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HEARING OF BOARD OF APPEALS  
1299 BEACON STREET  
Wednesday, September 18, 2019 at 7:00 p.m.  
Brookline Town Hall  
333 Washington Street  
Sixth Floor  
Brookline, Massachusetts 02445

Reporter: Jennifer A. Doherty, CSR

1 APPEARANCES:

2 Jesse Geller, Chairman

3 Johanna Schneider, Board Member

4 Kate Poverman, Board Member

5 Randolph Meiklejohn, Board Member

6

7 Maria Morelli, Planner

8

9 Rashna Balakrishna

10 Stefan Vogelmann

11 Geoff Engler

12 Raj Dhanda, Applicant

13 Haril Pandya, CBT Architects

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1 P R O C E E D I N G S

2 CHAIRMAN GELLER: Good evening,  
3 everyone. We are reconvening the hearing of 1299  
4 Beacon Street. This is a comprehensive permit.

5 For the record, my name is Jesse  
6 Geller. To my immediate left is Johanna Schneider.  
7 To Ms. Schneider's left is Randolph Meiklejohn. To  
8 my right is Kate Poverman.

9 The last hearing was July 15 of this  
10 year. And as people will recall we have an  
11 extension now through October 3, which means this  
12 hearing as currently scheduled needs to close and we  
13 cease taking testimony as of October 3.

14 Tonight's agenda is as follows:  
15 We'll hear a report on soil testing. We will then  
16 review the applicant's request for waivers. Waivers  
17 are ways that you request to be excluded from the  
18 normal town ordinances, like the zoning bylaw.

19 Then the Board will review -- we only  
20 have pieces, but we will review the procedural  
21 history and findings of a proposed decision. We  
22 don't have conditions yet. They are being drafted  
23 and so everyone is aware, for a project as complex  
24 as this should the Board grant the comprehensive  
25 permit, there are an expensive number of fairly

1 complex conditions that are placed on the project  
2 that the applicant has to stick to.

3 So obviously it takes a considerable  
4 amount of time to put those together.

5 Anything else administratively,  
6 Maria? Next hearing?

7 MS. MORELLI: The next hearing is  
8 scheduled for October 2, and we will discuss draft  
9 conditions then.

10 Just for background, the last time  
11 the ZBA convened it was July 15, and the applicant  
12 presented a revision to the design in response to  
13 parking requirements to lessen the intensity of use  
14 and impact on the public way, and that resulted in  
15 the developer adjusting the unit mix, not the gross  
16 for residential and commercial from 65 units to 55  
17 and affordable housing units were reduced in  
18 portion.

19 They were no further charges to the  
20 developer on the design from the ZBA, although the  
21 ZBA was concerned that the affordable units were  
22 reduced as a result of that change.

23 So for tonight's -- I just want to  
24 mention that we do have a court reporter.  
25 Transcripts are available in two weeks. We do have

1 this live stream on cable and they will archive  
2 video through Brookline Interactive Group, and we  
3 have a website page with all the files pertaining to  
4 this case and eventually the draft conditions.

5 One thing that was left hanging at  
6 the July 15 hearing was that we definitely wanted to  
7 have some soil tested to determine if there were any  
8 hazardous materials. The purpose is we want to  
9 ensure the site is suitable for residential  
10 occupancy, and so the applicant's geotech consultant  
11 GEI did do the sampling and the results came in.

12 We received a report dated August 2.  
13 I do have it here. It's posted on the website, and  
14 basically there were no hazardous materials detected  
15 in that soil sampling.

16 Our geotech peer reviewer, Dan  
17 LaFrance of Fuss and O'Neil did review this report,  
18 and I'll just read a very brief paragraph because it  
19 includes some conclusions and recommendations. And  
20 this is dated September 9, 2019 from Dan LaFrance.

21 "Reporting and response actions have  
22 not be triggered as a result of the testing  
23 performed to date as noted by GEI. Quote,  
24 additional soil sampling and analysis will be  
25 necessary to completely characterize all the soil

1 for off-site disposal," end quote, specifically as  
2 noted by GEI and peer reviewer. Sampling is  
3 generally warranted at a rate of one sample per 500  
4 and 750 tons. That's 300.25 cubic yards for  
5 disposal.

6 We concur with GEI's notation that  
7 additional testing will be required and recommend  
8 that the construction management plan for the  
9 project included contingency in the event the  
10 contaminated soil is identified.

11 However, based on the information  
12 collected to date the soil conditions are not  
13 indicative of a large scale environmental clean-up  
14 being required at the site and response actions have  
15 not been triggered at this time as a result of the  
16 findings.

17 Also related to geotech, and you can  
18 decide how you want to handle it, the abutter to the  
19 west, that's the Trader Joe's site, did have a  
20 geotech environmental reports submitted, and the  
21 ZBA's geotechnical peer reviewer did review them,  
22 and it appears that at least to our peer reviewer  
23 that the reports were done on the plans prior to  
24 their being revised. This project is not building  
25 in the water table and Dan LaFrance has stated that

1 groundwater issues are no longer -- groundwater  
2 issues are no longer present with the design that  
3 was offered, provided to the ZBA. So the two levels  
4 of subgrade parking are not built to the water  
5 table.

6 If you like, I can briefly read just  
7 two paragraphs from Mr. LaFrance dated September 18,  
8 2019.

9 "I have reviewed the two submittals  
10 prepared by Whitestone Associates in reference to  
11 the geotechnical and environmental concerns. The  
12 reports refer to the foundation as having an  
13 approximate depth of forty feet and therefore  
14 requiring dewatering and groundwater management.  
15 The reports further review nearby sites regulated  
16 under the state cleanup program 21E sites.

17 During earlier iterations of the  
18 project, dewatering and groundwater management were  
19 concerns that I raised to the ZBA and the  
20 applicant's design team. The applicant in turn  
21 revised the building program terminating the now  
22 two-story parking garage approximately twenty feet  
23 below grade above the elevation of groundwater.

24 Groundwater depth was confirmed with  
25 additional field measurements performed by the

1 applicant's geotechnical consultant. The current  
2 building design does not extend below the  
3 groundwater table and dewatering and potential  
4 contaminant migration issues associated with the  
5 dewatering near 21E sites are no longer part of the  
6 project, therefore the concerns raised by the  
7 third-party reviewer have been satisfied in the  
8 evolution of the project design.

9           And there was testing done in May and  
10 December which accounts for different levels of  
11 water. So that is regarding geotech. Unless there  
12 are other questions about that, the peer reviewer  
13 seems to be satisfied with the geotech issues.

14           So for waivers it might be expedient  
15 if the applicant wants to make just one statement  
16 about waivers. You have an annotated version and I  
17 think it might be helpful --

18           CHAIRMAN GELLER: I don't want to  
19 jump to waivers just yet, but if you want to comment  
20 about that, that's fine. Is that the complete  
21 summary? I take it we don't have -- we're not  
22 proposing to have our peer reviewer offer anything  
23 more than what they submitted in the past, correct?

24           MS. MORELLI: We will have a  
25 provision regarding the soil testing.



1 CHAIRMAN GELLER:

2 CHAIRMAN GELLER: Conditions?

3 MS. MORELLI: Right.

4 CHAIRMAN GELLER: Okay. Does the  
5 applicant want to present anything about soil  
6 testing? No. You're shaking your head in the  
7 negative.

8 MS. POVERMAN: No.

9 CHAIRMAN GELLER: Thank you. Okay.  
10 So does the applicant want to walk through the  
11 waivers request? Now, Maria, I understand there was  
12 an initial list that was provided. I think it was  
13 earlier. I don't think it was today but earlier in  
14 the week, and then today there was a revised  
15 version.

16 MS. MORELLI: Right.

17 CHAIRMAN GELLER: I suspect that's  
18 what you handed to us.

19 MS. MORELLI: Right.

20 MR. ENGLER: Mr. Chairman, for the  
21 record, Geoff Engler for SEB representing the  
22 applicant. I don't think it's our pleasure to walk  
23 through all the waivers. I think it's a pleasure to  
24 make a statement to say we're comfortable with the  
25 list Maria provided to us inclusive --

1                   CHAIRMAN GELLER: The amended one?

2                   MR. ENGLER: The amended one  
3 inclusive of the changes that the Town has  
4 introduced and recommended. I think we're okay with  
5 that. I also, as the Board knows, the waivers go  
6 hand and glove with the plans, so we respectfully  
7 request that we need the waivers in order to  
8 construct the plan as proposed. So I think we are  
9 comfortable with the waivers that have been created  
10 and we don't have any further comment.

11                   CHAIRMAN GELLER: Just for clarity  
12 sake, and you've seen this before, this Board does  
13 not grant a global waiver, and Maria has completed a  
14 version that has been circulated. So is your  
15 comment inclusive of that deletion?

16                   MR. ENGLER: Correct.

17                   CHAIRMAN GELLER: Thank you.

18                   MS. MORELLI: One small note. The  
19 Town is not responsible for any omissions. So the  
20 building commissioner and my staff is neutral. We  
21 don't recommend approval or denial of waivers. We  
22 are simply looking at the plans as they were at the  
23 last hearing and looking at the waivers list to  
24 ensure any waiver requests are consistent with the  
25 plans.

1           So the building commissioner is here  
2 tonight to provide testimony to confirm that the  
3 waiver request would be necessary for this project  
4 to be built.

5           CHAIRMAN GELLER: Mr. Bennett, do you  
6 confirm that?

7           MR. BENNETT: Yes, I do.

8           CHAIRMAN GELLER: I see you've been  
9 busy this summer.

10          MR. ENGLER: Mr. Chairman, to Maria's  
11 point, we certainly acknowledge and understand as  
12 part of our preparation of the construction level  
13 documents and submittal of the building permit, if  
14 we miss something, it's our onus and our  
15 responsibility to appear before this Board to ask  
16 for that waiver.

17                 We don't anticipate that being the  
18 characteristic. We think we've been thorough. We  
19 know Maria and the building inspector have been  
20 thorough, but I can't represent for 100 percent, but  
21 I don't foresee that happening.

22                 If it were to happen, we know that's  
23 our responsibility.

24          CHAIRMAN GELLER: Great. Thank you  
25 very much.

1 Board members, you have in front of  
2 you a list of requested waivers. Let's run this as  
3 we have done in the past. Let's run through that  
4 list and if the Board members would simply say yea  
5 or nay. You can say yes or no, sure. You don't  
6 like yea or nay? Johanna doesn't like yea or nay.  
7 She insists on yes or no.

8 Okay. A, I think. It's part and  
9 parcel of the project, so yes.

10 MS. SCHNEIDER: Yes.

11 MS. POVERMAN: Yes.

12 MR. MEIKLEJOHN: Yes.

13 CHAIRMAN GELLER: B.

14 MS. SCHNEIDER: Yes.

15 MS. MORELLI: Could I recommend you  
16 list under column two the general requirement. Not  
17 everybody might have a printout, so if you can say  
18 B, affordable housing requirements, that will be  
19 helpful for the audience. Thank you.

20 CHAIRMAN GELLER: Sure. C, special  
21 district regulations for the G175 district. Yes.

22 MS. SCHNEIDER: Yes.

23 MS. POVERMAN: Yes.

24 MR. MEIKLEJOHN: Yes.

25 CHAIRMAN GELLER: D, 529 design

1 review. Yes.

2 MS. SCHNEIDER: Yes.

3 MR. MEIKLEJOHN: Yes.

4 CHAIRMAN GELLER: E, maximum floor  
5 area ratio. Yes.

6 MS. POVERMAN: Yes.

7 MR. MEIKLEJOHN: Yes.

8 MS. SCHNEIDER: Yes.

9 CHAIRMAN GELLER: F, maximum height  
10 of building. There was some comment about the  
11 height of the mechanicals. I assume this does take  
12 into account --

13 MS. MORELLI: That is right,  
14 mechanicals are not included in the height of the  
15 building. It is a separate height requirement for  
16 the mechanicals.

17 CHAIRMAN GELLER: So F, yes.

18 MS. POVERMAN: Yes.

19 MS. SCHNEIDER: Yes.

20 CHAIRMAN GELLER: F.1, exceptions to  
21 maximum height regulations. This is with reference  
22 to the mechanical equipment. What is the result of  
23 the request that it be condensed?

24 MS. MORELLI: It would be the  
25 perspective, this is regarding Section 5.31.1 and

1 there is a maximum height of ten feet. Exceptions  
2 to that require a special permit. What's measured  
3 on the plans is fourteen feet. And I certainly  
4 understand architects want a little bit of leeway  
5 until they can actually spec the system. I imagine  
6 they will want it to be lower. We just want to have  
7 it for the record we prefer it not to exceed ten  
8 feet. So that is just --

9 CHAIRMAN GELLER: Would the staff  
10 agree to the ten foot mechanical height?

11 MS. POVERMAN: I just want to say  
12 Mr. Boehmer emphasized this point about not wanting  
13 mechanicals to be too high and show windows.

