

HARDING TOWNSHIP BOARD OF ADJUSTMENT MINUTES
SPECIAL MEETING
SEPTEMBER 30, 2020
7:30 PM

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Board of Adjustment Chair, Mr. Flanagan called the special electronic meeting of the Board of Adjustment to order at 7:30 and announced that adequate notice of the meeting had been made in accordance with the New Jersey State Open Public Meetings Act and State Executive Order 103.

ROLL CALL

Ms. Taglairino called the roll. It went as follows:

Ms. Sovolos	Present	Mr. Newlin	Present
Mr. Flanagan	Present	Mr. Maselli	Present
Mr. Rosenbaum	Present	Mr. Addonizio	Present
Mr. Symonds	Present	Ms. Chipperson	Present
Mr. Cammarata	Excused		

Board Attorney, Gary Hall, and Ms. Mertz, the Board Planner and Board of Adjustment Secretary Lori Taglairino were also present.

ADMINISTRATIVE

Mr. Mlenak noted that the BOA# 17-18, New York SMSA Limited Partnership d/b/a Verizon Wireless application was carried until the October 15, 2020 meeting with notice. The meeting will be a hybrid electronic and in person meeting

Mr. Mlenak advised that the applicant agreed to extend the FCC Shot Clock. He additionally noted that the Board must vote to the agreement as well.

Mr. Newlin made a motion to extend the FCC Shot Clock for the Verizon application. It was seconded by Ms. Chipperson. On a voice vote all were in favor of extending the FCC Shot Clock.

MINUTES

Mr. Flanagan made a motion to approve the July 16, 2020 minutes. It was seconded by Mr. Newlin. On a voice all eligible member were in favor of approving the minutes.

Mr. Flanagan made a motion to approve the August 25, 2020 minutes. It was seconded by Mr. Newlin. On a voice all eligible member were in favor of approving the minutes.

ONGOING TRAINING

Ongoing training will take place October 15, 2020 at 6:30.

BUDGET APPROVAL VOTE

Mr. Flanagan made a motion to approve the 2021 budget. It was seconded by Mr. Newlin. On a voice all were in favor of approving the budget.

RESOLUTIONS

BOA 2019 Annual Report Resolution

Mr. Flanagan made a motion to approve the Resolution for the 2019 Annual Report. It was seconded by Mr. Symonds. On a voice all were in favor of approving the resolution.

Do Not Exceed Limit for Gary Hall Resolution #06-2020

Mr. Flanagan made a motion to approve the “Do Not Exceed Resolution for Gary Hall”. It was seconded by Mr. Newlin. On a voice all were in favor of approving the resolution.

Prior to commencing the application, there was a discussion regarding witnesses for the BOA #06-20 529 Waterfront Properties application. One potential witness was not available and Mr. Lakind requested an adjournment at a late hour. Mr. Newlin polled the Board as to whether they wished to proceed with the witness in attendance. The Board agreed to continue with the testimony later in the meeting.

NEW BUSINESS

Application BOA #07-20

Lauren Dowling
27 Village Road, B16 Lot 3, R-1 & R-3 Zone
Applicant is seeking relief for an accessory dwelling on the property as per NJSA 40:55D-70(d)(1).

Presenting:
Larry Calli, Attorney

Mr. Ferrante, Engineer
Mr. Pessolano, Planner
Ms. Dowling, Owner

Ms. Dowling, Mr. Ferrante and Mr. Pessolano were sworn in for testimony.

- Mr. Calli presented a proposal for an accessory garage and apartment structure. He noted that the lot was a split zone lot in the R-1 and R-3 zones on a 1.49 acre lot. The applicant is seeking a use variance for this zone.
- Mr. Ferrante presented the layout and site situation for the proposed structure.
- Mr. Ferrante presented Exhibit A-1, a photo from Village Road and A-2 and an aerial photo of the lot.
- Mr. Pessolano presented planner testimony addressing his reasons for suitability for this project.
- Mr. Flanagan is concerned about the density on 1.49 acres when 6 acres are required noting that that goes against the Master Plan.
- Ms. Mertz noted the concern of the accessory dwelling in the R-3 zone and the size of the lot.
- Mr. Newlin suggested considering an addition with a common entrance as a potentially compliant solution.

Mr. Calli requested to carry until the October 15, 2020 with no further notice.

Application BOA #08-20

Mark Drzala
50 Ravenswood Lane, B25.02 L10.11, R-R Zone
Applicant is requesting variance relief for Lot coverage as per
NJSA 40:55D-70(c)

Presenting:

Mr. Drzala, Owner

Mr. Hall swore in Mr. Drzala for testimony.

- Mr. Drzala presented proposed plans to add a 12 ft. x 18ft. shed to his property. He noted that he is over in lot coverage and is requesting 10.8% lot coverage.
- Mr. Drzala explained how his property came to be over in lot coverage.
- The Board asked if there was any way to reduce any of the existing lot coverage.

Mr. Flanagan made a motion to approved with the contingent on the agreement of the home owner to remove the shed upon sale of the property, extra tree planting will screen the shed from the cul-de-sac and Anthony Wayne and the Township Engineer must address stormwater issues and the addition of a dry well. Mr. Fox will confirm the survey. The zoning table needs to be corrected as well. The Board requested compliance with the lighting ordinance. The motion was seconded by Mr. Maselli. A roll call vote went as follows:

For: Ms. Chipperson, Mr. Rosenbaum, Mr. Maselli, Mr. Newlin, Mr. Symonds, Mr. Addonizio and Mr. Flanagan.
Against: None

OLD BUSINESS

Application BOA# 06-20

529 Waterfront Properties, LLC
PO Box 1303, Beach Haven, NJ 08008
Applicant is appealing a Tree Officer decision at 595 Van Beuren Road as per NJSA 40:55D-70(a), NJSA 40:55D76(a) (1) and 225-111 of the Harding Township Code.

Presenting:
Arnold Lakind, Attorney
Mr. Addonizio recused.
Mr. Linson was present for testimony.
Mr. Weibel, Arborist.

Mr. Weibel was sworn in for testimony.
Mr. Flanagan noted that he read the August transcript.
A copy of the transcript of the appeal testimony is appended to these minutes.

Mr. Flanagan made a motion to uphold the Tree Officer decision. It was seconded by Mr. Rosenbaum. A roll call vote went as follows:

For: Ms. Chipperson, Mr. Rosenbaum, Mr. Maselli, Mr. Newlin, and Mr. Flanagan.
Against: Mr. Symonds

OTHER BUSINESS

None

EXECUTIVE SESSION

Mr. Flanagan made a motion to adjourn into executive session. It was seconded by Mr. Newlin. A roll call vote went as follows:

For: Ms. Chipperson, Mr. Rosenbaum, Mr. Maselli, Mr. Newlin, Mr. Addonizio, Ms. Sovolos and Mr. Flanagan and Mr. Symonds

Review of Professionals:

Review of the Attorney, Planner and Engineer for the Board of Adjustment

ADJOURNMENT

Mr. Flanagan adjourned the meeting at 11:20.

Lori Taglairino _____

Respectfully submitted by

Lori Taglairino, Board of Adjustment Secretary

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HARDING TOWNSHIP, NEW JERSEY

BOARD OF ADJUSTMENT

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IN RE: :

529 WATERFRONT PROPERTIES, LLC :

APPEAL OF TREE OFFICER'S :

DECISION AT 595 VAN BEUREN ROAD :

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LOCATION: Via Zoom

DATE: Wednesday, September 30, 2020

TIME: 9:33 p.m.

RENZI LEGAL RESOURCES

Court Reporting, Videography & Legal Services

2277 STATE HIGHWAY #33, SUITE 410

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<p style="text-align: right;">2</p> <p>1 M E M B E R S:</p> <p>2 ALF NEWLIN, Chair</p> <p>3 MICHAEL FLANAGAN</p> <p>4 ARIC ROSENBAUM</p> <p>5 DAN MASELLI</p> <p>6 RITA CHIPPERSON</p> <p>7 HUGH SYMONDS</p> <p>8 ELIZABETH SOVOLOS</p> <p>9</p> <p>10 ALSO PRESENT:</p> <p>11 GARY HALL, ESQ., Board Attorney</p> <p>12 LORI TAGLAIRINO, Board Administrator</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">4</p> <p>1 I N D E X</p> <p>2 WITNESS PAGE</p> <p>3 MATTHEW WEIBEL</p> <p>4 DIRECT EXAMINATION BY MR. LAKIND 16</p> <p>5 CROSS-EXAMINATION BY MR. VITOLO 49</p> <p>6</p> <p>7</p> <p>8</p> <p>9 E X H I B I T S</p> <p>10</p> <p>11 ID DESCRIPTION PAGE</p> <p>12</p> <p>13 (NO EXHIBITS WERE MARKED.)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">3</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 SZAFERMAN LAKIND</p> <p>4 BY: ARNOLD C. LAKIND, ESQ.</p> <p>5 101 Grovers Mill Road, Suite 200</p> <p>6 Lawrenceville, New Jersey 08648</p> <p>7 Tel: (609) 275-0400</p> <p>8 E-mail: alakind@szaferman.com</p> <p>9 Attorney for 529 Waterfront Properties, LLC</p> <p>10</p> <p>11</p> <p>12 RIKER, DANZIG, SCHERER, HYLAND, PERRETTI, LLP</p> <p>13 BY: FRANK J. VITOLO, ESQ.</p> <p>14 Headquarters Plaza</p> <p>15 One Speedwell Avenue</p> <p>16 Morristown, New Jersey 07962-1981</p> <p>17 Tel: (973) 538-0800</p> <p>18 E-mail: fvitol@riker.com</p> <p>19 Attorney for the Gargiulos</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">5</p> <p>1 CHAIRMAN NEWLIN: Mr. Lakind, are you</p> <p>2 there?</p> <p>3 MR. LAKIND: I am, yes. Thank you.</p> <p>4 MR. ADDONZIO: Alf, I'm going to</p> <p>5 recuse, all right?</p> <p>6 CHAIRMAN NEWLIN: Yes. Thanks, Tom.</p> <p>7 MR. ADDONZIO: Thank you.</p> <p>8 CHAIRMAN NEWLIN: Gary, can you kick</p> <p>9 us off, please.</p> <p>10 MR. HALL: I would turn to Mr. Lakind</p> <p>11 and suggest that he make his request. And then we</p> <p>12 can hear from Mr. Vitolo, I'll comment, and the</p> <p>13 Board could comment.</p> <p>14 Arnold, do you still want an</p> <p>15 adjournment?</p> <p>16 MR. LAKIND: I do, yes, Gary. Thank</p> <p>17 you.</p> <p>18 MR. HALL: For everything? Just so</p> <p>19 we're clear. Your other witness is still here. You</p> <p>20 don't want to present him tonight?</p> <p>21 MR. LAKIND: I'd rather present both</p> <p>22 witnesses at the same time because I think it would</p> <p>23 be a more coherent presentation. So that would be</p> <p>24 my preference. I'm prepared, if it's the Board's</p> <p>25 preference, to present my arborist if that's what</p>

<p style="text-align: right;">6</p> <p>1 the Board wishes, though.</p> <p>2 Can I explain essentially how we got</p> <p>3 to where we are and the basis for this request?</p> <p>4 But before doing so, can I ask how</p> <p>5 many Board members are available this evening on</p> <p>6 this application?</p> <p>7 MR. HALL: I think it's only six</p> <p>8 because Mr. Cammarata is not here.</p> <p>9 Is that correct, Lori?</p> <p>10 MS. TAGLAIRINO: Right.</p> <p>11 MR. HALL: Because Elizabeth said she</p> <p>12 didn't get to go through the transcript. Mr.</p> <p>13 Flanagan is eligible and he can so certify. So I</p> <p>14 think that leaves six.</p> <p>15 MR. LAKIND: Okay. Let me essentially</p> <p>16 explain how we got to where we are. But before</p> <p>17 doing that, I do want, if at all possible, seven</p> <p>18 individuals to deliberate. I'm not being</p> <p>19 troublesome in requesting this, it's just that</p> <p>20 statistically when a tie vote counts against me, I'm</p> <p>21 much better off with seven individuals. So whatever</p> <p>22 happens this evening, I would ask that seven</p> <p>23 individuals deliberate.</p> <p>24 The basis of my request is as follows:</p> <p>25 Creigh Rahenkamp is the planner who I have hired for</p>	<p style="text-align: right;">8</p> <p>1 Gary, is in response to two of the questions that</p> <p>2 you raised or one of them -- was precipitated by the</p> <p>3 testimony of Mr. Linson.</p> <p>4 As the Board will recall, this</p> <p>5 application was based upon a need to install</p> <p>6 utilities and make certain driveway improvements.</p> <p>7 MR. HALL: That was a stated reason,</p> <p>8 it's not what Mr. Linson relied on.</p> <p>9 MR. LAKIND: No, no. I agree. I</p> <p>10 agree that was the stated --</p> <p>11 MR. HALL: So that's not relevant.</p> <p>12 Whatever they wrote on the paper is irrelevant to</p> <p>13 me.</p> <p>14 So go ahead. Sorry I interrupted.</p> <p>15 MR. LAKIND: No, that's okay.</p> <p>16 The stated reasons were the two things</p> <p>17 I mentioned. Early on in the hearing, Mr. Linson</p> <p>18 acknowledged that neither basis would have warranted</p> <p>19 the grant. And essentially, his reason, in large</p> <p>20 part, while different people might characterize it</p> <p>21 differently, was that there would be a large number</p> <p>22 of arborvitaes replacing 28 deciduous trees and that</p> <p>23 he felt, in his words, every man's home is his</p> <p>24 castle.</p> <p>25 That's a much different basis than</p>
<p style="text-align: right;">7</p> <p>1 this case. In the middle of the afternoon today, he</p> <p>2 e-mailed me and indicated he had been hospitalized</p> <p>3 with an infection. It's not COVID; it's a bacterial</p> <p>4 infection. I e-mailed him back and asked if he</p> <p>5 could do the hearing from his hospital room, and he</p> <p>6 said yes.</p> <p>7 I then informed Mr. Vitolo and Gary</p> <p>8 that the issue arose but I don't think I need an</p> <p>9 adjournment because Mr. Rehenkamp was prepared to</p> <p>10 proceed.</p> <p>11 Then at 4:30, I received an e-mail</p> <p>12 from him in which he said the doctors and nurses are</p> <p>13 discussing his condition and he's becoming</p> <p>14 concerned. And then at 4:56, he e-mailed me and</p> <p>15 said there's a concern that he might have septicemia</p> <p>16 and he would not be in a position to go forward this</p> <p>17 evening.</p> <p>18 So the reason I'm requesting an</p> <p>19 adjournment is that I don't have my planner</p> <p>20 available.</p> <p>21 Secondly, as I indicated earlier, it</p> <p>22 is my preference and I think my right to have seven</p> <p>23 members deliberate.</p> <p>24 Third, the need for a planner was</p> <p>25 precipitated by what I perceived as -- and this,</p>	<p style="text-align: right;">9</p> <p>1 certainly was anticipated. And I expected that the</p> <p>2 decision would be based on the record in accordance</p> <p>3 with the memo that was given to the Board. That</p> <p>4 created a need for a land planner when I heard that</p> <p>5 testimony. I know I had Mr. Schommer present, and</p> <p>6 my intention was for him to address the utility</p> <p>7 issue and the driveway improvement issue. But as</p> <p>8 Mr. Hall pointed out, in the course of the hearing,</p> <p>9 and as did the Chairman at the time, that really was</p> <p>10 unnecessary. So in an excess of caution, I did ask</p> <p>11 him one question about planning, but it's not nearly</p> <p>12 the comprehensive explanation to which this Board is</p> <p>13 entitled in assessing this application because your</p> <p>14 Master Plan says -- and I'm prepared to make a</p> <p>15 proffer if you wish -- a good deal about tree</p> <p>16 replacement.</p> <p>17 One last supporting argument for this</p> <p>18 request is the following: Many of the applications,</p> <p>19 which I'm sure you hear, involve requests to erect</p> <p>20 structures that will not get erected if the</p> <p>21 application is deferred. This case is essentially</p> <p>22 about landscaping. And I don't mean to denigrate</p> <p>23 the seriousness of the application, but the</p> <p>24 distinction, I think, to some extent justifies more</p> <p>25 liberality in granting a requested adjournment.</p>

<p style="text-align: right;">10</p> <p>1 I know Mr. Hall is of the view that</p> <p>2 it's discretionary determination. But in making</p> <p>3 that determination, I think one thing that should</p> <p>4 not be lost on the Board is that Mr. Rehenkamp's</p> <p>5 absence could not have been anticipated.</p> <p>6 With that in mind, and because I would</p> <p>7 like seven people to deliberate, I do request an</p> <p>8 adjournment this evening.</p> <p>9 CHAIRMAN NEWLIN: I'd like to ask you</p> <p>10 some questions about your order. Just tell us who</p> <p>11 you intended to bring. Obviously, one of them is a</p> <p>12 planner, but you also have another person.</p> <p>13 MR. LAKIND: Yes. Matthew Weibel, who</p> <p>14 is an arborist. It's conceivable that I may have</p> <p>15 one or two questions for Mr. Batista. And the</p> <p>16 planner is Creigh Rehenkamp who I mentioned earlier.</p> <p>17 But essentially, it would be Mr. Weibel and Mr.</p> <p>18 Rehenkamp.</p> <p>19 CHAIRMAN NEWLIN: Okay. So we would</p> <p>20 start Mr. Weibel anyway. So why would we not do</p> <p>21 that?</p> <p>22 MR. LAKIND: I think that is fine.</p> <p>23 The concern I have is I don't want a vote this</p> <p>24 evening until I have the opportunity to produce Mr.</p> <p>25 Rehenkamp.</p>	<p style="text-align: right;">12</p> <p>1 the ordinance. But I do need to have the</p> <p>2 opportunity to address it.</p> <p>3 MR. VITOLO: May I be heard?</p> <p>4 MR. HALL: Yeah, I'm done. Why don't</p> <p>5 we hear from Mr. Vitolo?</p> <p>6 CHAIRMAN NEWLIN: Okay. Please.</p> <p>7 MR. VITOLO: Good evening, everybody.</p> <p>8 Thank you again for hearing us.</p> <p>9 We want a vote tonight. This is</p> <p>10 happening -- what happened here is really</p> <p>11 interesting. As Mr. Hall knows, after the last</p> <p>12 hearing, I put in writing a request to Mr. Lakind,</p> <p>13 and I said, "Mr. Lakind, please identify the</p> <p>14 witnesses you intend to call at the next hearing. I</p> <p>15 think it would be helpful for us to know and we can</p> <p>16 do proffers and all of that."</p> <p>17 He flatly refused. He refused to</p> <p>18 identify his witnesses until a couple days ago. And</p> <p>19 the reason I asked back then is precisely what's</p> <p>20 happening tonight. He came up with a surprise</p> <p>21 witness, a new planner, who is not available. So</p> <p>22 now he comes to this Board looking for an</p> <p>23 adjournment.</p> <p>24 Every time this proceeding is delayed,</p> <p>25 the Superior Court action that's related has to get</p>
<p style="text-align: right;">11</p> <p>1 CHAIRMAN NEWLIN: Okay.</p> <p>2 MR. HALL: I suggest that we do that</p> <p>3 and table the decision. I mean, I keep looking at</p> <p>4 -- I have it right in front of me. You called Mr.</p> <p>5 Schommer, qualified, and you asked at your request</p> <p>6 did he review the Master Plan. You had a planner</p> <p>7 there after you had heard from Mr. Linson. Why</p> <p>8 didn't you ask him more? It strikes me you want a</p> <p>9 do-over.</p> <p>10 MR. LAKIND: No, I don't want a</p> <p>11 do-over.</p> <p>12 MR. HALL: You had a planner. Why</p> <p>13 didn't you ask him more while you had him there?</p> <p>14 MR. LAKIND: I think all of us have</p> <p>15 had experience where there are professional</p> <p>16 planners, professional engineers, and engineers who</p> <p>17 are planners. And planners tend to be a little bit</p> <p>18 more knowledgeable about planning issues. I did not</p> <p>19 intend to have Mr. Schommer provide planning</p> <p>20 testimony because of the basis set forth in the</p> <p>21 application for the tree removal permit. I frankly</p> <p>22 didn't think it was necessary. And I was surprised</p> <p>23 when I heard the basis that Mr. Linson gave, because</p> <p>24 I frankly don't think either of the bases, or any of</p> <p>25 them if there's something I missed, was supported in</p>	<p style="text-align: right;">13</p> <p>1 adjourned as well. We've already gone to the Court</p> <p>2 once. And we're going to have to go to them again</p> <p>3 after tonight if there's no vote on this</p> <p>4 application.</p> <p>5 We don't need a planner in this case.</p> <p>6 He had his chance with Mr. Schommer. There is</p> <p>7 interpretation of an ordinance here. There's no</p> <p>8 amendment. There's no constitutionality. There's</p> <p>9 no questions about the Master Plan anymore. All</p> <p>10 he's asking to do here is further delay the</p> <p>11 proceedings. And really, it's really terrible that</p> <p>12 we didn't address this two weeks ago when we had the</p> <p>13 opportunity because we wouldn't have been tonight</p> <p>14 having this conversation.</p> <p>15 The issue before the Board tonight, as</p> <p>16 it was, is very simple. Was the tree removal permit</p> <p>17 issued justified based on the criteria in the</p> <p>18 ordinance? That's it.</p> <p>19 So Mr. Lakind has had his shot. He</p> <p>20 continues to change his witness list. He dumped one</p> <p>21 of the witnesses he was going to have last time.</p> <p>22 Now he picked up someone new on this application.</p> <p>23 It's like a game, respectfully.</p> <p>24 So I ask the Board to rein this in,</p> <p>25 let's hear his last witness, and let's have a vote</p>

