51:3 picture [1] - 115:10 piece [7] - 13:18, 25:21, 28:21, 31:10, 46:11, 71:9, 129:16 pieces [1] - 51:10 pierce [2] - 89:25, 90:8 pierced [1] - 90:20 pike [1] - 128:4 pipe [1] - 45:6 pipes [1] - 42:18 pipng [1] - 117:6 pivotal [1] - 26:5 place [16] - 1:12, 31:17, 84:23, 85:2, 85:4, 85:15, 86:9, 87:10, 87:19, 89:16, 92:12, 98:22, 117:4, 129:16, 137:2 placed [1] - 28:16 places [1] - 110:24 placing [2] - 112:9, 115:9 plan [64] - 19:19, 20:9, 21:7, 21:8, 21:12, 21:14, 21:18, 21:25, 22:4, 22:7, 22:19, 22:20, 22:21, 23:2, 25:6, 25:18, 25:20, 27:7, 29:7, 30:6, 33:25, 34:2, 34:12, 40:24, 44:3, 51:6, 52:4, 52:8, 52:10, 53:5, 76:20, 77:5, 87:1, 88:17, 91:8, 92:4, 94:11, 100:17, 100:20, 100:21, 101:7, 102:17, 102:22, 111:18, 111:19, 111:24, 114:9, 115:22, 116:3, 117:16, 123:24, 123:25, 124:4, 125:17, 128:7, 128:17, 129:12, 132:9, 133:10, 137:20, 139:16, 139:22, 144:22 Plan [54] - 1:2, 1:11,</p>	<p>10:5, 18:7, 27:9, 50:1, 50:4, 51:9, 52:8, 52:22, 53:21, 54:1, 55:3, 70:22, 74:14, 75:1, 75:9, 76:20, 77:5, 102:14, 109:2, 114:11, 118:18, 118:21, 118:22, 121:25, 122:16, 125:12, 125:24, 130:19, 130:20, 130:23, 131:13, 131:16, 132:6, 132:17, 132:20, 136:5, 136:19, 136:21, 137:15, 138:8, 138:13, 138:24, 138:25, 139:6, 139:20, 140:9, 144:4, 144:12, 144:14, 145:2 PLAN [1] - 148:8 planned [3] - 24:17, 65:1, 116:14 Planner [2] - 48:8, 149:9 planner [6] - 54:9, 110:4, 113:23, 114:2, 114:4, 138:14 planner's [2] - 113:24 planners [1] - 139:14 PLANNING [1] - 148:1 planning [21] - 3:21, 4:6, 7:7, 8:4, 8:5, 8:20, 9:11, 11:14, 11:15, 21:10, 78:5, 84:6, 87:25, 89:15, 110:20, 113:22, 116:2, 116:5, 120:16, 132:5, 137:8 Planning [21] - 1:6, 1:22, 1:23, 2:2, 4:4, 4:6, 5:25, 14:7, 14:23, 16:1, 48:20, 58:17, 58:18, 67:16, 67:23, 67:25, 69:23, 74:24, 81:16, 84:15, 144:11 plans [5] - 6:20, 66:8, 103:7, 113:1, 128:8 plant [3] - 32:1, 85:8, 90:6 PLANTATIONS [1] - 148:1 planting [1] - 89:24 Plaza [1] - 43:9 pleasant [1] - 120:20 plenty [1] - 88:21 plowed [1] - 40:8</p>	<p>plows [2] - 56:3, 69:14 plus [3] - 9:14, 76:1, 115:18 pockets [1] - 131:22 point [40] - 16:15, 21:16, 28:10, 30:1, 30:10, 36:24, 37:8, 37:20, 38:15, 45:3, 52:25, 53:24, 55:4, 67:17, 94:1, 95:25, 96:16, 97:5, 98:8, 99:22, 106:14, 107:7, 107:25, 109:4, 111:8, 113:18, 117:15, 119:19, 120:25, 128:18, 128:19, 136:4, 137:13, 138:12, 139:19, 139:21, 139:25, 143:5, 144:10, 145:3 Pointe [9] - 1:3, 1:11, 10:8, 71:16, 96:8, 109:1, 110:20, 119:14, 133:18 POINTE [1] - 148:9 pointed [1] - 116:4 points [1] - 114:7 policeman [1] - 112:13 policies [1] - 46:22 policy [4] - 46:8, 86:9, 98:21, 117:16 polluted [1] - 45:17 populations [1] - 131:23 portable [1] - 134:19 portion [4] - 46:17, 95:9, 103:21, 104:2 posed [2] - 17:8, 54:9 position [1] - 4:12 positively [1] - 13:5 positives [1] - 33:9 possible [3] - 33:24, 37:2, 129:12 possibly [1] - 131:4 potential [6] - 59:4, 96:13, 98:4, 120:5, 132:3, 135:18 potentially [2] - 81:14, 126:4 Powers [1] - 8:21 practice [2] - 46:8, 137:13 practices [1] - 34:12 practicing [1] - 7:12 pre [1] - 27:8 pre-application [1] - 27:8 precedence [1] -</p>	<p>136:3 precedent [4] - 112:8, 117:15, 121:2, 136:9 predominant [1] - 143:7 preempted [1] - 138:3 prefer [1] - 50:10 preference [1] - 61:12 Preliminary [11] - 1:2, 1:11, 18:7, 54:1, 76:20, 77:5, 102:14, 109:2, 125:12, 125:24, 138:13 preliminary [5] - 70:8, 111:6, 128:21, 137:18, 137:22 PRELIMINARY [1] - 148:8 premature [1] - 100:19 PREMIER [1] - 148:22 prepare [1] - 21:13 prepared [5] - 18:18, 103:7, 107:20, 108:23, 127:10 presence [4] - 18:22, 18:24, 58:11, 113:14 PRESENT [1] - 149:8 present [8] - 1:4, 3:10, 19:11, 33:2, 63:22, 63:23, 65:15, 70:22 presentation [2] - 1:13, 17:22 presented [3] - 27:19, 110:2, 134:3 presenting [1] - 10:25 presently [1] - 115:25 preservation [1] - 134:20 presumption [1] - 39:2 pretty [7] - 29:15, 29:22, 67:2, 67:11, 78:5, 99:25, 100:13 prevent [3] - 20:3, 20:5, 128:19 previous [3] - 105:8, 128:7, 128:8 previously [15] - 3:2, 5:7, 7:3, 8:22, 10:2, 12:6, 50:3, 53:20, 91:6, 108:13, 108:14, 110:19, 111:11, 113:2, 138:19 primarily [5] - 3:16, 6:12, 6:15, 6:19, 60:3 primary [5] - 9:24, 10:12, 18:16, 21:21, 62:13</p>	<p>principal [1] - 8:21 principle [1] - 116:2 print [1] - 96:11 private [16] - 23:24, 38:5, 38:13, 38:16, 42:10, 42:15, 42:24, 43:8, 43:11, 45:9, 45:10, 77:23, 78:1, 80:6, 115:16, 129:23 privately [3] - 38:11, 42:24 privately-funded [1] - 38:11 privately-maintained [1] - 42:24 privately-owned [1] - 42:24 privy [1] - 128:24 problem [7] - 13:11, 79:16, 86:19, 88:4, 112:5, 117:8, 135:17 problems [3] - 118:17, 119:11, 141:22 Procaccini [2] - 145:8, 145:18 proceed [5] - 18:20, 19:5, 26:7, 107:7, 122:19 procedures [4] - 24:18, 29:12, 36:21, 87:20 proceed [4] - 14:7, 21:7, 108:6, 125:21 proceeding [1] - 107:21 process [30] - 21:9, 22:8, 22:10, 23:9, 23:10, 26:4, 26:6, 27:25, 28:4, 33:21, 33:23, 34:24, 35:17, 57:16, 85:17, 91:13, 92:11, 93:9, 99:21, 100:25, 107:2, 111:19, 111:20, 112:6, 116:6, 129:7, 136:7, 136:20 producing [1] - 132:14 professional [6] - 3:15, 3:20, 4:1, 5:3, 5:4, 7:10 professionals [1] - 126:16 Professor [1] - 113:18 professor [2] - 110:4, 113:12 profile [2] - 69:13, 69:15 program [11] - 15:9, 20:24, 23:13, 24:10,</p>
--	---	--	---	---