14 MS. BALAKRISHNA: Rashna Balakrishna  
15 for the developer. Our architects tell me that ten  
16 feet is sufficient for the mechanicals, but there  
17 may be additional height needed for the stair and  
18 elevator overrides. It can be explained further if  
19 you would like.

20 MS. MORELLI: Thank you.

21 MR. PANDYA: Haril Pandya. So  
22 typically the stair override and the elevator  
23 overrides are a four plus additional, so it's a code  
24 requirement so it's something we can't skirt. Those  
25 are the two things that usually end up popping over

1 ten feet typically for the floor to floor basis.

2 On mechanical screening, that being  
3 screening mechanical equipment, I think that's a  
4 comfortable number, but a couple of extra feet for  
5 two or three locations where that happens. There is  
6 no get-around unfortunately.

7 MS. MORELLI: If the commissioner has  
8 any suggestion for dealing -- you've heard what the  
9 architect mentioned, Mr. Bennett. Do you have any  
10 further guidance for the ZBA?

11 MR. BENNETT: This is something that  
12 has come up in the past and the ZBA has it and there  
13 is no alternative typically granted for that special  
14 permit.

15 MS. MORELLI: So it sounds like it  
16 would be a waiver and perhaps we can put a condition  
17 that just minimizes the screening of the bulk.

18 MS. SCHNEIDER: It sounds like there  
19 may be a difference between the mechanical screening  
20 and other element conditions. Can we break that  
21 out?

22 MR. MEIKLEJOHN: Just a  
23 clarification, what is the convention or the rule  
24 for measuring -- from where you measure the height?  
25 Is it from the average surface of the roof or the

1 top structure of the full story below.

2 MS. MORELLI: The building  
3 commissioner would actually be the best person to  
4 answer that.

5 MR. BENNETT: It's to the roof  
6 structure, not necessarily the --

7 MR. MEIKLEJOHN: Thank you.

8 MS. POVERMAN: I have a question. If  
9 the mechanical, the bylaw says that mechanicals  
10 should be higher than ten feet, but it's a code  
11 requirement that the elevator may be higher, then  
12 this 5.3.1 actually wouldn't apply to the elevator,  
13 so we should be able to keep it in as it is.

14 MS. MORELLI: Let's put it this way:  
15 So provisions of 530 shall not apply to church  
16 fires, copula, stones, monuments, water towers,  
17 observation towers, transmission towers, windmills,  
18 chimney smokestacks -- silos, derricks, conveyors,  
19 flagpoles, masts, aerials, elevator, penthouses. I  
20 think that's it. Water tanks, monitors and other  
21 structures normally built above the roof. So this  
22 is like I think what we're looking at, any structure  
23 design from mechanical or electrical use shall be  
24 concealed or screened for public view.

25 So substantial rooftop structures,



1 observation towers, elevators, penthouses, and  
2 mechanical equipment shall not exceed the height  
3 limit by more than ten feet unless a special permit  
4 is granted by the Board of Appeals.

5 So it sounds to me like the bylaw  
6 doesn't separate mechanicals from elevator  
7 penthouses, so it sounds like you'll have to grant  
8 the waiver, but what will record is a condition that  
9 we will try to keep the bulk of the screening for  
10 the mechanicals around ten feet, and then whatever  
11 has to be covered. So it's not like we have a whole  
12 box like fourteen feet. Does that make sense?

13 CHAIRMAN GELLER: Just bifurcate the  
14 waiver provision, but let me suggest that with  
15 respect to the override for the elevator and the  
16 stairs that it be minimum required.

17 MR. MEIKLEJOHN: Can I ask a question  
18 about that? This is probably for the architect. Do  
19 you know if the type of elevator that's proposed  
20 will have a machine room above the roof? No?  
21 Okay.

22 MR. PANDYA: Wouldn't be.

23 MR. MEIKLEJOHN: If the stairs has to  
24 get the person up to the roof and the elevator  
25 override, I think it's usually twelve-something feet

1 from the highest floor. Is there any reason that  
2 either the stair or the elevator override structure  
3 above the roof should be higher than the ten feet or  
4 whatever the number is for mechanical equipment,  
5 because I don't see how they could?

6 MR. PANDYA: The elevator would be  
7 the floor to floor plus usually four or five feet  
8 because they allow for the elevator to go up  
9 further.

10 MR. MEIKLEJOHN: But since the  
11 elevator isn't serving the roof --

12 MR. PANDYA: Right, but that override  
13 doesn't account for the machine on top of it. It's  
14 usual for maintenance to get on top of the elevator,  
15 so it's four plus four feet or three feet depending  
16 on the manufacturer's requirements. It's usually  
17 four plus. The stairs usually just four because you  
18 have to get on top of the roof for maintenance  
19 purposes.

20 MR. MEIKLEJOHN: Are you saying an  
21 elevator story above the roof plus?

22 MR. PANDYA: It is the elevator. Say  
23 for example it was ten feet on the top floor, that  
24 elevator has got to get you to the roof which would  
25 be the ten feet plus a maintenance.

1 MR. MEIKLEJOHN: In the past the  
2 elevator does not take passengers to the roof.

3 MR. PANDYA: There is to roof deck  
4 plan as of yet, so right now it's just the  
5 override.

6 MR. MEIKLEJOHN: Last landing on top  
7 of the interior floor.

8 MR. PANDYA: Right. It's not twelve  
9 feet on top of the roof.

10 MR. MEIKLEJOHN: The override  
11 structure is less than ten.

12 MR. PANDYA: Yes.

13 MR. MEIKLEJOHN: Thank you.

14 CHAIRMAN GELLER: So F1, yes, as  
15 modified as suggested.

16 MS. SCHNEIDER: Yes.

17 CHAIRMAN GELLER: G, setback entrance  
18 to garage 20 feet and 19 feet four inches. Yes.

19 MS. POVERMAN: Yes.

20 MS. BALAKRISHNA: I would like to  
21 make a comment. The architect noted in the last  
22 couple of hours that he reviewed the dimensions of  
23 the proposed garage entrance setback is actually  
24 twenty feet one inch, so we don't need Waiver G as  
25 it turns out.

1                   CHAIRMAN GELLER: That makes me  
2 happy. Thank you. H has been deleted. No, H has  
3 been replaced. No, the original H was deleted and  
4 they simply stepped them up.

5                   H is minimum rear yard and other  
6 structure of principal use in a district. This is  
7 the proposed setback to the property line shared  
8 with 1297 Beacon Street which is the project. Yes.

9                   MS. POVERMAN: Yes.

10                  MS. SCHNEIDER: Yes.

11                  CHAIRMAN GELLER: I, minimum side  
12 yard and waiver of the calculation because the  
13 proposed side yard is zero feet.

14                  MS. BALAKRISHNA: I have one more  
15 correction. The architect noted and that's the  
16 details should read the proposed side yard as one  
17 foot and the first and second floors should be  
18 deleted.

19                  MS. MORELLI: Okay. This is in I.  
20 Okay. The proposed side yard is one foot not zero  
21 feet.

22                  MS. BALAKRISHNA: Yes.

23                  MS. MORELLI: And delete first and  
24 second floor.

25                  CHAIRMAN GELLER: Any comment on

1 that, Maria?

2 MS. MORELLI: No.

3 CHAIRMAN GELLER: In favor.

4 MS. SCHNEIDER: Yes.

5 MR. MEIKLEJOHN: Yes.

6 MS. POVERMAN: Yes.

7 CHAIRMAN GELLER: I.1, landscape open  
8 space. Yes.

9 MS. SCHNEIDER: Yes.

10 MR. MEIKLEJOHN: Does the --

11 MS. MORELLI: I just got the  
12 landscape plans today, so if Mr. Vogelmann could  
13 just state for the record the amount in square feet  
14 the amount of landscape area.

15 MR. VOGELMANN: I just have to look  
16 it up again.

17 MS. MORELLI: Sure.

18 MR. VOGELMANN: So the landscape open  
19 area which you see in green on this, it would not  
20 meet the required 20 percent of the gross floor area  
21 of the building. So we are -- but I just will tell  
22 you that it is 3,818 square feet that you see.

23 CHAIRMAN GELLER: Thank you. Yes.

24 MS. POVERMAN: Yes.

25 MS. SCHNEIDER: Yes.

1 CHAIRMAN GELLER: J, accessory  
2 underground structures waiver of being within ten  
3 feet of the lot line. Yes.

4 MS. POVERMAN: Yes.

5 MS. SCHNEIDER: Yes.

6 CHAIRMAN GELLER: K, off street  
7 parking space requirements, waiver from two space  
8 per dwelling unit requirement. Yes.

9 MS. SCHNEIDER: Yes.

10 MR. MEIKLEJOHN: Yes.

11 CHAIRMAN GELLER: Second K, let's  
12 make it K1 and K2.

13 MS. MORELLI: This is a  
14 transportation parking overlay district, so we have  
15 two versions.

16 CHAIRMAN GELLER: Yes. And this is a  
17 waiver from residential parking ratios. And yes.

18 MS. POVERMAN: Yes.

19 MR. MEIKLEJOHN: Yes.

20 MS. SCHNEIDER: Yes.

21 CHAIRMAN GELLER: L, design of off  
22 street parking facilities. This is a waiver from  
23 the design prohibiting parked vehicles to obtain  
24 access to another tandem parking. Yes.

25 MR. MEIKLEJOHN: Yes.

1 MS. SCHNEIDER: Yes.

2 CHAIRMAN GELLER: M, this is a waiver  
3 of the demo delay. Yes.

4 MR. MEIKLEJOHN: Yes.

5 MS. POVERMAN: Yes.

6 MS. SCHNEIDER: Yes.

7 CHAIRMAN GELLER: And then what was N  
8 has been deleted I guess at the behest of the  
9 building commissioner as well as DPW. That's fine  
10 too. That's waivers.

11 Next we are going to take a look at  
12 the findings in a preliminary draft decision as well  
13 as procedural history. And we just caution, this is  
14 not fixed in stone. I'm sure as it is worked on  
15 that there may in fact need to be additions,  
16 subtractions, corrections, but let's at least start  
17 the process.

18 So procedural history, does anybody  
19 have a comment? Maria, you obviously have to fill  
20 in the date of the rubbish and recycle?

21 MS. MORELLI: Yes.

22 MS. POVERMAN: I didn't have any  
23 comments.

24 MS. SCHNEIDER: None.

25 CHAIRMAN GELLER: Findings. We can

1 undertake it in order where people can jump in with  
2 comments, I don't care which.

3 Let me just say Item 16, findings,  
4 there were words missing.

5 MS. MORELLI: Let me speak to 16 and  
6 17. So I left that in there because I still don't  
7 have confirmation from the transportation division.  
8 There is going to be a loss of parking spaces on  
9 Soule in front of the project site, and it is  
10 possible that one parking space can dimensionally be  
11 accommodated in front of the site between the two  
12 curb cuts, but we did have testimony from our  
13 traffic peer reviewer that that parking space, if it  
14 were occupied, may not meet AASHTO standards and the  
15 transportation board typically does relax meeting  
16 AASHTO standards.

17 And that's regarding site distance  
18 because parking is in such a premium in the area,  
19 and I simply left those in there just as reminders  
20 that I still need confirmation from the  
21 transportation division regarding that parking space  
22 if there will actually be an elimination of all of  
23 the parking spaces in front of the project side on  
24 Soule.

25 MS. POVERMAN: I want to confirm that



1 there isn't any spots on Beacon Street.

2 MS. MORELLI: No, there isn't.

3 MS. POVERMAN: Thanks.

4 CHAIRMAN GELLER: Number 18, would  
5 you explain to me where you're going with the  
6 recitation.

7 MS. MORELLI: This is to --

8 CHAIRMAN GELLER: Comparative  
9 heights.

10 MS. MORELLI: It is comparative  
11 heights because it's directly across the street, but  
12 Beacon Street is a very wide boulevard, and it's  
13 also Pelham Hall is bounded by three streets, so it  
14 has breathing room. There are some differences.  
15 I'm not saying just because there is an eight-story  
16 building across the street. So maybe you want to  
17 put some more qualifiers in there or eliminate it?

18 CHAIRMAN GELLER: These are findings  
19 by the Board. I think any findings of the Board  
20 that there are structures that are eight feet or  
21 close to eight feet were more general. Pelham Hall  
22 would --

23 MS. SCHNEIDER: Eight stories.

24 CHAIRMAN GELLER: Did I say eight  
25 feet? That would be eight stories. I think there

1 is a global acknowledgement that there are some  
2 structures.