<p style="text-align: right;">14</p> <p>1 on this application.</p> <p>2 MR. LAKIND: I'd like to respond.</p> <p>3 CHAIRMAN NEWLIN: No. Excuse me.</p> <p>4 Mr. Vitolo, thank you.</p> <p>5 Gary, you have already addressed the</p> <p>6 point about having to agree to witnesses at the last</p> <p>7 hearing so I think that's been addressed.</p> <p>8 And let's cut to the main issue. The</p> <p>9 main issue is do we need a planner or not. And I</p> <p>10 don't think the Board has to decide right now. My</p> <p>11 suggestion -- and it's going to be up to the Board</p> <p>12 members -- we should proceed and hear from the</p> <p>13 arborist expert that you're bringing on and see</p> <p>14 where we wind up and then decide if it's necessary</p> <p>15 to hear from a planner.</p> <p>16 And personally, I don't really see it,</p> <p>17 Mr. Lakind, at this point. You might change my</p> <p>18 mind. But to me, this is an ordinance issue. So I</p> <p>19 think we should hear from your arborist.</p> <p>20 I want to hear from our Board members</p> <p>21 here.</p> <p>22 Mike?</p> <p>23 MR. FLANAGAN: Alf, I fully support</p> <p>24 your proposal. I would like to hear from the</p> <p>25 arborist. And then if we feel we need to hear from</p>	<p style="text-align: right;">16</p> <p>1 The only thing I'd ask is before we</p> <p>2 make a decision on the planner that I have an</p> <p>3 opportunity to address what Mr. Vitolo said at the</p> <p>4 end after Mr. Weibel's testimony, because it was</p> <p>5 not --</p> <p>6 CHAIRMAN NEWLIN: Sure. We</p> <p>7 understand.</p> <p>8 MR. LAKIND: Okay. Thank you.</p> <p>9 Matt Weibel, please.</p> <p>10 MR. HALL: Mr. Weibel, can you raise</p> <p>11 your right hand?</p> <p>12 ---</p> <p>13 MATTHEW WEIBEL, having been first duly</p> <p>14 sworn, testified as follows:</p> <p>15 ---</p> <p>16 DIRECT EXAMINATION BY MR. LAKIND:</p> <p>17 Q. Mr. Weibel, can you tell the Board,</p> <p>18 please, where you're employed?</p> <p>19 A. I work for a company called SavATree</p> <p>20 Consultant Group. SavATree.</p> <p>21 Q. And what is the nature of SavATree</p> <p>22 Consulting Group's business?</p> <p>23 A. So we do arboricultural consulting, so</p> <p>24 tree inventories, management plans, formal risk</p> <p>25 assessments, tree protection preservation plans for</p>
<p style="text-align: right;">15</p> <p>1 Mr. Lakind's planner, we can take it up at the end.</p> <p>2 But I would like to move forward with this.</p> <p>3 CHAIRMAN NEWLIN: Rita?</p> <p>4 MS. CHIPPERSON: Yeah, I agree. I</p> <p>5 think we should move forward and see where it takes</p> <p>6 us.</p> <p>7 CHAIRMAN NEWLIN: Dan?</p> <p>8 MR. MASELLI: Move forward. Let's go.</p> <p>9 CHAIRMAN NEWLIN: Hugh?</p> <p>10 MR. SYMONDS: I agree. Forward is for</p> <p>11 us.</p> <p>12 CHAIRMAN NEWLIN: Aric?</p> <p>13 MR. ROSENBAUM: Let's move forward.</p> <p>14 More information is better.</p> <p>15 CHAIRMAN NEWLIN: Elizabeth?</p> <p>16 MS. SOVOLOS: Fine with me. Thank</p> <p>17 you.</p> <p>18 CHAIRMAN NEWLIN: I'm doing random, by</p> <p>19 the way, in case you're wondering.</p> <p>20 Gary, is that okay?</p> <p>21 MR. HALL: Yeah, that's fine. I think</p> <p>22 that's what I suggest.</p> <p>23 CHAIRMAN NEWLIN: Mr. Lakind, can we</p> <p>24 proceed?</p> <p>25 MR. LAKIND: Yes, we can.</p>	<p style="text-align: right;">17</p> <p>1 construction sites, things of that nature.</p> <p>2 Q. And what is your educational</p> <p>3 background?</p> <p>4 A. I have a Bachelor of Science from</p> <p>5 Rutgers University in natural resource management.</p> <p>6 I took grad school briefly for forest biometrics,</p> <p>7 didn't get my master's. Then I started working here</p> <p>8 a SavATree in 2002.</p> <p>9 Q. Do you possess any licenses relevant</p> <p>10 to your work as an arborist?</p> <p>11 A. Yes. I'm a New Jersey licensed tree</p> <p>12 expert, a registered consulting arborist, ISA</p> <p>13 certified arborist, and tree risk assessment</p> <p>14 qualified through the ISA.</p> <p>15 Q. And what is the ISA?</p> <p>16 A. International Society of</p> <p>17 Arboriculture.</p> <p>18 Q. Is your work at SavATree that of being</p> <p>19 an arborist?</p> <p>20 A. Yes, consulting arborist.</p> <p>21 Q. And have you ever testified in court</p> <p>22 as an expert arborist?</p> <p>23 A. Yes, I have.</p> <p>24 CHAIRMAN NEWLIN: In New Jersey?</p> <p>25 THE WITNESS: Yes, New Jersey.</p>

<p style="text-align: right;">18</p> <p>1 BY MR. LAKIND:</p> <p>2 Q. And are you a resident of New Jersey?</p> <p>3 A. Yes, I'm from Fair Lawn.</p> <p>4 Q. Mr. Weibel, that's in Bergen County,</p> <p>5 is that correct?</p> <p>6 A. Right. Yes.</p> <p>7 Q. Have you had the opportunity to make</p> <p>8 assessments in your professional capacity as an</p> <p>9 arborist of tree health?</p> <p>10 CHAIRMAN NEWLIN: I think he's</p> <p>11 acceptable.</p> <p>12 MR. ROSENBAUM: I have one quick</p> <p>13 question.</p> <p>14 CHAIRMAN NEWLIN: Sure, Aric.</p> <p>15 MR. ROSENBAUM: According to Linked In</p> <p>16 it says your ISA expires June 2020.</p> <p>17 THE WITNESS: I have renewed that.</p> <p>18 They were delayed this year because of COVID. It</p> <p>19 was due this year. It's been updated since then.</p> <p>20 MR. ROSENBAUM: What's the new expire</p> <p>21 date?</p> <p>22 THE WITNESS: The new expire date?</p> <p>23 MR. ROSENBAUM: It's active now, then,</p> <p>24 at least.</p> <p>25 THE WITNESS: 2024. I believe it's a</p>	<p style="text-align: right;">20</p> <p>1 assessments, Mr. Battista provided me with a copy of</p> <p>2 the replanting plan for the site, the tree removal</p> <p>3 permit, a copy of the ordinance, as well as the</p> <p>4 Master Plan for Harding.</p> <p>5 Q. And after you were provided copies of</p> <p>6 those documents, did you undertake to review them?</p> <p>7 A. Yes, I did.</p> <p>8 Q. You have read, have you not, the tree</p> <p>9 replacement ordinance, Section 225-111 of Harding</p> <p>10 Township Municipal Code, correct?</p> <p>11 A. Yes, I have.</p> <p>12 Q. And Item 10, just to direct the</p> <p>13 Board's attention, provides for consideration of any</p> <p>14 planned tree replacement or other landscaped plan</p> <p>15 for re-vegetating cleared areas.</p> <p>16 You're familiar, are you not, with</p> <p>17 what the replacement plan is contemplated -- excuse</p> <p>18 me -- what the contemplated replacement plan is on</p> <p>19 behalf of Mr. Gargiulo?</p> <p>20 A. Yes.</p> <p>21 Q. And can you very briefly explain to</p> <p>22 the Board what species of trees will be planted?</p> <p>23 A. So they plan to replant with green</p> <p>24 giant arborvitae, a variety of western arborvitae,</p> <p>25 thuja plicata. They plan to plant them at 3 to</p>
<p style="text-align: right;">19</p> <p>1 four-year.</p> <p>2 MR. ROSENBAUM: Okay. Thanks.</p> <p>3 MR. LAKIND: Thank you, Mr. Chairman.</p> <p>4 BY MR. LAKIND:</p> <p>5 Q. Mr. Weibel, were you retained by Mr.</p> <p>6 Battista to essentially examine whether or not the</p> <p>7 opinion of Mr. Linson to grant the tree removal</p> <p>8 permit in this matter was proper?</p> <p>9 A. Yes.</p> <p>10 Q. And can you tell us what steps you</p> <p>11 took to make that assessment?</p> <p>12 A. Sure. So I -- this is the Battista</p> <p>13 property -- earlier this month, performed an</p> <p>14 assessment of a large catalpa tree that was of</p> <p>15 concern that's scheduled to be removed as part of</p> <p>16 this project. I performed what's called a Level 2</p> <p>17 visual assessment of the trees, ground-based visual</p> <p>18 assessment of tree health and structure, sound the</p> <p>19 tree, the lower canopy of the tree with a mallet,</p> <p>20 probed any open cavities. I then performed an ISA</p> <p>21 qualitative risk assessment of the tree to determine</p> <p>22 the risk associated with the tree.</p> <p>23 Q. Were there any documents you examined</p> <p>24 in connection with that retention?</p> <p>25 A. Yes. After performing the</p>	<p style="text-align: right;">21</p> <p>1 4-foot spacing, interval spacing. The species of</p> <p>2 arborvitae is not native of New Jersey; it's native</p> <p>3 to Pacific Northwest America. It generally is for</p> <p>4 hedges because it does form formal hedges and rows</p> <p>5 tall and relatively fast.</p> <p>6 Q. When you say it's not native to New</p> <p>7 Jersey, what does that mean?</p> <p>8 A. So, for example, the catalpa tree I</p> <p>9 assessed, the other trees along -- the mature trees</p> <p>10 that are existing along there currently, the oak</p> <p>11 trees, black walnut trees, the ash trees are all</p> <p>12 native trees to New Jersey, so they naturally grow</p> <p>13 here in wooded areas since the state was founded.</p> <p>14 Whereas, this variety of arborvitae does not</p> <p>15 naturally grow in New Jersey.</p> <p>16 Q. Now, Mr. Linson testified, if I</p> <p>17 recall, that the size at maturity of the arborvitae</p> <p>18 would be about 50 feet high. Is that consistent</p> <p>19 with your understanding?</p> <p>20 A. Yes.</p> <p>21 Q. And about 25 to 30 feet wide, is that</p> <p>22 also consistent with your understanding?</p> <p>23 A. Open grown so they can grow to 20 to</p> <p>24 25 feet wide.</p> <p>25 CHAIRMAN NEWLIN: I'm sorry, can you</p>

<p style="text-align: right;">22</p> <p>1 repeat that?</p> <p>2 THE WITNESS: Open grown, they would</p> <p>3 grow 25 feet wide.</p> <p>4 MR. HALL: I thought he asked you</p> <p>5 about 50. Did I mishear?</p> <p>6 MR. LAKIND: Yes, you did. Fifty was</p> <p>7 the height. Then I asked for the breadth.</p> <p>8 MR. HALL: Oh, I'm sorry.</p> <p>9 MR. LAKIND: I can clarify, Gary.</p> <p>10 BY MR. LAKIND:</p> <p>11 Q. How high is it anticipated that these</p> <p>12 arborvitaes would grow?</p> <p>13 A. Fifty feet.</p> <p>14 Q. And what is the breadth of the</p> <p>15 branches, width?</p> <p>16 A. At majority, they would be 20 to 25,</p> <p>17 potentially 30 feet wide.</p> <p>18 Q. Now, the replacement plan anticipates</p> <p>19 that these arborvitaes will line the sides of the</p> <p>20 50-foot right-of-way, correct?</p> <p>21 A. Yes.</p> <p>22 Q. As a consequence -- excuse me. I may</p> <p>23 have asked you this. You said about 350 arborvitaes</p> <p>24 will be planned along the right-of-way, is that</p> <p>25 correct?</p>	<p style="text-align: right;">24</p> <p>1 small cones that hold their seeds.</p> <p>2 Q. And do trees shed -- excuse me. Do</p> <p>3 the arborvitaes shed these cones?</p> <p>4 A. Yes.</p> <p>5 Q. And they tend to be shed equally</p> <p>6 around the perimeter of a tree?</p> <p>7 A. Yeah.</p> <p>8 Q. And, of course, the arborvitaes at</p> <p>9 50 feet tall will generate a certain amount of shade</p> <p>10 on Mr. Battista's property, correct?</p> <p>11 A. Yeah.</p> <p>12 Q. Now, how far apart is it planned for</p> <p>13 the arborvitaes to be planted?</p> <p>14 A. It appears to be within 3 to 4 feet on</p> <p>15 center on average.</p> <p>16 Q. Now, will the arborvitaes line the</p> <p>17 entire area of Lot 6.01, 6.02, and the lots across</p> <p>18 the street?</p> <p>19 A. Yeah. From of the driveway, of</p> <p>20 course. Starting from the existing driveway.</p> <p>21 Q. Now, what, if any, impact would that</p> <p>22 have on the vistas Mr. Battista might enjoy from any</p> <p>23 of his properties?</p> <p>24 A. Well, they'd be altered. Wouldn't be</p> <p>25 able to see through in looking out a front window.</p>
<p style="text-align: right;">23</p> <p>1 A. That was originally planned. I was</p> <p>2 informed -- I didn't see an updated plan, but I was</p> <p>3 informed it was updated to closer to 400 trees. I'm</p> <p>4 not sure of the exact number at this point.</p> <p>5 Q. In connection with the planting along</p> <p>6 the perimeter, assuming the trees are not trimmed,</p> <p>7 will any portion of the branches encroach on Mr.</p> <p>8 Battista's property?</p> <p>9 A. Yes.</p> <p>10 Q. And approximately how large will that</p> <p>11 encroachment be?</p> <p>12 A. Well, from the plan, the plan looks</p> <p>13 like they're approximately 5 feet from the property</p> <p>14 line, so if they grow 20 feet wide, it could be as</p> <p>15 much as 15 feet over.</p> <p>16 Q. In connection with the arborvitaes,</p> <p>17 how wide will the root system generally be?</p> <p>18 A. Probably grow about the same width as</p> <p>19 the trees grow, 20 feet, 25 feet out.</p> <p>20 Q. So the roots will also encroach on Mr.</p> <p>21 Battista's property?</p> <p>22 A. Yes.</p> <p>23 Q. Do arborvitaes generate cones?</p> <p>24 A. Yes, very small cones, not like pine</p> <p>25 cones you see from pine trees. They do have very</p>	<p style="text-align: right;">25</p> <p>1 Currently, looking through, you'd look under the</p> <p>2 existing mature canopies, can see across the road,</p> <p>3 even. That full screen there, you would just see</p> <p>4 the screen, the hedge.</p> <p>5 Q. And in the winter, do the arborvitaes</p> <p>6 shed any of their growth?</p> <p>7 A. No. They're evergreen.</p> <p>8 Q. And in the winter, how would that</p> <p>9 impact the vistas from Mr. Battista's property?</p> <p>10 A. He'd still be seeing the arborvitae.</p> <p>11 Q. Now, have you examined whether or not</p> <p>12 there are deciduous trees that will remain at or</p> <p>13 near the right-of-way where the arborvitaes are</p> <p>14 being planted?</p> <p>15 A. I believe they retained the oak tree</p> <p>16 existing.</p> <p>17 Q. In order for the arborvitaes to</p> <p>18 flourish, will any steps have to be taken with</p> <p>19 regard to the remaining deciduous trees?</p> <p>20 A. Potentially, yes. This species of</p> <p>21 arborvitae prefers either full or partial sun at</p> <p>22 least four hours ideal of sunlight per day. And</p> <p>23 they grow to be 50 feet tall, so it might require</p> <p>24 elevation, raising the canopy of existing oak trees,</p> <p>25 as well as pruning of trees on the Battista private</p>

<p style="text-align: right;">26</p> <p>1 property that overhang or grow into the driveway 2 there. They have to prune some existing trees as 3 well to make a clearance. 4 Q. When you used the phrase raising 5 existing trees, can you tell me what you mean by 6 that, please? 7 A. Sure. Currently, when I was at the 8 property, there were a few spruce trees within the 9 Battista private property as well as farther up, a 10 wooded area, natural wood growth, that all grew 11 across, the canopies grew across into where they 12 plan to plant these arborvitaes and, obviously, 13 currently shade those trees, so you have to prune 14 them back or elevate them higher and farther above 15 to penetrate through and reach the new trees so they 16 grow properly and uniformly so you have hedge they 17 desire. 18 Q. Now, if the trees do not grow 19 uniformly, are there steps the owner can take to 20 essentially make them uniform? 21 A. You can top the trees that are taller, 22 make them smaller. 23 Q. Now, with regard to the distance 24 between the trees, I think you testified earlier 25 there are 3 to 4 feet on center, is that correct?</p>	<p style="text-align: right;">28</p> <p>1 out, they tend to grow in their natural form, I 2 suppose, you would say. So if you planted these 3 trees and they grow 20 feet tall, at 10 to 15 feet 4 space, at maturity you'll still have a full hedge. 5 It requires much less maintenance to get that point. 6 It would take longer for a full hedge. 7 Q. Now, if Mr. Battista wished to trim 8 the arborvitaes that encroached upon his property, 9 how is that generally done? Do you know? 10 A. He's generally legally allowed to 11 prune trees right at his property line as long as 12 it's not expected to result in death or instability 13 of the tree. 14 Q. In order to prune arborvitaes of this 15 width, would any type of scaffolding or ladders be 16 required? 17 A. Certainly, to the upper canopies, 18 encroachment on property, you'd have to have an 19 orchard ladder, pole clip, pole saw, something of 20 that nature, to reach the higher portions. 21 Q. And are you familiar with what the 22 cost would be to trim the arborvitaes that encroach 23 on Mr. Battista's property? 24 A. I don't have an exact cost. 25 Q. Okay. Does the word canopy have a</p>
<p style="text-align: right;">27</p> <p>1 A. Yes. 2 Q. And have you done any study or 3 examined any publications that prescribe the 4 distance on center between arborvitaes, at which 5 arborvitaes should be planted? 6 A. Yes. So Arbor Day Foundation has 7 general fact sheets for multiple species on their 8 website. For arborvitae, they recommend 5 to 6-foot 9 spacing for hedges. 10 Q. And are the fact sheets from Arbor Day 11 Foundation something that experts such yourself 12 routinely rely? 13 A. They're among the fact sheets. 14 Certainly, universities and other places have fact 15 sheets, too, for species. This is one that is 16 common and easy to find. 17 Q. Now, what is the impact of planting 18 the arborvitaes 3 to 4 feet rather than 5 to 6 feet 19 with regard to visibility through the hedgerow? 20 A. Well, if you're going to, obviously, 21 make a denser hedgerow sooner when they're planted 22 that close. It generally requires then increased 23 maintenance. Trees are planted closer, they tend to 24 shade out earlier, so you have to maintain them more 25 diligently. As opposed if they're widely spaced</p>	<p style="text-align: right;">29</p> <p>1 meaning to arborists such as yourself? 2 A. Yes. 3 Q. And what is that meaning? 4 A. So a canopy is the -- it's the live 5 foliage of the upper portion of the tree that 6 contains the foliage. Because we're talking about a 7 canopy spread, which is the area of canopy coverage 8 that exists under the drip line of a tree. 9 Q. Now, would you expect that there would 10 be a difference in the diameter of the canopy 11 between the deciduous trees that are out there and 12 the proposed arborvitaes? 13 A. Yes. 14 Q. And would there be a difference in the 15 extent of the root zone between the existing 16 deciduous trees and the proposed arborvitaes? 17 A. Yes. 18 Q. And would the difference in canopy 19 size have an impact -- excuse me -- and the 20 difference in the root zone have an impact on 21 drainage? 22 A. Yeah, it definitely could. Larger 23 canopy of deciduous trees are more spread out, 24 covers larger area, so it tends to intercept more 25 rainwater during the growing season. The root zones</p>

<p style="text-align: right;">30</p> <p>1 also of a -- the root zone of, for example, an oak 2 tree may extend actually as much as 60 or 80 feet 3 from the base of the tree, so they have larger 4 spread of root zone or the spread of canopy height, 5 so they tend to absorb more rainwater in general and 6 intercept more stormwater as well. 7 Q. Thank you. Does the term monoculture 8 have a meaning to arborists such as yourself? 9 A. Yes. 10 Q. And can you tell me what that is, 11 please? 12 A. Monoculture is when a population of 13 trees or an area of trees is all one species. This 14 makes that area susceptible to pests or disease 15 outbreak occurs to that species. A classic example 16 in America, of course, is dutch elm disease at the 17 time when the American elm was the dominant street 18 tree in many cities and towns in America. Dutch elm 19 disease, a foreign pest came in and killed the vast 20 majority of elm trees and decimated street trees in 21 many towns. 22 Q. Is species diversity a goal that 23 arborists generally seek to accomplish? 24 A. Yes, generally. So if I do a tree 25 inventory, we usually do a species population study</p>	<p style="text-align: right;">32</p> <p>1 MR. LAKIND: I recognize that there 2 are no requirements, but when examining a tree 3 replacement plan, I am certainly entitled -- because 4 it was even said at the last hearing -- to elicit 5 evidence that the tree placement plan is deficient. 6 CHAIRMAN NEWLIN: Gary and I were 7 correcting you that you're implying that these were 8 conditions. So I just want to note, they're not 9 conditions. 10 MR. LAKIND: No, no, no. If I did, 11 that's my error and I apologize. 12 MR. VITOLO: And I would also just for 13 the record state my objection to this entire line of 14 questioning, as it goes to tree replanting, not tree 15 removal. And I was going to get to it on cross, but 16 I'll make my objection now. 17 BY MR. LAKIND: 18 Q. Mr. Weibel, let me turn to the 28 19 trees that were approved for removal. Now, you were 20 out at the site and you examined those trees, 21 correct? 22 A. I examined the catalpa tree 23 thoroughly. 24 Q. And the trees that were planned for 25 removal, you've indicated they were native trees; is</p>
<p style="text-align: right;">31</p> <p>1 as part of our report. There are general 2 recommendations for no more than 10 percent of a 3 species, 20 percent of a genus, 20 percent of a 4 specific family of tree within a study area. 5 Q. Now, what about the maintenance of 6 native trees, is that a goal arborists seek to 7 accomplish in their planning endeavors? 8 CHAIRMAN NEWLIN: Mr. Lakind, can I 9 note that to the greatest extent possible that you 10 ask questions that are actually tied into the 11 ordinance or something specific? It may be that 12 this is all perfectly legitimate, but I'm not sure 13 how it actually applies to the ordinance. That's 14 what we're looking at here. 15 MR. LAKIND: Just by way response, the 16 reason I think it does is Item 10 of your ordinance 17 required Mr. Linson to assess the appropriateness of 18 the tree replacement. 19 MR. HALL: It doesn't say that. It 20 says consider any tree planting plan. Consider. It 21 doesn't say assess. 22 CHAIRMAN NEWLIN: Mr. Lakind, these 23 are not conditions. These are things that are, 24 quote, taken into consideration. They're not 25 requirements.</p>	<p style="text-align: right;">33</p> <p>1 that correct? 2 A. Yes. The ones that are still onsite, 3 yes. 4 Q. Now, is there any indigenous wildlife 5 that is served by the presence of these deciduous 6 trees? 7 A. Yeah. I mean, hawks can certainly 8 nest in these trees, other birds. Walnuts and 9 acorns are good food for squirrels and deer. 10 Flowers, the catalpa tree has nice flowers in the 11 summer for pollinators, insects, and bees. 12 Q. Okay. Would the arborvitaes 13 essentially serve the same indigenous population? 14 A. No. They don't flower, so there would 15 be no pollinators very much. This species was 16 chosen because it's deer resistant, so deer wouldn't 17 benefit from it. They do nest smaller songbirds, 18 but not larger hawks and such would nest there. 19 Q. I want to go over with you now the 20 factors listed in the ordinance that Mr. Linson 21 applied. And I will skip over those that I don't 22 think are germane. But number 5 is whether the 23 cutting or removal would constitute a significant 24 change in the screening between existing or proposed 25 buildings on adjoining lots.</p>

<p style="text-align: right;">34</p> <p>1 Earlier, you testified to the impact 2 of the arborvitae hedge. Would that impact the 3 screening of the adjoining lots? 4 A. Yeah. Yes, it changes the screening. 5 CHAIRMAN NEWLIN: I would like him to 6 say more about it. 7 BY MR. LAKIND: 8 Q. Would you elaborate on the difference 9 between the current screening and the screening 10 after the arborvitae are at full growth? 11 A. Yes. So currently, there are mature 12 shade trees that have canopies with foliage, high in 13 the canopy, obviously, in the crown. So lower areas 14 are generally clear right now. Lawn. So if you're 15 looking across from the Battista property, you can 16 see through across the road to the Battista property 17 or you can see across the road. No screen in the 18 lower or minimal screen in the lower section in the 19 formal lawn area to the Battista property. 20 CHAIRMAN NEWLIN: So the green giants 21 would actually provide more screening? 22 THE WITNESS: More screening for some, 23 if that's what you want. 24 CHAIRMAN NEWLIN: Up to 30 feet, at 25 least, you know, the house being 30 feet?</p>	<p style="text-align: right;">36</p> <p>1 what's called a best management practice of the 2 International Society of Arboriculture, a 3 qualitative tree risk assessment of the tree. So 4 there we look at likely to failure, impacting a 5 target, and the consequence of those failures. 6 There's a matrix you go through and you get to a 7 rating of either low, moderate, high, or extreme. 8 And in this case, the tree, I found to be low-risk 9 to person and property. The tree leans away from 10 the driveway towards the Battista property. The 11 existing target there is a wooden fence. If the 12 tree were to fail, it will fail towards the fence, 13 hit the fence. Mr. Battista indicated that he does 14 not particularly care about the fence and if it does 15 happen to fall on the fence, he would just replace 16 it. I would consider that to be a negligible 17 consequence if the tree were to fail. So based on 18 that, the tree came out as a low risk to person and 19 property. 20 Q. Now, when you referred to the term 21 Level 2 assessment, what does that refer to? 22 A. So there's three levels of risk 23 assessment. Level 1 is a limited visual assessment. 24 So if you're looking at a tree on a neighboring 25 property or a wooded area and you don't have access</p>
<p style="text-align: right;">35</p> <p>1 THE WITNESS: Yes. 2 BY MR. LAKIND: 3 Q. Now, the green giants would 4 essentially screen the right-of-way; is that 5 correct? 6 A. Yes. 7 Q. With regard to factor 9, which reads, 8 "Whether the presence of such tree or trees is 9 likely to cause hardship or will endanger the public 10 or the owner of property on which the tree or trees 11 are located or an adjoining property owner or for 12 some other adequate reason within the intent of this 13 article." 14 Now, earlier you indicated you did an 15 assessment of the catalpa tree, is that correct? 16 A. Yes. 17 Q. Can you explain to the Board what that 18 assessment consisted of? 19 A. Sure. So I did, again, a level 2 20 visual assessment of the tree, ground-based visual 21 assessment of tree health, structure, sounding the 22 lower portion of the tree with a mallet, probing 23 opening, cavity, or defects. So the tree is in good 24 health, in full canopy. There was one dead branch 25 in the canopy, but nothing of concern. I also did</p>	<p style="text-align: right;">37</p> <p>1 to get to it, you're just looking at it from public 2 property or someone else's property, you can't do a 3 thorough 360-degree visual assessment, that's a 4 Level 1 assessment. Level 2, what I did, is a full 5 360-degree ground-based assessment of the entire 6 tree, as I said, sounding and probing. Level 3, as 7 Level 2, it involves some kind of advanced 8 methodology. So it could be arrow assessment, climbing 9 the tree, it could be using resistograph drill test, 10 it could be using a tree radar unit or something to 11 measure extent of decay present in a portion of the 12 tree. 13 Q. Now, who is it that developed these 14 three levels? 15 MR. VITOLO: We're getting far afield 16 here. Object to the question. 17 MR. LAKIND: I don't think it's far 18 afield. 19 CHAIRMAN NEWLIN: Excuse me. Mr. 20 Lakind, it's a lot of detail. I think we are 21 following. You don't need to substantiate the 22 history of the rating, unless other Board members 23 disagree. 24 MR. LAKIND: Okay. May I continue 25 then?</p>