<p>25:12, 28:10, 37:13, 37:20, 59:23, 98:21, 109:10</p> <p>program's [1] - 119:10</p> <p>programming [1] - 55:16</p> <p>programs [3] - 46:3, 102:25, 110:16</p> <p>progress [1] - 119:9</p> <p>project [93] - 1:14, 2:24, 4:11, 6:24, 6:25, 7:1, 8:19, 9:5, 10:8, 14:25, 15:2, 15:8, 15:12, 16:3, 17:23, 20:8, 21:24, 23:7, 27:11, 27:25, 28:21, 28:23, 30:12, 30:17, 30:23, 33:9, 34:3, 35:20, 37:2, 38:2, 38:17, 40:6, 40:20, 40:25, 42:23, 43:11, 45:25, 47:19, 47:22, 47:24, 48:4, 50:19, 62:24, 63:10, 64:9, 69:21, 70:24, 71:8, 84:9, 84:19, 86:9, 87:10, 87:23, 89:1, 91:11, 94:7, 100:2, 103:1, 109:1, 109:21, 110:11, 110:13, 110:21, 112:9, 115:19, 115:25, 116:5, 117:24, 118:3, 118:9, 118:16, 119:10, 119:13, 119:15, 120:2, 120:13, 121:1, 121:7, 122:11, 123:15, 124:20, 125:11, 125:19, 126:4, 126:12, 126:13, 129:9, 130:4, 130:19, 132:2, 136:8, 139:21</p> <p>projects [21] - 3:18, 3:24, 4:21, 10:7, 11:22, 11:24, 12:2, 28:23, 45:13, 74:15, 74:22, 85:19, 86:5, 86:10, 117:19, 121:3, 121:8, 129:23, 130:6, 137:15, 140:2</p> <p>proper [2] - 87:22, 100:16</p> <p>properly [2] - 34:13, 102:1</p> <p>properties [8] - 37:19, 52:15, 90:24, 94:20,</p>	<p>96:4, 97:9, 97:15</p> <p>property [51] - 26:18, 28:19, 29:1, 29:6, 29:8, 31:10, 31:20, 32:13, 34:14, 35:24, 36:2, 36:4, 36:20, 37:13, 38:6, 38:8, 38:9, 38:19, 38:22, 40:17, 41:14, 46:6, 52:10, 52:17, 55:22, 55:24, 86:23, 87:21, 89:17, 90:12, 90:14, 90:16, 91:14, 91:25, 94:15, 94:16, 94:18, 94:25, 95:4, 95:6, 96:1, 96:21, 97:7, 97:25, 98:2, 99:19, 100:15, 100:19, 101:6, 115:17, 140:7</p> <p>proportion [1] - 75:17</p> <p>proportionally [1] - 75:19</p> <p>proposal [8] - 71:13, 89:8, 101:16, 113:5, 119:18, 127:20, 132:19, 133:6</p> <p>propose [1] - 47:19</p> <p>proposed [19] - 26:1, 27:6, 40:19, 45:22, 46:3, 54:2, 69:1, 71:15, 75:8, 75:17, 88:24, 95:3, 103:5, 109:1, 111:25, 115:25, 119:19, 130:17, 144:16</p> <p>proposes [2] - 45:25, 71:8</p> <p>proposing [3] - 69:21, 80:9, 80:13</p> <p>pros [1] - 140:11</p> <p>prospective [1] - 96:17</p> <p>protect [8] - 20:3, 28:16, 46:9, 97:3, 98:3, 98:6, 98:7, 133:11</p> <p>protected [2] - 33:15, 91:22</p> <p>protecting [2] - 28:18, 29:16</p> <p>protection [3] - 22:22, 29:18, 92:1</p> <p>Protection [1] - 109:6</p> <p>protectors [1] - 135:2</p> <p>protocol [4] - 85:1, 85:4, 85:15, 87:19</p> <p>protocols [2] - 88:17, 101:25</p> <p>provably [1] - 119:3</p> <p>prove [1] - 126:14</p>	<p>provide [13] - 6:23, 15:24, 16:1, 17:1, 45:23, 48:12, 52:1, 52:17, 57:13, 73:23, 88:25, 116:8, 126:2</p> <p>provided [18] - 9:21, 14:15, 15:19, 30:14, 39:9, 45:21, 53:10, 58:16, 61:5, 61:6, 66:21, 71:25, 103:11, 121:20, 122:12, 124:23, 124:24, 125:24</p> <p>Providence [6] - 10:16, 73:15, 73:20, 74:23, 110:24, 145:19</p> <p>PROVIDENCE [2] - 148:1, 148:23</p> <p>provides [1] - 42:2</p> <p>providing [6] - 3:20, 14:23, 72:5, 72:12, 126:17, 141:10</p> <p>proving [1] - 111:8</p> <p>provision [3] - 72:10, 77:16, 134:18</p> <p>provisional [1] - 118:23</p> <p>provisions [2] - 74:25, 77:14</p> <p>psychology [1] - 84:7</p> <p>Public [2] - 148:15, 150:2</p> <p>PUBLIC [1] - 148:7</p> <p>public [67] - 1:15, 1:17, 1:18, 2:15, 2:18, 2:20, 14:3, 14:15, 17:7, 21:15, 36:18, 40:7, 40:10, 41:8, 41:9, 41:24, 42:3, 42:16, 42:17, 42:18, 42:20, 43:12, 43:13, 44:19, 45:16, 45:23, 46:13, 57:11, 57:15, 60:8, 61:12, 64:2, 64:16, 69:7, 70:4, 70:11, 73:22, 74:18, 74:21, 79:6, 79:7, 80:8, 102:22, 103:21, 103:25, 104:2, 105:14, 105:16, 106:9, 106:21, 111:19, 112:21, 114:17, 114:21, 116:9, 121:21, 122:2, 123:14, 123:20, 125:7, 126:21, 126:23, 129:6, 130:5, 146:3</p>	<p>publicized [1] - 113:13</p> <p>publicly [1] - 21:14</p> <p>publicly-available [1] - 21:14</p> <p>pull [4] - 62:9, 77:22, 77:24, 79:2</p> <p>pulled [3] - 44:12, 62:11, 88:15</p> <p>purchase [7] - 32:19, 32:20, 37:18, 38:18, 92:21, 93:8, 94:6</p> <p>purchased [1] - 32:13</p> <p>purchasers [2] - 92:5, 92:6</p> <p>purpose [3] - 37:9, 47:17, 47:18</p> <p>purposes [3] - 16:21, 93:11, 140:3</p> <p>purview [1] - 124:5</p> <p>push [2] - 141:18, 142:16</p> <p>pushed [1] - 26:16</p> <p>pushing [3] - 100:6, 143:9, 143:10</p> <p>put [16] - 2:14, 29:1, 37:14, 42:6, 42:12, 42:14, 56:14, 62:6, 62:8, 62:10, 62:16, 86:7, 97:15, 100:5, 120:22, 136:7</p> <p>puts [1] - 23:2</p> <p>putting [3] - 30:25, 103:22, 135:15</p> <p>puzzle [1] - 28:21</p>	<p>70:5, 70:6, 83:23, 84:2, 84:5, 84:20, 90:3, 91:3, 101:2, 103:7, 110:5, 110:6, 126:17, 126:18, 129:4, 129:20, 139:12, 140:17, 142:23</p> <p>quick [6] - 17:10, 27:21, 44:13, 61:11, 63:9, 94:19</p> <p>quite [3] - 75:9, 78:23, 115:21</p> <p>quote [3] - 14:13, 118:25, 123:7</p>
R				
<p>R25 [2] - 49:11, 49:13</p> <p>racetrack [1] - 119:16</p> <p>RAISED [1] - 83:24</p> <p>raised [7] - 18:17, 89:17, 97:6, 98:8, 111:14, 114:11, 120:23</p> <p>range [1] - 136:19</p> <p>rate [9] - 47:20, 47:23, 49:5, 58:13, 58:14, 58:15, 68:10, 76:3, 131:11</p> <p>rates [2] - 50:24, 65:24</p> <p>rather [2] - 77:23, 116:25</p> <p>RE [1] - 148:7</p> <p>read [1] - 84:7</p> <p>reading [3] - 66:8, 76:14, 144:2</p> <p>ready [4] - 1:4, 106:21, 112:21, 127:11</p> <p>real [4] - 37:16, 38:10, 62:16, 90:17</p> <p>reality [2] - 32:14, 103:17</p> <p>really [15] - 10:25, 19:22, 21:22, 27:14, 29:17, 31:10, 53:6, 53:9, 59:18, 83:19, 90:17, 100:14, 123:19, 140:5, 141:20</p> <p>Realty [1] - 84:12</p> <p>rear [3] - 75:3, 95:6, 95:7</p> <p>reason [9] - 19:12, 20:25, 26:7, 34:17, 43:6, 43:7, 62:16, 72:12, 137:22</p> <p>reasonable [1] - 42:1</p> <p>reasoning [2] - 72:15, 94:7</p>				
Q				
<p>qualified [12] - 3:2, 3:5, 4:23, 6:5, 7:19, 11:12, 12:7, 13:10, 110:3, 110:4, 114:5, 120:13</p> <p>qualify [2] - 20:13, 93:10</p> <p>quality [3] - 33:20, 102:24, 103:4</p> <p>quantity [1] - 50:15</p> <p>quarter [1] - 60:9</p> <p>quarterback [1] - 2:5</p> <p>questions [49] - 1:24, 2:7, 2:8, 2:10, 2:21, 2:22, 3:3, 3:6, 3:7, 13:14, 13:15, 13:25, 17:8, 17:11, 46:24, 46:25, 54:14, 57:3, 57:16, 61:10, 63:8, 64:6, 67:13, 67:15, 67:16, 67:21, 67:23, 69:22, 69:25, 70:3,</p>				