3 I would say what the Board didn't get  
4 into was why those structures were the size they are  
5 or the process or the amenities that allow for the  
6 height. So I think somehow if there is a finding  
7 that refers to other structures, it's without  
8 comment.

9 MS. POVERMAN: I don't see the  
10 necessity of --

11 CHAIRMAN GELLER: That's somewhat  
12 where I'm going with it. It's not like we said,  
13 Well, all of these other structures around it exist  
14 at this height and therefore this is a comparative  
15 height. I think it clearly states something exactly  
16 the opposite.

17 MS. MORELLI: I want to say when I  
18 did my any design analysis, I never spoke about  
19 height being the only metric you only look at in  
20 conjunction with the width of the street or the the  
21 depth of a setback. It's really set height and  
22 setback ratio that justifies buildings of a certain  
23 height.

24 MS. SCHNEIDER: Maybe this just needs  
25 to be flushed out a little bit more so that -- or

1 just taken out, but if we're going to keep it in, I  
2 think it needs to be in reference to something else,  
3 something more related to this project that the  
4 Board found.

5 I mean, I remember Cliff talked about  
6 this. It was about being the island, being a  
7 broader road in front of, et cetera, so maybe if  
8 what we're trying to do is tie this into the height  
9 of this project, then I think we need to say more  
10 and if we can't tie it in, then just take it out.

11 CHAIRMAN GELLER: We can also say  
12 that I think the Board acknowledges they are tall  
13 buildings. I don't think the Board made a finding  
14 one way or the other about the relevance of that.

15 MS. MORELLI: All right.

16 MR. MEIKLEJOHN: I would agree with  
17 that.

18 MS. MORELLI: So we can strike it.

19 CHAIRMAN GELLER: Okay. My next  
20 would be 19. Isn't the addition -- I think it's  
21 1309A, isn't that the direct abutter?

22 MS. MORELLI: There are three direct  
23 abutters.

24 CHAIRMAN GELLER: But I'm talking  
25 about -- you're referring to the Trader Joe's

1 grocery store as the abutter to the west. Isn't it  
2 really?

3 MS. MORELLI: So the west is Trader  
4 Joe's is 1309.

5 MR. MEIKLEJOHN: Center Place.

6 CHAIRMAN GELLER: I think they're two  
7 separate buildings. The piece that was added on  
8 that had a yoga store in there. I think it's a  
9 separate structure. I think that's 1309A.

10 MS. MORELLI: I will verify the  
11 address.

12 CHAIRMAN GELLER: From a factual  
13 standpoint just make sure. And also in terms you're  
14 going to reference the lease at Trader Joe's which  
15 leases space in which part leases space for Trader  
16 Joe's. It's a commercial building. They have a few  
17 more leases in that.

18 Twenty-three, I would reword -- well,  
19 let me take 23 and 24. I would reword it. I don't  
20 think that the property dispute that pertains to  
21 egress, frankly, is something that we have oversight  
22 over and you've recognized that in 25. Explain to  
23 me the need for 23, 24 which leads to 25.

24 MS. MORELLI: Because I feel that it  
25 might be considered important to acknowledge that

1 you look at it because there was a question of  
2 whether it was under the ZBA's jurisdiction, and we  
3 did do our due diligence to discern. We did ask for  
4 advice from Mass. Housing. They did not respond.  
5 They affirmed in the negative. We consulted our 40B  
6 consultant. The building commissioner expressly  
7 asked in his letter to the ZBA for some guidance,  
8 how should we direct, guide in this matter.

9 It certainly is a life safety issue  
10 and we wouldn't want it to look like the ZBA didn't  
11 do its due diligence concerning the life safety  
12 issue.

13 CHAIRMAN GELLER: Anybody have a  
14 thought about that?

15 MS. SCHNEIDER: I think it all makes  
16 sense but I wonder with respect to paragraph 23 and  
17 what we should be doing is providing less detail and  
18 there is a longstanding egress or claim regarding or  
19 dispute regarding the egress in potential trespass  
20 between the site and the abutter to the east. That  
21 remains unresolved. Maybe I'd leave it at that.

22 CHAIRMAN GELLER: And define that and  
23 carry that definition forward as we get to the  
24 conclusion.

25 MS. SCHNEIDER: I would probably take

1 out or probably tweak the first sentence. I would  
2 take out the rest, the second two sentences of 23  
3 and just leave it at that, and then we can go  
4 through the other steps to show that this was  
5 properly vetted but ultimately the Board does not  
6 have jurisdiction over this issue and --

7 MR. MEIKLEJOHN: Therefore there  
8 shall not be a question about our diligence about  
9 it.

10 MS. SCHNEIDER: I think our diligence  
11 gets up to the point where we figure out that we  
12 don't have jurisdiction over it. I don't know if we  
13 need to go further and say the permits -- it's up to  
14 the applicant to resolve this issue in order to  
15 obtain state level permits.

16 CHAIRMAN GELLER: Whatever they need  
17 to do to get state level permits, they need to do  
18 it. There's nothing we're going to do to add or  
19 subtract.

20 Just as an aside comment, it was  
21 suggested by counsel for the applicant of -- I don't  
22 know whether the suggestion was as a condition or  
23 somewhere else within the decision that pertained to  
24 whatever was going on with this dispute. We  
25 absolutely would not be in favor of adding any

1 comment about that dispute. That dispute is a  
2 private property dispute. That's between you and  
3 the neighbor. We're not going to add it to the  
4 decision.

5 MS. MORELLI: So that I understand  
6 for Item 23, just rework the first sentence.

7 MS. SCHNEIDER: Then kill the rest.

8 MS. MORELLI: And 24, keep it?

9 MS. POVERMAN: Why would we need it?

10 MS. MORELLI: I want to be clear, do  
11 you want me to delete 24?

12 CHAIRMAN GELLER: Yeah, I don't think  
13 you need 24.

14 MS. SCHNEIDER: Why don't we say we  
15 consulted with the building commissioner.

16 CHAIRMAN GELLER: I think what you  
17 can provide is you can provide that after  
18 consultation with the building commissioner and Judi  
19 Barrett, right?

20 MS. SCHNEIDER: And an attempt to  
21 reach Mass. Housing for a legal opinion, we  
22 concluded that we do not have jurisdiction. I think  
23 push them all together so that it describes the due  
24 diligence that we did and that ultimately leads to  
25 the conclusion that this is not us.

1 MS. MORELLI: Thank you.

2 CHAIRMAN GELLER: Thirty, I found it  
3 confusing.

4 MS. SCHNEIDER: I didn't find it  
5 confusing. I thought it didn't go far enough in  
6 terms of describing the Board's feelings about how  
7 these issues were resolved.

8 CHAIRMAN GELLER: Well, maybe my  
9 confusion was I didn't know what was there was  
10 going. Just...

11 MS. MORELLI: So I was reading the  
12 transcript where the revised plan was presented to  
13 the ZBA, and I think you expressed that you were  
14 disappointed that the number of affordable housing  
15 were reduced rather than any GFA being reduced to  
16 meet the parking requirements recommended.

17 CHAIRMAN GELLER: So then maybe it  
18 needs to be reworded to provide that the Board  
19 expressed its displeasure that affordable housing  
20 was sacrificed for increased commercial space.

21 MS. MORELLI: Okay.

22 MS. SCHNEIDER: Is this also the  
23 place where we talk about the Board's further  
24 disappointment that rather than responding to the  
25 Board and the public comment about the size of the



1 project, the applicant chose to maintain the size of  
2 the project and fill the space with unnecessary  
3 residential amenities.

4 CHAIRMAN GELLER: I think there's a  
5 way to word that that would be appropriate.

6 MS. SCHNEIDER: I wasn't saying that  
7 be verbatim but that's the sentiment I would like to  
8 have in there.

9 CHAIRMAN GELLER: That is fine. That  
10 was a finding of the Board. I think the sort of  
11 feeling globally as the Board was that it was an  
12 oversized structure simply that -- well, I'll leave  
13 it at that, that it was simply an oversized  
14 structure.

15 And so I think you can start to put  
16 that together and we can look at that language.

17 MS. SCHNEIDER: That may be something  
18 we want to run by Judi Barrett as well.

19 MS. MORELLI: Sure.

20 CHAIRMAN GELLER: Sorry to disappoint  
21 but that's as far as we go.

22 MR. MEIKLEJOHN: In 27 and 28 there's  
23 technical --

24 MS. MORELLI: Yes. So I'm going to  
25 return to that. That's a little complicated, so I

1 want to consult with Peter Ditto and the peer  
2 reviewer.

3 MR. MEIKLEJOHN: Had the soil  
4 condition or the finding methods record the recent  
5 cycle --

6 MS. MORELLI: Yes, the due diligence,  
7 yes.

8 CHAIRMAN GELLER: I do want to offer  
9 to the public an opportunity to speak, but it is not  
10 all good, but I want to speak just about those  
11 topics that we've touch on this evening. Those  
12 topics we've touched on this everything are soil,  
13 and soil testing. We touched on waivers, and we  
14 obviously touched on findings.

15 MS. SCHNEIDER: Can I ask a question?  
16 Since we already voted on the waivers, are we still  
17 taking public testimony about the waivers?

18 CHAIRMAN GELLER: I think waivers are  
19 technical, but if somebody wants to in the context  
20 of conversation raise a topic, I'm not going to  
21 exclude them.

22 MS. SCHNEIDER: We've already  
23 voted.

24 CHAIRMAN GELLER: Right. They're  
25 technical in any event. So if people do want to

1 speak. This does not foreclose the opportunity when  
2 we start reviewing conditions, which frankly is the  
3 more important portion. Anybody want to speak? No?  
4 Okay. Anything from the applicant?

5 MR. ENGLER: Well, are we winding  
6 down? Why don't I reserve my right to comment until  
7 I see -- I guess we'd like to be prepared for the  
8 next hearing and to the extent -- I mean, it was  
9 helpful for Maria to get us a draft of the waivers a  
10 little bit before the hearing. I expect the  
11 conditions to be much more extensive and robust.

12 To the extent that obviously we can  
13 get them ASAP, it will allow us more time to even be  
14 helpful to Maria and have a little bit of  
15 collaboration thus making your job easier when we  
16 get here. I think that statement is of the obvious,  
17 but I know Maria understands that. We just want to  
18 be as prepared as we can for the next hearing.

19 CHAIRMAN GELLER: No, I think that's  
20 a great suggestion. The conditions clearly are the  
21 key portion of all of this and we need adequate  
22 time. Maria is well aware of this. That includes,  
23 frankly, members of the public. These are complex  
24 conditions and they're long, so the sooner we can  
25 get it, the better off we all are to digest it all

1 and think about it.

2 MS. POVERMAN: Jesse, I have a  
3 question. When is it appropriate to discuss some of  
4 the suggestions that the public has made, for  
5 example the ballards which I think are worthy of  
6 considering. Would this be in the conditions or is  
7 this something we want to discuss more fully now?

8 CHAIRMAN GELLER: Well, if you have a  
9 list that you put together which would be typical,  
10 Kate.

11 MS. POVERMAN: It is not --

12 CHAIRMAN GELLER: Well, I would urge  
13 you to share the list with Maria because I suspect  
14 that Maria already has started to put together the  
15 buckets which are the conditions which may be eighty  
16 conditions, and what you are listing here probably  
17 is going to fit almost entirely within buckets that  
18 she already has.

19 MS. MORELLI: So are you talking  
20 about permanent ballards? I did recall that  
21 comment, but we really do have to consult with the  
22 DPW professionals who really design the public way.  
23 And we understand the objective of the concern and  
24 there may be more than one way to deal with that  
25 concern rather than being prescriptive about the

1 solution.

2 So I share all of these comments with  
3 the other departments. That's why it takes so long  
4 to write conditions because we do consider all of  
5 these suggestions, and I have to consult with the  
6 professionals who have the expertise.

7 MS. POVERMAN: I don't want to lose  
8 the opportunity to have these things considered and  
9 have the applicant address them if appropriate,  
10 because I think that's an interesting way of  
11 addressing the parking concerns on the sidewalks and  
12 things like that. I understand what you're saying  
13 about the public way, but it is something we want to  
14 consider -- and I see Geoff jumping up  
15 immediately -- whether or not the applicant will be  
16 responsible at least in part for the construction of  
17 the ballards.

18 MS. MORELLI: Well, anything the DPW  
19 deems as worthy for some things warranted, DPW knows  
20 to ask for public benefits for mitigation to the  
21 applicant.

22 For instance, there is a  
23 Soule/Longwood improvement concerning both curbs,  
24 crosswalks, and ramps, and there was an initial  
25 discussion with the applicant, and so there is some

1 discussion going on between the applicant and DPW  
2 about the estimate cost for the work and how much  
3 the applicant will be willing to pay toward that.