<p style="text-align: right;">38</p> <p>1 MR. HALL: One quick question here. I 2 guess the question is you started out referring to 3 paragraph 9. And it's his testimony about this 4 assessment that that's required to make that 5 judgment under 9? Because I'm back to linking it to 6 the ordinance, not what in a perfect world people 7 may choose to do. 8 MR. LAKIND: It's relevant to factor 9 9 because that factor seems to anticipate whether or 10 not a tree is in such a condition that it's a danger 11 to the public or the owner, et cetera. So what my 12 client arranged for was a test that's -- I was going 13 to have testimony about this -- that's accepted in 14 the world of arborists in order to essentially reach 15 an opinion on that. 16 BY MR. LAKIND: 17 Q. Is the type of examination, Level 1, 18 2, or 3, is that something that is generally 19 accepted in the community of arborists such as 20 yourself? 21 A. Yes. 22 Q. Now, you have reviewed the various 23 factors listed in the ordinance, is that correct? 24 A. Yes. 25 Q. And do you have an opinion to a</p>	<p style="text-align: right;">40</p> <p>1 you ever appeared before a land use board on a 2 proceeding such as this? 3 THE WITNESS: I don't recall. I've 4 appeared in front of a board, I don't know it was 5 land use board or not. 6 MR. HALL: Have you opined as to the 7 propriety of a decision of a tree officer to issue a 8 tree removal permit? 9 THE WITNESS: I don't recall 10 specifically that. 11 MR. HALL: Okay. But it's your 12 opinion -- you just said that Mr. Linson's decision 13 was not reasonable; is that correct? 14 THE WITNESS: Yes. 15 MR. HALL: Based on -- so you're 16 saying he should have denied the permit, in your 17 opinion? 18 THE WITNESS: Yes. 19 MR. HALL: Okay. Now, everybody keeps 20 talking about Battista. Do you know who actually 21 owns this property and who filed an appeal with the 22 Zoning Board? 23 THE WITNESS: The person who filed a 24 tree permit removal. 25 MR. HALL: What's that?</p>
<p style="text-align: right;">39</p> <p>1 reasonable degree of certainty other than with 2 regard to the ash trees whether or not the decision 3 to grant the permit to remove the trees was 4 reasonable? 5 A. In my opinion, the ordinance and the 6 Master Plan don't support removing these trees. 7 Q. And when you refer to the ordinance, 8 you're referring to the factors we discussed a few 9 moments ago? 10 A. Right. Tree conservation ordinance 11 225-111. 12 MR. LAKIND: Mr. Chairman, that's all 13 the questions I have of this witness. At some 14 point, I would like to discuss with the Board why I 15 believe a planner is so critical in this case. 16 CHAIRMAN NEWLIN: Let's go piece by 17 piece. 18 Any questions from the Board members 19 or Gary? 20 MR. HALL: I have questions, but I 21 defer to others first. 22 CHAIRMAN NEWLIN: Gary, go first. 23 It's fine. 24 MR. HALL: Okay. Sure. 25 You said you testified in court. Have</p>	<p style="text-align: right;">41</p> <p>1 THE WITNESS: The person who filed for 2 the tree removal permit and the tree replacement 3 plan. 4 MR. HALL: Was Mr. Battista? 5 THE WITNESS: No, it was not him. 6 MR. HALL: Who was it, then? 7 THE WITNESS: I don't recall his name. 8 MR. HALL: Is it a person or an 9 entity? Do you know? 10 THE WITNESS: The person who owns the 11 property where the trees are currently growing? 12 CHAIRMAN NEWLIN: Does that matter to 13 the arborist, Gary? 14 MR. HALL: Well, they keep talking 15 about Battista. It's not Battista. It's 529 16 Waterfront Properties. I think people have to keep 17 that in mind. And he's talking as if Mr. Battista 18 lives there. He doesn't. There's no testimony. 19 Maybe his business entity that owns these 20 properties. It shouldn't be referred to as 21 Battista. 22 CHAIRMAN NEWLIN: Can that be noted. 23 MR. HALL: Okay. Enough of that. 24 Now, you said the deciduous trees that 25 there are now, they have a bigger canopy than the</p>

<p style="text-align: right;">42</p> <p>1 arborvitae would?</p> <p>2 THE WITNESS: Yes.</p> <p>3 MR. HALL: Okay. Wouldn't that be a</p> <p>4 bigger encroachment on the neighboring property than</p> <p>5 the arborvitae? You called it an encroachment for</p> <p>6 the arborvitae. But it's not for the deciduous</p> <p>7 trees, is that your --</p> <p>8 THE WITNESS: No. I mean, the</p> <p>9 deciduous trees are mature and ancient, if you will.</p> <p>10 And the way they grow up and over, they don't</p> <p>11 necessarily impact the lower -- you know, trying to</p> <p>12 walk through or trying to plant materials underneath</p> <p>13 them, they don't fight constant -- shading is not a</p> <p>14 constant barrier.</p> <p>15 MR. HALL: And also the root, you said</p> <p>16 the deciduous trees have a bigger root expanse in</p> <p>17 the context of absorbing water. Isn't that a bigger</p> <p>18 encroachment on the neighboring property?</p> <p>19 If your neighbor has trees, that's</p> <p>20 always the case, isn't it?</p> <p>21 THE WITNESS: Yeah. I mean, they</p> <p>22 encroach as well, yes.</p> <p>23 MR. HALL: But you implied that's a</p> <p>24 negative, didn't you? You used the word</p> <p>25 encroachment.</p>	<p style="text-align: right;">44</p> <p>1 removed or the permit, were they large trees? What</p> <p>2 is the definition of a large tree?</p> <p>3 THE WITNESS: Yes. So the catalpa</p> <p>4 tree I looked at measured to be over 50 inches in</p> <p>5 diameter. It would be considered, in my mind, a</p> <p>6 mature or an ancient tree. And looking at the</p> <p>7 Master Plan -- it's not loading, of course. I had a</p> <p>8 thought on that, but it didn't load properly. I was</p> <p>9 trying to quote the Master Plan. But it mentions in</p> <p>10 one of the sections on page 95, which isn't loading</p> <p>11 for me, that part of the purpose of this historic</p> <p>12 plan is to maintain the natural view of the town,</p> <p>13 ancient and mature trees should be preserved</p> <p>14 whenever possible. And going back to the previous</p> <p>15 testimony that I read, it was acknowledged that you</p> <p>16 could do all the upgrades in terms of road and</p> <p>17 utility without removing these trees. And also,</p> <p>18 based on my assessment of the tree's low risk to</p> <p>19 person and property, so I don't believe it needs to</p> <p>20 be removed for health or safety reasons.</p> <p>21 MR. SYMONDS: Actually, my question is</p> <p>22 much simpler than that. It just says large. Is</p> <p>23 large a six-inch tree, a 12-inch tree, a 20-inch</p> <p>24 tree, or a 40-inch tree?</p> <p>25 THE WITNESS: It depends on the</p>
<p style="text-align: right;">43</p> <p>1 THE WITNESS: The question was if the</p> <p>2 roots from the arborvitae would encroach onto the</p> <p>3 other property, I said yes.</p> <p>4 MR. HALL: Okay. But the deciduous</p> <p>5 encroach more? I just want to make sure we</p> <p>6 understand that.</p> <p>7 MR. LAKIND: Let me just make an</p> <p>8 objection for the record. I've been doing land use</p> <p>9 work for 45 years, and I'm not quite used to a board</p> <p>10 attorney examining a witness either before an</p> <p>11 objector. So I would just for record purposes, I'm</p> <p>12 going to object to that.</p> <p>13 MR. HALL: Well, you can object all</p> <p>14 you want. I want the Board to have correct</p> <p>15 information. I think it's fair for me to ask</p> <p>16 questions.</p> <p>17 That's all I have.</p> <p>18 CHAIRMAN NEWLIN: Any other questions</p> <p>19 from Board members?</p> <p>20 MR. SYMONDS: This is Hugh. Can I ask</p> <p>21 one question?</p> <p>22 CHAIRMAN NEWLIN: Please.</p> <p>23 MR. SYMONDS: Mr. Weibel, in the</p> <p>24 standard for permit issuance, it states that large</p> <p>25 trees should be preserved. Were the trees that were</p>	<p style="text-align: right;">45</p> <p>1 species in that case, then. Because some trees,</p> <p>2 like flowering dogwood, 12 inches is large. For</p> <p>3 others, like an oak tree, maybe something over 20</p> <p>4 inches or 24 inches is considered large.</p> <p>5 CHAIRMAN NEWLIN: It's a little better</p> <p>6 if you're much clearer and you just picked for large</p> <p>7 trees, give us a number.</p> <p>8 THE WITNESS: For the trees we're</p> <p>9 talking about, for the existing trees in this site,</p> <p>10 I'd consider a tree over 20 inches to be large.</p> <p>11 CHAIRMAN NEWLIN: Twenty inches in</p> <p>12 diameter?</p> <p>13 THE WITNESS: Diameter, yes.</p> <p>14 MR. SYMONDS: The trees on the permit,</p> <p>15 were they 20 inches or 16 inches? Were they large</p> <p>16 trees?</p> <p>17 THE WITNESS: The catalpa that I</p> <p>18 assessed was 52 inches. The other ones were -- the</p> <p>19 oak trees aren't being removed. The ash trees were</p> <p>20 in that 20-inch range. I didn't measure them</p> <p>21 specifically. They're on this list. The walnut</p> <p>22 trees, as well, I would consider them mature trees.</p> <p>23 I don't have the exact measurements on those.</p> <p>24 MR. SYMONDS: Okay. Thank you.</p> <p>25 CHAIRMAN NEWLIN: Any other questions</p>

<p style="text-align: right;">46</p> <p>1 from Board members?</p> <p>2 I have a couple questions.</p> <p>3 How old is the Catalpa, in your</p> <p>4 estimate?</p> <p>5 THE WITNESS: Aging is difficult on</p> <p>6 trees.</p> <p>7 CHAIRMAN NEWLIN: You can gave a</p> <p>8 range.</p> <p>9 THE WITNESS: I would assume it's at</p> <p>10 least -- definitely over a hundred years, close to</p> <p>11 150 years old probably.</p> <p>12 CHAIRMAN NEWLIN: What's the lifespan</p> <p>13 of catalpas?</p> <p>14 THE WITNESS: They tend to be a little</p> <p>15 shorter than oak trees, certainly.</p> <p>16 CHAIRMAN NEWLIN: Just give me a</p> <p>17 range.</p> <p>18 THE WITNESS: You can get 250 years</p> <p>19 out of it.</p> <p>20 CHAIRMAN NEWLIN: And catalpas are not</p> <p>21 native to New Jersey, they're naturalized in New</p> <p>22 Jersey; is that true?</p> <p>23 THE WITNESS: I believe they're native</p> <p>24 to New Jersey.</p> <p>25 CHAIRMAN NEWLIN: Okay. I didn't</p>	<p style="text-align: right;">48</p> <p>1 did not see the picnic table that was underneath the</p> <p>2 catalpa tree, the lean of the catalpa tree. I think</p> <p>3 he might have had a little different take on the</p> <p>4 risk assessment.</p> <p>5 You know, basically, there's not going</p> <p>6 to be a lot of activity under the catalpa tree</p> <p>7 unless there's a picnic table where people are using</p> <p>8 it. But there's a natural lean towards the Battista</p> <p>9 property from the Gargiulo property, which if the</p> <p>10 tree were to fail, it's not going to fall on the</p> <p>11 Gargiulo property, it's going to fall on the</p> <p>12 Battista property.</p> <p>13 CHAIRMAN NEWLIN: Mr. Linson, isn't it</p> <p>14 a heck of a lot easier to move a table than take</p> <p>15 down a 150-year-old tree?</p> <p>16 MR. LINSON: Oh, sure. And that's</p> <p>17 what they did. That's what they did.</p> <p>18 I mean, in my opinion, if Mr. Battista</p> <p>19 was going to assume the risk of that tree and Mr.</p> <p>20 Gargiulo was willing to --</p> <p>21 CHAIRMAN NEWLIN: Mr. Linson, I'm</p> <p>22 sorry to cut you off. We're just looking at any of</p> <p>23 the main points. You've given us good information</p> <p>24 from Mr. Weibel. Any other comments?</p> <p>25 MR. LINSON: No, that's about it.</p>
<p style="text-align: right;">47</p> <p>1 think so. Okay.</p> <p>2 Mr. Linson, do you have questions or</p> <p>3 any comments on any of the main points?</p> <p>4 You have to take yourself off mute.</p> <p>5 That's the first thing you have to do. Perfect.</p> <p>6 MR. LINSON: Well, I agreed with</p> <p>7 Matthew right up until the very end. I think his</p> <p>8 statements were very accurate about the growth habit</p> <p>9 of the green giant junipers.</p> <p>10 Basically, when I look at a tree</p> <p>11 removal application, we generally think that when</p> <p>12 somebody wants to increase the screening, that's a</p> <p>13 good thing. And in this case, the removal of the 28</p> <p>14 trees with the replacement of 380-something trees --</p> <p>15 Jim Mazzucco could tell you exactly -- appear to be</p> <p>16 a good thing. I don't necessarily consider the fact</p> <p>17 that a tree planted in the tree conservation zone is</p> <p>18 going to be a detriment to the neighboring property</p> <p>19 because if these trees grow onto the Battista</p> <p>20 property, there's 25 feet into the Battista property</p> <p>21 is a tree conservation zone. So a tree going into</p> <p>22 the tree conservation zone on another property is</p> <p>23 really a benefit, not a detriment. So that's what</p> <p>24 strikes me.</p> <p>25 And then, of course, Matthew Weibel</p>	<p style="text-align: right;">49</p> <p>1 CHAIRMAN NEWLIN: Mr. Vitolo, I think</p> <p>2 you wanted to ask questions.</p> <p>3 MR. VITOLO: Thank you, Mr. Chairman.</p> <p>4 CROSS-EXAMINATION BY MR. VITOLO:</p> <p>5 Q. Mr. Weibel, have you reviewed the</p> <p>6 landscape plans prepared by Mr. Mazzucco?</p> <p>7 A. Yes.</p> <p>8 Q. And he's with Bosenberg. Do you know</p> <p>9 Bosenberg?</p> <p>10 A. No, I don't think so, no.</p> <p>11 Q. Do you know that Mr. Mazzucco has been</p> <p>12 doing this kind of work for over 25 years?</p> <p>13 MR. LAKIND: I'm going to object. I</p> <p>14 don't see how that's relevant to any of these</p> <p>15 factors.</p> <p>16 MR. HALL: It's relevant to the</p> <p>17 credibility of Mr. Weibel's testimony.</p> <p>18 CHAIRMAN NEWLIN: I think it does.</p> <p>19 BY MR. VITOLO:</p> <p>20 Q. Can you answer that, Mr. Weibel?</p> <p>21 A. Can you repeat the question? I'm</p> <p>22 sorry.</p> <p>23 Q. Yeah. Do you know that Mr. Mazzucco</p> <p>24 has been doing this for over 25 years?</p> <p>25 A. I did not know that, no.</p>

<p style="text-align: right;">50</p> <p>1 Q. And do you know his firm has won many</p> <p>2 awards and they've been featured in magazines, et</p> <p>3 cetera? Are you aware of that?</p> <p>4 MR. LAKIND: I'm going to object.</p> <p>5 That's not testimony from the witness; that's</p> <p>6 testimony from --</p> <p>7 MR. VITOLO: That's the last question</p> <p>8 I'll have on this.</p> <p>9 Do you know that, Mr. Weibel?</p> <p>10 THE WITNESS: No.</p> <p>11 MR. LAKIND: Move to strike.</p> <p>12 BY MR. VITOLO:</p> <p>13 Q. Did you review the sheets prepared by</p> <p>14 Mr. Mazzucco identifying the trees to be removed in</p> <p>15 connection with this project?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And then on those sheets,</p> <p>18 didn't they also identify the trees that will</p> <p>19 remain?</p> <p>20 A. Yes, it did.</p> <p>21 Q. Okay. And also on his drawings, did</p> <p>22 you notice that he identified every species of tree</p> <p>23 located in the affected area?</p> <p>24 A. It wasn't always species, but he had</p> <p>25 at least the genus. He just said oak; he didn't say</p>	<p style="text-align: right;">52</p> <p>1 MR. VITOLO: He's been proffered as an</p> <p>2 expert.</p> <p>3 CHAIRMAN NEWLIN: As an arborist.</p> <p>4 MR. VITOLO: Right. And his opinion</p> <p>5 in this case is that the Township's tree expert was</p> <p>6 not reasonable in applying the ordinance criteria.</p> <p>7 I'm asking him about the ordinance because he had</p> <p>8 given expert opinion on the ordinance.</p> <p>9 MR. LAKIND: If I might, that's going</p> <p>10 to be the testimony, if we're permitted to testify,</p> <p>11 of what a planner does. This an arborist, he's not</p> <p>12 a planner.</p> <p>13 MR. VITOLO: His opinion was that --</p> <p>14 MR. HALL: He gave an opinion that Mr.</p> <p>15 Linson was unreasonable.</p> <p>16 MR. VITOLO: That was his opinion.</p> <p>17 MR. LAKIND: Based on --</p> <p>18 MR. VITOLO: Based on the ordinance.</p> <p>19 CHAIRMAN NEWLIN: Gary, can we move</p> <p>20 this along?</p> <p>21 MR. VITOLO: This is very important,</p> <p>22 Mr. Chairman.</p> <p>23 CHAIRMAN NEWLIN: That's why I'm</p> <p>24 looking to Gary.</p> <p>25 MR. HALL: Mr. Vitolo represents the</p>
<p style="text-align: right;">51</p> <p>1 what kind of oak. But, yes.</p> <p>2 Q. Okay. The genus then, right?</p> <p>3 A. At least, yes. Some were species,</p> <p>4 correct.</p> <p>5 Q. Okay. To compile this information,</p> <p>6 Mr. Mazzucco would have been required to inspect the</p> <p>7 site, maybe even photograph it to determine the</p> <p>8 genus, and then carefully plot those trees on his</p> <p>9 plans, right?</p> <p>10 A. I assume he did that, yeah. I wasn't</p> <p>11 there.</p> <p>12 Q. Mr. Weibel, was is the purpose of the</p> <p>13 Harding Township Tree Conservation ordinance?</p> <p>14 A. Well, it's not opening for me, of</p> <p>15 course. But the tree conservation ordinance or the</p> <p>16 tree Master Plan?</p> <p>17 Q. What is the purpose, without looking</p> <p>18 at your screen and looking it up, of the Harding</p> <p>19 Township tree conservation ordinance?</p> <p>20 A. The object of the tree conservation</p> <p>21 ordinance is to set guidelines, I suppose, when</p> <p>22 noted. Not requirements, but guidelines for --</p> <p>23 CHAIRMAN NEWLIN: Mr. Vitolo, he's an</p> <p>24 arborist. Why do we need to ask the poor chap about</p> <p>25 the ordinance?</p>	<p style="text-align: right;">53</p> <p>1 property owner whose permit is being challenged. I</p> <p>2 think he should be given some leeway.</p> <p>3 CHAIRMAN NEWLIN: Okay. Very good.</p> <p>4 Thank you.</p> <p>5 BY MR. VITOLO:</p> <p>6 Q. Mr. Weibel, in fact, the purpose of</p> <p>7 the ordinance -- and I am quoting -- is to prevent</p> <p>8 the indiscriminate, uncontrolled, and excessive</p> <p>9 destruction, removal, and cutting of trees.</p> <p>10 Does that sound familiar since you did</p> <p>11 read the ordinance?</p> <p>12 A. Yes, it does.</p> <p>13 Q. Now, sir, you'll agree, would you not,</p> <p>14 that was not the case here?</p> <p>15 A. No. I find it to be indiscriminate</p> <p>16 and excessive because I don't think the tree needed</p> <p>17 to be removed.</p> <p>18 Q. Despite your testimony of a few</p> <p>19 minutes ago that Mr. Mazzucco diligently went</p> <p>20 through, inspected the trees, plotted them, you call</p> <p>21 that an indiscriminate removal of trees?</p> <p>22 A. Yes. They don't have to be moved</p> <p>23 based upon structure and risk. They don't have to</p> <p>24 be removed to install the utilities and site</p> <p>25 upgrades. So it's indiscriminate, there's no reason</p>