<p>reasons [9] - 29:19, 55:1, 65:7, 111:2, 112:19, 128:6, 128:10, 131:24, 132:15</p> <p>receive [1] - 7:14</p> <p>received [7] - 11:20, 18:9, 54:10, 55:7, 57:15, 57:21, 95:13</p> <p>recently [1] - 94:24</p> <p>recess [1] - 54:24</p> <p>RECESS [1] - 108:4</p> <p>recognize [5] - 37:21, 47:9, 109:9, 129:5, 129:8</p> <p>recollection [1] - 139:4</p> <p>recommend [5] - 23:16, 69:16, 80:20, 106:7, 106:8</p> <p>recommendation [3] - 80:16, 107:9, 140:22</p> <p>record [31] - 1:7, 4:25, 6:9, 7:23, 9:4, 14:19, 15:20, 16:9, 39:13, 47:6, 48:10, 48:11, 48:19, 52:7, 54:6, 57:19, 67:14, 71:11, 75:16, 92:9, 92:16, 93:1, 95:11, 96:8, 96:15, 103:11, 108:15, 113:21, 121:12, 145:16, 146:15</p> <p>recorded [2] - 28:19, 77:9</p> <p>recorder [2] - 62:6, 62:13</p> <p>records [2] - 28:20, 93:21</p> <p>recreational [3] - 116:7, 116:9, 117:7</p> <p>red [3] - 89:16, 90:17, 110:9</p> <p>redesigned [1] - 44:12</p> <p>Redevelopment [1] - 18:9</p> <p>redevelopment [3] - 3:17, 3:18, 4:20</p> <p>reduce [8] - 52:24, 75:10, 78:10, 79:22, 80:6, 81:17, 81:19, 81:25</p> <p>reduced [3] - 144:12, 144:14, 144:16</p> <p>reducing [1] - 79:17</p> <p>reduction [2] - 140:22, 141:6</p> <p>reductions [1] - 78:10</p> <p>refer [4] - 22:9, 26:8,</p>	<p>39:14, 52:6</p> <p>reference [2] - 26:14, 99:23</p> <p>referenced [4] - 3:7, 39:13, 118:19, 122:19</p> <p>references [1] - 16:23</p> <p>referred [4] - 18:14, 26:22, 60:10, 124:3</p> <p>referring [4] - 52:7, 52:9, 73:7, 83:9</p> <p>refine [1] - 25:25</p> <p>refining [1] - 27:3</p> <p>reflective [1] - 93:6</p> <p>reflects [1] - 103:17</p> <p>refuted [1] - 124:21</p> <p>regard [7] - 13:19, 119:19, 134:23, 134:24, 135:10, 135:19, 145:12</p> <p>regarding [5] - 13:17, 118:4, 129:7, 138:17, 140:19</p> <p>regards [12] - 2:10, 11:10, 11:20, 16:4, 16:5, 64:8, 67:18, 68:1, 96:8, 96:16, 123:4, 124:22</p> <p>Region [2] - 15:11, 15:21</p> <p>registered [4] - 5:3, 5:4, 7:11, 8:2</p> <p>regs [1] - 141:10</p> <p>regular [5] - 34:6, 34:8, 43:21, 65:5, 146:9</p> <p>regulated [1] - 88:18</p> <p>regulates [1] - 73:20</p> <p>regulation [2] - 123:23, 138:4</p> <p>regulations [8] - 16:23, 19:8, 19:23, 19:24, 22:4, 29:13, 81:25, 98:18</p> <p>rejected [1] - 119:21</p> <p>relate [1] - 6:19</p> <p>related [6] - 2:22, 15:17, 45:20, 57:9, 123:13, 124:25</p> <p>relates [11] - 2:23, 4:9, 14:13, 42:18, 57:17, 62:23, 99:18, 123:2, 125:6, 125:9, 125:20</p> <p>relating [1] - 39:16</p> <p>relation [2] - 70:24, 87:3</p> <p>relationship [3] - 17:12, 17:17, 24:24</p> <p>relative [6] - 70:16, 70:23, 71:5, 111:11,</p>	<p>112:1, 112:3</p> <p>relatively [2] - 71:6, 111:10</p> <p>relay [1] - 64:8</p> <p>relayed [2] - 14:3, 39:12</p> <p>release [5] - 25:10, 25:19, 28:8, 31:19, 32:18</p> <p>releases [1] - 90:1</p> <p>relevant [3] - 113:13, 114:3, 126:15</p> <p>relief [2] - 76:19, 77:4</p> <p>remain [1] - 116:5</p> <p>remaining [1] - 136:11</p> <p>remains [2] - 28:7, 113:19</p> <p>remedial [22] - 21:7, 21:13, 21:25, 22:3, 22:7, 22:20, 24:12, 24:16, 25:18, 26:4, 34:12, 35:4, 36:21, 91:8, 92:4, 92:12, 101:6, 102:21, 111:18, 111:19, 112:25, 124:4</p> <p>remediate [2] - 85:6, 132:3</p> <p>remediated [6] - 16:17, 24:19, 33:13, 39:19, 123:24, 133:8</p> <p>remediating [1] - 21:23</p> <p>remediation [31] - 16:15, 16:18, 19:13, 19:24, 20:9, 21:25, 22:4, 25:20, 29:13, 30:3, 30:6, 30:7, 33:19, 35:17, 37:2, 39:21, 84:23, 89:15, 100:17, 100:20, 111:12, 111:13, 111:24, 112:2, 112:5, 112:25, 128:17, 129:7, 133:4, 133:10, 135:10</p> <p>Remediation [1] - 30:6</p> <p>remedies [3] - 22:16, 25:25, 91:19</p> <p>remedy [4] - 36:7, 92:2, 102:4, 102:5</p> <p>remember [1] - 44:11</p> <p>remind [1] - 137:13</p> <p>reminder [1] - 120:8</p> <p>removal [4] - 20:16, 22:18, 31:7, 100:18</p> <p>remove [2] - 36:17, 102:2</p>	<p>removed [7] - 21:6, 33:12, 33:18, 101:20, 101:21, 102:1, 102:8</p> <p>removing [4] - 21:9, 41:2, 41:3, 80:12</p> <p>renewal [1] - 4:20</p> <p>rental [10] - 90:5, 92:22, 93:2, 93:9, 93:10, 93:11, 94:15, 95:8, 97:15, 131:15</p> <p>rentals [2] - 92:18, 93:7</p> <p>renters [2] - 98:22, 117:2</p> <p>renting [4] - 73:16, 96:18, 97:8, 98:18</p> <p>reopen [3] - 105:14, 105:16, 105:18</p> <p>repairs [2] - 43:21, 91:18</p> <p>repeating [1] - 120:18</p> <p>repetitive [1] - 90:19</p> <p>replace [1] - 87:5</p> <p>replaced [1] - 40:9</p> <p>report [13] - 18:6, 18:8, 18:13, 18:17, 19:17, 25:22, 26:6, 34:23, 36:22, 59:3, 97:2, 122:18, 125:2</p> <p>Report [1] - 19:6</p> <p>reportable [3] - 25:10, 27:16, 28:8</p> <p>reported [1] - 28:25</p> <p>Reporter [1] - 150:7</p> <p>reporting [2] - 92:2, 114:3</p> <p>reports [4] - 35:18, 91:23, 113:25, 118:14</p> <p>represent [2] - 108:16, 124:14</p> <p>representation [1] - 126:12</p> <p>representations [1] - 109:5</p> <p>representing [3] - 1:9, 104:22, 108:17</p> <p>represents [1] - 144:18</p> <p>request [6] - 27:9, 44:14, 46:7, 53:7, 55:6, 125:23</p> <p>requested [2] - 23:11, 79:6</p> <p>requesting [1] - 15:25</p> <p>require [5] - 32:17, 60:12, 86:5, 102:18, 141:10</p> <p>required [14] - 19:8,</p>	<p>20:20, 22:25, 34:1, 42:4, 56:13, 56:18, 71:25, 72:8, 73:18, 74:4, 74:12, 77:5, 127:22</p> <p>requirement [8] - 42:11, 44:1, 61:17, 72:6, 76:13, 91:10, 112:21, 114:18</p> <p>requirements [14] - 36:22, 38:13, 43:1, 46:15, 66:21, 66:24, 72:22, 74:9, 82:12, 91:16, 99:10, 119:4, 120:18, 135:12</p> <p>requires [2] - 42:14, 111:18</p> <p>requiring [1] - 26:1</p> <p>reserved [1] - 81:4</p> <p>residences [4] - 78:2, 78:4, 96:2, 119:20</p> <p>resident [7] - 74:17, 78:6, 80:19, 80:25, 81:4, 91:21, 91:22</p> <p>residential [23] - 16:21, 18:22, 27:7, 27:17, 29:16, 33:14, 34:15, 37:16, 65:17, 71:16, 83:20, 86:6, 86:7, 94:5, 95:17, 96:6, 109:16, 112:9, 115:17, 117:17, 121:6, 124:2, 127:25</p> <p>Residential [1] - 95:23</p> <p>residents [25] - 16:24, 34:18, 39:13, 60:23, 64:11, 65:5, 65:6, 74:8, 82:16, 89:20, 90:20, 90:22, 91:20, 91:25, 98:14, 114:15, 114:25, 115:24, 117:2, 122:25, 126:19, 127:17, 130:4, 134:16</p> <p>resist [1] - 69:13</p> <p>Resource [1] - 125:3</p> <p>resources [1] - 46:10</p> <p>Resources [2] - 46:22, 102:23</p> <p>respect [1] - 51:22</p> <p>respected [1] - 112:24</p> <p>respectfully [1] - 119:5</p> <p>respects [3] - 51:17, 114:8, 119:4</p> <p>respond [6] - 1:18, 61:15, 91:4, 101:12, 126:18, 144:1</p> <p>responded [1] - 125:7</p>
--	---	--	--	---