4 MS. POVERMAN: I've never seen  
5 ballards anywhere in Brookline that I can think  
6 of.

7 CHAIRMAN GELLER: We've seen  
8 ballards. You mean specific to sidewalks or  
9 ballards in general?

10 MS. POVERMAN: To sidewalks.

11 CHAIRMAN GELLER: I've never seen  
12 them on sidewalks.

13 MS. SCHNEIDER: It sounds like, Kate,  
14 you may -- you were going to make these lists. It  
15 sounds like we, in the process, could benefit if you  
16 have specific stuff like that and getting that stuff  
17 to Maria so she can vet it through the town  
18 departments.

19 For example, DPW or transportation  
20 will be a non start because it will create these  
21 other safety issues. I'd rather do that now than  
22 going into the don't spend time discussing  
23 conditions that people who know more than we do  
24 about this stuff and we deem unsafe or impractical  
25 or whatever before we even throw it out to the

1 applicant.

2 MS. POVERMAN: I do want to say that  
3 some ballards like sink into the ground. I've seen  
4 them in Europe so that they make --

5 MS. SCHNEIDER: Like robots?

6 MS. POVERMAN: No. They go all the  
7 way down so that they don't permanently block an  
8 area if fire access or something is needed. I want  
9 to throw that out there, and actually my other list  
10 elements were addressed by the provisions to the  
11 geotech. So right now, that's all I have. Anything  
12 else I will --

13 CHAIRMAN GELLER: Anything else?

14 MS. POVERMAN: -- give to Maria.

15 CHAIRMAN GELLER: Great. Anything  
16 else? I want to mention -- I want to thank, I don't  
17 know, a member of the public submitted these  
18 photographs for entry into the record, so we are  
19 going to enter them into the record of this hearing.

20 Our next hearing is October 2, at 7  
21 p.m. same place I assume, but it will be posted. I  
22 want to thank everyone for your time this evening.  
23 Somebody has a question over there? Yes, you.

24 MS. BURLOFF: I'm Margaret Burloff.  
25 I'm the one who wrote about the ballards. I didn't

1     come up with that out of whole cloth.  If you go  
2     around Boston and you look at the federal buildings  
3     and a lot of the buildings in Boston, if you go past  
4     the State House, the State House has beautiful  
5     ballards.  They're not big, fat things.  They're  
6     beautiful ballards to protect pedestrians who are  
7     traveling the sidewalks.  There a lot of examples.  
8     Maybe Brookline doesn't have one yet, but also  
9     Brookline doesn't have a building like this yet.  So  
10    if you are going to consider granting this building,  
11    I think there has to be some consideration to the  
12    safety of the pedestrians who use that sidewalk.

13                   MS. MORELLI:  May I just ask you?  So  
14    that sidewalk isn't very wide and we need to leave a  
15    four foot wide, so what is the objection?

16                   MS. BURLOFF:  We need a three foot  
17    wide path of travel around street furnishings.

18                   MS. MORELLI:  What I'm trying to get  
19    at is what are you trying to protect?

20                   MS. BURLOFF:  People.

21                   MS. MORELLI:  Is it because of  
22    traffic on Soule?

23                   MS. BURLOFF:  It's because parking on  
24    the sidewalk, the pictures that was provided to you  
25    today is --



1 MS. MORELLI: You're talking about  
2 the sidewalk in front of the building which may not  
3 even have parking in front of the project site?

4 MS. BURLOFF: The sidewalk along the  
5 30 Longwood Avenue side on Soule, the southern side  
6 of Soule Avenue which is the side of the 30 Longwood  
7 Avenue building.

8 MS. MORELLI: You don't want any  
9 parking on the sidewalk.

10 MS. BURLOFF: Absolutely. The  
11 pictures you were given today aren't an anomaly.  
12 This is a daily --

13 CHAIRMAN GELLER: We're not taking  
14 testimony. Thank you very much.

15 MS. POVERMAN: I'm not going to be  
16 here on the second. Just so you know this may be my  
17 farewell appearance. Maria, I'm having surgery the  
18 week before.

19 CHAIRMAN GELLER: What if we told you  
20 no?

21 MS. POVERMAN: Then I would say  
22 okay.

23 CHAIRMAN GELLER: When did this  
24 matter open? In April of '18. So you've got from  
25 April of '18?

1 MS. POVERMAN: I have had all that  
2 time.

3 CHAIRMAN GELLER: And you're not  
4 going to miss -- you're not going to be here for the  
5 finale. It's like walking out in the last thirty  
6 minutes of a movie.

7 MS. POVERMAN: My health or...

8 MS. SCHNEIDER: Kate, come on.

9 MS. POVERMAN: If I can drag myself  
10 in, I'll drag myself in.

11 CHAIRMAN GELLER: Absent the  
12 applicant giving us further time, we have a hard  
13 deadline. Well, I'm sorry to hear that. Okay.  
14 Anybody else have any disclosures?

15 MS. POVERMAN: You can Facetime me.

16 CHAIRMAN GELLER: So this is  
17 continued until October 2. I want to thank  
18 everyone.

19 (Whereupon, the hearing was suspended  
20 at 8 p.m.)

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C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

I, Jennifer A. Doherty, Certified  
Shorthand Reporter and Notary in and for the  
Commonwealth of Massachusetts, do hereby certify  
that the foregoing Pages 1 to 43 to be a true,  
complete and accurate transcript of the testimony of  
the aforementioned hearing held at the time and  
place hereinbefore set forth, to the best of my  
knowledge, skill and ability.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY  
HAND AND SEAL THIS 30TH DAY OF SEPTEMBER, 2019.

<%11353,Signature%>

Jennifer A. Doherty

<b>0</b>	<b>4</b>	<b>accurate</b> 43:8	<b>analysis</b> 5:24
<b>02445</b> 1:14	<b>40b</b> 29:5	<b>acknowledge</b> 11:11 28:25	26:18
<b>1</b>	<b>43</b> 43:7	<b>acknowledgement</b> 26:1	<b>annotated</b> 8:16
<b>1</b> 43:7	<b>5</b>	<b>acknowledges</b> 27:12	<b>anomaly</b> 41:11
<b>100</b> 11:20	<b>5.3.1</b> 16:12	<b>actions</b> 5:21 6:14	<b>answer</b> 16:4
<b>11353</b> 43:20	<b>5.31.1</b> 13:25	<b>add</b> 30:18 31:3	<b>anticipate</b> 11:17
<b>1297</b> 20:8	<b>500</b> 6:3	<b>added</b> 28:7	<b>anybody</b> 23:18
<b>1299</b> 1:9 3:3	<b>529</b> 12:25	<b>adding</b> 30:25	29:13 35:3 42:14
<b>1309</b> 28:4	<b>530</b> 16:15	<b>addition</b> 27:20	<b>appeals</b> 1:8 17:4
<b>1309a</b> 27:21 28:9	<b>55</b> 4:16	<b>additional</b> 5:24	<b>appear</b> 11:15
<b>15</b> 3:9 4:11 5:6	<b>6</b>	6:7 7:25 14:17,23	<b>appearance</b> 41:17
<b>16</b> 24:3,5	<b>65</b> 4:16	<b>additions</b> 23:15	<b>appearances</b> 2:1
<b>17</b> 24:6	<b>7</b>	<b>address</b> 28:11	<b>appears</b> 6:22
<b>18</b> 1:10 7:7 25:4	<b>7</b> 39:20	37:9	<b>applicant</b> 2:12 4:2
41:24,25	<b>750</b> 6:4	<b>addressed</b> 39:10	4:11 7:20 8:15 9:5
<b>19</b> 19:18 27:20	<b>7:00</b> 1:10	<b>addressing</b> 37:11	9:10,22 30:14,21
<b>2</b>	<b>8</b>	<b>adequate</b> 35:21	33:1 35:4 37:9,15
<b>2</b> 4:8 5:12 39:20	<b>8</b> 42:20	<b>adjusting</b> 4:15	37:21,25 38:1,3
42:17	<b>9</b>	<b>administratively</b> 4:5	39:1 42:12
<b>20</b> 19:18 21:20	<b>9</b> 5:20	<b>advice</b> 29:4	<b>applicant's</b> 3:16
<b>2019</b> 1:10 5:20 7:8	<b>a</b>	<b>aerials</b> 16:19	5:10 7:20 8:1
43:16	<b>aashto</b> 24:14,16	<b>affirmed</b> 29:5	<b>apply</b> 16:12,15
<b>21e</b> 7:16 8:5	<b>ability</b> 43:11	<b>affordable</b> 4:17,21	<b>appropriate</b> 33:5
<b>23</b> 28:19,23 29:16	<b>able</b> 16:13	12:18 32:14,19	36:3 37:9
30:2 31:6	<b>absent</b> 42:11	<b>aforementioned</b> 43:9	<b>approval</b> 10:21
<b>24</b> 28:19,23 31:8	<b>absolutely</b> 30:25	<b>agenda</b> 3:14	<b>approximate</b> 7:13
31:11,13	41:10	<b>agree</b> 14:10 27:16	<b>approximately</b> 7:22
<b>25</b> 28:22,23	<b>abutter</b> 6:18 27:21	<b>allow</b> 18:8 26:5	<b>april</b> 41:24,25
<b>27</b> 33:22	28:1 29:20	35:13	<b>architect</b> 15:9
<b>28</b> 33:22	<b>abutters</b> 27:23	<b>alternative</b> 15:13	17:18 19:21 20:15
<b>3</b>	<b>access</b> 22:24 39:8	<b>amended</b> 10:1,2	<b>architects</b> 2:13
<b>3</b> 3:11,13	<b>accessory</b> 22:1	<b>amenities</b> 26:5	14:4,15
<b>3,818</b> 21:22	<b>accommodated</b> 24:11	<b>amount</b> 4:4 21:13	<b>archive</b> 5:1
<b>30</b> 41:5,6	<b>account</b> 13:12	21:14	<b>area</b> 13:5 21:14,19
<b>300.25</b> 6:4	18:13		21:20 24:18 39:8
<b>30th</b> 43:16	<b>accounts</b> 8:10		<b>asap</b> 35:13
<b>333</b> 1:12			<b>aside</b> 30:20
			<b>asked</b> 29:7
			<b>associated</b> 8:4

<b>associates</b> 7:10 <b>assume</b> 13:11 39:21 <b>attempt</b> 31:20 <b>audience</b> 12:19 <b>august</b> 5:12 <b>available</b> 4:25 <b>avenue</b> 41:5,6,7 <b>average</b> 15:25 <b>aware</b> 3:23 35:22	11:15 12:1,4 17:4 24:15 25:19,19 26:3 27:4,12,13 30:5 32:18,25 33:10,11 <b>board's</b> 32:6,23 <b>boehmer</b> 14:12 <b>boston</b> 40:2,3 <b>boulevard</b> 25:12 <b>bounded</b> 25:13 <b>box</b> 17:12 <b>break</b> 15:20 <b>breathing</b> 25:14 <b>brief</b> 5:18 <b>briefly</b> 7:6 <b>broader</b> 27:7 <b>brookline</b> 1:11,14 5:2 38:5 40:8,9 <b>buckets</b> 36:15,17 <b>building</b> 6:24 7:21 8:2 10:20 11:1,13 11:19 13:10,15 16:2 21:21 23:9 25:16 28:16 29:6 31:15,18 40:9,10 41:2,7 <b>buildings</b> 26:22 27:13 28:7 40:2,3 <b>built</b> 7:4 11:4 16:21 <b>bulk</b> 15:17 17:9 <b>burloff</b> 39:24,24 40:16,20,23 41:4 41:10 <b>busy</b> 11:9 <b>bylaw</b> 3:18 16:9 17:5	<b>calculation</b> 20:12 <b>care</b> 24:2 <b>carry</b> 29:23 <b>case</b> 5:4 <b>caution</b> 23:13 <b>cbt</b> 2:13 <b>cease</b> 3:13 <b>center</b> 28:5 <b>certain</b> 26:22 <b>certainly</b> 11:11 14:3 29:9 <b>certified</b> 43:4 <b>certify</b> 43:6 <b>cetera</b> 27:7 <b>chairman</b> 2:2 3:2 8:18 9:1,2,4,9,17 9:20 10:1,11,17 11:5,8,10,24 12:13 12:20,25 13:4,9,17 13:20 14:9 17:13 19:14,17 20:1,11 20:25 21:3,7,23 22:1,6,11,16,21 23:2,7,25 25:4,8 25:18,24 26:11 27:11,19,24 28:6 28:12 29:13,22 30:16 31:12,16 32:2,8,17 33:4,9 33:20 34:8,18,24 35:19 36:8,12 38:7,11 39:13,15 41:13,19,23 42:3 42:11,16 <b>change</b> 4:22 <b>changes</b> 10:3 <b>characteristic</b> 11:18 <b>characterize</b> 5:25 <b>charges</b> 4:19	<b>chimney</b> 16:18 <b>chose</b> 33:1 <b>church</b> 16:15 <b>circulated</b> 10:14 <b>claim</b> 29:18 <b>clarification</b> 15:23 <b>clarity</b> 10:11 <b>clean</b> 6:13 <b>cleanup</b> 7:16 <b>clear</b> 31:10 <b>clearly</b> 26:15 35:20 <b>cliff</b> 27:5 <b>close</b> 3:12 25:21 <b>cloth</b> 40:1 <b>code</b> 14:23 16:10 <b>collaboration</b> 35:15 <b>collected</b> 6:12 <b>column</b> 12:16 <b>come</b> 15:12 40:1 42:8 <b>comfortable</b> 9:24 10:9 15:4 <b>comment</b> 8:19 10:10,15 13:10 19:21 20:25 23:19 26:8 30:20 31:1 32:25 35:6 36:21 <b>comments</b> 23:23 24:2 37:2 <b>commercial</b> 4:16 28:16 32:20 <b>commissioner</b> 10:20 11:1 15:7 16:3 23:9 29:6 31:15,18 <b>commonwealth</b> 43:2,6 <b>comparative</b> 25:8 25:10 26:14
<b>b</b>			
<b>b</b> 12:13,18 <b>background</b> 4:10 <b>balakrishna</b> 2:9 14:14,14 19:20 20:14,22 <b>ballards</b> 36:5,20 37:17 38:5,8,9 39:3,25 40:5,6 <b>barrett</b> 31:19 33:18 <b>based</b> 6:11 <b>basically</b> 5:14 <b>basis</b> 15:1 <b>beacon</b> 1:9 3:4 20:8 25:1,12 <b>beautiful</b> 40:4,6 <b>behest</b> 23:8 <b>benefit</b> 38:15 <b>benefits</b> 37:20 <b>bennett</b> 11:5,7 15:9,11 16:5 <b>best</b> 16:3 43:10 <b>better</b> 35:25 <b>bifurcate</b> 17:13 <b>big</b> 40:5 <b>bit</b> 14:4 26:25 35:10,14 <b>block</b> 39:7 <b>board</b> 1:8 2:3,4,5 3:19,24 10:5,12			
	<b>c</b>		
	<b>c</b> 3:1 12:20 43:1,1 <b>cable</b> 5:1		