<p style="text-align: right;">54</p> <p>1 to remove it.</p> <p>2 Q. And it was uncontrolled as well, is</p> <p>3 that your testimony?</p> <p>4 A. I don't think it's required to do the</p> <p>5 job they wanted to do, to install -- to fix the --</p> <p>6 to improve the site. There's no reason to remove</p> <p>7 the trees, again, based on risk or health, based</p> <p>8 impacts by the proposed construction. And these</p> <p>9 trees are natural, native, ancient trees which the</p> <p>10 Master Plan said we try to preserve and protect.</p> <p>11 Q. Just to reiterate, that's, in your</p> <p>12 opinion, indiscriminate and uncontrolled?</p> <p>13 A. Yes.</p> <p>14 Q. That's fine. Can you point me to the</p> <p>15 provision in the town ordinance that empowers a tree</p> <p>16 conversation officer to determine the issuance of a</p> <p>17 tree removal permit based upon the genus of a</p> <p>18 specific tree?</p> <p>19 A. No.</p> <p>20 Q. It's not in there, right?</p> <p>21 A. No.</p> <p>22 Q. And one of the other Board members</p> <p>23 asked you about saving large trees, right? You guys</p> <p>24 had an extended discussion about what a large tree</p> <p>25 is?</p>	<p style="text-align: right;">56</p> <p>1 assessment. I saw them, I observed them when I was</p> <p>2 them there.</p> <p>3 Q. And I believe it's your testimony that</p> <p>4 out of 28 trees removed, you only did an assessment</p> <p>5 of 1?</p> <p>6 A. Level 2 assessment, correct.</p> <p>7 MR. VITOLO: Okay. No more questions.</p> <p>8 CHAIRMAN NEWLIN: Okay. Mr. Lakind,</p> <p>9 you have already said why you want to have a</p> <p>10 planner. I'm not sure -- you want to say more about</p> <p>11 that?</p> <p>12 MR. LAKIND: Yes, I really would.</p> <p>13 CHAIRMAN NEWLIN: Please be very brief</p> <p>14 because I think you already have said why, so please</p> <p>15 be brief.</p> <p>16 MR. LAKIND: I would. Originally, I</p> <p>17 was going to explain and argue that 116 in the tree</p> <p>18 removal ordinance, the very second policy statement</p> <p>19 is that this ordinance is designed to implement the</p> <p>20 policies and goals of the Master Plan, number one.</p> <p>21 Number two, in order to assess some of</p> <p>22 the discretionary determinations, or I call them</p> <p>23 rather subjective determinations, made by Mr.</p> <p>24 Linson, there needs to be some standard. No public</p> <p>25 employee can just make subjective determinations.</p>
<p style="text-align: right;">55</p> <p>1 A. Correct.</p> <p>2 Q. What does the ordinance say about</p> <p>3 hedgerows.</p> <p>4 A. It says preserve hedgerows.</p> <p>5 Q. Right. What is the applicant here</p> <p>6 looking to put in place of these trees that are</p> <p>7 being taken out?</p> <p>8 A. Install a new hedgerow.</p> <p>9 Q. Right.</p> <p>10 CHAIRMAN NEWLIN: It says preserve,</p> <p>11 Mr. Vitolo; it does not say replace.</p> <p>12 MR. VITOLO: It also says to preserve</p> <p>13 large trees. I was just trying to get him to</p> <p>14 testify that they're on the same level, that's all,</p> <p>15 Mr. Chairman.</p> <p>16 MR. LAKIND: He's putting words in the</p> <p>17 witness' mouth and misquoting the ordinance. It</p> <p>18 doesn't say --</p> <p>19 CHAIRMAN NEWLIN: I think we</p> <p>20 understand.</p> <p>21 BY MR. VITOLO:</p> <p>22 Q. Mr. Weibel, did you do an analysis of</p> <p>23 the trees encroaching from any of the properties</p> <p>24 owned by Mr. Battista onto Mr. Gargiulo's property?</p> <p>25 A. I did not do a -- I did not do a new</p>	<p style="text-align: right;">57</p> <p>1 That standard is the ordinance as informed by what</p> <p>2 the Master Plan wants to accomplish.</p> <p>3 Number three, the Master Plan has</p> <p>4 three elements that are critical to this: The</p> <p>5 conservation plan element, the land use plan</p> <p>6 element, and the housing plan element. All of them</p> <p>7 address issues that Mr. Vitolo questioned the</p> <p>8 arborist about. So Mr. Vitolo clearly understands</p> <p>9 why that information is relevant, because all of</p> <p>10 those provisions talk about what a large tree is,</p> <p>11 it's six inches; the importance of native growth;</p> <p>12 the importance of varieties in genuses; the</p> <p>13 importance of preserving old specimen trees; the</p> <p>14 importance of history. All of that must inform Mr.</p> <p>15 Linson's decision because, otherwise, the reference</p> <p>16 to the Master Plan in the ordinance would be</p> <p>17 meaningless. Mr. Vitolo acknowledges much in the</p> <p>18 way he questioned my witness.</p> <p>19 MR. VITOLO: May I respond?</p> <p>20 CHAIRMAN NEWLIN: Gary?</p> <p>21 MR. HALL: Yeah, I think he can.</p> <p>22 MR. VITOLO: Very briefly.</p> <p>23 CHAIRMAN NEWLIN: Please.</p> <p>24 MR. VITOLO: If the Board allows a</p> <p>25 planner to testify in this matter, it will set the</p>

<p style="text-align: right;">58</p> <p>1 precedent that any resident objecting to a tree 2 removal will have an appeal to the Zoning Board and 3 planners involved in determining whether the tree 4 removal was appropriate. This is not the intent of 5 this ordinance. 6 This ordinance was meant to give a 7 bunch of factors to the tree conservation 8 professional who, in his judgment, decides whether 9 to approve the permit. This was not meant to have 10 an automatic appeal to the Zoning Board to have 11 planner testimony looking into the Master -- those 12 are built into the criteria in the ordinance. 13 There is no use and no reason to have 14 a planner testify in this case. It's a total waste 15 of time. 16 CHAIRMAN NEWLIN: Gary, is there 17 anything else you want to mention? I'd like to poll 18 the Board. 19 MR. HALL: No, no. I think that's 20 fair. I mean, the only thing I'll say is that, you 21 know, the converse of what Mr. Lakind said is 22 that -- he said Mr. Linson should not have 23 discretionary judgment, but he's saying he should 24 interpret the ordinance. I mean, I don't know where 25 you draw the line. It sounds like -- I don't think</p>	<p style="text-align: right;">60</p> <p>1 decision on this, and then Mr. Lakind might have 2 another witness. 3 MR. MASELLI: I just have one question 4 for him. 5 CHAIRMAN NEWLIN: Go ahead. 6 MR. MASELLI: For John. Just out of 7 curiosity, when a permit is sought for tree removal, 8 have you ever rejected the removal of a tree that 9 may have been a significant tree? 10 Has it always been -- like, if I come 11 in and I want to cut down all my trees in my tree 12 conservation easement and I give you a legitimate 13 reason, but that's up to your opinion whether it's 14 legitimate or not, and the weight of that decision 15 is, listen, you can do this some other way. Have 16 you ever rejected a permit for a tree removal? 17 MR. LINSON: I have not rejected any 18 in Harding that I can recall. I have rejected them 19 in other towns. 20 MR. MASELLI: And for what reason have 21 you rejected it? Because of the significance of the 22 tree? 23 MR. LINSON: Healthy trees, you know, 24 sometimes you have a parent, "My child has asthma or 25 they're allergic to trees," so they want to cut down</p>
<p style="text-align: right;">59</p> <p>1 this Board is supposed to rewrite the ordinance. 2 Anyway, I throw that all out. 3 CHAIRMAN NEWLIN: Anything else Gary? 4 MR. HALL: No. That's fine. 5 CHAIRMAN NEWLIN: Can I poll the Board 6 to see if we think we need a planner? 7 Mike? 8 MR. FLANAGAN: Thanks, Alf. 9 In my mind, this is a question of Mr. 10 Linson's judgment. I think the way the ordinance is 11 written, the way I read it, there are 10 criteria 12 that shall be considered. They don't say any of 13 those is any more important than any of the others. 14 In my mind, this is a question about what the tree 15 expert, what the town's tree expert decided in 16 issuing a permit. I don't think we need a planner 17 to tell us what Mr. Linson was thinking or should 18 have been thinking. So, no, I don't think we need 19 to hear from a planner. 20 CHAIRMAN NEWLIN: Dan? 21 MR. MASELLI: I would agree with Mike 22 on this one. But I do have a question. Unless you 23 want to go through all the Board members first. 24 CHAIRMAN NEWLIN: Well, I anticipate 25 what's going to happen is we're going to make a</p>	<p style="text-align: right;">61</p> <p>1 one tree. But, you know, there's pollen from trees 2 that's carried miles in the air. So cutting down 3 one tree not going to solve the problem of your 4 child's asthma. 5 I had one -- sometimes I get involved 6 with neighbors where one neighbor wants another tree 7 removed that is totally healthy. It just happens to 8 lean that way or whatever. But if it's a healthy 9 tree and there's no planned replacement or 10 management of the area, it would be denied. 11 And there's always an appeal process 12 associated with the permit process. So you haven't 13 had any appeals before this, so up to this point, I 14 think I have exercised the duties of the tree 15 conservation officer for Harding Township. Unless 16 -- and if I'm doing something wrong, I want to know 17 about it. 18 CHAIRMAN NEWLIN: Do you think the 19 catalpa is unhealthy? 20 MR. LINSON: It has a large crown, 21 it's extremely hollow, and it has a lean to it. So 22 there is a liability. 23 CHAIRMAN NEWLIN: But is it unhealthy? 24 MR. LINSON: It's not unhealthy. But 25 being healthy could be to its detriment, having such</p>

<p style="text-align: right;">62</p> <p>1 a full crown and such a hollow trunk, it makes it 2 more susceptible to windthrow and trunk failure in a 3 wind or ice storm. 4 CHAIRMAN NEWLIN: Dan, anything else? 5 MR. MASELLI: No. That's just out of 6 curiosity. I'm also curious -- you're stating that 7 it's not unhealthy. We've had some pretty 8 significant storms over the last five, six, 9 seven years, and it's survived that. So I was just 10 curious if there were any denials. That's all. 11 MR. LINSON: You know, when Brian 12 Bosenberg and I looked at all 28 trees, and I had my 13 mallet, I tapped on it. I said this tree looks like 14 it's hollow. I tapped on it and I said this is not 15 a tree that I would force Mr. Gargiulo to keep. 16 There's a definite liability. There's a definite 17 defect in the tree. So the fact that it doesn't 18 lean over a house or it's only leaning over a fence 19 doesn't make it any less likely that it is going to 20 fail under a storm condition. But it definitely has 21 a propensity for failure. 22 CHAIRMAN NEWLIN: Thank you. 23 Now I'm losing my place. Rita, do we 24 need a planner? 25 MS. CHIPPERSON: I would just ask Gary</p>	<p style="text-align: right;">64</p> <p>1 Aric. 2 MR. ROSENBAUM: I don't see what a 3 planner would add to this conversation, so I'm a no. 4 CHAIRMAN NEWLIN: I would tend to 5 agree. I also don't see -- we work with planners 6 who understand the Master Plan aspect. 7 Mr. Linson, when you do these tree 8 permits, do you take along the Master Plan and 9 reference the Master Plan when you're processing 10 these permits? 11 THE WITNESS: No, I do. 12 CHAIRMAN NEWLIN: He looks at the 13 ordinance. I think that's pretty clear. 14 So, Mr. Lakind, what else would you 15 like to do? I'll be very blunt, I think we've 16 squeezed pretty much the juice out of this lemon. 17 MR. LAKIND: I appreciate your 18 courtesy. 19 CHAIRMAN NEWLIN: We understand this 20 is a very big application. There's all sorts of 21 stuff going on. And that's why all the big guns are 22 here. But this is pretty simple for us. We have 23 our blinders. This is very simple. 24 MR. LAKIND: The only things I would 25 do are, number one, if necessary, I mean, Mike</p>
<p style="text-align: right;">63</p> <p>1 if -- Gary, do you have any idea what's done in 2 other towns or typically in this type of scenario? 3 I mean, it sounds like we haven't dealt with it 4 here. 5 MR. HALL: No, we haven't. And I 6 haven't dealt with it anywhere else either, so. I'm 7 skeptical about what a planner could add to this. I 8 think it's pretty far afield, personally. 9 MS. CHIPPERSON: Okay. I wanted to 10 ask the question. But I agree with the Board up 11 until this point that I don't think the planner is 12 required. 13 CHAIRMAN NEWLIN: Elizabeth? 14 MS. SOVOLOS: Agreed. Again, I have 15 not heard the first part of this and haven't read 16 the transcript, but from what I've heard and 17 understand tonight, I'm with everyone else on this 18 one. 19 CHAIRMAN NEWLIN: Hugh? 20 MR. SYMONDS: My understanding of what 21 a planner could add to this discussion is limited to 22 "I don't know." So for me to say, no, we don't need 23 a planner, the only answer I can say to that is I 24 don't know. 25 CHAIRMAN NEWLIN: Okay. Thanks.</p>	<p style="text-align: right;">65</p> <p>1 Battista and his family lives on lots adjoining this 2 property. Gary raised those issues. 3 CHAIRMAN NEWLIN: We heard from one 4 family member already. 5 MR. LAKIND: I can call Mr. Batista to 6 explain that he did if there's any real dispute. I 7 don't think there is. There's a dispute about who 8 has rights to the right-of-way. I don't think 9 there's a dispute that he lives in the adjoining 10 properties. If there is, I'll call him. 11 MR. HALL: Those are all court issues, 12 they're not issues on this appeal, I don't think. 13 We did hear in the daughter-in-law who -- 14 MR. LAKIND: Okay. Yeah. The second 15 thing is I heard only five members have either 16 attended or read the transcript, so I certainly 17 would oppose a vote until we have a full 18 seven-member Board. I think a five-member vote 19 would be inappropriate. 20 MR. HALL: It's six, isn't it? 21 MR. LAKIND: No. One member said she 22 did not read the transcript yet. 23 MR. HALL: Yeah, but she's seven. 24 Aren't there seven people here tonight? 25 CHAIRMAN NEWLIN: Did I miss somebody?</p>

<p style="text-align: right;">66</p> <p>1 MR. LAKIND: Mr. Addonzio left. I 2 don't think so. 3 MR. HALL: Well, he stepped down, to 4 begin with. 5 CHAIRMAN NEWLIN: Lori, can you give 6 us a count? 7 MS. TAGLAIRINO: There are eight 8 members present. Mr. Addonzio recused himself. 9 That leaves seven. And with Elizabeth who has not 10 read the transcript, that leaves six voting members. 11 MR. HALL: One approach, Alf, might be 12 to do a straw poll, because with six, you need a 13 majority which is four. 14 CHAIRMAN NEWLIN: Is there any reason 15 that we need to have seven legally? 16 MR. HALL: No. It's common courtesy, 17 but there's no legal requirement, to my knowledge. 18 MR. LAKIND: Well, Gary, my argument 19 is it's much harder for me. Percentage-wise, it's 20 much harder to get four out of six than four out of 21 seven, so that's why I would oppose it. 22 I also would like the chance to make a 23 very brief summation. It will take less than 24 60 seconds. 25 MR. VITOLO: We would like to have a</p>	<p style="text-align: right;">68</p> <p>1 MR. LAKIND: No. And we never heard 2 it until he testified he failed to do it. 3 MR. VITOLO: That was weeks ago. 4 MR. LAKIND: Well, I don't have to 5 identify every basis in an appeal, Gary. You know 6 that. 7 MR. HALL: The land use law says you 8 give the reasons for the appeal in your notice, 9 which you did. 10 MR. LAKIND: I had no way of knowing 11 he hadn't presented it until he said it. 12 MR. HALL: Mr. Linson, did you say 13 that? I thought the paperwork was signed by the 14 Shade Tree, somebody else. 15 CHAIRMAN NEWLIN: Gary, I'm going to 16 interrupt you. 17 Mike, you said you want a hard stop at 18 10:45. It is past 10:45. 19 MR. FLANAGAN: It's 10:46. Why don't 20 we just keep going for a few minutes here, Alf, see 21 where it gets to, if the Board will indulge us in 22 staying a few minutes after 11 if we need to. 23 CHAIRMAN NEWLIN: Okay. Thanks, Mike. 24 Sorry, Gary. 25 MR. HALL: Mr. Lakind, where in the</p>
<p style="text-align: right;">67</p> <p>1 vote here, Mr. Chairman. 2 CHAIRMAN NEWLIN: You've said that, 3 Mr. Vitolo. We're doing what we need to do here. 4 I'm sorry. Sure you can do a summation, Mr. Lakind. 5 MR. LAKIND: Thank you. I promised 6 you I would do it in a minute, and I will. 7 Number one, there's one procedural 8 issue that's absolutely fatal to this application 9 that is outside of Mr. Linson's judgment. That is 10 there was an obligation in your ordinance, because 11 it uses the word shall, that every application shall 12 be presented to the Shade Tree Advisory Committee. 13 That committee consists of a garden club, a Harding 14 Township Historical Society member, an Environmental 15 Club member. That was not done in this matter. Mr. 16 Linson testified he didn't do it so there's a fatal 17 flaw in the process because without the input from 18 those people, the only input you have is from 19 someone who's an expert in trees and essentially the 20 chairperson. But we have a right under the 21 ordinance, because it uses the word shall, to have 22 this matter presented to the Shade Tree Committee, 23 and it was not. 24 MR. HALL: Was that in your appeal? I 25 don't think ever heard that before.</p>	<p style="text-align: right;">69</p> <p>1 ordinance -- I want to make sure I see the exact 2 wording. 3 MR. LAKIND: Let me get it, Gary. 4 MS. CHIPPERSON: Isn't the Shade Tree 5 Commission meetings public record? 6 MR. LAKIND: Yeah, 225 111 C3, within 7 three days after an application and the application 8 fee, if required, have been received, the tree 9 conservation officer shall mail a copy of the 10 application to the Shade Tree Advisory Committee. 11 And I don't want to get into a legal 12 argument, but the word shall generally is 13 preemptory. 14 MR. HALL: But it's not always a fatal 15 error either. 16 MR. LAKIND: Well -- 17 MR. HALL: The land use law at various 18 parts say, well, but if you don't do that, it's 19 okay. 20 MR. LAKIND: It does. But it doesn't 21 say that here. 22 Look, I'm going seek to enforce it 23 either here or somewhere. 24 MR. HALL: Well, whatever. I'll defer 25 to the Board. I don't know it's automatic, but --</p>

<p style="text-align: right;">70</p> <p>1 MR. VITOLO: That's very professional 2 of you, Mr. Lakind, to spring that on the Board two 3 minutes before you're closing your case. 4 CHAIRMAN NEWLIN: Please go ahead, Mr. 5 Lakind. 6 MR. LAKIND: Okay. So there is a 7 fatal flaw in the procedure. 8 The notion that I sprung it on anybody 9 is ridiculous. Gary asked me for who I'm going to 10 call, what witnesses. I provided it, certainly, 11 before Mr. Vitolo did. 12 Secondly, I think it's fatal error for 13 this Board not to consider the Master Plan as it 14 informs the application of the 10 factors, but the 15 Board has ruled against me. 16 With regard to the application, Mr. 17 Gargiulo seeks privacy for a roadway which impairs 18 Mr. Battista's rights to the views which he 19 enjoys -- 20 MR. HALL: He has no rights to views. 21 I thought I was clear on that. I apologize for 22 interjecting, but that's just wrong. 23 MR. LAKIND: You're right, he does not 24 have a right. Mr. Battista's interest in the views 25 he had, it imposes on Mr. Battista's obligations to,</p>	<p style="text-align: right;">72</p> <p>1 250 years. And no one, Mr. Linson or Mr. Weibel, 2 suggested that it's about to topple. I think the 3 tree replacement plan is flawed. I've gone through 4 that. I won't reiterate. 5 The only other thing I'd like to do 6 and I neglected to do is there are a couple of 7 photographs that I'd like to move into evidence. 8 And I will tell you what they are. I believe I laid 9 an adequate foundation for each. BL-4 was -- 10 CHAIRMAN NEWLIN: Wait. This is a 11 summary. So I don't understand. Why are we getting 12 more information? I would prefer not to do this. 13 MR. LAKIND: Okay. 14 MS. CHIPPERSON: If I can just jump 15 in. I don't know the procedure here in this, but 16 how can you bring up the "shall have sent the report 17 to the Shade Tree Commission" in your closing 18 argument? 19 Mr. Vitolo has had, what, 30 seconds 20 notice of this? I mean, this just seems ridiculous. 21 And I believe the meetings are public record, so the 22 information was publicly available. This just feels 23 very wrong, the whole procedure that we're going 24 through here right now. And we're introducing 25 photographs in a closing argument?</p>
<p style="text-align: right;">71</p> <p>1 if he wishes to, to cut and trim and reliability 2 associated with branches on his property. That 3 simply is not fair. It impairs the drainage. And I 4 don't want to go on. You've heard everything. 5 CHAIRMAN NEWLIN: These are big 6 properties, Mr. Lakind. 7 MR. LAKIND: I'm sorry? 8 CHAIRMAN NEWLIN: These are big 9 properties. 10 MR. LAKIND: They are. I think -- 11 CHAIRMAN NEWLIN: The sympathy level 12 is low. 13 MR. LAKIND: Mr. Hall indicated in his 14 memo that you might want to consider voting 15 separately on each of the trees. And I know there 16 was some separate discussion of the catalpa, so I 17 would urge the Board to do that. 18 MR. HALL: That was before I heard any 19 testimony. So based on testimony, if you think it's 20 needed. 21 MR. LAKIND: But essentially a change 22 from deciduous to arborvitae will change the 23 drainage patterns, it would change the screening. 24 It's not necessary in order to protect any property 25 because the catalpa has a potential life of</p>	<p style="text-align: right;">73</p> <p>1 I mean, you tell me, Gary, but this is 2 very out of whack. 3 MR. HALL: Yeah, I tend to agree. As 4 I said, I don't know this thing about not sending it 5 somewhere. That should have been flagged upfront. 6 If it's so fatal, we could have maybe saved wasting 7 two, three, or four hours of time hearing all this 8 testimony because you don't need any witness. You 9 could have moved right away. You could have moved 10 for some directed decision on that if that's your 11 argument. I tend to agree. 12 MS. CHIPPERSON: Plus, I'd like to 13 have heard from the opposing Counsel as to what they 14 think about this, but he's had no opportunity to 15 prepare it. And now we're going delay voting 16 because of something that was sprung on us in the 17 last 30 seconds. 18 CHAIRMAN NEWLIN: But I don't we 19 necessarily are, are we? 20 MS. CHIPPERSON: No, my point is if we 21 don't delay voting and now we vote, we're voting 22 without all of the information because Mr. Vitolo 23 just found out about this 30 seconds ago. And I 24 would like to hear both sides so we can make a 25 proper decision.</p>

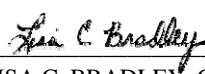
<p style="text-align: right;">74</p> <p>1 CHAIRMAN NEWLIN: Gary, please weigh 2 in. 3 MR. HALL: I think it's a legal issue 4 and it should have been raised sooner. I don't know 5 how we can decide it right now. This is the first I 6 heard of it, too. I don't know. His opening 7 statement should have flagged that if that was -- 8 well, he said he didn't hear the testimony. But he 9 should have raised it before tonight. In the 10 beginning, I would think. 11 CHAIRMAN NEWLIN: Gary, you need to 12 give very specific traffic directions here. What do 13 we need to do? 14 MS. CHIPPERSON: Let me just throw in 15 there, too, that I'm concerned about we vote now 16 with something hanging open that we just found out 17 about, and then the town ends up finding itself in 18 some type of appeal. 19 MR. HALL: It sounds like they're 20 going to appeal no matter what we do. 21 MR. VITOLO: They're going to appeal. 22 It doesn't matter. They're going to appeal this. 23 I just need 30 seconds to do my 24 closing. 25 CHAIRMAN NEWLIN: Mr. Lakind has to</p>	<p style="text-align: right;">76</p> <p>1 CHAIRMAN NEWLIN: Excuse me. Let me 2 speak. 3 Gary, we need clear direction. Can we 4 decide this application tonight? 5 MR. HALL: I think you can if you 6 want. 7 CHAIRMAN NEWLIN: No, I need a little 8 stronger than that, Gary. Is there an issue? Rita 9 brought up an issue, a procedural issue. That's 10 beyond our expertise. Can we decide this 11 application -- 12 MR. HALL: I think you can vote now. 13 You've heard it all. The one thing just came up. I 14 don't think that should be fatal to anything, so I 15 would suggest you vote. 16 CHAIRMAN NEWLIN: Rita, do you have a 17 concern with that? 18 MS. CHIPPERSON: I just don't see how 19 it's procedurally proper. Obviously, I'm a lawyer, 20 but I don't do this type of law. But, you know, 21 when we've heard 10 seconds of testimony about 22 something that supposedly is conclusory on what 23 we're voting on and, you know, there's -- that's all 24 we've heard. I mean, it's just preposterous to me. 25 My guess is that you can't bring something up in an</p>
<p style="text-align: right;">75</p> <p>1 wrap up then. Are you done? 2 MR. LAKIND: Yes, I am. 3 CHAIRMAN NEWLIN: Okay. Mr. Vitolo. 4 MR. VITOLO: I'm only going to say one 5 thing to the Board. Mr. Battista, next door to this 6 property, has a subdivision that he just did. He's 7 going to mow down trees, vegetation next door. This 8 whole thing is a complete charade. And they're 9 going to appeal this. They're trying to delay the 10 court action. This is what it's all about. So 11 please vote so I can go up to appeal and we'll have 12 to handle it at the court. Thank you. 13 MR. LAKIND: I just want to respond to 14 this. The notion that we did something unethical or 15 that we're just appealing to gain time, he forgets, 16 the Court enjoined the planting of the trees -- 17 CHAIRMAN NEWLIN: Mr. Vitolo, Mr. 18 Lakind, excuse me. We're not taking this into 19 account. Mr. Vitolo can say what he wants to say. 20 There's no consideration that you've done something 21 improper, and we wouldn't know about it. 22 MR. VITOLO: I never said he did 23 anything unethical. 24 CHAIRMAN NEWLIN: Excuse me, guys. 25 MR. LAKIND: I understand --</p>	<p style="text-align: right;">77</p> <p>1 appeal in your closing argument. That's going to be 2 my guess, but, Gary, we really would need to rely on 3 you. 4 CHAIRMAN NEWLIN: A hundred percent, 5 Gary. You need to tell us if we can go ahead or we 6 can't go ahead. 7 MR. HALL: I think you can and should 8 vote. That issue, if they're going challenge it, 9 they challenge it. 10 CHAIRMAN NEWLIN: Okay. Let's move 11 on. 12 Is there any member of the public that 13 have any comments? 14 Nobody? Lori, we good on that? 15 MS. TAGLAIRINO: I don't see anybody 16 raising hands. 17 CHAIRMAN NEWLIN: Can we poll the 18 Board members? 19 Dan? 20 MR. MASELLI: What are we -- what is 21 the question? 22 CHAIRMAN NEWLIN: Do you have an 23 opinion about deciding this appeal? 24 MR. MASELLI: Are we voting or we 25 deciding on --</p>