responding [1] - 126:17
response [4] - 2:9, 88:9, 128:7, 128:8
responses [4] - 14:12, 17:6, 57:13, 84:16
responsibilities [3] - 36:3, 129:21, 130:12
responsibility [11] - 24:22, 40:5, 40:12, 41:7, 42:25, 45:10, 110:9, 111:9, 116:21, 116:25, 117:1
responsible [7] - 22:2, 25:13, 90:8, 90:11, 90:13, 91:7, 101:24
responsive [1] - 105:25
rest [6] - 48:2, 94:24, 95:18, 95:25, 117:7, 141:17
restoration [2] - 30:21, 47:1
restore [2] - 26:19, 46:1
restored [1] - 33:13
restrict [1] - 73:17
restricted [1] - 91:2
restriction [3] - 28:12, 28:14, 116:22
restrictions [4] - 16:20, 97:24, 98:1, 99:18
result [6] - 19:4, 27:15, 27:17, 31:16, 65:9, 65:23
resulted [1] - 28:1
results [4] - 18:6, 23:15, 38:25, 129:6
retail [2] - 58:6, 58:7
retention [3] - 40:17, 41:1, 42:19
reused [4] - 16:10, 16:17, 16:21, 39:19
Review [2] - 8:8, 8:11
review [15] - 1:11, 3:21, 8:6, 26:9, 34:19, 63:6, 103:1, 113:25, 116:6, 123:5, 124:16, 126:1, 126:3, 137:14, 143:1
reviewed [2] - 19:5, 125:2
reviewing [3] - 63:5, 104:17, 127:13
revised [3] - 52:10, 76:19, 77:5
revisit [1] - 17:23

RHODE [1] - 148:1
Rhode [24] - 1:9, 3:22, 5:16, 7:13, 8:6, 9:14, 10:9, 12:8, 12:9, 16:22, 21:18, 32:16, 53:7, 56:10, 56:13, 58:16, 58:17, 61:12, 99:3, 102:23, 122:18, 123:15, 148:16, 148:16
RI [3] - 19:23, 135:12, 148:23
RI-DEM [1] - 19:23
ribbon [1] - 110:9
Richard [1] - 149:4
RIDE [1] - 61:6
ride [1] - 133:20
right-of-way [2] - 60:12, 115:12
rights [2] - 134:6, 140:8
rip [1] - 87:4
RIPTES [1] - 102:24
RISD [1] - 8:16
risk [4] - 33:16, 34:13, 120:18, 137:25
risks [3] - 16:11, 33:2, 110:22
Ritch [1] - 149:11
River [3] - 45:2, 100:5, 133:5
river [2] - 79:14, 135:22
Road [18] - 43:3, 47:20, 48:6, 58:7, 63:10, 63:13, 63:15, 63:16, 64:18, 64:22, 64:23, 65:5, 66:9, 84:4, 101:4, 114:21, 115:2, 148:16
road [9] - 45:23, 69:7, 72:24, 79:5, 115:5, 115:16, 134:2, 135:17, 137:4
roads [2] - 2:19, 45:1
roadway [14] - 6:19, 7:1, 7:21, 40:6, 40:7, 40:16, 41:12, 41:16, 41:25, 42:7, 42:11, 123:8, 129:22
roadways [3] - 20:12, 45:16, 70:25
role [7] - 2:6, 9:4, 13:13, 13:16, 17:17, 21:21, 26:5
roof [1] - 71:18
roofs [1] - 42:22
room [2] - 55:13, 126:17
Rosenlof [1] - 149:9

route [1] - 60:6
routes [4] - 64:18, 135:4, 135:5
routine [2] - 40:25, 41:4
row [1] - 86:10
RPR [2] - 148:15, 150:7
rule [1] - 117:19
rules [3] - 82:25, 84:1, 96:23
run [1] - 88:6
runoff [5] - 41:12, 42:11, 42:21, 45:17, 134:20
rural [1] - 130:6

S

safe [4] - 16:17, 32:11, 39:20, 134:17
safely [2] - 16:10, 133:11
safety [16] - 2:17, 57:14, 57:18, 64:4, 64:7, 67:19, 109:25, 120:11, 123:4, 123:20, 127:16, 128:13, 133:12, 133:14, 134:15
sale [3] - 47:24, 48:1, 92:23
sales [1] - 32:20
Sam [3] - 6:7, 6:8, 6:10
sampled [2] - 27:2, 101:21
samples [1] - 31:21
sampling [2] - 101:22, 101:24
Samuel [1] - 6:7
sat [1] - 64:2
satisfied [2] - 119:8, 121:24
satisfy [2] - 120:18, 126:14
Savage [2] - 1:8, 149:13
saw [2] - 26:7, 116:6
scariest [1] - 33:17
scaring [1] - 96:22
scenario [2] - 35:15, 38:10
scenarios [1] - 74:1
Schechtman [2] - 1:8, 149:13
school [2] - 58:5, 62:1
Scientist [2] - 15:11, 15:21
scope [1] - 108:22

seal [1] - 150:5
search [1] - 93:4
Second [1] - 126:25
second [14] - 1:16, 16:8, 39:14, 47:24, 54:4, 58:12, 64:3, 99:14, 104:4, 105:19, 121:23, 126:24, 128:9, 146:21
Secretary [1] - 149:6
section [2] - 65:9, 103:4
security [1] - 52:18
sedimentation [1] - 22:24
See [1] - 52:3
see [20] - 26:2, 26:3, 42:22, 45:4, 52:4, 52:5, 53:2, 53:19, 72:13, 73:7, 73:19, 74:25, 90:14, 101:16, 103:17, 106:1, 118:25, 127:23, 128:19, 140:18
seeing [6] - 44:11, 45:9, 45:11, 45:12, 100:2, 106:21
seem [2] - 11:2, 73:3
sees [1] - 79:17
sell [2] - 36:1, 47:23
selling [1] - 50:14
senior [6] - 61:2, 61:6, 84:13, 86:12, 113:11, 131:5
Senior [1] - 7:25
seniors [1] - 132:22
sense [7] - 22:9, 52:18, 117:3, 124:25, 125:6, 140:19, 141:11
sensitive [1] - 34:16
sent [2] - 89:10, 145:20
sentence [2] - 39:18, 77:3
separate [3] - 25:21, 95:8, 121:18
separated [3] - 47:21, 73:9, 115:16
series [2] - 118:2, 119:22
serious [3] - 16:12, 112:6, 118:16
seriously [3] - 112:22, 121:25, 124:13
seriousness [1] - 113:16
serve [4] - 8:8, 67:7, 139:16, 140:3
services [8] - 3:21, 6:23, 8:17, 9:21, 61:5, 61:6, 114:14, 134:18
session [2] - 58:5, 62:2
set [16] - 40:20, 97:16, 98:1, 106:17, 114:10, 115:15, 119:1, 121:5, 136:3, 136:14, 136:15, 136:18, 136:21, 137:19, 143:24, 150:4
setting [4] - 117:14, 121:2, 123:23, 123:25
setup [1] - 43:15
seven [4] - 39:3, 54:2, 119:20, 131:9
Seventy [1] - 82:21
Seventy-four [1] - 82:21
several [7] - 53:6, 57:22, 57:24, 110:2, 111:16, 114:8, 120:10
severe [1] - 114:12
severely [1] - 111:7
sewage [1] - 134:18
sewer [1] - 40:10
sewers [1] - 42:12
shaded [1] - 78:15
shape [2] - 99:16, 140:1
Shaw's [1] - 43:9
Shawn [25] - 3:11, 3:12, 14:12, 17:6, 17:21, 22:6, 23:2, 24:23, 27:21, 28:22, 31:16, 33:7, 34:5, 37:7, 47:5, 47:6, 48:8, 52:6, 66:19, 68:2, 69:5, 88:16, 91:5, 92:5, 101:15
Shawn's [1] - 38:15
shed [2] - 60:10, 60:18
shelved [1] - 37:3
Shevlin [1] - 63:6
shifting [1] - 118:8
shocked [2] - 38:24, 39:1
shocking [1] - 39:17
shoot [1] - 106:12
shopping [1] - 58:8
short [2] - 54:24, 121:16
show [2] - 118:14, 118:25