<p><b>complete</b> 8:20 43:8 <b>completed</b> 10:13 <b>completely</b> 5:25 <b>complex</b> 3:23 4:1 35:23 <b>complicated</b> 33:25 <b>comprehensive</b> 3:4,24 <b>concealed</b> 16:24 <b>concern</b> 36:23,25 <b>concerned</b> 4:21 <b>concerning</b> 29:11 37:23 <b>concerns</b> 7:11,19 8:6 37:11 <b>concluded</b> 31:22 <b>conclusion</b> 29:24 31:25 <b>conclusions</b> 5:19 <b>concur</b> 6:6 <b>condensed</b> 13:23 <b>condition</b> 15:16 17:8 30:22 34:4 <b>conditions</b> 3:22 4:1,9 5:4 6:12 9:2 15:20 35:2,11,20 35:24 36:6,15,16 37:4 38:23 <b>confirm</b> 11:2,6 24:25 <b>confirmation</b> 24:7 24:20 <b>confirmed</b> 7:24 <b>confusing</b> 32:3,5 <b>confusion</b> 32:9 <b>conjunction</b> 26:20 <b>consider</b> 37:4,14 40:10 <b>considerable</b> 4:3</p>	<p><b>consideration</b> 40:11 <b>considered</b> 28:25 37:8 <b>considering</b> 36:6 <b>consistent</b> 10:24 <b>construct</b> 10:8 <b>construction</b> 6:8 11:12 37:16 <b>consult</b> 34:1 36:21 37:5 <b>consultant</b> 5:10 8:1 29:6 <b>consultation</b> 31:18 <b>consulted</b> 29:5 31:15 <b>contaminant</b> 8:4 <b>contaminated</b> 6:10 <b>context</b> 34:19 <b>contingency</b> 6:9 <b>continued</b> 42:17 <b>convened</b> 4:11 <b>convention</b> 15:23 <b>conversation</b> 34:20 <b>conveyors</b> 16:18 <b>copula</b> 16:16 <b>correct</b> 8:23 10:16 <b>correction</b> 20:15 <b>corrections</b> 23:16 <b>cost</b> 38:2 <b>counsel</b> 30:21 <b>couple</b> 15:4 19:22 <b>court</b> 4:24 <b>covered</b> 17:11 <b>create</b> 38:20 <b>created</b> 10:9 <b>crosswalks</b> 37:24 <b>csr</b> 1:18</p>	<p><b>cubic</b> 6:4 <b>curb</b> 24:12 <b>curbs</b> 37:23 <b>current</b> 8:1 <b>currently</b> 3:12 <b>cuts</b> 24:12 <b>cycle</b> 34:5</p> <p style="text-align: center;"><b>d</b></p> <p><b>d</b> 3:1 12:25 <b>daily</b> 41:12 <b>dan</b> 5:16,20 6:25 <b>date</b> 5:23 6:12 23:20 <b>dated</b> 5:12,20 7:7 <b>day</b> 43:16 <b>deadline</b> 42:13 <b>deal</b> 36:24 <b>dealing</b> 15:8 <b>december</b> 8:10 <b>decide</b> 6:18 <b>decision</b> 3:21 23:12 30:23 31:4 <b>deck</b> 19:3 <b>deem</b> 38:24 <b>deems</b> 37:19 <b>define</b> 29:22 <b>definitely</b> 5:6 <b>definition</b> 29:23 <b>delay</b> 23:3 <b>delete</b> 20:23 31:11 <b>deleted</b> 20:2,3,18 23:8 <b>deletion</b> 10:15 <b>demo</b> 23:3 <b>denial</b> 10:21 <b>departments</b> 37:3 38:18 <b>depending</b> 18:15 <b>depth</b> 7:13,24 26:21</p>	<p><b>derricks</b> 16:18 <b>describes</b> 31:23 <b>describing</b> 32:6 <b>design</b> 4:12,20 7:2 7:20 8:2,8 12:25 16:23 22:21,23 26:18 36:22 <b>detail</b> 29:17 <b>details</b> 20:16 <b>detected</b> 5:14 <b>determine</b> 5:7 <b>developer</b> 4:15,20 14:15 <b>dewatering</b> 7:14 7:18 8:3,5 <b>dhanda</b> 2:12 <b>difference</b> 15:19 <b>differences</b> 25:14 <b>different</b> 8:10 <b>digest</b> 35:25 <b>diligence</b> 29:3,11 30:8,10 31:24 34:6 <b>dimensionally</b> 24:10 <b>dimensions</b> 19:22 <b>direct</b> 27:21,22 29:8 <b>directly</b> 25:11 <b>disappoint</b> 33:20 <b>disappointed</b> 32:14 <b>disappointment</b> 32:24 <b>discern</b> 29:3 <b>disclosures</b> 42:14 <b>discuss</b> 4:8 36:3,7 <b>discussing</b> 38:22 <b>discussion</b> 37:25 38:1</p>
--	---	---	---

<p><b>displeasure</b> 32:19  <b>disposal</b> 6:1,5  <b>dispute</b> 28:20  29:19 30:24 31:1  31:1,2  <b>distance</b> 24:17  <b>district</b> 12:21,21  20:6 22:14  <b>ditto</b> 34:1  <b>division</b> 24:7,21  <b>documents</b> 11:13  <b>doherty</b> 1:18 43:4  43:21  <b>doing</b> 29:17  <b>dpw</b> 23:9 36:22  37:18,19 38:1,19  <b>draft</b> 4:8 5:4 23:12  35:9  <b>drafted</b> 3:22  <b>drag</b> 42:9,10  <b>due</b> 29:3,11 31:23  34:6  <b>dwelling</b> 22:8</p>	<p>17:15,19,24 18:2,6  18:8,11,14,21,22  18:24 19:2  <b>elevators</b> 17:1  <b>eliminate</b> 25:17  <b>elimination</b> 24:22  <b>emphasized</b> 14:12  <b>engler</b> 2:11 9:20  9:21 10:2,16  11:10 35:5  <b>ensure</b> 5:9 10:24  <b>enter</b> 39:19  <b>entirely</b> 36:17  <b>entrance</b> 19:17,23  <b>entry</b> 39:18  <b>environmental</b>  6:13,20 7:11  <b>equipment</b> 13:22  15:3 17:2 18:4  <b>estimate</b> 38:2  <b>et</b> 27:7  <b>europe</b> 39:4  <b>evening</b> 3:2 34:11  39:22</p>	<p><b>expensive</b> 3:25  <b>expertise</b> 37:6  <b>explain</b> 25:5 28:22  <b>explained</b> 14:18  <b>expressed</b> 32:13  32:19  <b>expressly</b> 29:6  <b>extend</b> 8:2  <b>extension</b> 3:11  <b>extensive</b> 35:11  <b>extent</b> 35:8,12  <b>extra</b> 15:4</p>	<p><b>fill</b> 23:19 33:2  <b>finale</b> 42:5  <b>find</b> 32:4  <b>finding</b> 26:6 27:13  33:10 34:4  <b>findings</b> 3:21 6:16  23:12,25 24:3  25:18,19 34:14  <b>fine</b> 8:20 23:9 33:9  <b>fire</b> 39:8  <b>fires</b> 16:16  <b>first</b> 20:17,23 30:1  31:6</p>
<p style="text-align: center;"><b>e</b></p>	<p><b>event</b> 6:9 34:25  <b>eventually</b> 5:4  <b>everybody</b> 12:17  <b>evolution</b> 8:8  <b>exactly</b> 26:15  <b>example</b> 18:23  36:5 38:19  <b>examples</b> 40:7  <b>exceed</b> 14:7 17:2  <b>exceptions</b> 13:20  14:1  <b>exclude</b> 34:21  <b>excluded</b> 3:17  <b>exist</b> 26:13  <b>expect</b> 35:10  <b>expedient</b> 8:14</p>	<p style="text-align: center;"><b>f</b></p> <p><b>f</b> 13:9,17 43:1  <b>f.1</b> 13:20  <b>f1</b> 19:14  <b>facetime</b> 42:15  <b>facilities</b> 22:22  <b>fact</b> 23:15  <b>factual</b> 28:12  <b>fairly</b> 3:25  <b>far</b> 32:5 33:21  <b>farewell</b> 41:17  <b>fat</b> 40:5  <b>favor</b> 21:3 30:25  <b>federal</b> 40:2  <b>feel</b> 28:24  <b>feeling</b> 33:11  <b>feelings</b> 32:6  <b>feet</b> 7:13,22 14:1,3  14:8,16 15:1,4  16:10 17:3,10,12  17:25 18:3,7,15,15  18:23,25 19:9,18  19:18,24 20:13,21  21:13,22 22:3  25:20,21,25  <b>field</b> 7:25  <b>figure</b> 30:11  <b>files</b> 5:3</p>	<p><b>fit</b> 36:17  <b>five</b> 18:7  <b>fixed</b> 23:14  <b>flagpoles</b> 16:19  <b>floor</b> 1:13 13:4  15:1,1 18:1,7,7,23  19:7 20:24 21:20  <b>floors</b> 20:17  <b>flushed</b> 26:25  <b>follows</b> 3:14  <b>foot</b> 14:10 20:17  20:20 40:15,16  <b>foreclose</b> 35:1  <b>foregoing</b> 43:7  <b>foresee</b> 11:21  <b>forth</b> 43:10  <b>forty</b> 7:13  <b>forward</b> 29:23  <b>found</b> 27:4 32:2  <b>foundation</b> 7:12  <b>four</b> 14:23 18:7,15  18:15,17,17 19:18  40:15  <b>fourteen</b> 14:3  17:12  <b>frankly</b> 28:21 35:2  35:23</p>