<p style="text-align: right;">78</p> <p>1 CHAIRMAN NEWLIN: Just a poll, just 2 running down the Board members to get their views. 3 MR. MASELLI: Is this a poll for a yes 4 or a no vote? 5 CHAIRMAN NEWLIN: Yes, please. 6 MR. MASELLI: So what is the question? 7 What does no mean and what does the yes mean? 8 MR. HALL: The question is whether Mr. 9 Linson's decision should be upheld or reversed. 10 That's a simple question. 11 MR. MASELLI: I'm leaning towards 12 upheld on it. That's what I'm leaning towards. 13 CHAIRMAN NEWLIN: Upheld? 14 MR. MASELLI: Yes. 15 CHAIRMAN NEWLIN: Mike? 16 MR. FLANAGAN: Let me start by saying 17 I'm not happy about this issue being brought up here 18 at the 11th hour or the moments before a vote is 19 about to be taken. Right? It seems to me that if 20 this was part of their argument, it probably should 21 have been made before we spent two meetings 22 discussing with arborists, et cetera. So to start 23 there. 24 If it's our attorney's view that we 25 should take a vote on it and we can take a vote on</p>	<p style="text-align: right;">80</p> <p>1 Gary, you said and someone had 2 mentioned individual tree voting. Is that something 3 that's still on the table? 4 CHAIRMAN NEWLIN: Yes. 5 MR. HALL: Whatever you want to do. 6 It's your choice. 7 Hugh, are you just talking about the 8 catalpa, or are you talking about other trees? 9 MR. MASELLI: I thought it was either 10 a yes or a no. So if it's just about individual 11 trees, everybody should be made aware of that. 12 MR. SYMONDS: I can speak to that 13 because I thought about this before I made the 14 answer. We had specific testimony that the catalpa 15 tree was large. Somebody said 60 inches maybe, 16 something like that. That sounds like a large tree 17 of any species. The ash trees, I'm going to 18 discount because they're ash trees, they're all 19 ready to -- they don't count. But we also had -- 20 apparently, there were a significant number of 21 walnut trees and oak trees. We did not get 22 testimony as to what size they were. I think they 23 were already cut down, for that matter, is what I 24 think. But again -- 25 CHAIRMAN NEWLIN: Mr. Linson, can you</p>
<p style="text-align: right;">79</p> <p>1 it, then we will. And if we're going to take a vote 2 on it, I'm voting to uphold Mr. Linson's decision 3 because, as we read the ordinance that we've been 4 focusing on, there are 10 items that he shall, he 5 must -- I agree shall means must -- consider. He 6 considered them, he came to a decision. So for that 7 reason, I would uphold Mr. Linson's decision. 8 CHAIRMAN NEWLIN: Elizabeth -- oh, I'm 9 sorry you're not eligible, correct? 10 MS. SOVOLOS: Right. 11 CHAIRMAN NEWLIN: I apologize. 12 Hugh? 13 MR. SYMONDS: Again, reading strictly 14 from the ordinance, because the testimony has been 15 quite confusing to me, and most of it -- especially 16 the part about the planner and what-have-you. But 17 the long and short of it to me is that the ordinance 18 reads, "To the greatest extent practical, large 19 trees should be preserved," and it does not seem 20 like we have done that. 21 CHAIRMAN NEWLIN: So you would not 22 uphold the decision? 23 MR. SYMONDS: I would vote to overturn 24 Mr. Linson's permit. 25 MR. MASELLI: May I intervene on this?</p>	<p style="text-align: right;">81</p> <p>1 confirm that? 2 MR. LINSON: They were topped out and 3 they're trunks, most of the walnuts. 4 CHAIRMAN NEWLIN: You're correct, 5 Hugh. 6 MR. SYMONDS: So, again, my feeling is 7 the ordinance specifies large trees. And if we say 8 that the permit should be upheld, then a large tree 9 is coming down. 10 MR. MASELLI: That's why I mentioned 11 whether that was still on the table. 12 CHAIRMAN NEWLIN: Gary said it is, so 13 it is. You want to exclude the catalpa, you can 14 exclude the catalpa. 15 MR. SYMONDS: Well, to be honest with 16 you, if this had happened earlier, there would have 17 more large trees is my feeling. So it's really at 18 this point we're just trying to cover what loss 19 ground we can. 20 CHAIRMAN NEWLIN: Thank you. 21 Aric? 22 MR. ROSENBAUM: From all the testimony 23 I've heard, I will add that Mr. Lakind's point 24 during his closing -- I'm not an attorney -- just 25 doesn't sit right with me. I'd like to note that.</p>

<p style="text-align: right;">82</p> <p>1 But in terms of the testimony that I</p> <p>2 heard, I haven't heard anything to tell me factually</p> <p>3 that Mr. Linson is in error. So I'm voting to</p> <p>4 uphold Mr. Linson.</p> <p>5 CHAIRMAN NEWLIN: Rita?</p> <p>6 MS. CHIPPERSON: I'm going to agree</p> <p>7 with Aric. I think -- I do understand what Hugh was</p> <p>8 saying about the one tree in particular, but my</p> <p>9 understanding is that it's not about our decision on</p> <p>10 what we would initially think about it; it's about</p> <p>11 whether Mr. Linson was wrong. And I don't see from</p> <p>12 everything that was presented here that he was</p> <p>13 wrong. So I don't feel comfortable overturning his</p> <p>14 decision.</p> <p>15 As far as the things that were brought</p> <p>16 up in the closing, I think the most appropriate</p> <p>17 thing to do is disregard it because I didn't hear</p> <p>18 any testimony from a professional or any other</p> <p>19 person that would support something that came up in</p> <p>20 the closing statement. The first thing I learned in</p> <p>21 law school is you don't take an attorney's word for</p> <p>22 it. And we didn't have any testimony to support any</p> <p>23 of that, and I have no idea whether it's accurate or</p> <p>24 not accurate. So for me personally, I'm going to</p> <p>25 disregard what I heard in the closing. And I would</p>	<p style="text-align: right;">84</p> <p>1 CHAIRMAN NEWLIN: I think Dan, if I'm</p> <p>2 not mistaken, excludes the catalpa.</p> <p>3 MR. HALL: Is everyone on board with</p> <p>4 that?</p> <p>5 Aric, were you on board with that?</p> <p>6 MR. ROSENBAUM: With saving --</p> <p>7 MR. HALL: Excluding the catalpa.</p> <p>8 MR. ROSENBAUM: What I said is I</p> <p>9 didn't include or exclude it.</p> <p>10 MR. HALL: Okay. But the question is</p> <p>11 for purposes of a vote whether that should be</p> <p>12 excluded; reversed only as to that.</p> <p>13 I'm sorry. Rita.</p> <p>14 MS. CHIPPERSON: Sorry to interrupt</p> <p>15 you.</p> <p>16 How legally does it make sense to</p> <p>17 exclude one tree if we're evaluating this on appeal</p> <p>18 and we're deciding whether or not the permit was</p> <p>19 proper? I mean, can we do that?</p> <p>20 MR. HALL: I think so, because an</p> <p>21 example is -- and this ordinance doesn't say it, but</p> <p>22 in the context of an appeal of a use variance, this</p> <p>23 Board -- I don't who was on it then. It's been a</p> <p>24 while. The approval of the T-Mobile cell tower by</p> <p>25 this Board -- and I was on at that time -- it was</p>
<p style="text-align: right;">83</p> <p>1 uphold Mr. Linson.</p> <p>2 CHAIRMAN NEWLIN: Okay. So my</p> <p>3 perspective is I'm going to take your word for it</p> <p>4 and Gary's word for it about that issue. So I'm</p> <p>5 also going to -- I don't really see how we can act</p> <p>6 on that here, and it's so late.</p> <p>7 The application was not correct, but</p> <p>8 Mr. Linson did not rely on the aspect that was not</p> <p>9 correct, so I don't think that is material. I do</p> <p>10 think the catalpa should be excluded. I think the</p> <p>11 rest of Mr. Linson's determination should be upheld.</p> <p>12 And most of the objections that came up in the</p> <p>13 testimony had to do with disagreements with the</p> <p>14 ordinance itself, which is not -- and I tend to</p> <p>15 agree, the ordinance probably has a lot of flaws,</p> <p>16 but I don't think those have anything to do with Mr.</p> <p>17 Linson and his processing of the ordinance.</p> <p>18 Gary, where does that leave us?</p> <p>19 MR. HALL: Well, if I mistaken, I</p> <p>20 heard five people favoring upholding, and Hugh</p> <p>21 favoring not upholding which, number one, that means</p> <p>22 getting a seventh vote wouldn't change the outcome.</p> <p>23 And number two, I think, as I said, from what I</p> <p>24 hear, I don't know if everybody -- I think all five,</p> <p>25 excluding the catalpa --</p>	<p style="text-align: right;">85</p> <p>1 appealed to the Township Committee. And that</p> <p>2 provision in the statute specifically says you can</p> <p>3 approve, affirm, or reverse with conditions.</p> <p>4 And I think it's implicit that there</p> <p>5 was a lot of focus separately on the catalpa. You</p> <p>6 can say, well, yeah, everything was good except for</p> <p>7 that. I don't know why that -- all or nothing</p> <p>8 strikes me as --</p> <p>9 CHAIRMAN NEWLIN: As Hugh noted, you</p> <p>10 can see that in the ordinance basically. That's</p> <p>11 pretty clear unless there's such a huge public</p> <p>12 safety issue, which doesn't seem to be the case.</p> <p>13 So, Gary, you've got to make sure we can do that, if</p> <p>14 in fact we can do it.</p> <p>15 MR. HALL: It's my opinion that you</p> <p>16 can. I did suggest that, as someone pointed out,</p> <p>17 back in August in my memo.</p> <p>18 CHAIRMAN NEWLIN: I want to see. Is</p> <p>19 there a sufficient number of people on the Board</p> <p>20 that would support that option?</p> <p>21 MS. CHIPPERSON: Well, I think Mr.</p> <p>22 Linson did say that the tree is not -- what was the</p> <p>23 right words? Not unhealthy or not -- I don't want</p> <p>24 to put words in your mouth.</p> <p>25 MR. HALL: I think he said it could be</p>

<p style="text-align: right;">86</p> <p>1 more prone to falling but it wasn't a danger or 2 hazard, in lay terms. Fundamentally, that was my 3 recollection. 4 MS. CHIPPERSON: Which would seem to 5 indicate that it's not a public safety issue. 6 MR. HALL: Yes. He specifically said 7 it wasn't a danger or a hazard. His concern in 8 including that was that potential liability on the 9 part of the property other, Mr. Gargiulo, to have to 10 keep a tree that could in the future fall down. I 11 mean, any tree could fall down. 12 CHAIRMAN NEWLIN: This is Harding. 13 That's why we move here. This tree is five feet in 14 diameter and 150 years old. I mean, clearly, it 15 meets that condition. 16 So, again, do we have enough folks 17 that would support this? 18 MR. FLANAGAN: Alf, I would support 19 keeping the catalpa and affirming the rest of the 20 decisions by Mr. Linson. 21 MR. HALL: Rita, are you okay with 22 that? I think everybody else said they were. 23 CHAIRMAN NEWLIN: Hugh, would you be 24 okay with that? 25 MR. HALL: No, Hugh was against the</p>	<p style="text-align: right;">88</p> <p>1 on this. 2 MS. CHIPPERSON: Yeah, that's my 3 concern. I appreciate the age, the size. I would 4 love to save it, but there's testimony that it has a 5 large top, it has a hollow base, it's leaning, you 6 know. I hesitate to override his judgment, as he's 7 the specialist and I'm not. 8 CHAIRMAN NEWLIN: Mr. Linson, you have 9 to make this clear for us. Is this abnormally -- 10 when I say abnormally, based on Harding, lots of 11 trees -- is this a public safety issue or not? 12 We're going by your assessment. 13 MR. LINSON: The danger is, in my 14 estimation, is that the tree will eventually fall 15 and it will fall into the Battista property. 16 CHAIRMAN NEWLIN: That's true with all 17 trees, right? Come on, you need say. Does it got 18 to go? 19 MR. LINSON: This tree has some 20 serious defects. I personally would not require Mr. 21 Gargiulo to preserve this tree. I believe it's a 22 potential hazard. We don't know when it's going to 23 fall, but we do know where it's going to fall. It's 24 going to fall. 25 MR. ROSENBAUM: Could I ask him more</p>
<p style="text-align: right;">87</p> <p>1 whole thing, I think. He said about the large 2 trees. 3 MR. SYMONDS: I know simply from we've 4 been there and we've had testimony that the catalpa 5 is large. I tried to get Mr. Weibel to say that 6 there were some other large trees there. But, 7 again, I know this one tree is large. The permit 8 said it should come down, so I'm willing to 9 invalidate the entire permit. 10 MR. HALL: Okay. That's what I 11 thought you had said. 12 CHAIRMAN NEWLIN: I'm sorry, Rita, did 13 you answer? 14 MS. CHIPPERSON: No. I'm still 15 thinking about it. 16 CHAIRMAN NEWLIN: Aric, where would 17 you be? 18 MR. HALL: I think he said yes. 19 CHAIRMAN NEWLIN: You'd be okay with 20 this? 21 MR. ROSENBAUM: I would be okay with 22 it, but I still haven't heard any factual evidence 23 that Mr. Linson's understanding that it was hollow 24 and then potentially it could fall down on someone, 25 it's going to kill somebody, so I can go either way</p>	<p style="text-align: right;">89</p> <p>1 simply? Would you stand under that tree? 2 MR. LINSON: I have, actually. But it 3 wasn't windy; it was a nice, calm day. But I would 4 not want to park my car under it during a 5 thunderstorm; I'll tell you that. 6 MS. CHIPPERSON: It sounds to me like 7 you're testifying that it is a public safety issue. 8 I mean, if you're saying it's going to fall, you 9 know, that's my hesitation. 10 MR. MASELLI: You have two tree 11 experts here. One says that it's not, and one says 12 that it is, so... 13 MR. LINSON: The frequency of somebody 14 being underneath it when it falls is very slight. 15 And that's how I would agree with Matthew Weibel, 16 under those conditions. But we just don't know when 17 it's going to fall. And as hollow as it is, you 18 know -- basically, if the cross-section of a tree is 19 more than 30 percent hollow, there is a hazard 20 rating. I did not core sample it. I did the same 21 thing Mr. Weibel did with the hammer and the mallet, 22 and it is very, very hollow. 23 MR. MASELLI: Can these new trees, 24 these 380 giant arborvitaes, can they cohabitate 25 with this tree? Or will the new plantings affect</p>

<p style="text-align: right;">90</p> <p>1 the tree structure-wise, root-wise, canopy-wise, 2 et cetera?</p> <p>3 MR. LINSON: I do believe that you 4 could plant the green giant junipers in a continuous 5 row all the way up the driveway right up to the edge 6 of this catalpa tree. It's just the issue that the 7 tree is hollow and it is leaning.</p> <p>8 CHAIRMAN NEWLIN: Mr. Linson, this is 9 very simple, unfortunately, because I wish this tree 10 were saved. And if I was the property owner, I 11 almost definitely would. But it's much more -- this 12 is a different situation. You have a property owner 13 who wants to take it down, his reason to take it 14 down is public safety. And you're saying you agree, 15 is that true?</p> <p>16 MR. LINSON: Yes, I do.</p> <p>17 CHAIRMAN NEWLIN: So I'm changing my 18 view, and I think --</p> <p>19 MS. CHIPPERSON: Alf, let me just 20 throw one more thing into this as I think through 21 this. But Mr. Linson is saying that if there's a 22 hazard here, the hazard is for the Battistas.</p> <p>23 CHAIRMAN NEWLIN: That's true.</p> <p>24 MS. CHIPPERSON: And the Battistas are 25 here asking us to leave it. So if they're willing</p>	<p style="text-align: right;">92</p> <p>1 MS. CHIPPERSON: And it's the 2 Battistas there today, but, I mean, that could 3 change a week from now.</p> <p>4 MR. ROSENBAUM: I appreciate it's a 5 large, beautiful tree. I appreciate the Battistas 6 enjoy the tree. It's a great-looking tree, but the 7 potential liability -- and it's more than zero, 8 according to Mr. Linson, it's not a hundred 9 percent -- it's unfair to ask the Gargiulos to own 10 that risk.</p> <p>11 CHAIRMAN NEWLIN: So I'm just trying 12 to, again, look at the number of votes we have. 13 Mike is uphold, Aric is uphold, Hugh is not. 14 Dan?</p> <p>15 MR. MASELLI: If there's a liability 16 issue, then it's uphold for the entire application 17 or judgment.</p> <p>18 I personally would like to see the 19 tree saved. I just don't know how that would work 20 if liability is an issue here unless the Battistas 21 are willing to take that liability. And I don't 22 think that's on the table; or if it is, please 23 advise.</p> <p>24 CHAIRMAN NEWLIN: I don't think we 25 want to ask for that. That's complicated.</p>
<p style="text-align: right;">91</p> <p>1 to assume the risk and the risk is to them --</p> <p>2 MR. ROSENBAUM: Who owns the liability 3 if it falls.</p> <p>4 MS. CHIPPERSON: What's that, Aric?</p> <p>5 MR. ROSENBAUM: Who owns the liability 6 if it falls? If it fell on somebody, if it fell on 7 someone's personal property, who would own that 8 liability?</p> <p>9 MS. CHIPPERSON: I would think the 10 Gargiulos, right? I'm not sure though, Gary.</p> <p>11 MR. LINSON: Well, when you've 12 documented that there's a defect in the tree, it's 13 not an act of God when it falls.</p> <p>14 CHAIRMAN NEWLIN: I thought about 15 that, getting a release or something like that. 16 That is so complicated.</p> <p>17 MR. ROSENBAUM: They own the 18 liability.</p> <p>19 MS. CHIPPERSON: What was that, Aric?</p> <p>20 MR. ROSENBAUM: If they own the 21 liability, I mean --</p> <p>22 MS. CHIPPERSON: Then it seems unfair.</p> <p>23 MR. ROSENBAUM: Yeah. Then you're 24 asking them to own something, some risk. I'm not 25 sure that's fair.</p>	<p style="text-align: right;">93</p> <p>1 MR. HALL: They can always do it on 2 their own. The Board doesn't have to.</p> <p>3 MR. LAKIND: Mr. Battista is willing 4 to take that liability, if that's significant.</p> <p>5 CHAIRMAN NEWLIN: You guys can maybe 6 work that out.</p> <p>7 Rita?</p> <p>8 MS. CHIPPERSON: Yeah. It kills me. 9 I hate to see the tree come down, I really do. But 10 I can't, in good conscience, overturn Mr. Linson's 11 decision and force someone to take on liability. I 12 think it would be the wrong decision for the Board 13 and for the town.</p> <p>14 CHAIRMAN NEWLIN: So it's 5 to 1 to 15 uphold, Gary, I believe.</p> <p>16 MR. HALL: Uphold in toto. Okay.</p> <p>17 CHAIRMAN NEWLIN: That's what it 18 sounds like. We have the votes.</p> <p>19 MR. MASELLI: You guys need to work it 20 out between the neighbors. That would make us all 21 feel better about the tree. My original thought was 22 that maybe it was going to interrupt the new line of 23 trees, but I heard that it was not so that made me 24 feel better about saving it. So if you guys can 25 work it out between neighbors, that would be good.</p>

<p style="text-align: right;">94</p> <p>1 CHAIRMAN NEWLIN: I think, 2 unfortunately, it sounds very naive, but Mr. Vitolo, 3 even considering all the acrimony and other things 4 going along, it certainly would be appreciated if 5 your client -- and he may be attending. Your client 6 has come to the town for certain considerations 7 present before, I remember -- even though we're not 8 requiring it, could make an exception for the 9 catalpa. We'll at least say that you heard from 10 Board. Obviously, you do what you're going to do. 11 MR. VITOLO: I will certainly convey 12 that to my client. 13 CHAIRMAN NEWLIN: I would sincerely 14 appreciate it. Consider, guys, we've spent a lot of 15 our time, our volunteer time, going through this in 16 good faith, and we're doing it for free. So a 17 little ask, you know. Again, it's naive, but please 18 consider it. 19 MR. VITOLO: Okay. 20 CHAIRMAN NEWLIN: May I have a motion? 21 MR. FLANAGAN: I move that we uphold 22 Mr. Linson's decisions. 23 CHAIRMAN NEWLIN: May I have a second? 24 MR. ROSENBAUM: Second. 25 CHAIRMAN NEWLIN: Lori, can we have a</p>	<p style="text-align: right;">96</p> <p>1 everybody. 2 CHAIRMAN NEWLIN: Thank you. 3 (Proceeding concluded at 11:18 p.m.) 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">95</p> <p>1 vote? 2 MS. TAGLAIRINO: Ms. Chipperson. 3 MS. CHIPPERSON: Yes. 4 MS. TAGLAIRINO: Mr. Maselli. 5 MR. MASELLI: Yes. 6 MS. TAGLAIRINO: Mr. Flanagan. 7 MR. FLANAGAN: Yes. 8 MS. TAGLAIRINO: Mr. Newlin. 9 CHAIRMAN NEWLIN: Yes. 10 MS. TAGLAIRINO: Mr. Rosenbaum. 11 MR. ROSENBAUM: Yes. 12 MS. TAGLAIRINO: Mr. Symonds. 13 MR. SYMONDS: No. 14 CHAIRMAN NEWLIN: Thank you, guys. 15 MR. HALL: That will be memorialized 16 at the next meeting. 17 MR. LAKIND: Okay. Thank you very 18 much. 19 CHAIRMAN NEWLIN: Thank you, everyone. 20 MR. LAKIND: Gary, can I just ask when 21 that meeting will be? Because we have to report. 22 MR. HALL: The third Thursday. 23 Lori, do you have the date in hand? 24 MS. TAGLAIRINO: October 15th. 25 MR. LAKIND: All right. Thank you,</p>	<p style="text-align: right;">97</p> <p>1 CERTIFICATE 2 3 I, Lisa C. Bradley, a Certified Court 4 Reporter and Notary Public of the State of New 5 Jersey, do hereby certify that the foregoing is a 6 true and accurate transcript of the testimony as 7 taken stenographically by and before me at the time, 8 place and on the date hereinbefore set forth, to the 9 best of my ability. 10 11 12 13 14  15 LISA C. BRADLEY, CCR 16 CCR NO. 30XI00228700 17 Dated: October 14, 2020 18 19 20 21 22 23 24 25</p>