<p>showed [1] - 51:6 showing [1] - 47:6 shown [3] - 111:5, 115:8, 119:9 shows [1] - 101:7 shrink [1] - 58:20 shrub [1] - 90:6 shy [1] - 71:25 sic [1] - 133:13 side [12] - 36:16, 41:23, 47:1, 66:10, 75:5, 100:4, 105:2, 105:23, 110:22, 117:21 sidelines [1] - 95:7 sides [4] - 80:11, 106:8, 106:16, 143:9 sidewalk [10] - 60:10, 60:11, 66:9, 86:10, 86:11, 86:17, 129:10, 129:18, 133:14, 134:10 sidewalks [13] - 20:12, 63:10, 63:12, 64:19, 64:22, 86:2, 86:7, 88:24, 88:25, 89:2, 115:9, 138:11 sign [1] - 38:17 signature [1] - 47:8 significant [14] - 14:4, 14:5, 14:13, 37:1, 60:15, 109:8, 109:13, 109:18, 112:5, 118:24, 122:8, 123:10, 123:21, 134:14 significantly [2] - 53:4, 111:1 Silveira [1] - 100:6 similar [8] - 10:7, 56:20, 71:1, 71:10, 74:6, 98:21, 99:21, 133:17 SIMMS [1] - 93:11 Simms [1] - 149:4 SIMMS [51] - 6:14, 12:12, 13:3, 13:9, 18:24, 23:2, 23:8, 23:19, 23:22, 23:24, 24:11, 24:15, 24:20, 31:16, 32:6, 32:11, 32:21, 32:24, 33:4, 33:6, 35:3, 38:12, 38:23, 39:22, 39:25, 43:4, 43:14, 43:18, 43:25, 44:6, 44:10, 47:3, 65:1, 65:14, 65:21, 66:2, 92:5, 92:9, 92:11, 92:14, 92:16, 92:20, 92:23,</p>	<p>92:25, 93:3, 93:17, 104:8, 126:24, 127:4, 128:22, 146:25 simply [7] - 21:1, 46:13, 109:4, 109:8, 113:6, 119:14, 120:25 single [10] - 65:18, 76:1, 76:13, 82:10, 82:20, 83:19, 86:6, 91:1, 95:12, 131:4 single-families [1] - 82:20 single-family [8] - 65:18, 76:1, 76:13, 82:10, 83:19, 86:6, 91:1, 95:12 SIR [2] - 19:6, 26:8 site [130] - 4:11, 6:12, 6:15, 7:20, 14:5, 14:8, 16:4, 16:6, 16:9, 16:11, 16:13, 16:20, 17:19, 18:4, 18:5, 18:12, 19:12, 19:14, 20:10, 20:17, 21:5, 21:23, 22:13, 22:14, 22:23, 23:1, 23:12, 23:17, 24:18, 25:3, 25:9, 25:22, 26:6, 27:1, 27:5, 27:18, 28:2, 28:18, 29:9, 30:15, 30:19, 31:16, 32:17, 33:13, 33:17, 33:18, 34:16, 35:6, 36:1, 36:8, 37:15, 37:21, 37:22, 38:7, 39:11, 41:24, 53:2, 53:9, 60:4, 60:22, 60:25, 61:8, 61:17, 62:18, 64:13, 64:21, 67:20, 76:20, 77:5, 78:14, 79:11, 84:13, 84:14, 84:22, 84:25, 85:3, 85:23, 85:25, 86:1, 86:21, 87:6, 87:17, 88:19, 92:19, 93:19, 94:14, 94:18, 95:15, 95:19, 96:24, 100:3, 101:17, 102:3, 102:6, 102:9, 102:25, 109:14, 109:18, 111:7, 111:9, 111:17, 111:22, 112:3, 112:10, 112:25, 113:4, 113:7, 113:17, 114:14, 115:20, 119:20,</p>	<p>120:3, 121:5, 123:2, 123:13, 123:24, 123:25, 124:6, 124:25, 129:7, 132:3, 132:23, 133:7, 135:9, 138:19, 141:14 Site [1] - 19:6 sites [17] - 16:12, 16:13, 16:16, 29:1, 37:14, 37:23, 39:18, 55:24, 84:18, 87:14, 110:25, 111:4, 117:16, 121:7, 128:1, 132:24, 133:2 sitting [1] - 50:25 situation [7] - 43:24, 43:25, 110:14, 110:15, 123:18, 133:21, 135:21 six [10] - 65:17, 65:18, 80:5, 80:14, 83:17, 84:11, 85:19, 86:10, 131:12 six-acre [1] - 84:11 sixteen [1] - 75:25 sizes [1] - 71:4 slabs [1] - 20:13 slalom [1] - 141:23 slightly [1] - 35:14 small [4] - 46:17, 56:2, 57:2, 80:14 smaller [6] - 56:25, 71:6, 71:7, 71:16, 71:18, 77:15 so... [4] - 66:13, 82:20, 128:2, 142:15 soil [34] - 20:1, 20:2, 20:6, 20:7, 20:10, 21:1, 21:3, 21:6, 22:21, 24:22, 26:15, 26:16, 26:18, 26:19, 29:6, 29:7, 29:10, 29:14, 30:18, 30:22, 31:5, 31:7, 33:11, 38:25, 87:1, 88:17, 90:15, 91:17, 94:11, 101:17, 101:25 soils [19] - 19:10, 19:11, 19:20, 20:4, 20:25, 21:9, 22:18, 22:19, 22:22, 26:25, 27:3, 28:17, 29:10, 33:14, 35:25, 88:18, 94:2, 102:5, 133:8 sold [4] - 49:7, 93:14, 93:24, 95:16 solicitor [1] - 2:12 Solicitor [1] - 149:10 solicitor's [1] - 11:9</p>	<p>someone [1] - 89:24 sometimes [5] - 24:4, 36:13, 36:24, 49:7, 94:12 somewhat [1] - 50:7 somewhere [2] - 59:5, 68:13 Sorry [2] - 6:14, 69:17 sorry [7] - 19:2, 25:14, 54:18, 63:18, 68:19, 77:11, 80:16 sort [13] - 2:5, 10:25, 25:1, 31:8, 44:19, 44:21, 45:5, 56:4, 58:9, 64:10, 84:19, 112:13, 114:19 sorts [9] - 20:13, 29:15, 32:4, 40:11, 41:3, 42:20, 44:16, 69:14, 71:1 sound [1] - 19:21 sounding [1] - 33:17 sounds [6] - 21:20, 24:12, 85:21, 86:23, 88:13, 88:15 source [1] - 31:18 south [6] - 42:23, 52:12, 64:21, 66:12, 73:8, 75:5 South [1] - 110:24 southern [1] - 9:10 Sowams [16] - 43:3, 47:20, 48:5, 63:10, 63:13, 63:15, 64:18, 65:5, 65:9, 65:23, 66:9, 95:1, 114:21, 115:2, 129:13, 132:23 space [24] - 2:20, 42:2, 45:20, 45:24, 46:9, 46:14, 51:17, 51:23, 53:4, 53:8, 53:10, 53:11, 53:19, 57:11, 71:9, 72:11, 73:16, 78:23, 80:20, 80:22, 81:4, 81:10, 123:14, 139:23 spaces [23] - 66:5, 66:6, 66:16, 72:5, 72:14, 72:16, 72:19, 75:20, 76:11, 77:24, 77:25, 78:24, 79:15, 80:5, 80:9, 80:18, 80:19, 80:24, 81:11, 81:12, 82:5, 83:20, 89:19 Speaker [1] - 85:1 SPEAKER [3] - 145:5, 145:11, 145:15 SPEAKERS [1] -</p>	<p>63:21 speaks [1] - 112:1 special [1] - 46:14 specialist [1] - 57:12 specialties [1] - 113:15 specialty [5] - 4:17, 4:18, 4:23, 7:24, 10:18 specific [11] - 3:5, 6:18, 22:8, 22:13, 46:14, 52:13, 53:16, 85:4, 112:2, 139:9, 142:23 specifically [10] - 16:7, 21:2, 34:11, 42:10, 42:21, 115:22, 132:24, 137:19, 138:1, 138:9 specifications [1] - 42:15 specifics [1] - 9:19 specified [1] - 139:2 specify [2] - 138:25, 139:5 speeds [1] - 62:17 spelled [1] - 131:3 Spinella [12] - 9:3, 9:6, 10:18, 11:8, 13:22, 54:25, 55:17, 57:4, 61:16, 75:16, 95:11, 99:15 SPINELLA [50] - 9:6, 9:13, 9:17, 9:22, 10:4, 10:6, 10:10, 10:12, 10:15, 10:20, 11:12, 11:22, 12:1, 12:8, 12:11, 12:17, 12:23, 13:1, 13:8, 13:17, 55:17, 56:9, 61:16, 75:16, 75:23, 75:24, 75:25, 76:6, 76:12, 76:24, 77:8, 77:12, 78:1, 78:21, 79:4, 79:12, 79:16, 81:23, 82:6, 82:9, 82:19, 82:23, 83:2, 83:7, 83:11, 83:13, 83:15, 83:21, 95:11, 96:2 spite [2] - 116:19, 120:17 spot [1] - 65:4 spots [11] - 75:11, 78:3, 79:4, 79:6, 82:1, 82:19, 83:1, 100:10, 100:18, 101:7, 101:8 sprays [1] - 32:9 Spring [2] - 84:11,</p>
---	--	--	---	--