<p><b>front</b> 12:1 24:9,11 24:23 27:7 41:2,3 <b>full</b> 16:1 <b>fully</b> 36:7 <b>furnishings</b> 40:17 <b>further</b> 4:19 7:15 10:10 14:18 15:10 18:9 30:13 32:23 42:12 <b>fuss</b> 5:17</p>	<p><b>geotech</b> 5:10,16 6:17,20 8:11,13 39:11 <b>geotechnical</b> 6:21 7:11 8:1 <b>getting</b> 38:16 <b>gfa</b> 32:15 <b>give</b> 39:14 <b>given</b> 41:11 <b>giving</b> 42:12 <b>global</b> 10:13 26:1 <b>globally</b> 33:11 <b>glove</b> 10:6 <b>go</b> 10:5 18:8 30:3 30:13 32:5 33:21 39:6 40:1,3 <b>going</b> 23:11 24:8 25:5 26:12 27:1 28:14 30:18,24 31:3 32:10 33:24 34:20 36:17 38:1 38:14,22 39:19 40:10 41:15 42:4 42:4 <b>good</b> 3:2 34:10 <b>grade</b> 7:23 <b>grant</b> 3:24 10:13 17:7 <b>granted</b> 15:13 17:4 <b>granting</b> 40:10 <b>great</b> 11:24 35:20 39:15 <b>green</b> 21:19 <b>grocery</b> 28:1 <b>gross</b> 4:15 21:20 <b>ground</b> 39:3 <b>groundwater</b> 7:1 7:1,14,18,23,24 8:3</p>	<p><b>group</b> 5:2 <b>guess</b> 23:8 35:7 <b>guidance</b> 15:10 29:7 <b>guide</b> 29:8</p>	<p><b>high</b> 14:13 <b>higher</b> 16:10,11 18:3 <b>highest</b> 18:1 <b>history</b> 3:21 23:13 23:18 <b>hours</b> 19:22 <b>house</b> 40:4,4 <b>housing</b> 4:17 12:18 29:4 31:21 32:14,19</p>
<p style="text-align: center;"><b>g</b></p>		<p style="text-align: center;"><b>h</b></p>	<p style="text-align: center;"><b>i</b></p>
<p><b>g</b> 3:1 19:17,24 <b>g175</b> 12:21 <b>garage</b> 7:22 19:18 19:23 <b>gei</b> 5:11,23 6:2 <b>gei's</b> 6:6 <b>geller</b> 2:2 3:2,6 8:18 9:1,2,4,9,17 10:1,11,17 11:5,8 11:24 12:13,20,25 13:4,9,17,20 14:9 17:13 19:14,17 20:1,11,25 21:3,7 21:23 22:1,6,11,16 22:21 23:2,7,25 25:4,8,18,24 26:11 27:11,19,24 28:6 28:12 29:13,22 30:16 31:12,16 32:2,8,17 33:4,9 33:20 34:8,18,24 35:19 36:8,12 38:7,11 39:13,15 41:13,19,23 42:3 42:11,16 <b>general</b> 12:16 25:21 38:9 <b>generally</b> 6:3 <b>geoff</b> 2:11 9:21 37:14</p>		<p><b>h</b> 20:2,2,3,5 <b>hall</b> 1:11 25:13,21 <b>hand</b> 10:6 43:16 <b>handed</b> 9:18 <b>handle</b> 6:18 <b>hanging</b> 5:5 <b>happen</b> 11:22 <b>happening</b> 11:21 <b>happens</b> 15:5 <b>happy</b> 20:2 <b>hard</b> 42:12 <b>haril</b> 2:13 14:21 <b>hazardous</b> 5:8,14 <b>head</b> 9:6 <b>health</b> 42:7 <b>hear</b> 3:15 42:13 <b>heard</b> 15:8 <b>hearing</b> 1:8 3:3,9 3:12 4:6,7 5:6 10:23 35:8,10,18 39:19,20 42:19 43:9 <b>height</b> 13:9,11,14 13:15,21 14:1,10 14:17 15:24 17:2 26:6,14,15,19,21 26:23 27:8 <b>heights</b> 25:9,11 <b>held</b> 43:9 <b>helpful</b> 8:17 12:19 35:9,14 <b>hereinbefore</b> 43:10 <b>hereunto</b> 43:15</p>	<p><b>i.1</b> 21:7 <b>identified</b> 6:10 <b>imagine</b> 14:5 <b>immediate</b> 3:6 <b>immediately</b> 37:15 <b>impact</b> 4:14 <b>important</b> 28:25 35:3 <b>impractical</b> 38:24 <b>improvement</b> 37:23 <b>inch</b> 19:24 <b>inches</b> 19:18 <b>included</b> 6:9 13:14 <b>includes</b> 5:19 35:22 <b>inclusive</b> 9:25 10:3 10:15 <b>increased</b> 32:20 <b>indicative</b> 6:13 <b>information</b> 6:11 <b>initial</b> 9:12 37:24 <b>insists</b> 12:7 <b>inspector</b> 11:19 <b>instance</b> 37:22 <b>intensity</b> 4:13 <b>interactive</b> 5:2 <b>interesting</b> 37:10</p>



<p><b>interior</b> 19:7  <b>introduced</b> 10:4  <b>island</b> 27:6  <b>issue</b> 29:9,12 30:6  30:14  <b>issues</b> 7:1,2 8:4,13  32:7 38:21  <b>item</b> 24:3 31:6  <b>iterations</b> 7:17</p>	<p><b>knowledge</b> 43:11  <b>knows</b> 10:5 37:19</p>	<p><b>longwood</b> 37:23  41:5,6</p>	<p><b>means</b> 3:11  <b>measure</b> 15:24</p>
<p><b>j</b></p>	<p><b>l</b></p>	<p><b>look</b> 21:15 23:11</p>	<p><b>measured</b> 14:2</p>
<p><b>j</b> 22:1  <b>jennifer</b> 1:18 43:4  43:21  <b>jesse</b> 2:2 3:5 36:2  <b>job</b> 35:15  <b>joe's</b> 6:19 27:25  28:4,14,16  <b>johanna</b> 2:3 3:6  12:6  <b>judi</b> 31:18 33:18  <b>july</b> 3:9 4:11 5:6  <b>jump</b> 8:19 24:1  <b>jumping</b> 37:14  <b>jurisdiction</b> 29:2  30:6,12 31:22  <b>justifies</b> 26:22</p>	<p><b>l</b> 22:21  <b>lafrance</b> 5:17,20  6:25 7:7  <b>landing</b> 19:6  <b>landscape</b> 21:7,12  21:14,18  <b>language</b> 33:16  <b>large</b> 6:13  <b>leads</b> 28:23 31:24  <b>lease</b> 28:14  <b>leases</b> 28:15,15,17  <b>leave</b> 29:21 30:3  33:12 40:14  <b>leeway</b> 14:4  <b>left</b> 3:6,7 5:5 24:6  24:19  <b>legal</b> 31:21  <b>lessen</b> 4:13  <b>letter</b> 29:7  <b>level</b> 11:12 30:15  30:17  <b>levels</b> 7:3 8:10  <b>life</b> 29:9,11  <b>limit</b> 17:3  <b>line</b> 20:7 22:3  <b>list</b> 9:12,25 10:23  12:2,4,16 36:9,13  39:9  <b>listing</b> 36:16  <b>lists</b> 38:14  <b>little</b> 14:4 26:25  33:25 35:10,14  <b>live</b> 5:1  <b>locations</b> 15:5  <b>long</b> 35:24 37:3  <b>longer</b> 7:1,2 8:5  <b>longstanding</b>  29:18</p>	<p>26:19 29:1,10  33:16 40:2</p>	<p><b>measurements</b>  7:25</p>
<p><b>k</b></p>	<p><b>language</b> 33:16</p>	<p><b>looking</b> 10:22,23  16:22</p>	<p><b>measuring</b> 15:24</p>
<p><b>k</b> 22:6,11  <b>k1</b> 22:12  <b>k2</b> 22:12  <b>kate</b> 2:4 3:8 36:10  38:13 42:8  <b>keep</b> 16:13 17:9  27:1 31:8  <b>key</b> 35:21  <b>kill</b> 31:7  <b>know</b> 11:19,22  17:19 30:12,22  32:9 35:17 38:23  39:17 41:16</p>	<p><b>large</b> 6:13</p>	<p><b>lose</b> 37:7</p>	<p><b>mechanical</b> 13:22</p>
<p><b>k</b></p>	<p><b>leads</b> 28:23 31:24</p>	<p><b>loss</b> 24:8</p>	<p>14:10 15:2,3,19</p>
<p><b>k</b></p>	<p><b>lease</b> 28:14</p>	<p><b>lot</b> 22:3 40:3,7</p>	<p>16:9,23 17:2 18:4</p>
<p><b>k</b></p>	<p><b>leases</b> 28:15,15,17</p>	<p><b>lower</b> 14:6</p>	<p><b>mechanicals</b> 13:11</p>
<p><b>k</b></p>	<p><b>leave</b> 29:21 30:3  33:12 40:14</p>	<p><b>m</b></p>	<p>13:14,16 14:13,16</p>
<p><b>k</b></p>	<p><b>leeway</b> 14:4</p>	<p><b>m</b> 23:2</p>	<p>16:9 17:6,10</p>
<p><b>k</b></p>	<p><b>left</b> 3:6,7 5:5 24:6  24:19</p>	<p><b>machine</b> 17:20</p>	<p><b>meet</b> 21:20 24:14</p>
<p><b>k</b></p>	<p><b>legal</b> 31:21</p>	<p>18:13</p>	<p>32:16</p>
<p><b>k</b></p>	<p><b>lessen</b> 4:13</p>	<p><b>maintain</b> 33:1</p>	<p><b>meeting</b> 24:15</p>
<p><b>k</b></p>	<p><b>letter</b> 29:7</p>	<p><b>maintenance</b>  18:14,18,25</p>	<p><b>meiklejohn</b> 2:5</p>
<p><b>k</b></p>	<p><b>level</b> 11:12 30:15  30:17</p>	<p><b>making</b> 35:15</p>	<p>3:7 12:12,24 13:3</p>
<p><b>k</b></p>	<p><b>levels</b> 7:3 8:10</p>	<p><b>management</b> 6:8</p>	<p>13:7 15:22 16:7</p>
<p><b>k</b></p>	<p><b>life</b> 29:9,11</p>	<p>7:14,18</p>	<p>17:17,23 18:10,20</p>
<p><b>k</b></p>	<p><b>limit</b> 17:3</p>	<p><b>manufacturer's</b>  18:16</p>	<p>19:1,6,10,13 21:5</p>
<p><b>k</b></p>	<p><b>line</b> 20:7 22:3</p>	<p><b>margaret</b> 39:24</p>	<p>21:10 22:10,19,25</p>
<p><b>k</b></p>	<p><b>list</b> 9:12,25 10:23  12:2,4,16 36:9,13  39:9</p>	<p><b>maria</b> 2:7 4:6 9:11</p>	<p>23:4 27:16 28:5</p>
<p><b>k</b></p>	<p><b>listing</b> 36:16</p>	<p>9:25 10:13 11:19</p>	<p>30:7 33:22 34:3</p>
<p><b>k</b></p>	<p><b>lists</b> 38:14</p>	<p>21:1 23:19 35:9</p>	<p><b>member</b> 2:3,4,5</p>
<p><b>k</b></p>	<p><b>little</b> 14:4 26:25  33:25 35:10,14</p>	<p>35:14,17,22 36:13</p>	<p>39:17</p>
<p><b>k</b></p>	<p><b>live</b> 5:1</p>	<p>36:14 38:17 39:14</p>	<p><b>members</b> 12:1,4</p>
<p><b>k</b></p>	<p><b>locations</b> 15:5</p>	<p>41:17</p>	<p>35:23</p>
<p><b>k</b></p>	<p><b>long</b> 35:24 37:3</p>	<p><b>maria's</b> 11:10</p>	<p><b>mention</b> 4:24</p>
<p><b>k</b></p>	<p><b>longer</b> 7:1,2 8:5</p>	<p><b>mass</b> 29:4 31:21</p>	<p>39:16</p>
<p><b>k</b></p>	<p><b>longstanding</b>  29:18</p>	<p><b>massachusetts</b>  1:14 43:2,6</p>	<p><b>mentioned</b> 15:9</p>
<p><b>k</b></p>	<p><b>longstanding</b>  29:18</p>	<p><b>masts</b> 16:19</p>	<p><b>methods</b> 34:4</p>
<p><b>k</b></p>	<p><b>longstanding</b>  29:18</p>	<p><b>materials</b> 5:8,14</p>	<p><b>metric</b> 26:19</p>
<p><b>k</b></p>	<p><b>longstanding</b>  29:18</p>	<p><b>matter</b> 29:8 41:24</p>	<p><b>migration</b> 8:4</p>
<p><b>k</b></p>	<p><b>longstanding</b>  29:18</p>	<p><b>maximum</b> 13:4,9</p>	<p><b>minimizes</b> 15:17</p>
<p><b>k</b></p>	<p><b>longstanding</b>  29:18</p>	<p>13:21 14:1</p>	<p><b>minimum</b> 17:16</p>
<p><b>k</b></p>	<p><b>longstanding</b>  29:18</p>	<p><b>mean</b> 27:5 35:8</p>	<p>20:5,11</p>
<p><b>k</b></p>	<p><b>longstanding</b>  29:18</p>	<p>38:8</p>	<p><b>minutes</b> 42:6</p>
<p><b>k</b></p>	<p><b>longstanding</b>  29:18</p>	<p></p>	<p><b>missing</b> 24:4</p>
<p><b>k</b></p>	<p><b>longstanding</b>  29:18</p>	<p></p>	<p><b>mitigation</b> 37:20</p>
<p><b>k</b></p>	<p><b>longstanding</b>  29:18</p>	<p></p>	<p><b>mix</b> 4:15</p>