A			
ability 97:9	adjoining 33:25 34:3	86:18 90:19	appeals 61:13
able 24:25	35:11 65:1,9	allergic 60:25	appear 47:15
abnormally	adjourned 13:1	allowed 28:10	APPEARANCES
88:9,10	adjournment	allows 57:24	3:1
absence 10:5	5:15 7:9,19	altered 24:24	appeared 40:1
absolutely	9:25 10:8	amendment 13:8	40:4
67:8	12:23	America 21:3	appears 24:14
absorb 30:5	ADJUSTMENT 1:2	30:16,18	applicant 55:5
absorbing	Administrator	American 30:17	application
42:17	2:12	amount 24:9	6:6 8:5 9:13
acceptable	advanced 37:7	analysis 55:22	9:21,23
18:11	advise 92:23	ancient 42:9	11:21 13:4
accepted 38:13	Advisory 67:12	44:6,13 54:9	13:22 14:1
38:19	69:10	answer 49:20	47:11 64:20
access 36:25	affect 89:25	63:23 80:14	67:8,11 69:7
accomplish	affirm 85:3	87:13	69:7,10
30:23 31:7	affirming	anticipate	70:14,16
57:2	86:19	38:9 59:24	76:4,11 83:7
account 75:19	afield 37:15	anticipated	92:16
accurate 47:8	37:18 63:8	9:1 10:5	applications
82:23,24	afternoon 7:1	22:11	9:18
97:6	age 88:3	anticipates	22:18
acknowledged	Aging 46:5	anybody 70:8	applied 33:21
8:18 44:15	ago 12:18	77:15	applies 31:13
acknowledges	13:12 39:9	anymore 13:9	applying 52:6
57:17	53:19 68:3	anyway 10:20	appreciate
acorns 33:9	73:23	59:2	64:17 88:3
acrimony 94:3	agree 8:9,10	apart 24:12	92:4,5 94:14
act 83:5 91:13	14:6 15:4,10	apologize	appreciated
action 12:25	53:13 59:21	32:11 70:21	94:4
75:10	63:10 64:5	79:11	approach 66:11
active 18:23	73:3,11 79:5	apparently	appropriate
activity 48:6	82:6 83:15	80:20	58:4 82:16
add 63:7,21	89:15 90:14	appeal 1:6	appropriat...
64:3 81:23	agreed 47:6	40:21 58:2	31:17
Addonzio 5:4,7	63:14	58:10 61:11	approval 84:24
66:1,8	ahead 8:14	65:12 67:24	approve 58:9
address 9:6	60:5 70:4	68:5,8 74:18	85:3
12:2 13:12	77:5,6	74:20,21,22	approved 32:19
16:3 57:7	air 61:2	75:9,11 77:1	approximately
addressed 14:5	alakind@sz...	77:23 84:17	23:10,13
14:7	3:8	84:22	Arbor 27:6,10
adequate 35:12	Alf 2:2 5:4	appealed 85:1	arboricult...
72:9	14:23 59:8	appealing	16:23
	66:11 68:20	75:15	Arboriculture
			17:17 36:2
			arborist 5:25

10:14 14:13 14:19,25 17:10,12,13 17:19,20,22 18:9 41:13 51:24 52:3 52:11 57:8 arborists 29:1 30:8,23 31:6 38:14,19 78:22 arborvitae 20:24,24 21:2,14 25:10,21 27:8 34:2 42:1,5,6 43:2 71:22 arborvitaes 8:22 21:17 22:12,19,23 23:16,23 24:3,8,13,16 25:5,13,17 26:12 27:4,5 27:18 28:8 28:14,22 29:12,16 33:12 34:10 89:24 area 24:17 26:10 29:7 29:24 30:13 30:14 31:4 34:19 36:25 50:23 61:10 areas 20:15 21:13 34:13 argue 56:17 argument 9:17 66:18 69:12 72:18,25 73:11 77:1 78:20 Aric 2:4 15:12 18:14 64:1	81:21 82:7 84:5 87:16 91:4,19 92:13 Arnold 3:4 5:14 arose 7:8 arranged 38:12 arrow 37:8 article 35:13 ash 21:11 39:2 45:19 80:17 80:18 asked 7:4 11:5 12:19 22:4,7 22:23 54:23 70:9 asking 13:10 52:7 90:25 91:24 aspect 64:6 83:8 assess 31:17 31:21 56:21 assessed 21:9 45:18 assessing 9:13 assessment 17:13 19:11 19:14,17,18 19:21 35:15 35:18,20,21 36:3,21,23 36:23 37:3,4 37:5,8 38:4 44:18 48:4 56:1,4,6 88:12 assessments 16:25 18:8 20:1 associated 19:22 61:12 71:2 assume 46:9 48:19 51:10	91:1 assuming 23:6 asthma 60:24 61:4 attended 65:16 attending 94:5 attention 20:13 attorney 2:11 3:9,19 43:10 81:24 attorney's 78:24 82:21 August 85:17 automatic 58:10 69:25 available 6:5 7:20 12:21 72:22 Avenue 3:15 average 24:15 awards 50:2 aware 50:3 80:11 <hr/> B <hr/> B 2:1 4:9 Bachelor 17:4 back 7:4 12:19 26:14 38:5 44:14 85:17 background 17:3 bacterial 7:3 barrier 42:14 base 30:3 88:5 based 8:5 9:2 13:17 36:17 40:15 44:18 52:17,18 53:23 54:7,7 54:17 71:19 88:10 bases 11:24 basically 47:10 48:5	85:10 89:18 basis 6:3,24 8:18,25 11:20,23 68:5 Batista 10:15 65:5 Battista 19:6 19:12 20:1 24:22 25:25 26:9 28:7 34:15,16,19 36:10,13 40:20 41:4 41:15,15,17 41:21 47:19 47:20 48:8 48:12,18 55:24 65:1 75:5 88:15 93:3 Battista's 23:8,21 24:10 25:9 28:23 70:18 70:24,25 Battistas 90:22,24 92:2,5,20 beautiful 92:5 becoming 7:13 bees 33:11 beginning 74:10 behalf 20:19 believe 18:25 25:15 39:15 44:19 46:23 56:3 72:8,21 88:21 90:3 93:15 benefit 33:17 47:23 Bergen 18:4 best 36:1 97:9 better 6:21
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

15:14 45:5 93:21,24 BEUREN 1:7 beyond 76:10 big 64:20,21 71:5,8 bigger 41:25 42:4,16,17 biometrics 17:6 birds 33:8 bit 11:17 BL-4 72:9 black 21:11 blinders 64:23 blunt 64:15 board 1:2 2:11 2:12 5:13 6:1,5 8:4 9:3,12 10:4 12:22 13:15 13:24 14:10 14:11,20 16:17 20:22 35:17 37:22 39:14,18 40:1,4,5,22 43:9,14,19 46:1 54:22 57:24 58:2 58:10,18 59:1,5,23 63:10 65:18 68:21 69:25 70:2,13,15 71:17 75:5 77:18 78:2 84:3,5,23,25 85:19 93:2 93:12 94:10 Board's 5:24 20:13 Bosenberg 49:8 49:9 62:12 Bradley 97:3 97:15	branch 35:24 branches 22:15 23:7 71:2 breadth 22:7 22:14 Brian 62:11 brief 56:13,15 66:23 briefly 17:6 20:21 57:22 bring 10:11 72:16 76:25 bringing 14:13 brought 76:9 78:17 82:15 buildings 33:25 built 58:12 bunch 58:7 business 16:22 41:19 <hr/> C <hr/> C 3:4 97:1,1,3 97:15 C 369:6 call 12:14 53:20 56:22 65:5,10 70:10 called 11:4 16:19 19:16 36:1 42:5 calm 89:3 Cammarata 6:8 canopies 25:2 26:11 28:17 34:12 canopy 19:19 25:24 28:25 29:4,7,7,10 29:18,23 30:4 34:13 35:24,25 41:25 canopy-wise	90:1 capacity 18:8 car 89:4 care 36:14 carefully 51:8 carried 61:2 case 7:1 9:21 13:5 15:19 36:8 39:15 42:20 45:1 47:13 52:5 53:14 58:14 70:3 85:12 castle 8:24 catalpa 19:14 21:8 32:22 33:10 35:15 44:3 45:17 46:3 48:2,2 48:6 61:19 71:16,25 80:8,14 81:13,14 83:10,25 84:2,7 85:5 86:19 87:4 90:6 94:9 catalpas 46:13 46:20 cause 35:9 caution 9:10 cavities 19:20 cavity 35:23 CCR 97:15,16 cell 84:24 center 24:15 26:25 27:4 certain 8:6 24:9 94:6 certainly 9:1 27:14 28:17 32:3 33:7 46:15 65:16 70:10 94:4 94:11 certainty 39:1	certified 17:13 97:3 certify 6:13 97:5 cetera 38:11 50:3 78:22 90:2 Chair 2:2 Chairman 5:1,6 5:8 9:9 10:9 10:19 11:1 12:6 14:3 15:3,7,9,12 15:15,18,23 16:6 17:24 18:10,14 19:3 21:25 31:8,22 32:6 34:5,20,24 37:19 39:12 39:16,22 41:12,22 43:18,22 45:5,11,25 46:7,12,16 46:20,25 48:13,21 49:1,3,18 51:23 52:3 52:19,22,23 53:3 55:10 55:15,19 56:8,13 57:20,23 58:16 59:3,5 59:20,24 60:5 61:18 61:23 62:4 62:22 63:13 63:19,25 64:4,12,19 65:3,25 66:5 66:14 67:1,2 68:15,23 70:4 71:5,8 71:11 72:10
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

73:18 74:1 74:11,25 75:3,17,24 76:1,7,16 77:4,10,17 77:22 78:1,5 78:13,15 79:8,11,21 80:4,25 81:4 81:12,20 82:5 83:2 84:1 85:9,18 86:12,23 87:12,16,19 88:8,16 90:8 90:17,23 91:14 92:11 92:24 93:5 93:14,17 94:1,13,20 94:23,25 95:9,14,19 96:2 chairperson 67:20 challenge 77:8 77:9 challenged 53:1 chance 13:6 66:22 change 13:20 14:17 33:24 71:21,22,23 83:22 92:3 changes 34:4 changing 90:17 chap 51:24 characterize 8:20 charade 75:8 child 60:24 child's 61:4 Chipperson 2:6 15:4 62:25 63:9 69:4	72:14 73:12 73:20 74:14 76:18 82:6 84:14 85:21 86:4 87:14 88:2 89:6 90:19,24 91:4,9,19,22 92:1 93:8 95:2,3 choice 80:6 choose 38:7 chosen 33:16 cities 30:18 clarify 22:9 classic 30:15 clear 5:19 34:14 64:13 70:21 76:3 85:11 88:9 clearance 26:3 cleared 20:15 clearer 45:6 clearly 57:8 86:14 client 38:12 94:5,5,12 climbing 37:8 clip 28:19 close 27:22 46:10 closer 23:3 27:23 closing 70:3 72:17,25 74:24 77:1 81:24 82:16 82:20,25 club 67:13,15 Code 20:10 cohabitate 89:24 coherent 5:23 come 60:10 87:8 88:17 93:9 94:6	comes 12:22 comfortable 82:13 coming 81:9 comment 5:12 5:13 comments 47:3 48:24 77:13 Commission 69:5 72:17 committee 67:12,13,22 69:10 85:1 common 27:16 66:16 community 38:19 company 16:19 compile 51:5 complete 75:8 complicated 91:16 92:25 comprehensive 9:12 conceivable 10:14 concern 7:15 10:23 19:15 35:25 76:17 86:7 88:3 concerned 7:14 74:15 concluded 96:3 conclusory 76:22 condition 7:13 38:10 62:20 86:15 conditions 31:23 32:8,9 85:3 89:16 cones 23:23,24 23:25 24:1,3 confirm 81:1 confusing 79:15	connection 19:24 23:5 23:16 50:15 conscience 93:10 consequence 22:22 36:5 36:17 conservation 39:10 47:17 47:21,22 51:13,15,19 51:20 57:5 58:7 60:12 61:15 69:9 consider 31:20 31:20 36:16 45:10,22 47:16 70:13 71:14 79:5 94:14,18 consideration 20:13 31:24 75:20 considerat... 94:6 considered 44:5 45:4 59:12 79:6 considering 94:3 consisted 35:18 consistent 21:18,22 consists 67:13 constant 42:13 42:14 constitute 33:23 constituti... 13:8 construction 17:1 54:8 Consultant 16:20
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

consulting 16:22,23 17:12,20	47:25 51:15	D	79:2,6,7,22 82:9,14 93:11,12
contains 29:6	court 1:21	D4 :1	decisions
contemplated 20:17,18	12:25 13:1	Dan 2:5 15:7	86:20 94:22
context 42:17	17:21 39:25	59:20 62:4	deer 33:9,16
84:22	65:11 75:10	77:19 84:1	33:16
continue 37:24	75:12,16	92:14	defect 62:17
continues 13:20	97:3	danger 38:10	91:12
continuous 90:4	courtesy 64:18	86:1,7 88:13	defects 35:23
conversation 13:14 54:16	66:16	DANZIG 3:12	88:20
64:3	cover 81:18	date 1:12	defer 39:21
converse 58:21	coverage 29:7	18:21,22	69:24
convey 94:11	covers 29:24	95:23 97:8	deferred 9:21
copies 20:5	COVID 7:3	Dated 97:17	deficient 32:5
copy 20:1,3	18:18	daughter-i...	definite 62:16
69:9	created 9:4	65:13	62:16
core 89:20	credibility	day 25:22 27:6	definitely
correct 6:9	49:17	27:10 89:3	29:22 46:10
18:5 20:10	Creigh 6:25	days 12:18	62:20 90:11
22:20,25	10:16	69:7	definition
24:10 26:25	criteria 13:17	dead 35:24	44:2
32:21 33:1	52:6 58:12	deal 9:15	degree 39:1
35:5,15	59:11	dealt 63:3,6	delay 13:10
38:23 40:13	critical 39:15	death 28:12	73:15,21
43:14 51:4	57:4	decay 37:11	75:9
55:1 56:6	cross 32:15	decide 14:10	delayed 12:24
79:9 81:4	CROSS-EXAM...	14:14 74:5	18:18
83:7,9	4:5 49:4	76:4,10	deliberate
correcting 32:7	cross-section	decided 59:15	6:18,23 7:23
cost 28:22,24	89:18	decides 58:8	10:7
Counsel 73:13	crown 34:13	deciding 77:23	denials 62:10
count 66:6	61:20 62:1	77:25 84:18	denied 40:16
80:19	curiosity 60:7	deciduous 8:22	61:10
counts 6:20	62:6	25:12,19	denigrate 9:22
County 18:4	curious 62:6	29:11,16,23	denser 27:21
couple 12:18	62:10	33:5 41:24	depends 44:25
46:2 72:6	current 34:9	42:6,9,16	DESCRIPTION
course 9:8	currently	43:4 71:22	4:11
24:8,20	21:10 25:1	decimated	designed 56:19
30:16 44:7	26:7,13	30:20	desire 26:17
	34:11 41:11	decision 1:7	Despite 53:18
	cut 14:8 48:22	9:2 11:3	destruction
	60:11,25	16:2 39:2	53:9
	71:1 80:23	40:7,12	detail 37:20
	cutting 33:23	57:15 60:1	determination
	53:9 61:2	60:14 73:10	
		73:25 78:9	

10:2,3 83:11 determinat... 56:22,23,25 determine 19:21 51:7 54:16 determining 58:3 detriment 47:18,23 61:25 developed 37:13 diameter 29:10 44:5 45:12 45:13 86:14 difference 29:10,14,18 29:20 34:8 different 8:20 8:25 48:3 90:12 differently 8:21 difficult 46:5 diligently 27:25 53:19 direct 4:4 16:16 20:12 directed 73:10 direction 76:3 directions 74:12 disagree 37:23 disagreements 83:13 discount 80:18 discretionary 10:2 56:22 58:23 discuss 39:14 discussed 39:8 discussing 7:13 78:22 discussion 54:24 63:21	71:16 disease 30:14 30:16,19 dispute 65:6,7 65:9 disregard 82:17,25 distance 26:23 27:4 distinction 9:24 diversity 30:22 do-over 11:9 11:11 doctors 7:12 documented 91:12 documents 19:23 20:6 dogwood 45:2 doing 6:4,17 15:18 43:8 49:12,24 61:16 67:3 94:16 dominant 30:17 door 75:5,7 drainage 29:21 71:3,23 draw 58:25 drawings 50:21 drill 37:9 drip 29:8 driveway 8:6 9:7 24:19,20 26:1 36:10 90:5 due 18:19 duly 16:13 dumped 13:20 dutch 30:16,18 duties 61:14 <hr/> E E 2:1,1 4:1,9	97:1,1 e-mail 3:8,18 7:11 e-mailed 7:2,4 7:14 earlier 7:21 10:16 19:13 26:24 27:24 34:1 35:14 81:16 Early 8:17 easement 60:12 easier 48:14 easy 27:16 edge 90:5 educational 17:2 eight 66:7 either 11:24 25:21 36:7 43:10 63:6 65:15 69:15 69:23 80:9 87:25 elaborate 34:8 element 57:5,6 57:6 elements 57:4 elevate 26:14 elevation 25:24 elicit 32:4 eligible 6:13 79:9 Elizabeth 2:8 6:11 15:15 63:13 66:9 79:8 elm 30:16,17 30:18,20 else's 37:2 employed 16:18 employee 56:25 empowers 54:15 encroach 23:7 23:20 28:22	42:22 43:2,5 encroached 28:8 encroaching 55:23 encroachment 23:11 28:18 42:4,5,18,25 endanger 35:9 endeavors 31:7 ends 74:17 enforce 69:22 engineers 11:16,16 enjoined 75:16 enjoy 24:22 92:6 enjoys 70:19 entire 24:17 32:13 37:5 87:9 92:16 entitled 9:13 32:3 entity 41:9,19 Environmental 67:14 equally 24:5 erect 9:19 erected 9:20 error 32:11 69:15 70:12 82:3 especially 79:15 ESQ 2:11 3:4 3:13 essentially 6:2,15 8:19 9:21 10:17 19:6 26:20 33:13 35:4 38:14 67:19 71:21 estimate 46:4 estimation 88:14
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

78:22 90:2	37:19 75:18	fact 27:7,10	76:14
evaluating	75:24 76:1	27:13,14	favoring 83:20
84:17	exercised	47:16 53:6	83:21
evening 6:5,22	61:14	62:17 85:14	featured 50:2
7:17 10:8,24	EXHIBITS 4:13	factor 35:7	fee 69:8
12:7	existing 21:10	38:8,9	feel 14:25
eventually	24:20 25:2	factors 33:20	82:13 93:21
88:14	25:16,24	38:23 39:8	93:24
evergreen 25:7	26:2,5 29:15	49:15 58:7	feeling 81:6
everybody 12:7	33:24 36:11	70:14	81:17
40:19 80:11	45:9	factual 87:22	feels 72:22
83:24 86:22	exists 29:8	factually 82:2	feet 21:18,21
96:1	expanse 42:16	fail 36:12,12	21:24 22:3
evidence 32:5	expect 29:9	36:17 48:10	22:13,17
72:7 87:22	expected 9:1	62:20	23:13,14,15
exact 23:4	28:12	failed 68:2	23:19,19
28:24 45:23	experience	failure 36:4	24:9,14
69:1	11:15	62:2,21	25:23 26:25
exactly 47:15	expert 14:13	failures 36:5	27:18,18
examination	17:12,22	fair 18:3	28:3,3 30:2
4:4 16:16	52:2,5,8	43:15 58:20	34:24,25
38:17	59:15,15	71:3 91:25	47:20 86:13
examine 19:6	67:19	faith 94:16	fell 91:6,6
examined 19:23	expertise	fall 36:15	felt 8:23
25:11 27:3	76:10	48:10,11	fence 36:11,12
32:20,22	experts 27:11	86:10,11	36:13,14,15
examining 32:2	89:11	87:24 88:14	62:18
43:10	expire 18:20	88:15,23,23	Fifty 22:6,13
example 21:8	18:22	88:24 89:8	fight 42:13
30:1,15	expires 18:16	89:17	filed 40:21,23
84:21	explain 6:2,16	falling 86:1	41:1
exception 94:8	20:21 35:17	falls 89:14	find 27:16
excess 9:10	56:17 65:6	91:3,6,13	53:15
excessive 53:8	explanation	familiar 20:16	finding 74:17
53:16	9:12	28:21 53:10	fine 10:22
exclude 81:13	extend 30:2	family 31:4	15:16,21
81:14 84:9	extended 54:24	65:1,4	39:23 54:14
84:17	extent 9:24	far 24:12	59:4
excluded 83:10	29:15 31:9	37:15,17	firm 50:1
84:12	37:11 79:18	63:8 82:15	first 16:13
excludes 84:2	extreme 36:7	farther 26:9	39:21,22
excluding	extremely	26:14	47:5 59:23
83:25 84:7	61:21	fast 21:5	63:15 74:5
excuse 14:3		fatal 67:8,16	82:20
20:17 22:22		69:14 70:7	five 62:8
24:2 29:19		70:12 73:6	65:15 83:20
	F		
	F 97:1		

83:24 86:13 five-member 65:18 fix 54:5 flagged 73:5 74:7 Flanagan 2:3 6:13 14:23 59:8 68:19 78:16 86:18 94:21 95:6,7 flatly 12:17 flaw 67:17 70:7 flawed 72:3 flaws 83:15 flourish 25:18 flower 33:14 flowering 45:2 flowers 33:10 33:10 focus 85:5 focusing 79:4 foliage 29:5,6 34:12 folks 86:16 following 9:18 37:21 follows 6:24 16:14 food 33:9 force 62:15 93:11 foregoing 97:5 foreign 30:19 forest 17:6 forgets 75:15 form 21:4 28:1 formal 16:24 21:4 34:19 forth 11:20 97:8 forward 7:16 15:2,5,8,10 15:13 found 36:8	73:23 74:16 foundation 27:6,11 72:9 founded 21:13 four 25:22 66:13,20,20 73:7 four-year 19:1 FRANK 3:13 frankly 11:21 11:24 free 1:24 94:16 frequency 89:13 front 11:4 24:25 40:4 full 25:3,21 28:4,6 34:10 35:24 37:4 62:1 65:17 fully 14:23 Fundamentally 86:2 further 13:10 future 86:10 fvitolo@ri... 3:18 <hr/> G <hr/> gain 75:15 game 13:23 garden 67:13 Gargiulo 20:19 48:9,11,20 62:15 70:17 86:9 88:21 Gargiulo's 55:24 Gargiulos 3:19 91:10 92:9 Gary 2:11 5:8 5:16 7:7 8:1 14:5 15:20 22:9 32:6 39:19,22	41:13 52:19 52:24 57:20 58:16 59:3 62:25 63:1 65:2 66:18 68:5,15,24 69:3 70:9 73:1 74:1,11 76:3,8 77:2 77:5 80:1 81:12 83:18 85:13 91:10 93:15 95:20 Gary's 83:4 general 27:7 30:5 31:1 generally 21:3 23:17 27:22 28:9,10 30:23,24 34:14 38:18 47:11 69:12 generate 23:23 24:9 genus 31:3 50:25 51:2,8 54:17 genuses 57:12 germane 33:22 getting 37:15 72:11 83:22 91:15 giant 20:24 47:9 89:24 90:4 giants 34:20 35:3 give 45:7 46:16 58:6 60:12 66:5 68:8 74:12 given 9:3 48:23 52:8 53:2 go 6:12 7:16 8:14 13:2	15:8 33:19 36:6 39:16 39:22 59:23 60:5 70:4 71:4 75:11 77:5,6 87:25 88:18 goal 30:22 31:6 goals 56:20 God 91:13 goes 32:14 going 5:4 13:2 13:21 14:11 27:20 32:15 38:12 43:12 44:14 47:18 47:21 48:5 48:10,11,19 49:13 50:4 52:9 56:17 59:25,25 61:3 62:19 64:21 68:15 68:20 69:22 70:9 72:23 73:15 74:20 74:21,22 75:4,7,9 77:1,8 79:1 80:17 82:6 82:24 83:3,5 87:25 88:12 88:22,23,24 89:8,17 93:22 94:4 94:10,15 good 9:15 12:7 33:9 35:23 47:13,16 48:23 53:3 77:14 85:6 93:10,25 94:16 grad 17:6 grant 8:19
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