<p>84:12 square [6] - 49:16, 49:20, 50:25, 68:8, 68:12, 137:10 squaring [1] - 75:2 staff [5] - 106:13, 107:18, 109:12, 133:25, 134:6 stage [15] - 19:14, 20:8, 70:5, 76:20, 77:6, 79:18, 99:25, 102:17, 111:10, 111:12, 113:7, 116:6, 132:16, 137:15, 138:21 stance [1] - 84:21 stand [3] - 62:8, 136:4, 139:25 standard [1] - 120:5 standards [17] - 16:22, 26:10, 45:7, 45:8, 67:9, 74:2, 87:3, 87:10, 111:25, 119:14, 121:5, 124:2, 126:15, 127:22, 128:12, 128:13, 130:9 standing [1] - 119:17 standpoint [1] - 79:20 start [16] - 3:9, 14:2, 14:19, 45:3, 45:12, 62:9, 94:14, 103:22, 103:23, 104:14, 104:15, 121:15, 127:10, 127:11, 127:12, 142:21 started [1] - 44:10 starts [4] - 25:9, 31:5, 35:17, 37:3 State [20] - 9:14, 10:8, 11:16, 28:1, 33:21, 79:21, 102:18, 102:19, 118:13, 119:9, 119:24, 123:22, 126:10, 127:22, 137:16, 137:17, 138:3, 138:4, 138:10, 148:16 state [13] - 3:21, 9:9, 31:22, 34:3, 46:16, 83:3, 84:1, 86:4, 109:15, 109:16, 130:6, 146:15 STATE [1] - 148:1 statement [4] - 105:10, 105:13, 106:18, 108:23 statements [6] - 105:17, 106:9,</p>	<p>106:20, 106:24, 107:8, 107:23 states [2] - 16:9, 134:13 States [1] - 17:14 Statewide [3] - 58:16, 58:17, 58:18 stating [1] - 24:15 station [1] - 86:11 statute [2] - 109:11, 137:19 stenographic [1] - 150:3 step [6] - 10:22, 22:25, 34:24, 58:21, 144:7, 144:20 steps [1] - 47:5 sticker [1] - 17:2 still [14] - 21:18, 23:5, 27:25, 36:4, 49:11, 49:15, 51:17, 53:14, 54:16, 58:5, 77:9, 81:3, 82:11, 106:12 stipulates [1] - 88:17 stockade [2] - 52:16 stockpile [1] - 26:15 stop [2] - 60:15, 64:17 stops [1] - 64:23 store [1] - 72:19 storm [18] - 2:19, 4:19, 6:20, 7:20, 40:14, 40:15, 40:23, 41:22, 42:18, 43:2, 43:10, 44:20, 45:1, 45:4, 57:9, 57:10, 123:14 story [1] - 115:6 straight [1] - 115:5 strategies [1] - 20:1 strategy [1] - 144:6 straw [1] - 107:17 street [27] - 40:10, 56:22, 62:11, 66:21, 69:18, 72:13, 72:14, 73:1, 73:23, 73:24, 74:2, 74:9, 76:19, 77:4, 77:23, 78:2, 78:8, 78:24, 80:8, 81:6, 83:20, 86:14, 86:18, 119:16, 141:21, 141:23 Street [1] - 1:9 streets [5] - 71:17, 74:21, 81:21, 86:8, 116:17 stretch [2] - 112:19, 114:17 strict [1] - 124:2 strictest [1] - 16:22 strictly [1] - 30:5 strike [2] - 72:21,</p>	<p>75:11 strong [1] - 123:16 structure [3] - 51:23, 51:24, 72:18 structures [2] - 41:11, 46:3 struggle [1] - 80:23 studies [1] - 123:6 Studio [2] - 8:1, 123:17 study [12] - 6:2, 57:14, 57:17, 58:23, 59:7, 59:13, 62:23, 62:25, 63:4, 63:7, 123:10, 128:16 stuff [7] - 27:24, 31:11, 36:22, 51:12, 96:1, 112:13, 138:12 style [1] - 69:12 subdivided [3] - 94:24, 95:17, 95:25 subdivisions [1] - 137:14 subject [2] - 95:18, 114:23 submissions [1] - 2:11 submit [3] - 91:16, 103:15, 119:5 submitted [12] - 2:12, 18:19, 26:9, 27:9, 55:1, 121:22, 122:12, 122:13, 122:14, 122:23, 123:1, 125:15 submitting [1] - 120:25 subsequent [7] - 18:7, 18:10, 18:17, 52:25, 55:8, 103:12, 106:6 subsequently [1] - 18:3 subsidies [2] - 118:2, 118:5 substantial [4] - 116:15, 117:12, 118:1, 120:11 substantially [1] - 19:7 subsurface [4] - 2:19, 57:10, 123:13 subtract [1] - 50:15 subtracted [1] - 50:21 suburban [1] - 130:7 succeeding [1] - 150:2 successful [2] - 11:22, 11:24 sudden [1] - 88:1 sufficient [1] - 125:15</p>	<p>suggest [3] - 58:20, 106:19, 112:7 suggested [3] - 82:2, 105:25, 119:2 suggesting [4] - 43:4, 43:20, 80:1, 80:2 suggestion [3] - 106:17, 107:1, 117:1 summarize [4] - 62:22, 108:19, 108:24, 120:7 summary [3] - 122:15, 143:3, 144:8 Super [2] - 74:19, 81:5 Superfund [1] - 16:12 Superior [8] - 9:14, 11:13, 12:8, 12:18, 13:11, 145:7, 145:8, 145:19 supervising [1] - 35:3 supervision [1] - 7:1 supplement [1] - 25:24 supplemental [1] - 128:20 supplying [1] - 72:7 SUPPORT [1] - 148:22 support [9] - 114:9, 122:8, 123:15, 123:16, 123:18, 125:19, 126:13, 132:15, 140:16 supported [1] - 132:16 supports [3] - 122:9, 125:14, 125:15 supposed [3] - 46:16, 96:24, 131:9 Supreme [12] - 9:15, 11:14, 12:9, 12:13, 12:15, 12:18, 12:20, 12:21, 12:25, 13:2, 13:8, 13:12 surface [13] - 2:19, 57:10, 70:12, 70:15, 70:16, 78:13, 78:17, 79:23, 80:7, 86:25, 123:14, 134:20, 141:13 surfaces [2] - 20:11, 85:25 surprise [1] - 33:3 surrounding [5] - 70:12, 70:16, 115:14, 119:23, 123:8 surveys [1] - 111:6 suspected [1] - 28:3 swales [3] - 42:20, 115:18, 117:5</p>	<p>Sweet [4] - 14:17, 64:4, 113:23, 124:12 Sweet's [1] - 114:7 Sweetbriar [41] - 40:20, 40:25, 42:5, 43:15, 43:24, 44:1, 44:5, 44:7, 44:9, 51:11, 51:13, 51:15, 55:15, 55:21, 56:11, 56:21, 60:5, 60:20, 65:25, 69:2, 69:6, 69:7, 69:18, 69:20, 70:14, 70:21, 71:2, 71:5, 71:8, 74:6, 74:11, 75:3, 78:19, 93:13, 95:9, 119:13, 119:22, 120:2, 120:3, 131:12 Sweetwater [1] - 133:13 sweetwater [2] - 133:14, 133:15 swept [1] - 40:8 swing [1] - 97:16 system [11] - 40:14, 40:15, 42:6, 42:8, 42:9, 42:11, 42:17, 42:19, 44:19, 45:14, 45:15 systems [7] - 2:19, 44:25, 45:4, 45:18, 116:18, 116:19, 123:14</p>
T				
<p>table [1] - 141:7 tabulation [1] - 66:19 targeted [5] - 15:8, 18:1, 23:13, 37:8, 123:3 tax [2] - 23:22, 56:13 team [17] - 1:20, 1:21, 1:24, 2:1, 2:9, 3:1, 67:17, 67:20, 69:23, 70:2, 75:8, 121:18, 121:21, 122:5, 123:16, 125:19, 126:6 Tech [1] - 7:17 technical [6] - 1:14, 2:23, 8:6, 88:19, 114:2, 125:13 technologies [2] - 16:19, 39:21 Teitz [2] - 149:10, 149:11 teitz [1] - 108:20 TEITZ [21] - 10:22, 48:19, 105:7,</p>				