<p><b>modified</b> 19:15  <b>monitors</b> 16:20  <b>monuments</b> 16:16  <b>morelli</b> 2:7 4:7  8:24 9:3,16,19  10:18 12:15 13:13  13:24 14:20 15:7  15:15 16:2,14  20:19,23 21:2,11  21:17 22:13 23:21  24:5 25:2,7,10  26:17 27:15,18,22  28:3,10,24 31:5,8  31:10 32:1,11,21  33:19,24 34:6  36:19 37:18 40:13  40:18,21 41:1,8  <b>movie</b> 42:6</p>	<p><b>non</b> 38:20  <b>normal</b> 3:18  <b>normally</b> 16:21  <b>notary</b> 43:5  <b>notation</b> 6:6  <b>note</b> 10:18  <b>noted</b> 5:23 6:2  19:21 20:15  <b>number</b> 3:25 15:4  18:4 25:4 32:14</p>	<p><b>ordinances</b> 3:18  <b>original</b> 20:3  <b>overlay</b> 22:14  <b>override</b> 14:22  17:15,25 18:2,12  19:5,10  <b>overrides</b> 14:18,23  <b>oversight</b> 28:21  <b>oversized</b> 33:12,13</p>	<p><b>pelham</b> 25:13,21  <b>penthouses</b> 16:19  17:1,7  <b>people</b> 3:10 24:1  34:25 38:23 40:20  <b>percent</b> 11:20  21:20  <b>performed</b> 5:23  7:25</p>
<p style="text-align: center;"><b>n</b></p>	<p style="text-align: center;"><b>o</b></p>	<p style="text-align: center;"><b>p</b></p>	<p><b>permanent</b> 36:20  <b>permanently</b> 39:7</p>
<p><b>n</b> 3:1 23:7  <b>name</b> 3:5  <b>nay</b> 12:5,6,6  <b>near</b> 8:5  <b>nearby</b> 7:15  <b>necessarily</b> 16:6  <b>necessary</b> 5:25  11:3  <b>necessity</b> 26:10  <b>need</b> 10:7 19:24  23:15 24:20 27:9  28:23 30:13,16,17  31:9,13 35:21  40:14,16  <b>needed</b> 14:17 39:8  <b>needs</b> 3:12 26:24  27:2 32:18  <b>negative</b> 9:7 29:5  <b>neighbor</b> 31:3  <b>neutral</b> 10:20  <b>never</b> 26:18 38:4  38:11</p>	<p><b>o</b> 3:1  <b>o'neil</b> 5:17  <b>objection</b> 40:15  <b>objective</b> 36:23  <b>observation</b> 16:17  17:1  <b>obtain</b> 22:23 30:15  <b>obvious</b> 35:16  <b>obviously</b> 4:3  23:19 34:14 35:12  <b>occupancy</b> 5:10  <b>occupied</b> 24:14  <b>october</b> 3:11,13  4:8 39:20 42:17  <b>offer</b> 8:22 34:8  <b>offered</b> 7:3  <b>okay</b> 9:4,9 10:4  12:8 17:21 20:19  20:20 27:19 32:21  35:4 41:22 42:13  <b>omissions</b> 10:19  <b>onus</b> 11:14  <b>open</b> 21:7,18  41:24  <b>opinion</b> 31:21  <b>opportunity</b> 34:9  35:1 37:8  <b>opposite</b> 26:16  <b>order</b> 10:7 24:1  30:14</p>	<p><b>p</b> 3:1  <b>p.m.</b> 1:10 39:21  42:20  <b>page</b> 5:3  <b>pages</b> 43:7  <b>pandya</b> 2:13 14:21  14:21 17:22 18:6  18:12,22 19:3,8,12  <b>paragraph</b> 5:18  29:16  <b>paragraphs</b> 7:7  <b>parcel</b> 12:9  <b>parked</b> 22:23  <b>parking</b> 4:13 7:4  7:22 22:7,14,17,22  22:24 24:8,10,13  24:18,21,23 32:16  37:11 40:23 41:3  41:9  <b>part</b> 8:5 11:12  12:8 28:15 37:16  <b>party</b> 8:7  <b>passengers</b> 19:2  <b>path</b> 40:17  <b>pay</b> 38:3  <b>pedestrians</b> 40:6  40:12  <b>peer</b> 5:16 6:2,21  6:22 8:12,22  24:13 34:1</p>	<p><b>permitted</b> 3:4,25  11:13 14:2 15:14  17:3  <b>permits</b> 30:13,15  30:17  <b>person</b> 16:3 17:24  <b>perspective</b> 13:25  <b>pertained</b> 30:23  <b>pertaining</b> 5:3  <b>pertains</b> 28:20  <b>peter</b> 34:1  <b>photographs</b>  39:18  <b>pictures</b> 40:24  41:11  <b>piece</b> 28:7  <b>pieces</b> 3:20  <b>place</b> 28:5 32:23  39:21 43:10  <b>placed</b> 4:1  <b>plan</b> 6:8 10:8 19:4  32:12  <b>planner</b> 2:7  <b>plans</b> 6:23 10:6,22  10:25 14:3 21:12  <b>pleasure</b> 9:22,23  <b>plus</b> 14:23 18:7,15  18:17,21,25  <b>point</b> 11:11 14:12  30:11</p>

<p><b>popping</b> 14:25  <b>portion</b> 4:18 35:3              35:21  <b>possible</b> 24:10  <b>posted</b> 5:13 39:21  <b>potential</b> 8:3              29:19  <b>poverman</b> 2:4 3:8              9:8 12:11,23 13:6              13:18 14:11 16:8              19:19 20:9 21:6              21:24 22:4,18              23:5,22 24:25              25:3 26:9 31:9              36:2,11 37:7 38:4              38:10 39:2,6,14              41:15,21 42:1,7,9              42:15  <b>prefer</b> 14:7  <b>preliminary</b> 23:12  <b>premium</b> 24:18  <b>preparation</b> 11:12  <b>prepared</b> 7:10              35:7,18  <b>prescriptive</b> 36:25  <b>present</b> 7:2 9:5  <b>presented</b> 4:12              32:12  <b>principal</b> 20:6  <b>printout</b> 12:17  <b>prior</b> 6:23  <b>private</b> 31:2  <b>probably</b> 17:18              29:25 30:1 36:16  <b>procedural</b> 3:20              23:13,18  <b>process</b> 23:17 26:5              38:15  <b>professionals</b>              36:22 37:6</p>	<p><b>program</b> 7:16,21  <b>prohibiting</b> 22:23  <b>project</b> 3:23 4:1              6:9,24 7:18 8:6,8              11:3 12:9 20:8              24:9,23 27:3,9              33:1,2 41:3  <b>properly</b> 30:5  <b>property</b> 20:7              28:20 31:2  <b>proposed</b> 3:21              10:8 17:19 19:23              20:7,13,16,20  <b>proposing</b> 8:22  <b>protect</b> 40:6,19  <b>provide</b> 11:2              31:17,17 32:18  <b>provided</b> 7:3 9:12              9:25 40:24  <b>providing</b> 29:17  <b>provision</b> 8:25              17:14  <b>provisions</b> 16:15              39:10  <b>public</b> 4:14 16:24              32:25 34:9,17              35:23 36:4,22              37:13,20 39:17  <b>purpose</b> 5:8  <b>purposes</b> 18:19  <b>push</b> 31:23  <b>put</b> 4:4 15:16              16:14 25:17 33:15              36:9,14</p>	<p><b>quote</b> 5:23 6:1</p> <hr/> <p style="text-align: center;"><b>r</b></p> <hr/> <p><b>r</b> 3:1 43:1  <b>raise</b> 34:20  <b>raised</b> 7:19 8:6  <b>raj</b> 2:12  <b>ramps</b> 37:24  <b>randolph</b> 2:5 3:7  <b>rashna</b> 2:9 14:14  <b>rate</b> 6:3  <b>ratio</b> 13:5 26:22  <b>ratios</b> 22:17  <b>reach</b> 31:21  <b>read</b> 5:18 7:6              20:16  <b>reading</b> 32:11  <b>really</b> 26:21 28:2              36:21,22  <b>rear</b> 20:5  <b>reason</b> 18:1  <b>recall</b> 3:10 36:20  <b>received</b> 5:12  <b>recitation</b> 25:6  <b>recognized</b> 28:22  <b>recommend</b> 6:7              10:21 12:15  <b>recommendations</b>              5:19  <b>recommended</b>              10:4 32:16  <b>reconvening</b> 3:3  <b>record</b> 3:5 9:21              14:7 17:8 21:13              34:4 39:18,19  <b>recycle</b> 23:20  <b>reduced</b> 4:17,22              32:15,15  <b>refer</b> 7:12  <b>reference</b> 7:10              13:21 27:2 28:14</p>	<p><b>referring</b> 27:25  <b>refers</b> 26:7  <b>regarding</b> 8:11,25              13:25 24:17,21              29:18,19  <b>regulated</b> 7:15  <b>regulations</b> 12:21              13:21  <b>related</b> 6:17 27:3  <b>relax</b> 24:15  <b>relevance</b> 27:14  <b>remains</b> 29:21  <b>remember</b> 27:5  <b>reminders</b> 24:19  <b>replaced</b> 20:3  <b>report</b> 3:15 5:12              5:17  <b>reporter</b> 1:18 4:24              43:5  <b>reporting</b> 5:21  <b>reports</b> 6:20,23              7:12,15  <b>represent</b> 11:20  <b>representing</b> 9:21  <b>request</b> 3:16,17              9:11 10:7 11:3              13:23  <b>requested</b> 12:2  <b>requests</b> 10:24  <b>require</b> 14:2  <b>required</b> 6:7,14              17:16 21:20  <b>requirement</b>              12:16 13:15 14:24              16:11 22:8  <b>requirements</b> 4:13              12:18 18:16 22:7              32:16  <b>requiring</b> 7:14  <b>reserve</b> 35:6</p>
	<p style="text-align: center;"><b>q</b></p> <hr/> <p><b>qualifiers</b> 25:17  <b>question</b> 16:8              17:17 29:1 30:8              34:15 36:3 39:23  <b>questions</b> 8:12</p>		