19:7 39:3 granting 9:25 great-looking 92:6 greatest 31:9 79:18 green 20:23 34:20 35:3 47:9 90:4 grew 26:10,11 ground 81:19 ground-based 19:17 35:20 37:5 Group 16:20 Group's 16:22 Grovers 3:5 grow 21:12,15 21:23 22:3 22:12 23:14 23:18,19 25:23 26:1 26:16,18 28:1,3 42:10 47:19 growing 29:25 41:11 grown 21:23 22:2 growth 25:6 26:10 34:10 47:8 57:11 guess 38:2 76:25 77:2 guidelines 51:21,22 guns 64:21 guys 54:23 75:24 93:5 93:19,24 94:14 95:14	5:18 6:7,11 8:7,11 9:8 10:1 11:2,12 12:4,11 15:21 16:10 22:4,8 31:19 38:1 39:20 39:24 40:6 40:11,15,19 40:25 41:4,6 41:8,14,23 42:3,15,23 43:4,13 49:16 52:14 52:25 57:21 58:19 59:4 63:5 65:11 65:20,23 66:3,11,16 67:24 68:7 68:12,25 69:14,17,24 70:20 71:13 71:18 73:3 74:3,19 76:5 76:12 77:7 78:8 80:5 83:19 84:3,7 84:10,20 85:15,25 86:6,21,25 87:10,18 93:1,16 95:15,22 HAMILTON 1:23 hammer 89:21 hand 16:11 95:23 handle 75:12 hands 77:16 hanging 74:16 happen 36:15 59:25 happened 12:10 81:16 happening	12:10,20 happens 6:22 61:7 happy 78:17 hard 68:17 harder 66:19 66:20 Harding 1:1 20:4,9 51:13 51:18 60:18 61:15 67:13 86:12 88:10 hardship 35:9 hate 93:9 hawks 33:7,18 hazard 86:2,7 88:22 89:19 90:22,22 Headquarters 3:14 health 18:9 19:18 35:21 35:24 44:20 54:7 healthy 60:23 61:7,8,25 hear 5:12 9:19 12:5 13:25 14:12,15,19 14:20,24,25 59:19 65:13 73:24 74:8 82:17 83:24 heard 9:4 11:7 11:23 12:3 63:15,16 65:3,15 67:25 68:1 71:4,18 73:13 74:6 76:13,21,24 81:23 82:2,2 82:25 83:20 87:22 93:23 94:9 hearing 7:5	8:17 9:8 12:8,12,14 14:7 32:4 73:7 heck 48:14 hedge 25:4 26:16 28:4,6 34:2 hedgerow 27:19 27:21 55:8 hedgerows 55:3 55:4 hedges 21:4,4 27:9 height 22:7 30:4 helpful 12:15 hereinbefore 97:8 hesitate 88:6 hesitation 89:9 high 21:18 22:11 34:12 36:7 higher 26:14 28:20 HIGHWAY 1:22 hired 6:25 historic 44:11 Historical 67:14 history 37:22 57:14 hit 36:13 hold 24:1 hollow 61:21 62:1,14 87:23 88:5 89:17,19,22 90:7 home 8:23 honest 81:15 hospital 7:5 hospitalized 7:2
H			
H 4:9 habit 47:8 Hall 2:11 5:10			

hour 78:18 hours 25:22 73:7 house 34:25 62:18 housing 57:6 huge 85:11 Hugh 2:7 15:9 43:20 63:19 79:12 80:7 81:5 82:7 83:20 85:9 86:23,25 92:13 hundred 46:10 77:4 92:8 HYLAND 3:12	57:14 important 52:21 59:13 imposes 70:25 improper 75:21 improve 54:6 improvement 9:7 improvements 8:6 inappropriate 65:19 inches 44:4 45:2,4,4,10 45:11,15,15 45:18 57:11 80:15 include 84:9 including 86:8 increase 47:12 increased 27:22 indicate 86:5 indicated 7:2 7:21 32:25 35:14 36:13 71:13 indigenous 33:4,13 indiscrimi... 53:8,15,21 53:25 54:12 individual 80:2,10 individuals 6:18,21,23 indulge 68:21 infection 7:3 7:4 inform 57:14 information 15:14 43:15 48:23 51:5 57:9 72:12 72:22 73:22 informed 7:7	23:2,3 57:1 informs 70:14 initially 82:10 input 67:17,18 insects 33:11 inspect 51:6 inspected 53:20 instability 28:12 install 8:5 53:24 54:5 55:8 intend 11:19 12:14 intended 10:11 intent 35:12 58:4 intention 9:6 intercept 29:24 30:6 interest 70:24 interesting 12:11 interjecting 70:22 International 17:16 36:2 interpret 58:24 interpreta... 13:7 interrupt 68:16 84:14 93:22 interrupted 8:14 interval 21:1 intervene 79:25 introducing 72:24 invalidate 87:9 inventories	16:24 inventory 30:25 involve 9:19 involved 58:3 61:5 involves 37:7 irrelevant 8:12 ISA 17:12,14 17:15 18:16 19:20 issuance 43:24 54:16 issue 7:8 9:7 9:7 13:15 14:8,9,18 40:7 67:8 74:3 76:8,9 76:9 77:8 78:17 83:4 85:12 86:5 88:11 89:7 90:6 92:16 92:20 issued 13:17 issues 11:18 57:7 65:2,11 65:12 issuing 59:16 Item 20:12 31:16 items 79:4
<hr/> I			<hr/> J
ice 62:3 ID 4:11 idea 63:1 82:23 ideal 25:22 identified 50:22 identify 12:13 12:18 50:18 68:5 identifying 50:14 impact 24:21 25:9 27:17 29:19,20 34:1,2 42:11 impacting 36:4 impacts 54:8 impairs 70:17 71:3 implement 56:19 implicit 85:4 implied 42:23 implying 32:7 importance 57:11,12,13			J 3:13 Jersey 1:1,23 3:6,16 17:11 17:24,25 18:2 21:2,7 21:12,15 46:21,22,24 97:5 Jim 47:15 job 54:5 John 60:6

judgment 38:5 58:8,23 59:10 67:9 88:6 92:17 juice 64:16 jump 72:14 June 18:16 junipers 47:9 90:4 justified 13:17 justifies 9:24	knowing 68:10 knowledge 66:17 knowledgeable 11:18 knows 12:11	95:20,25 Lakind's 15:1 81:23 land 9:4 40:1 40:5 43:8 57:5 68:7 69:17 landscape 49:6 landscaped 20:14 landscaping 9:22 large 8:19,21 19:14 23:10 43:24 44:1,2 44:22,23 45:2,4,6,10 45:15 54:23 54:24 55:13 57:10 61:20 79:18 80:15 80:16 81:7,8 81:17 87:1,5 87:6,7 88:5 92:5 larger 29:22 29:24 30:3 33:18 late 83:6 law 68:7 69:17 76:20 82:21 lawn 18:3 34:14,19 Lawrenceville 3:6 lawyer 76:19 lay 86:2 lean 48:2,8 61:8,21 62:18 leaning 62:18 78:11,12 88:5 90:7 leans 36:9 learned 82:20 leave 83:18	90:25 leaves 6:14 66:9,10 leeway 53:2 left 66:1 legal 1:20,21 66:17 69:11 74:3 legally 28:10 66:15 84:16 legitimate 31:12 60:12 60:14 lemon 64:16 let's 13:25,25 14:8 15:8,13 39:16 77:10 level 19:16 35:19 36:21 36:23 37:4,4 37:6,7 38:17 55:14 56:6 71:11 levels 36:22 37:14 liability 61:22 62:16 86:8 91:2,5 91:8,18,21 92:7,15,20 92:21 93:4 93:11 liberality 9:25 licensed 17:11 licenses 17:9 life 71:25 lifespan 46:12 limited 36:23 63:21 line 22:19 23:14 24:16 28:11 29:8 32:13 58:25 93:22 Linked 18:15
K	L		
keep 11:3 41:14,16 62:15 68:20 86:10 keeping 86:19 keeps 40:19 kick 5:8 kill 87:25 killed 30:19 kills 93:8 kind 37:7 49:12 51:1 know 9:5 10:1 12:15 28:9 34:25 40:4 40:20 41:9 42:11 48:5 49:8,11,23 49:25 50:1,9 58:21,24 60:23 61:1 61:16 62:11 63:22,24 68:5 69:25 71:15 72:15 73:4 74:4,6 75:21 76:20 76:23 83:24 85:7 87:3,7 88:6,22,23 89:9,16,18 92:19 94:17	ladder 28:19 ladders 28:15 laid 72:8 Lakind 3:3,4 4:4 5:1,3,10 5:16,21 6:15 8:9,15 10:13 10:22 11:10 11:14 12:12 12:13 13:19 14:2,17 15:23,25 16:8,16 18:1 19:3,4 22:6 22:9,10 31:8 31:15,22 32:1,10,17 34:7 35:2 37:17,20,24 38:8,16 39:12 43:7 49:13 50:4 50:11 52:9 52:17 55:16 56:8,12,16 58:21 60:1 64:14,17,24 65:5,14,21 66:1,18 67:4 67:5 68:1,4 68:10,25 69:3,6,16,20 70:2,5,6,23 71:6,7,10,13 71:21 72:13 74:25 75:2 75:13,18,25 93:3 95:17		

linking 38:5	located 35:11	main 14:8,9	80:23
Linson 8:3,8	50:23	47:3 48:23	Matthew 4:3
8:17 11:7,23	LOCATION 1:11	maintain 27:24	10:13 16:13
19:7 21:16	long 28:11	44:12	47:7,25
31:17 33:20	79:17	maintenance	89:15
47:2,6 48:13	longer 28:6	27:23 28:5	mature 21:9
48:16,21,25	look 25:1 36:4	31:5	25:2 34:11
52:15 56:24	47:10 69:22	majority 22:16	42:9 44:6,13
58:22 59:17	92:12	30:20 66:13	45:22
60:17,23	looked 44:4	making 10:2	maturity 21:17
61:20,24	62:12	mallet 19:19	28:4
62:11 64:7	looking 11:3	35:22 62:13	Mazzucco 47:15
67:16 68:12	12:22 24:25	89:21	49:6,11,23
72:1 80:25	25:1 31:14	man's 8:23	50:14 51:6
81:2 82:3,4	34:15 36:24	management	53:19
82:11 83:1,8	37:1 44:6	16:24 17:5	mean 9:22 11:3
83:17 85:22	48:22 51:17	36:1 61:10	21:7 26:5
86:20 88:8	51:18 52:24	MARKED 4:13	33:7 42:8,21
88:13,19	55:6 58:11	Maselli 2:5	48:18 58:20
89:2,13 90:3	looks 23:12	15:8 59:21	58:24 63:3
90:8,16,21	62:13 64:12	60:3,6,20	64:25 72:20
91:11 92:8	Lori 2:12 6:9	62:5 77:20	73:1 76:24
Linson's 40:12	66:5 77:14	77:24 78:3,6	78:7,7 84:19
57:15 59:10	94:25 95:23	78:11,14	86:11,14
67:9 78:9	losing 62:23	79:25 80:9	89:8 91:21
79:2,7,24	loss 81:18	81:10 89:10	92:2
83:11 87:23	lost 10:4	89:23 92:15	meaning 29:1,3
93:10 94:22	lot 24:17	93:19 95:4,5	30:8
Lisa 97:3,15	37:20 48:6	Master 9:14	meaningless
list 13:20	48:14 83:15	11:6 13:9	57:17
45:21	85:5 94:14	20:4 39:6	means 79:5
listed 33:20	lots 24:17	44:7,9 51:16	83:21
38:23	33:25 34:3	54:10 56:20	meant 58:6,9
listen 60:15	65:1 88:10	57:2,3,16	measure 37:11
little 11:17	love 88:4	58:11 64:6,8	45:20
45:5 46:14	low 36:7,18	64:9 70:13	measured 44:4
48:3 76:7	44:18 71:12	master's 17:7	measurements
94:17	low-risk 36:8	material 83:9	45:23
live 29:4	lower 19:19	materials	meeting 95:16
lives 41:18	34:13,18,18	42:12	95:21
65:1,9	35:22 42:11	matrix 36:6	meetings 69:5
LLC 1:5 3:9		Matt 16:9	72:21 78:21
LLP 3:12		matter 19:8	meets 86:15
load 44:8		41:12 57:25	member 65:4,21
loading 44:7		67:15,22	67:14,15
44:10		74:20,22	77:12
	M		
	M 2:1,1		
	magazines 50:2		
	mail 69:9		

members 6:5 7:23 14:12 14:20 37:22 39:18 43:19 46:1 54:22 59:23 65:15 66:8,10 77:18 78:2	30:7,12 month 19:13 Morristown 3:16 motion 94:20 mouth 55:17 85:24 move 15:2,5,8 15:13 48:14 50:11 52:19 72:7 77:10 86:13 94:21	64:25 71:24 need 7:8,24 8:5 9:4 12:1 13:5 14:9,25 37:21 51:24 59:6,16,18 62:24 63:22 66:12,15 67:3 68:22 73:8 74:11 74:13,23 76:3,7 77:2 77:5 88:17 93:19 needed 53:16 71:20 needs 44:19 56:24 negative 42:24 neglected 72:6 negligible 36:16 neighbor 42:19 61:6 neighboring 36:24 42:4 42:18 47:18 neighbors 61:6 93:20,25 neither 8:18 nest 33:8,17 33:18 never 68:1 75:22 new 1:1,23 3:6 3:16 12:21 13:22 17:11 17:24,25 18:2,20,22 21:2,6,12,15 26:15 46:21 46:21,24 55:8,25 89:23,25 93:22 97:4 Newlin 2:2 5:1	5:6,8 10:9 10:19 11:1 12:6 14:3 15:3,7,9,12 15:15,18,23 16:6 17:24 18:10,14 21:25 31:8 31:22 32:6 34:5,20,24 37:19 39:16 39:22 41:12 41:22 43:18 43:22 45:5 45:11,25 46:7,12,16 46:20,25 48:13,21 49:1,18 51:23 52:3 52:19,23 53:3 55:10 55:19 56:8 56:13 57:20 57:23 58:16 59:3,5,20,24 60:5 61:18 61:23 62:4 62:22 63:13 63:19,25 64:4,12,19 65:3,25 66:5 66:14 67:2 68:15,23 70:4 71:5,8 71:11 72:10 73:18 74:1 74:11,25 75:3,17,24 76:1,7,16 77:4,10,17 77:22 78:1,5 78:13,15 79:8,11,21 80:4,25 81:4 81:12,20
memo 9:3 71:14 85:17 memorialized 95:15 mention 58:17 mentioned 8:17 10:16 80:2 81:10 mentions 44:9 methodology 37:8 MICHAEL 2:3 middle 7:1 Mike 14:22 59:7,21 64:25 68:17 68:23 78:15 92:13 miles 61:2 Mill 3:5 mind 10:6 14:18 41:17 44:5 59:9,14 minimal 34:18 minute 67:6 minutes 53:19 68:20,22 70:3 mishear 22:5 misquoting 55:17 missed 11:25 mistaken 83:19 84:2 moderate 36:7 moments 39:9 78:18 monoculture	moved 53:22 73:9,9 mow 75:7 multiple 27:7 Municipal 20:10 mute 47:4 <hr/> N <hr/> N 4:1 naive 94:2,17 name 41:7 native 21:2,2 21:6,12 31:6 32:25 46:21 46:23 54:9 57:11 natural 17:5 26:10 28:1 44:12 48:8 54:9 naturalized 46:21 naturally 21:12,15 nature 16:21 17:1 28:20 near 25:13 nearly 9:11 necessarily 42:11 47:16 73:19 necessary 11:22 14:14		

82:5 83:2 84:1 85:9,18 86:12,23 87:12,16,19 88:8,16 90:8 90:17,23 91:14 92:11 92:24 93:5 93:14,17 94:1,13,20 94:23,25 95:8,9,14,19 96:2 nice 33:10 89:3 Northwest 21:3 Notary 97:4 note 31:9 32:8 81:25 noted 41:22 51:22 85:9 notice 50:22 68:8 72:20 notion 70:8 75:14 number 8:21 23:4 33:22 45:7 56:20 56:21 57:3 64:25 67:7 80:20 83:21 83:23 85:19 92:12 nurses 7:12	objection 32:13,16 43:8 objections 83:12 objector 43:11 obligation 67:10 obligations 70:25 observed 56:1 obviously 10:11 26:12 27:20 34:13 76:19 94:10 occurs 30:15 October 95:24 97:17 officer 40:7 54:16 61:15 69:9 OFFICER'S 1:6 oh 22:8 48:16 79:8 okay 6:15 8:15 10:19 11:1 12:6 15:20 16:8 19:2 28:25 33:12 37:24 39:24 40:11,19 41:23 42:3 43:4 45:24 46:25 47:1 50:17,21 51:2,5 53:3 56:7,8 63:9 63:25 65:14 68:23 69:19 70:6 72:13 75:3 77:10 83:2 84:10 86:21,24 87:10,19,21 93:16 94:19 95:17	old 46:3,11 57:13 86:14 once 13:2 ones 33:2 45:18 onsite 33:2 open 19:20 21:23 22:2 74:16 opening 35:23 51:14 74:6 opined 40:6 opinion 19:7 38:15,25 39:5 40:12 40:17 48:18 52:4,8,13,14 52:16 54:12 60:13 77:23 85:15 opportunity 10:24 12:2 13:13 16:3 18:7 73:14 oppose 65:17 66:21 opposed 27:25 opposing 73:13 option 85:20 orchard 28:19 order 10:10 25:17 28:14 38:14 56:21 71:24 ordinance 12:1 13:7,18 14:18 20:3,9 31:11,13,16 33:20 38:6 38:23 39:5,7 39:10 51:13 51:15,19,21 51:25 52:6,7 52:8,18 53:7 53:11 54:15 55:2,17	56:18,19 57:1,16 58:5 58:6,12,24 59:1,10 64:13 67:10 67:21 69:1 79:3,14,17 81:7 83:14 83:15,17 84:21 85:10 original 93:21 originally 23:1 56:16 outbreak 30:15 outcome 83:22 outside 67:9 overhang 26:1 override 88:6 overturn 79:23 93:10 overturning 82:13 owned 55:24 owner 26:19 35:10,11 38:11 53:1 90:10,12 owns 40:21 41:10,19 91:2,5
<hr/> O <hr/> oak 21:10 25:15,24 30:1 45:3,19 46:15 50:25 51:1 80:21 object 37:16 43:12,13 49:13 50:4 51:20 objecting 58:1			<hr/> P <hr/> p.m 1:13 96:3 Pacific 21:3 page 4:2,11 44:10 paper 8:12 paperwork 68:13 paragraph 38:3 parent 60:24 park 89:4 part 8:20 19:15 31:1 44:11 63:15 78:20 79:16

86:9	52:10	22:24 23:1	94:17
partial 25:21	PERRETTI 3:12	24:12 32:24	plicata 20:25
particular	person 10:12	61:9	plot 51:8
82:8	36:9,18	planner 6:25	plotted 53:20
particularly	40:23 41:1,8	7:19,24 9:4	Plus 73:12
36:14	41:10 44:19	10:12,16	point 14:6,17
parts 69:18	82:19	11:6,12	23:4 28:5
patterns 71:23	personal 91:7	12:21 13:5	39:14 54:14
penetrate	personally	14:9,15 15:1	61:13 63:11
26:15	14:16 63:8	16:2 39:15	73:20 81:18
people 8:20	82:24 88:20	52:11,12	81:23
10:7 38:6	92:18	56:10 57:25	pointed 9:8
41:16 48:7	perspective	58:11,14	85:16
65:24 67:18	83:3	59:6,16,19	points 47:3
83:20 85:19	pest 30:19	62:24 63:7	48:23
perceived 7:25	pests 30:14	63:11,21,23	pole 28:19,19
percent 31:2,3	photograph	64:3 79:16	policies 56:20
31:3 77:4	51:7	planners 11:16	policy 56:18
89:19 92:9	photographs	11:17,17	poll 58:17
Percentage...	72:7,25	58:3 64:5	59:5 66:12
66:19	phrase 26:4	planning 9:11	77:17 78:1,3
perfect 38:6	picked 13:22	11:18,19	pollen 61:1
47:5	45:6	31:7	pollinators
perfectly	picnic 48:1,7	plans 16:24,25	33:11,15
31:12	piece 39:16,17	49:6 51:9	poor 51:24
performed	pine 23:24,25	plant 20:25	population
19:13,16,20	place 55:6	26:12 42:12	30:12,25
performing	62:23 97:8	90:4	33:13
19:25	placement 32:5	planted 20:22	portion 23:7
perimeter 23:6	places 27:14	24:13 25:14	29:5 35:22
24:6	plan 9:14 11:6	27:5,21,23	37:11
permit 11:21	13:9 20:2,4	28:2 47:17	portions 28:20
13:16 19:8	20:14,17,18	planting 23:5	position 7:16
20:3 39:3	20:23,25	27:17 31:20	possess 17:9
40:8,16,24	22:18 23:2	75:16	possible 6:17
41:2 43:24	23:12,12	plantings	31:9 44:14
44:1 45:14	26:12 31:20	89:25	potential
53:1 54:17	32:3,5 39:6	Plaza 3:14	71:25 86:8
58:9 59:16	41:3 44:7,9	please 5:9	88:22 92:7
60:7,16	44:12 51:16	12:6,13 16:9	potentially
61:12 79:24	54:10 56:20	16:18 26:6	22:17 25:20
81:8 84:18	57:2,3,5,5,6	30:11 43:22	87:24
87:7,9	57:16 64:6,8	56:13,14	practical
permits 64:8	64:9 70:13	57:23 70:4	79:18
64:10	72:3	74:1 75:11	practice 36:1
permitted	planned 20:14	78:5 92:22	precedent 58:1

precipitated 7:25 8:2	26:9	41:16,20	56:24 69:5
precisely 12:19	probably 23:18 46:11 78:20 83:15	55:23 65:10 71:6,9	72:21 77:12 85:11 86:5 88:11 89:7 90:14 97:4
preemptory 69:13	probed 19:20	property 19:13 23:8,13,21 24:10 25:9 26:1,8,9 28:8,11,18 28:23 34:15 34:16,19 35:10,11 36:9,10,19 36:25 37:2,2 40:21 41:11 42:4,18 43:3 44:19 47:18 47:20,20,22 48:9,9,11,12 53:1 55:24 65:2 71:2,24 75:6 86:9 88:15 90:10 90:12 91:7	publications 27:3 publicly 72:22 purpose 44:11 51:12,17 53:6 purposes 43:11 84:11 put 12:12 55:6 85:24 putting 55:16
prefer 72:12	probing 35:22 37:6		
preference 5:24,25 7:22	problem 61:3		<hr/> Q <hr/>
prefers 25:21	procedural 67:7 76:9		qualified 11:5 17:14
prepare 73:15	procedurally 76:19		qualitative 19:21 36:3
prepared 5:24 7:9 9:14 49:6 50:13	procedure 70:7 72:15,23		question 9:11 18:13 37:16 38:1,2 43:1 43:21 44:21 49:21 50:7 59:9,14,22 60:3 63:10 77:21 78:6,8 78:10 84:10
preposterous 76:24	proceed 7:10 14:12 15:24		questioned 57:7,18
prescribe 27:3	proceeding 12:24 40:2 96:3		questioning 32:14
presence 33:5 35:8	proceedings 13:11		questions 8:1 10:10,15 13:9 31:10 39:13,18,20 43:16,18 45:25 46:2 47:2 49:2 56:7
present 2:10 5:20,21,25 9:5 37:11 66:8 94:7	process 61:11 61:12 67:17		quick 18:12 38:1
presentation 5:23	processing 64:9 83:17	proposal 14:24	quite 43:9
presented 67:12,22 68:11 82:12	produce 10:24	proposed 29:12 29:16 33:24 54:8	
preservation 16:25	professional 11:15,16 18:8 58:8 70:1 82:18	propriety 40:7	
preserve 54:10 55:4,10,12 88:21	proffer 9:15	protect 54:10 71:24	
preserved 43:25 44:13 79:19	proffered 52:1	protection 16:25	
preserving 57:13	proffers 12:16	provide 11:19 34:21	
pretty 62:7 63:8 64:13 64:16,22 85:11	project 19:16 50:15	provided 20:1 20:5 70:10	
prevent 53:7	promised 67:5	provides 20:13	
previous 44:14	prone 86:1	provision 54:15 85:2	
privacy 70:17	propensity 62:21	provisions 57:10	
private 25:25	proper 19:8 73:25 76:19 84:19	prune 26:2,13 28:11,14	
	properly 26:16 44:8	pruning 25:25	
	properties 1:5 3:9 24:23	public 35:9 37:1 38:11	