105:15, 106:7, 107:5, 107:16, 136:15, 136:25, 137:6, 138:22, 139:5, 144:1, 145:7, 145:13, 145:16, 146:2, 146:11, 146:15, 146:18, 146:20 template [1] - 44:4 ten [6] - 53:24, 65:18, 88:3, 106:3, 131:4, 132:8 tenant [6] - 91:24, 96:9, 96:13, 97:1, 97:13, 133:17 tenant's [1] - 96:10 tenants [12] - 96:17, 96:22, 98:4, 98:6, 98:7, 99:4, 99:9, 99:16, 99:17, 99:20, 135:13 tended [2] - 110:25, 120:19 tends [1] - 69:13 tenets [1] - 132:20 tenth [1] - 64:24 term [5] - 37:11, 88:19, 105:5, 118:22, 137:8 terms [22] - 13:6, 22:3, 35:17, 43:16, 44:16, 65:14, 65:15, 70:15, 81:7, 87:13, 92:21, 98:13, 110:11, 128:10, 130:10, 133:12, 133:13, 134:6, 138:16, 140:6, 140:21 test [3] - 21:2, 100:3, 100:8 tested [6] - 26:21, 95:13, 95:18, 95:21, 96:3, 96:5 tester [1] - 100:13 testified [22] - 4:2, 4:3, 4:5, 5:7, 5:17, 5:20, 5:24, 7:3, 7:6, 8:5, 8:22, 9:11, 10:2, 12:6, 12:13, 12:16, 19:15, 21:11, 40:6, 52:15, 64:1, 113:16 testify [6] - 9:16, 12:15, 12:21, 64:4, 108:13, 124:7 testifying [1] - 13:6 testimony [31] - 11:1, 12:24, 13:4, 14:15, 14:16, 18:15, 19:3, 20:19, 27:12, 28:13,	108:9, 113:18, 113:19, 114:6, 114:7, 114:20, 115:8, 116:4, 116:14, 116:20, 116:23, 119:3, 120:12, 120:24, 121:20, 124:21, 125:5, 125:14, 126:6, 128:6 testing [9] - 89:14, 93:19, 93:22, 93:25, 94:3, 99:25, 100:12, 100:16, 100:24 THE [7] - 83:24, 91:3, 127:1, 127:9, 149:2, 149:12, 149:15 the.. [1] - 50:7 themes [1] - 57:23 themselves [1] - 132:2 there'd [1] - 56:1 therefore [1] - 60:12 thereof [1] - 60:25 they've [3] - 17:18, 70:7, 141:10 thin [1] - 116:25 thinking [6] - 24:25, 55:13, 66:18, 77:22, 81:2, 134:3 third [1] - 1:12 thoughts [1] - 64:8 thousand [1] - 24:8 threatening [1] - 115:4 three [29] - 2:14, 3:10, 24:8, 57:21, 73:9, 75:4, 76:2, 81:9, 81:10, 81:25, 82:6, 82:16, 85:18, 93:14, 100:7, 105:23, 108:1, 115:16, 118:15, 121:18, 141:6, 141:9, 141:11, 142:8, 142:13, 142:14 three-bedroom [4] - 76:2, 81:9, 81:10, 142:13 three-bedrooms [2] - 82:16, 142:8 throughout [4] - 3:21, 9:9, 80:24, 95:5 tied [2] - 80:10, 110:8 tighten [1] - 143:11 tightness [1] - 80:25 timetables [1] - 16:2 timing [1] - 57:23 title [2] - 93:4 TO [3] - 15:5, 15:6, 75:24	today [6] - 33:14, 39:11, 43:24, 47:20, 89:8, 95:7 together [4] - 23:2, 77:19, 103:22, 131:22 tonight [40] - 2:7, 2:21, 3:10, 13:25, 84:17, 103:14, 106:2, 106:5, 106:7, 106:8, 106:24, 107:13, 107:18, 107:19, 108:22, 109:3, 109:13, 110:1, 110:8, 110:20, 112:8, 113:6, 113:20, 114:25, 116:9, 116:20, 117:10, 117:23, 118:19, 121:16, 122:5, 122:20, 122:23, 123:1, 123:12, 124:3, 124:22, 130:3, 134:4, 143:18 tonight's [3] - 120:24, 121:23, 126:2 took [7] - 1:12, 53:1, 75:1, 92:12, 121:25, 124:13 tool [1] - 29:18 tools [1] - 16:19 top [2] - 31:7, 31:8 topic [1] - 40:3 torn [1] - 87:2 toss [1] - 116:7 tossed [1] - 90:12 total [12] - 49:3, 49:21, 53:24, 71:19, 72:14, 75:18, 75:19, 80:13, 82:4, 100:17, 132:10, 144:15 touched [1] - 87:21 tough [1] - 126:18 Tourister [2] - 58:14, 58:24 towards [2] - 79:5, 84:17 town [41] - 8:8, 14:22, 40:5, 40:8, 40:11, 40:12, 41:7, 42:25, 44:20, 45:12, 45:24, 46:4, 46:14, 54:9, 54:11, 55:7, 59:3, 60:6, 60:13, 69:8, 74:12, 82:23, 84:21, 84:25, 89:3, 115:12, 116:7, 116:10, 116:15, 116:22, 117:8, 118:6, 118:8,	119:8, 119:12, 119:15, 123:5, 132:24, 138:14, 139:17 Town [14] - 11:13, 48:8, 84:24, 85:14, 86:4, 87:3, 87:7, 87:20, 90:9, 110:10, 110:15, 148:16, 149:9, 149:10 TOWN [1] - 148:1 town's [5] - 2:17, 44:25, 57:8, 102:17, 123:12 town-owned [1] - 40:11 towns [3] - 24:5, 74:21, 89:2 traditional [1] - 69:15 traditionally [1] - 60:7 traffic [44] - 2:16, 5:4, 5:5, 5:14, 5:22, 6:2, 6:6, 57:12, 57:14, 57:17, 57:24, 58:10, 58:13, 58:14, 58:18, 58:21, 58:23, 59:1, 59:7, 59:13, 59:25, 62:5, 62:6, 62:13, 62:14, 62:15, 62:17, 62:23, 62:24, 62:25, 63:3, 63:6, 67:19, 78:17, 85:24, 86:14, 114:1, 123:4, 123:6, 123:7, 133:13, 134:18, 142:5 training [6] - 3:13, 5:14, 7:14, 11:10, 11:19, 113:24 transcript [1] - 150:3 transcripts [3] - 125:25, 126:1, 126:2 transfer [3] - 36:2, 95:23, 120:14 transferred [1] - 110:10 transit [2] - 60:8, 112:21 transition [1] - 46:19 transportation [12] - 5:6, 5:22, 60:24, 61:3, 61:5, 61:7, 61:12, 64:16, 73:22, 114:18, 114:22, 135:5 trash [1] - 41:2 travel [2] - 62:17, 63:3 traverse [1] - 95:4 treat [1] - 127:19 treating [1] - 127:23 treatment [7] - 42:8,	42:19, 45:2, 45:4, 45:15, 45:18, 118:9 tree [3] - 43:3, 85:8, 90:6 tried [3] - 33:9, 72:21, 75:11 trigger [1] - 32:15 triggered [1] - 23:10 Trim [1] - 149:3 TRIM [2] - 127:5, 147:1 trip [1] - 59:8 trips [8] - 59:3, 59:5, 59:8, 59:10, 59:11, 63:1, 65:12 trotting [1] - 115:2 trouble [2] - 66:8, 75:2 true [6] - 28:15, 52:12, 60:4, 60:5, 150:3 truly [1] - 109:24 trust [2] - 46:10, 133:9 try [6] - 29:22, 53:7, 59:24, 84:2, 108:19, 139:8 trying [9] - 33:23, 45:19, 51:12, 53:1, 72:23, 81:1, 86:13, 106:12, 139:22 tucked [1] - 110:12 Tuesday [2] - 146:18, 146:19 turn [2] - 23:14, 138:22 turning [2] - 58:2, 62:20 two [55] - 8:7, 15:24, 18:16, 18:21, 19:16, 24:8, 26:1, 47:20, 48:24, 49:15, 50:13, 50:20, 50:24, 53:21, 62:4, 66:16, 68:4, 68:8, 72:18, 74:22, 76:1, 76:7, 78:13, 78:24, 80:3, 80:12, 81:12, 81:14, 82:16, 82:17, 83:12, 83:14, 83:16, 83:18, 85:8, 85:18, 90:3, 93:12, 93:13, 93:15, 95:1, 95:12, 95:16, 100:7, 118:14, 125:25, 131:10, 141:25, 142:7, 142:8, 143:15 Two [1] - 33:12 two-bedrooms [1] - 76:1 two-day [1] - 62:4 two-fold [1] - 78:13 type [13] - 11:20, 13:15, 28:14, 31:3,
--	--	--	---	--