<p><b>residential</b> 4:16 5:9 22:17 33:3 <b>resolve</b> 30:14 <b>resolved</b> 32:7 <b>respect</b> 17:15 29:16 <b>respectfully</b> 10:6 <b>respond</b> 29:4 <b>responding</b> 32:24 <b>response</b> 4:12 5:21 6:14 <b>responsibility</b> 11:15,23 <b>responsible</b> 10:19 37:16 <b>rest</b> 30:2 31:7 <b>result</b> 4:22 5:22 6:15 13:22 <b>resulted</b> 4:14 <b>results</b> 5:11 <b>return</b> 33:25 <b>review</b> 3:16,19,20 5:17 6:21 7:15 13:1 <b>reviewed</b> 7:9 19:22 <b>reviewer</b> 5:16 6:2 6:21,22 8:7,12,22 24:13 34:2 <b>reviewing</b> 35:2 <b>revised</b> 6:24 7:21 9:14 32:12 <b>revision</b> 4:12 <b>reword</b> 28:18,19 <b>reworded</b> 32:18 <b>rework</b> 31:6 <b>right</b> 3:8 9:3,16,19 13:13 18:12 19:4 19:8 27:15 31:19 34:24 35:6 39:11</p>	<p><b>road</b> 27:7 <b>robots</b> 39:5 <b>robust</b> 35:11 <b>roof</b> 15:25 16:5,21 17:20,24 18:3,11 18:18,21,24 19:2,3 19:9 <b>rooftop</b> 16:25 <b>room</b> 17:20 25:14 <b>rubbish</b> 23:20 <b>rule</b> 15:23 <b>run</b> 12:2,3 33:18</p> <hr/> <p style="text-align: center;"><b>s</b></p> <hr/> <p><b>s</b> 3:1 <b>sacrificed</b> 32:20 <b>safety</b> 29:9,11 38:21 40:12 <b>sake</b> 10:12 <b>sample</b> 6:3 <b>sampling</b> 5:11,15 5:24 6:2 <b>satisfied</b> 8:7,13 <b>saying</b> 18:20 25:15 33:6 37:12 <b>says</b> 16:9 <b>scale</b> 6:13 <b>scheduled</b> 3:12 4:8 <b>schneider</b> 2:3 3:6 12:10,14,22 13:2,8 13:19 15:18 19:16 20:10 21:4,9,25 22:5,9,20 23:1,6 23:24 25:23 26:24 29:15,25 30:10 31:7,14,20 32:4,22 33:6,17 34:15,22 38:13 39:5 42:8 <b>schneider's</b> 3:7 <b>screened</b> 16:24 <b>screening</b> 15:2,3 15:17,19 17:9</p>	<p><b>seal</b> 43:16 <b>seb</b> 9:21 <b>second</b> 20:17,24 22:11 30:2 41:16 <b>section</b> 13:25 <b>see</b> 11:8 18:5 21:19,22 26:9 35:7 37:14 <b>seen</b> 10:12 38:4,7 38:11 39:3 <b>sense</b> 17:12 29:16 <b>sentence</b> 30:1 31:6 <b>sentences</b> 30:2 <b>sentiment</b> 33:7 <b>separate</b> 13:15 17:6 28:7,9 <b>september</b> 1:10 5:20 7:7 43:16 <b>servicing</b> 18:11 <b>set</b> 26:21 43:10,15 <b>setback</b> 19:17,23 20:7 26:21,22 <b>shaking</b> 9:6 <b>share</b> 36:13 37:2 <b>shared</b> 20:7 <b>shorthand</b> 43:5 <b>show</b> 14:13 30:4 <b>side</b> 20:11,13,16 20:20 24:23 41:5 41:5,6 <b>sidewalk</b> 40:12,14 40:24 41:2,4,9 <b>sidewalks</b> 37:11 38:8,10,12 40:7 <b>signature</b> 43:20 <b>silos</b> 16:18 <b>simply</b> 10:22 12:4 20:4 24:19 33:12 33:13 <b>sink</b> 39:3</p>	<p><b>site</b> 5:9 6:1,14,19 24:9,11,17 29:20 41:3 <b>sites</b> 7:15,16 8:5 <b>sixth</b> 1:13 <b>size</b> 26:4 32:25 33:1 <b>skill</b> 43:11 <b>skirt</b> 14:24 <b>small</b> 10:18 <b>smokestacks</b> 16:18 <b>soil</b> 3:15 5:7,15,24 5:25 6:10,12 8:25 9:5 34:3,12,13 <b>solution</b> 37:1 <b>somebody</b> 34:19 39:23 <b>somewhat</b> 26:11 <b>sooner</b> 35:24 <b>sorry</b> 33:20 42:13 <b>sort</b> 33:10 <b>soule</b> 24:9,24 37:23 40:22 41:5 41:6 <b>sounds</b> 15:15,18 17:5,7 38:13,15 <b>southern</b> 41:5 <b>space</b> 21:8 22:7,7 24:10,13,21 28:15 28:15 32:20 33:2 <b>spaces</b> 24:8,23 <b>speak</b> 24:5 34:9,10 35:1,3 <b>spec</b> 14:5 <b>special</b> 12:20 14:2 15:13 17:3 <b>specific</b> 38:8,16 <b>specifically</b> 6:1 <b>spend</b> 38:22</p>
--	---	---	--

<p><b>spoke</b> 26:18  <b>spots</b> 25:1  <b>square</b> 21:13,22  <b>ss</b> 43:3  <b>staff</b> 10:20 14:9  <b>stair</b> 14:17,22 18:2  <b>stairs</b> 17:16,23  18:17  <b>standards</b> 24:14  24:16  <b>standpoint</b> 28:13  <b>start</b> 23:16 33:15  35:2 38:20  <b>started</b> 36:14  <b>state</b> 7:16 21:13  30:15,17 40:4,4  <b>stated</b> 6:25  <b>statement</b> 8:15  9:24 35:16  <b>states</b> 26:15  <b>stefan</b> 2:10  <b>stepped</b> 20:4  <b>steps</b> 30:4  <b>stick</b> 4:2  <b>stone</b> 23:14  <b>stones</b> 16:16  <b>store</b> 28:1,8  <b>stories</b> 25:23,25  <b>story</b> 7:22 16:1  18:21 25:15  <b>stream</b> 5:1  <b>street</b> 1:9,12 3:4  20:8 22:6,22 25:1  25:11,12,16 26:20  40:17  <b>streets</b> 25:13  <b>strike</b> 27:18  <b>structure</b> 16:1,6  16:22 18:2 19:11  20:6 28:9 33:12  33:14</p>	<p><b>structures</b> 16:21  16:25 22:2 25:20  26:2,4,7,13  <b>stuff</b> 38:16,16,24  <b>subgrade</b> 7:4  <b>submittal</b> 11:13  <b>submittals</b> 7:9  <b>submitted</b> 6:20  8:23 39:17  <b>substantial</b> 16:25  <b>subtract</b> 30:19  <b>subtractions</b> 23:16  <b>sufficient</b> 14:16  <b>suggest</b> 17:14  <b>suggested</b> 19:15  30:21  <b>suggestion</b> 15:8  30:22 35:20  <b>suggestions</b> 36:4  37:5  <b>suitable</b> 5:9  <b>summary</b> 8:21  <b>summer</b> 11:9  <b>sure</b> 12:5,20 21:17  23:14 28:13 33:19  <b>surface</b> 15:25  <b>surgery</b> 41:17  <b>suspect</b> 9:17 36:13  <b>suspended</b> 42:19  <b>system</b> 14:5</p>	<p><b>talking</b> 27:24  36:19 41:1  <b>tall</b> 27:12  <b>tandem</b> 22:24  <b>tanks</b> 16:20  <b>team</b> 7:20  <b>technical</b> 33:23  34:19,25  <b>tell</b> 14:15 21:21  <b>ten</b> 14:1,7,10,15  15:1 16:10 17:3  17:10 18:3,23,25  19:11 22:2  <b>terminating</b> 7:21  <b>terms</b> 28:13 32:6  <b>tested</b> 5:7  <b>testimony</b> 3:13  11:2 24:12 34:17  41:14 43:8  <b>testing</b> 3:15 5:22  6:7 8:9,25 9:6  34:13  <b>thank</b> 9:9 10:17  11:24 12:19 14:20  16:7 19:13 20:2  21:23 32:1 39:16  39:22 41:14 42:17  <b>thanks</b> 25:3  <b>thing</b> 5:5  <b>things</b> 14:25 37:8  37:12,19 40:5  <b>think</b> 8:17 9:12,13  9:22,23 10:4,8  11:18 12:8 15:3  16:20,22 17:25  25:19,25 26:6,15  27:2,9,12,13,20  28:6,8,9,20 29:15  30:10 31:12,16,22  32:13 33:4,10,15  34:18 35:16,19</p>	<p>36:1,5 37:10 38:5  40:11  <b>third</b> 8:7  <b>thirty</b> 32:2 42:5  <b>thorough</b> 11:18,20  <b>thought</b> 29:14  32:5  <b>three</b> 15:5 18:15  25:13 27:22 28:18  40:16  <b>throw</b> 38:25 39:9  <b>tie</b> 27:8,10  <b>time</b> 4:4,10 6:15  35:13,22 38:22  39:22 42:2,12  43:9  <b>today</b> 9:13,14  21:12 40:25 41:11  <b>told</b> 41:19  <b>tonight</b> 11:2  <b>tonight's</b> 3:14 4:23  <b>tons</b> 6:4  <b>top</b> 16:1 18:13,14  18:18,23 19:6,9  <b>topic</b> 34:20  <b>topics</b> 34:11,12  <b>touch</b> 34:11  <b>touched</b> 34:12,13  34:14  <b>towers</b> 16:16,17  16:17 17:1  <b>town</b> 1:11 3:18  10:3,19 38:17  <b>trader</b> 6:19 27:25  28:3,14,15  <b>traffic</b> 24:13 40:22  <b>transcript</b> 32:12  43:8  <b>transcripts</b> 4:25  <b>transmission</b>  16:17</p>
	<p style="text-align: center;"><b>t</b></p> <p><b>t</b> 43:1,1  <b>table</b> 6:25 7:5 8:3  <b>take</b> 8:21 13:11  19:2 23:11 27:10  28:19 29:25 30:2  <b>taken</b> 27:1  <b>takes</b> 4:3 37:3  <b>talk</b> 32:23  <b>talked</b> 27:5</p>		

<p><b>transportation</b> 22:14 24:7,15,21 38:19  <b>travel</b> 40:17  <b>traveling</b> 40:7  <b>trespass</b> 29:19  <b>triggered</b> 5:22 6:15  <b>true</b> 43:7  <b>try</b> 17:9  <b>trying</b> 27:8 40:18 40:19  <b>turn</b> 7:20  <b>turns</b> 19:25  <b>tweak</b> 30:1  <b>twelve</b> 17:25 19:8  <b>twenty</b> 7:22 19:24 28:18  <b>two</b> 4:25 7:3,7,9 7:22 12:16 14:25 15:5 22:7,15 24:11 28:6 30:2  <b>type</b> 17:19  <b>typical</b> 36:9  <b>typically</b> 14:22 15:1,13 24:15</p>	<p><b>unresolved</b> 29:21  <b>unsafe</b> 38:24  <b>urge</b> 36:12  <b>use</b> 4:13 16:23 20:6 40:12  <b>usual</b> 18:14  <b>usually</b> 14:25 17:25 18:7,16,17</p>	<p>34:1,8,10,25 35:3 35:17 36:7 37:7 37:13 39:2,8,16,16 39:22 41:8 42:17  <b>wanted</b> 5:6  <b>wanting</b> 14:12  <b>wants</b> 8:15 34:19  <b>warranted</b> 6:3 37:19  <b>washington</b> 1:12  <b>water</b> 6:25 7:4 8:11 16:16,20  <b>way</b> 4:14 16:14 27:14 33:5 36:22 36:24 37:10,13 39:7  <b>ways</b> 3:17  <b>we've</b> 11:18 34:11 34:12,22 38:7  <b>website</b> 5:3,13  <b>wednesday</b> 1:10  <b>week</b> 9:14 41:18  <b>weeks</b> 4:25  <b>west</b> 6:19 28:1,3  <b>whereof</b> 43:15  <b>whitestone</b> 7:10  <b>wide</b> 25:12 40:14 40:15,17  <b>width</b> 26:20  <b>willing</b> 38:3  <b>winding</b> 35:5  <b>windmills</b> 16:17  <b>windows</b> 14:13  <b>witness</b> 43:15  <b>wonder</b> 29:16  <b>worcester</b> 43:3  <b>word</b> 33:5  <b>words</b> 24:4  <b>work</b> 38:2  <b>worked</b> 23:14</p>	<p><b>worthy</b> 36:5 37:19  <b>write</b> 37:4  <b>wrote</b> 39:25</p>
<p><b>u</b></p>	<p><b>v</b></p>	<p><b>vehicles</b> 22:23  <b>verbatim</b> 33:7  <b>verify</b> 28:10  <b>version</b> 8:16 9:15 10:14  <b>versions</b> 22:15  <b>vet</b> 38:17  <b>vetted</b> 30:5  <b>video</b> 5:2  <b>view</b> 16:24  <b>vogelmann</b> 2:10 21:12,15,18  <b>voted</b> 34:16,23</p>	<p><b>y</b></p>
<p><b>ultimately</b> 30:5 31:24  <b>underground</b> 22:2  <b>understand</b> 9:11 11:11 14:4 31:5 36:23 37:12  <b>understands</b> 35:17  <b>undertake</b> 24:1  <b>unfortunately</b> 15:6  <b>unit</b> 4:15 22:8  <b>units</b> 4:16,17,21  <b>unnecessary</b> 33:2</p>	<p><b>w</b></p>	<p><b>waiver</b> 10:13,24 11:3,16 15:16 17:8,14 19:24 20:12 22:2,7,17,22 23:2  <b>waivers</b> 3:16,16 8:14,16,19 9:11,23 10:5,7,9,21,23 12:2 23:10 34:13 34:16,17,18 35:9  <b>walk</b> 9:10,22  <b>walking</b> 42:5  <b>want</b> 4:23 5:8 6:18 8:18,19 9:5,10 14:4,6,6,11 24:25 25:16 26:17 29:10 31:10,11 33:18</p>	<p><b>yard</b> 20:5,12,13,16 20:20  <b>yards</b> 6:4  <b>yea</b> 12:4,6,6  <b>yeah</b> 31:12  <b>year</b> 3:10  <b>yoga</b> 28:8</p>
<p><b>z</b></p>	<p><b>z</b></p>	<p><b>z</b></p>	<p><b>zba</b> 4:11,20,21 7:3 7:19 15:10,12 29:7,10 32:13  <b>zba's</b> 6:21 29:2  <b>zero</b> 20:13,20  <b>zoning</b> 3:18</p>