79:15 quote 31:24 44:9 quoting 53:7	60:20 66:14 79:7 90:13 reasonable 39:1,4 40:13 52:6 reasons 8:16 44:20 68:8 recall 8:4 21:17 40:3,9 41:7 60:18 received 7:11 69:8 recognize 32:1 recollection 86:3 recommend 27:8 recommenda... 31:2 record 9:2 32:13 43:8 43:11 69:5 72:21 recuse 5:5 recused 66:8 refer 36:21 39:7 reference 57:15 64:9 referred 36:20 41:20 referring 38:2 39:8 refused 12:17 12:17 regard 25:19 26:23 27:19 35:7 39:2 70:16 registered 17:12 Rehenkamp 7:9 10:16,18,25 Rehenkamp's 10:4 rein 13:24 reiterate	54:11 72:4 rejected 60:8 60:16,17,18 60:21 related 12:25 relatively 21:5 release 91:15 relevant 8:11 17:9 38:8 49:14,16 57:9 reliability 71:1 relied 8:8 rely 27:12 77:2 83:8 remain 25:12 50:19 remaining 25:19 remember 94:7 removal 11:21 13:16 19:7 20:2 32:15 32:19,25 33:23 40:8 40:24 41:2 47:11,13 53:9,21 54:17 56:18 58:2,4 60:7 60:8,16 remove 39:3 54:1,6 removed 19:15 44:1,20 45:19 50:14 53:17,24 56:4 61:7 removing 39:6 44:17 renewed 18:17 RENZI 1:20 repeat 22:1 49:21	replace 36:15 55:11 replacement 9:16 20:9,14 20:17,18 22:18 31:18 32:3 41:2 47:14 61:9 72:3 replacing 8:22 replant 20:23 replanting 20:2 32:14 report 31:1 72:16 95:21 Reporter 97:4 Reporting 1:21 represents 52:25 request 5:11 6:3,24 9:18 10:7 11:5 12:12 requested 9:25 requesting 6:19 7:18 requests 9:19 require 25:23 88:20 required 28:16 31:17 38:4 51:6 54:4 63:12 69:8 requirement 66:17 requirements 31:25 32:2 51:22 requires 27:22 28:5 requiring 94:8 resident 18:2 58:1 resistant 33:16 resistograph
------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

37:9	70:18,20	S 2:1 4:9	94:24
resource 17:5	RIKER 3:12	safety 44:20	Secondly 7:21
RESOURCES 1:20	risk 16:24	85:12 86:5	70:12
respectfully	17:13 19:21	88:11 89:7	seconds 66:24
13:23	19:22 36:3	90:14	72:19 73:17
respond 14:2	36:18,22	sample 89:20	73:23 74:23
57:19 75:13	44:18 48:4	SavATree 16:19	76:21
response 8:1	48:19 53:23	16:20,21	section 20:9
31:15	54:7 91:1,1	17:8,18	34:18
rest 83:11	91:24 92:10	save 88:4	sections 44:10
86:19	Rita 2:6 15:3	saved 73:6	see 14:13,16
result 28:12	62:23 76:8	90:10 92:19	15:5 23:2,25
retained 19:5	76:16 82:5	saving 54:23	24:25 25:2,3
25:15	84:13 86:21	84:6 93:24	34:16,17
retention	87:12 93:7	saw 28:19 56:1	48:1 49:14
19:24	road 1:7 3:5	saying 40:16	59:6 64:2,5
reverse 85:3	25:2 34:16	58:23 78:16	68:20 69:1
reversed 78:9	34:17 44:16	82:8 89:8	76:18 77:15
84:12	roadway 70:17	90:14,21	82:11 83:5
review 11:6	room 7:5	says 9:14	85:10,18
20:6 50:13	root 23:17	18:16 31:20	92:18 93:9
reviewed 38:22	29:15,20,25	44:22 55:4	seeds 24:1
49:5	30:1,4 42:15	55:10,12	seeing 25:10
rewrite 59:1	42:16	68:7 85:2	seek 30:23
ridiculous	root-wise 90:1	89:11,11	31:6 69:22
70:9 72:20	roots 23:20	scaffolding	seeks 70:17
right 5:5 6:10	43:2	28:15	sending 73:4
7:22 11:4	Rosenbaum 2:4	scenario 63:2	sense 84:16
14:10 16:11	15:13 18:12	scheduled	sent 72:16
18:6 28:11	18:15,20,23	19:15	separate 71:16
34:14 39:10	19:2 64:2	SCHERER 3:12	separately
47:7 51:2,9	81:22 84:6,8	Schommer 9:5	71:15 85:5
52:4 54:20	87:21 88:25	11:5,19 13:6	September 1:12
54:23 55:5,9	91:2,5,17,20	school 17:6	septicemia
67:20 70:23	91:23 92:4	82:21	7:15
70:24 72:24	94:24 95:10	Science 17:4	serious 88:20
73:9 74:5	95:11	screen 25:3,4	seriousness
78:19 79:10	rudinely	34:17,18	9:23
81:25 85:23	27:12	35:4 51:18	serve 33:13
88:17 90:5	row 90:5	screening	served 33:5
91:10 95:25	rows 21:4	33:24 34:3,4	Services 1:21
right-of-way	ruled 70:15	34:9,9,21,22	set 11:20
22:20,24	running 78:2	47:12 71:23	51:21 57:25
25:13 35:4	Rutgers 17:5	season 29:25	97:8
65:8		second 56:18	seven 6:17,21
rights 65:8		65:14 94:23	6:22 7:22
	<hr/> S <hr/>		

10:7 62:9 65:23,24 66:9,15,21 seven-member 65:18 seventh 83:22 shade 24:9 26:13 27:24 34:12 67:12 67:22 68:14 69:4,10 72:17 shading 42:13 shed 24:2,3,5 25:6 sheets 27:7,10 27:13,15 50:13,17 short 79:17 shorter 46:15 shot 13:19 sides 22:19 73:24 signed 68:13 significance 60:21 significant 33:23 60:9 62:8 80:20 93:4 simple 13:16 64:22,23 78:10 90:9 simpler 44:22 simply 71:3 87:3 89:1 sincerely 94:13 sir 53:13 sit 81:25 site 20:2 32:20 45:9 51:7 53:24 54:6 sites 17:1 situation	90:12 six 6:7,14 57:11 62:8 65:20 66:10 66:12,20 six-inch 44:23 size 21:17 29:19 80:22 88:3 skeptical 63:7 skip 33:21 slight 89:14 small 23:24 24:1 smaller 26:22 33:17 Society 17:16 36:2 67:14 solve 61:3 somebody 47:12 65:25 68:14 80:15 87:25 89:13 91:6 someone's 91:7 songbirds 33:17 sooner 27:21 74:4 sorry 8:14 21:25 22:8 48:22 49:22 67:4 68:24 71:7 79:9 84:13,14 87:12 sorts 64:20 sought 60:7 sound 19:18 53:10 sounding 35:21 37:6 sounds 58:25 63:3 74:19 80:16 89:6 93:18 94:2 SOVOLOS 2:8	15:16 63:14 79:10 space 28:4 spaced 27:25 spacing 21:1,1 27:9 speak 76:2 80:12 specialist 88:7 species 20:22 21:1 25:20 27:7,15 30:13,15,22 30:25 31:3 33:15 45:1 50:22,24 51:3 80:17 specific 31:4 31:11 54:18 74:12 80:14 specifically 40:10 45:21 85:2 86:6 specifies 81:7 specimen 57:13 Speedwell 3:15 spent 78:21 94:14 spread 29:7,23 30:4,4 spring 70:2 spruce 26:8 sprung 70:8 73:16 SQUARE 1:23 squeezed 64:16 squirrels 33:9 stand 89:1 standard 43:24 56:24 57:1 start 10:20 78:16,22 started 17:7 38:2 Starting 24:20	state 1:22 21:13 32:13 97:4 stated 8:7,10 8:16 statement 56:18 74:7 82:20 statements 47:8 states 43:24 stating 62:6 statistically 6:20 statute 85:2 staying 68:22 stenograph... 97:7 stepped 66:3 steps 19:10 25:18 26:19 stop 68:17 storm 62:3,20 storms 62:8 stormwater 30:6 straw 66:12 street 24:18 30:17,20 strictly 79:13 strike 50:11 strikes 11:8 47:24 85:8 stronger 76:8 structure 19:18 35:21 53:23 structure-... 90:1 structures 9:20 study 27:2 30:25 31:4 stuff 64:21 subdivision 75:6
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

subjective 56:23,25	susceptible 30:14 62:2	25:23 28:3	71:19 73:8
substantiate 37:21	sworn 16:14	taller 26:21	74:8 76:21
sufficient 85:19	Symonds 2:7	tapped 62:13	79:14 80:14
suggest 5:11	15:10 43:20	62:14	80:22 81:22
11:2 15:22	43:23 44:21	target 36:5,11	82:1,18,22
76:15 85:16	45:14,24	Tel 1:24 3:7	83:13 87:4
suggested 72:2	63:20 79:13	3:17	88:4 97:6
suggestion 14:11	79:23 80:12	tell 10:10	thank 5:3,7,16
Suite 1:22 3:5	81:6,15 87:3	16:17 19:10	12:8 14:4
summary 72:11	95:12,13	26:5 30:10	15:16 16:8
summation 66:23 67:4	sympathy 71:11	47:15 59:17	19:3 30:7
summer 33:11	system 23:17	72:8 73:1	45:24 49:3
sun 25:21	SZAFERMAN 3:3	77:5 82:2	53:4 62:22
sunlight 25:22	T	89:5	67:5 75:12
Superior 12:25	T 4:9 97:1,1	tend 11:17	81:20 95:14
support 14:23	T-Mobile 84:24	24:5 27:23	95:17,19,25
39:6 82:19	table 11:3	28:1 30:5	96:2
82:22 85:20	48:1,7,14	46:14 64:4	Thanks 5:6
86:17,18	80:3 81:11	73:3,11	19:2 59:8
supported 11:25	92:22	83:14	63:25 68:23
supporting 9:17	TAGLAIRINO	tends 29:24	they'd 24:24
suppose 28:2	2:12 6:10	term 30:7	thing 10:3
51:21	66:7 77:15	36:20	16:1 47:5,13
supposed 59:1	95:2,4,6,8	terms 44:16	47:16 58:20
supposedly 76:22	95:10,12,24	82:1 86:2	65:15 72:5
sure 9:19 16:6	take 15:1	terrible 13:11	73:4 75:5,8
18:14 19:12	26:19 28:6	test 37:9	76:13 82:17
23:4 26:7	47:4 48:3,14	38:12	82:20 87:1
31:12 35:19	64:8 66:23	testified	89:21 90:20
39:24 43:5	78:25,25	16:14 17:21	things 8:16
48:16 56:10	79:1 82:21	21:16 26:24	17:1 31:23
67:4 69:1	83:3 90:13	34:1 39:25	64:24 82:15
85:13 91:10	90:13 92:21	67:16 68:2	94:3
91:25	93:4,11	testify 52:10	think 5:22 6:7
surprise 12:20	taken 25:18	55:14 57:25	6:14 7:8,22
surprised 11:22	31:24 55:7	58:14	9:24 10:3,22
survived 62:9	78:19 97:7	testifying	11:14,22,24
	takes 15:5	89:7	12:15 14:7
	talk 57:10	testimony 8:3	14:10,19
	talking 29:6	9:5 11:20	15:5,21
	40:20 41:14	16:4 38:3,13	18:10 26:24
	41:17 45:9	41:18 44:15	31:16 33:22
	80:7,8	49:17 50:5,6	37:17,20
	tall 21:5 24:9	52:10 53:18	41:16 43:15
		54:3 56:3	47:1,7,11
		58:11 71:19	48:2 49:1,10

49:18 53:2	thunderstorm	16:24,25	80:15,16
53:16 54:4	89:5	17:11,13	81:8 82:8
55:19 56:14	Thursday 95:22	18:9 19:7,14	84:17 85:22
57:21 58:19	tie 6:20	19:18,19,19	86:10,11,13
58:25 59:6	tied 31:10	19:21,22	87:7 88:14
59:10,16,18	time 1:13 5:22	20:2,8,14	88:19,21
61:14,18	9:9 12:24	21:8 24:6	89:1,10,18
63:8,11	13:21 30:17	25:15 28:13	89:25 90:1,6
64:13,15	58:15 73:7	29:5,8 30:2	90:7,9 91:12
65:7,8,12,18	75:15 84:25	30:3,18,24	92:5,6,6,19
66:2 67:25	94:15,15	31:4,18,20	93:9,21
70:12 71:10	97:7	32:2,5,14,14	tree's 44:18
71:19 72:2	today 7:1 92:2	32:22 33:10	trees 8:22
73:14 74:3	TOLL 1:24	35:8,10,15	19:17 20:22
74:10 76:5	Tom 5:6	35:20,21,22	21:9,9,11,11
76:12,14	tonight 5:20	35:23 36:3,3	21:11,12
77:7 80:22	12:9,20 13:3	36:8,9,12,17	23:3,6,19,25
80:24 82:7	13:13,15	36:18,24	24:2 25:12
82:10,16	63:17 65:24	37:6,9,10,12	25:19,24,25
83:9,10,10	74:9 76:4	38:10 39:10	26:2,5,8,13
83:16,23,24	top 26:21 88:5	40:7,8,24	26:15,18,21
84:1,20 85:4	topped 81:2	41:2,2 44:2	26:24 27:23
85:21,25	topple 72:2	44:4,6,23,23	28:3,11
86:22 87:1	total 58:14	44:24,24	29:11,16,23
87:18 90:18	totally 61:7	45:3,10	30:13,13,20
90:20 91:9	toto 93:16	47:10,17,17	30:20 31:6
92:22,24	tower 84:24	47:21,21,22	32:19,20,24
93:12 94:1	town 44:12	48:2,2,6,10	32:25 33:6,8
thinking 59:17	54:15 74:17	48:15,19	34:12 35:8
59:18 87:15	93:13 94:6	50:22 51:13	35:10 39:2,3
third 7:24	town's 59:15	51:15,16,19	39:6 41:11
95:22	towns 30:18,21	51:20 52:5	41:24 42:7,9
thorough 37:3	60:19 63:2	53:16 54:15	42:16,19
thoroughly	Township 1:1	54:17,18,24	43:25,25
32:23	20:10 51:13	56:17 57:10	44:1,13,17
thought 22:4	51:19 61:15	58:1,3,7	45:1,7,8,9
44:8 68:13	67:14 85:1	59:14,15	45:14,16,19
70:21 80:9	Township's	60:7,8,9,11	45:19,22,22
80:13 87:11	52:5	60:16,22	46:6,15
91:14 93:21	traffic 74:12	61:1,3,6,9	47:14,14,19
three 36:22	transcript	61:14 62:13	50:14,18
37:14 57:3,4	6:12 63:16	62:15,17	51:8 53:9,20
69:7 73:7	65:16,22	64:7 67:12	53:21 54:7,9
throw 59:2	66:10 97:6	67:22 68:14	54:9,23 55:6
74:14 90:20	tree 1:6 9:15	69:4,8,10	55:13,23
thuja 20:25	11:21 13:16	72:3,17 80:2	56:4 57:13

60:11,23,25 61:1 62:12 67:19 71:15 75:7,16 79:19 80:8 80:11,17,18 80:21,21 81:7,17 87:2 87:6 88:11 88:17 89:23 93:23 tried 87:5 trim 28:7,22 71:1 trimmed 23:6 troublesome 6:19 true 46:22 88:16 90:15 90:23 97:6 trunk 62:1,2 trunks 81:3 try 54:10 trying 42:11 42:12 44:9 55:13 75:9 81:18 92:11 turn 5:10 32:18 Twenty 45:11 two 8:1,16 10:15 13:12 56:21 70:2 73:7 78:21 83:23 89:10 type 28:15 38:17 63:2 74:18 76:20 typically 63:2	understand 16:7 43:6 55:20 63:17 64:6,19 72:11 75:25 82:7 understanding 21:19,22 63:20 82:9 87:23 understands 57:8 undertake 20:6 unethical 75:14,23 unfair 91:22 92:9 unfortunately 90:9 94:2 unhealthy 61:19,23,24 62:7 85:23 uniform 26:20 uniformly 26:16,19 unit 37:10 universities 27:14 University 17:5 unnecessary 9:10 unreasonable 52:15 updated 18:19 23:2,3 upfront 73:5 upgrades 44:16 53:25 upheld 78:9,12 78:13 81:8 83:11 uphold 79:2,7 79:22 82:4 83:1 92:13 92:13,16	93:15,16 94:21 upholding 83:20,21 upper 28:17 29:5 urge 71:17 use 40:1,5 43:8 57:5 58:13 68:7 69:17 84:22 uses 67:11,21 usually 30:25 utilities 8:6 53:24 utility 9:6 44:17 <hr/> V <hr/> VAN 1:7 variance 84:22 varieties 57:12 variety 20:24 21:14 various 38:22 69:17 vast 30:19 vegetation 75:7 Videography 1:21 view 10:1 44:12 78:24 90:18 views 70:18,20 70:24 78:2 visibility 27:19 vistas 24:22 25:9 visual 19:17 19:17 35:20 35:20 36:23 37:3 Vitolo 3:13	4:5 5:12 7:7 12:3,5,7 14:4 16:3 32:12 37:15 49:1,3,4,19 50:7,12 51:23 52:1,4 52:13,16,18 52:21,25 53:5 55:11 55:12,21 56:7 57:7,8 57:17,19,22 57:24 66:25 67:3 68:3 70:1,11 72:19 73:22 74:21 75:3,4 75:17,19,22 94:2,11,19 volunteer 94:15 vote 6:20 10:23 12:9 13:3,25 65:17,18 67:1 73:21 74:15 75:11 76:12,15 77:8 78:4,18 78:25,25 79:1,23 83:22 84:11 95:1 votes 92:12 93:18 voting 66:10 71:14 73:15 73:21,21 76:23 77:24 79:2 80:2 82:3 <hr/> W <hr/> Wait 72:10 walk 42:12
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

walnut 21:11 45:21 80:21	52:10 59:25 67:3 72:23	wildlife 33:4 willing 48:20	42:24 67:11 67:21 69:12
walnuts 33:8 81:3	72:24 73:15 73:21 75:15	87:8 90:25 92:21 93:3	82:21 83:3,4
want 5:14,20 6:17 10:23	75:18 76:23 79:1 81:18	wind 14:14 62:3	wording 69:2
11:8,10 12:9 14:20 32:8	84:17,18 88:12 94:7	window 24:25 windthrow 62:2	words 8:23 55:16 85:23
33:19 34:23 43:5,14,14	94:16 we've 13:1	windy 89:3 winter 25:5,8	85:24 work 16:19
56:9,10 58:17 59:23	62:7 64:15 76:21,24	wish 9:15 90:9 wished 28:7	17:10,18 43:9 49:12
60:11,25 61:16 68:17	79:3 87:3,4 94:14	wishes 6:1 71:1	64:5 92:19 93:6,19,25
69:1,11 71:4 71:14 75:13	website 27:8 Wednesday 1:12	witness 4:2 5:19 12:21	working 17:7 world 38:6,14
76:6 80:5 81:13 85:18	week 92:3 weeks 13:12	13:20,25 17:25 18:17	wouldn't 13:13 24:24 33:16
85:23 89:4 92:25	68:3 Weibel 4:3	18:22,25 22:2 34:22	42:3 75:21 83:22
wanted 49:2 54:5 63:9	10:13,17,20 16:9,10,13	35:1 39:13 40:3,9,14,18	wrap 75:1 writing 12:12
wants 47:12 57:2 61:6	16:17 18:4 19:5 32:18	40:23 41:1,5 41:7,10 42:2	written 59:11 wrong 61:16
75:19 90:13 warranted 8:18	43:23 47:25 48:24 49:5	42:8,21 43:1 43:10 44:3	70:22 72:23 82:11,13
wasn't 50:24 51:10 86:1,7	49:20 50:9 51:12 53:6	44:25 45:8 45:13,17	93:12 wrote 8:12
89:3 waste 58:14	55:22 72:1 87:5 89:15	46:5,9,14,18 46:23 50:5	www.RLReso... 1:25
wasting 73:6 water 42:17	89:21 Weibel's 16:4	50:10 57:18 60:2 64:11	<hr/> X <hr/>
Waterfront 1:5 3:9 41:16	49:17 weigh 74:1	73:8 witness' 55:17	x 1:3,8 4:1,9
way 15:19 31:15 42:10	weight 60:14 went 53:19	witnesses 5:22 12:14,18	<hr/> Y <hr/>
57:18 59:10 59:11 60:15	western 20:24 whack 73:2	13:21 14:6 70:10	yeah 12:4 15:4
68:10 87:25 90:5	what-have-you 79:16	won 50:1 wondering	15:21 24:7 24:11,19
we'll 75:11 94:9	wide 21:21,24 22:3,17	15:19 wood 26:10	29:22 33:7 34:4 42:21
we're 5:19 13:2 29:6	23:14,17 widely 27:25	wooded 21:13 26:10 36:25	49:23 51:10 57:21 65:14
31:14 37:15 45:8 48:22	width 22:15 23:18 28:15	wooden 36:11 word 28:25	65:23 69:6 73:3 85:6
			88:2 91:23 93:8
			year 18:18,19 years 43:9

46:10,11,18 49:12,24 62:9 72:1 86:14	16 4:4 45:15	360-degree 37:3,5 368-7652 1:24 380 89:24 380-something 47:14	800 1:24
z	2	4	9
zero 92:7 zone 29:15,20 30:1,4 47:17 47:21,22 zones 29:25 Zoning 40:22 58:2,10 Zoom 1:11	2 19:16 35:19 36:21 37:4,7 38:18 56:6 20 21:23 22:16 23:14,19 28:3 31:3,3 45:3,10,15 20-inch 44:23 45:20 200 3:5 2002 17:8 2020 1:12 18:16 97:17 2024 18:25 225 69:6 225-111 20:9 39:11 2277 1:22 24 45:4 25 21:21,24 22:3,16 23:19 47:20 49:12,24 250 46:18 72:1 275-0400 3:7 28 8:22 32:18 47:13 56:4 62:12	4 24:14 26:25 27:18 4-foot 21:1 4:30 7:11 4:56 7:14 40-inch 44:24 400 23:3 410 1:22 45 43:9 49 4:5	9 35:7 38:3,5 38:8 9:33 1:13 95 44:10 973 3:17 989-9199 1:24
0	3	5	
07962-1981 3:16 08648 3:6 08690 1:23	3 20:25 24:14 26:25 27:18 37:6 38:18 30 1:12 21:21 22:17 34:24 34:25 72:19 73:17,23 74:23 89:19 30XI00228700 97:16 33 1:22 333319 1:25 350 22:23	5 23:13 27:8 27:18 33:22 93:14 50 21:18 22:5 24:9 25:23 44:4 50-foot 22:20 52 45:18 529 1:5 3:9 41:15 538-0800 3:17 595 1:7	
1		6	
1 36:23 37:4 38:17 56:5 93:14 10 20:12 28:3 31:2,16 59:11 70:14 76:21 79:4 10:45 68:18,18 10:46 68:19 101 3:5 11 68:22 11:18 96:3 111 69:6 116 56:17 11th 78:18 12 45:2 12-inch 44:23 14 97:17 15 23:15 28:3 150 46:11 86:14 150-year-old 48:15 15th 95:24		6 27:18 6-foot 27:8 6.01 24:17 6.02 24:17 60 30:2 66:24 80:15 609 1:24 3:7	
		7	
		8	
		80 30:2	