<p>31:4, 38:19, 96:19, 97:3, 97:20, 98:21, 99:18, 99:21, 114:6 types [6] - 3:24, 41:3, 73:1, 97:8, 137:5, 144:23 typical [3] - 26:4, 28:24, 66:25 typically [3] - 24:9, 31:3, 32:3</p>	<p>139:6, 142:3, 144:23, 144:25 United [1] - 17:14 units [61] - 47:23, 48:24, 49:15, 50:4, 50:9, 50:13, 50:18, 52:20, 52:23, 52:24, 53:8, 53:16, 53:22, 53:25, 54:5, 54:7, 56:8, 56:15, 56:16, 66:2, 75:18, 75:19, 75:25, 76:7, 76:8, 78:25, 81:7, 82:8, 82:10, 83:20, 92:6, 93:12, 93:13, 94:17, 95:1, 98:18, 131:3, 131:4, 131:6, 131:7, 131:10, 131:11, 131:12, 131:13, 131:15, 132:8, 132:10, 132:13, 132:22, 136:8, 137:9, 137:10, 144:6, 144:11, 144:16, 144:17, 144:19, 144:21 University [3] - 5:16, 110:4, 113:12 unknown [2] - 94:1, 100:14 unless [3] - 38:1, 38:18, 56:15 unlike [2] - 33:20, 51:21 unlikely [2] - 60:14, 115:10 unrebutted [3] - 113:19, 114:20, 120:14 unrelated [1] - 115:16 unusual [4] - 110:11, 117:25, 118:16, 118:20 unworkable [1] - 113:3 up [60] - 3:12, 6:7, 6:14, 7:22, 9:3, 14:10, 16:10, 19:14, 24:4, 30:20, 33:4, 33:7, 35:8, 37:14, 37:21, 37:22, 40:4, 40:20, 49:3, 53:1, 53:9, 55:5, 57:24, 62:9, 62:11, 69:10, 69:11, 74:24, 75:15, 78:15, 83:25, 84:10, 85:19, 88:15, 88:23, 89:7, 94:6, 97:15, 103:12, 105:22, 107:8, 109:3, 110:8,</p>	<p>110:25, 111:3, 111:17, 124:6, 133:10, 136:4, 138:14, 138:17, 138:20, 139:6, 140:20, 141:11, 141:16, 143:3, 143:4, 143:12, 144:7 upcoming [2] - 58:11, 58:22 upheld [2] - 128:14, 145:2 upside [1] - 132:4 urban [5] - 3:17, 4:20, 74:1, 130:7 urge [2] - 122:16, 126:1 Ursillo [1] - 149:11 users [1] - 28:17 uses [7] - 23:16, 34:15, 37:16, 37:24, 94:6, 112:9, 121:6 usual [2] - 137:8, 137:13 utility [7] - 6:12, 6:16, 6:21, 41:8, 42:20, 43:13, 44:18 utilized [1] - 78:22</p>	<p>136:17 visitor [4] - 74:25, 79:15, 80:8, 141:20 visitors [10] - 67:3, 67:5, 72:11, 74:10, 74:18, 74:19, 79:8, 79:9, 82:21, 82:22 visual [1] - 52:18 visualize [1] - 51:7 volume [1] - 21:6 volumes [4] - 58:10, 58:14, 59:1, 62:14 voluntary [5] - 18:18, 18:20, 19:5, 26:7, 122:19 vote [6] - 107:13, 107:14, 107:18, 107:19, 126:4, 130:21</p>	<p>weekly [2] - 41:4, 94:16 weigh [2] - 132:1, 140:10 well-aware [1] - 27:10 well-known [1] - 112:24 well-respected [1] - 112:24 west [1] - 132:11 western [1] - 52:17 wetland [6] - 26:17, 26:19, 30:20, 50:22, 79:5, 101:19 wetlands [7] - 26:15, 30:19, 30:20, 33:12, 46:2, 101:23 whatsoever [2] - 42:25, 45:3 wheelchairs [1] - 86:13</p>
U			W	
<p>U.S [3] - 15:9, 15:11, 15:21 ultimate [3] - 21:24, 25:25, 37:13 ultimately [6] - 19:14, 23:23, 33:24, 37:21, 53:18, 91:9 Um-hm [3] - 56:6, 79:8, 94:22 Unanimous [1] - 127:9 unclear [1] - 116:20 uncomfortable [1] - 134:25 uncommon [1] - 28:14 under [13] - 16:22, 18:14, 22:4, 23:5, 31:14, 52:10, 89:18, 94:2, 98:11, 99:3, 99:20, 124:5 underground [1] - 117:6 underline [1] - 109:4 Understandably [1] - 98:15 undertaken [3] - 60:13, 118:6 undertaking [1] - 24:8 underway [1] - 111:9 unequivocally [1] - 28:15 unfortunately [1] - 130:20 UNIDENTIFIED [3] - 145:5, 145:11, 145:15 Union [2] - 8:1, 123:17 unique [2] - 43:1, 123:18 unit [24] - 60:22, 65:25, 66:3, 66:15, 66:16, 66:25, 67:2, 71:13, 71:17, 75:20, 75:22, 76:1, 78:7, 79:1, 81:8, 93:5, 131:4, 136:24, 138:16, 138:25,</p>	<p>110:25, 111:3, 111:17, 124:6, 133:10, 136:4, 138:14, 138:17, 138:20, 139:6, 140:20, 141:11, 141:16, 143:3, 143:4, 143:12, 144:7 upcoming [2] - 58:11, 58:22 upheld [2] - 128:14, 145:2 upside [1] - 132:4 urban [5] - 3:17, 4:20, 74:1, 130:7 urge [2] - 122:16, 126:1 Ursillo [1] - 149:11 users [1] - 28:17 uses [7] - 23:16, 34:15, 37:16, 37:24, 94:6, 112:9, 121:6 usual [2] - 137:8, 137:13 utility [7] - 6:12, 6:16, 6:21, 41:8, 42:20, 43:13, 44:18 utilized [1] - 78:22</p>	<p>110:25, 111:3, 111:17, 124:6, 133:10, 136:4, 138:14, 138:17, 138:20, 139:6, 140:20, 141:11, 141:16, 143:3, 143:4, 143:12, 144:7 upcoming [2] - 58:11, 58:22 upheld [2] - 128:14, 145:2 upside [1] - 132:4 urban [5] - 3:17, 4:20, 74:1, 130:7 urge [2] - 122:16, 126:1 Ursillo [1] - 149:11 users [1] - 28:17 uses [7] - 23:16, 34:15, 37:16, 37:24, 94:6, 112:9, 121:6 usual [2] - 137:8, 137:13 utility [7] - 6:12, 6:16, 6:21, 41:8, 42:20, 43:13, 44:18 utilized [1] - 78:22</p>	W	
V			<p>wait [1] - 24:6 waiting [1] - 54:16 waivers [1] - 130:14 walk [6] - 51:11, 78:7, 83:25, 115:2, 117:25, 133:18 walk-away [1] - 117:25 walking [1] - 114:21 walks [1] - 88:4 walkways [1] - 137:3 wants [1] - 85:7 warned [1] - 117:14 warranted [1] - 19:13 Warren [1] - 8:8 Waste [1] - 103:4 wastewater [1] - 6:22 watch [1] - 121:15 watching [1] - 34:17 water [24] - 2:19, 4:19, 6:20, 6:21, 7:20, 33:20, 40:14, 40:23, 41:22, 42:14, 43:2, 43:10, 45:4, 46:9, 57:9, 57:11, 85:12, 85:13, 102:24, 103:4, 123:14, 131:8, 134:19, 134:20 Water [1] - 42:14 waters [1] - 45:17 wealthier [1] - 115:23 weather [2] - 114:23, 115:4 week [1] - 15:17 weekday [1] - 59:6 weekend [1] - 85:12 weekends [1] - 75:6</p>	<p>whereas [1] - 37:15 whereby [1] - 96:10 whereof [1] - 150:4 white [1] - 56:25 WHO [1] - 15:5 whole [7] - 26:5, 37:20, 83:3, 101:25, 112:16, 142:5 wholeheartedly [1] - 80:18 wholesale [1] - 120:14 wife [1] - 112:13 william [1] - 149:15 William [3] - 104:22, 108:15, 126:11 willing [4] - 43:20, 82:13, 116:24, 141:17 wish [2] - 45:24, 52:24 witness [2] - 11:5, 150:4 witnesses [2] - 13:25, 124:11 wondering [3] - 69:1, 93:1, 110:13 word [3] - 105:9, 109:9, 109:11 workers [1] - 22:23 works [5] - 9:9, 42:3, 52:3, 59:23, 81:24 worse [1] - 81:21 worth [2] - 60:20, 61:1 wrap [3] - 35:2, 36:5, 91:12 writing [1] - 85:4 written [5] - 87:10, 105:9, 106:18, 107:20, 108:20</p>

Y**yard** [2] - 89:24, 90:6**year** [2] - 21:11, 99:5**yearly** [1] - 91:9**years** [19] - 3:15, 4:15,
5:3, 5:12, 5:15, 7:12,
8:4, 8:12, 11:18,
11:23, 36:13, 36:25,
84:5, 88:3, 89:7,
100:7, 113:10,
121:3, 124:19**young** [1] - 112:13**YOUNG** [4] - 84:3,

87:16, 87:19, 101:4

Young [2] - 84:4,

101:4

yourself [5] - 3:12,
4:25, 6:8, 7:23, 9:4**yup** [2] - 34:23, 92:15**Yup** [2] - 44:2, 92:24**Z****zero** [2] - 58:12, 58:14**zone** [4] - 40:18, 46:1,
46:19, 49:13**Zoning** [5] - 4:4, 8:8,
8:10, 72:23, 74:4**zoning** [9] - 5:25, 7:7,
8:5, 9:12, 66:20,
66:23, 66:24, 74:8,
87:25