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SMITHFIELD TOWNSHIP BOARD OF SUPERVISORS

- - -

In Re: Application of SHAWNEE STAGE 1, LLC,
regarding the Shawnee Valley PRD Plan,
Tentative Amended Land Use Plan
2021 Proposed Amendments

RECEIVED ON

FEB 22 2022

Conditional Use

**SMITHFIELD TOWNSHIP
MONROE COUNTY, PA**

- - -

VOLUME 2 - Pages 111 to 175

- - -

Continued public hearing held in the
above-captioned matter before the Smithfield Township
Board of Supervisors, Municipal Building, 1155 Red Fox
Road, East Stroudsburg, PA on Wednesday, February 9,
2022, commencing at or about 6:07 p.m.

- - -

JACOB PRIDE, Chairperson
ROBERT LOVENHEIM, Vice Chairman
BRIAN BARRETT, (via Zoom) Secretary

RONOLD KARASEK, ESQ., Twp. Solicitor
JON S. TRESSLAR, P.E., Twp. Engineer
JULIA HEILAKKA, Office Manager

- - -

 **ORIGINAL**

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STROUDSBURG, PA 18360
(570) 992-7766

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-- For Depuy IV, L.P., successor to Depuy Corporation, LLC, Ski Shawnee, Inc., and Shawnee Square, L.P.

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12
13
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15
16
17
18
19
20
21
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23
24
25

INDEX TO INDIVIDUALS GRANTED PARTY STATUS -

1. Charles J. Vogt, Esq.
2. F. Andrew Wolf, Esq.
3. Anthony Giovannini, Jr.
4. Vincent Della Fera
5. Bridget Keating
6. Martha Carbone
7. Tim Carbone
8. Dennis Ladd
9. Sharon Ladd
10. Peter Sauvigne
11. JoAnn Norris
12. Bill Stockbridge
13. Lee Bower
14. Ann Ligi (denied)
15. Holly Cadwallader
16. Ian Bower
17. Pam Barrett

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2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX OF WITNESSES

- - -

<u>Applicant:</u>	<u>Page No.</u>
1. Ted Hunter	
Cross Examination by Mr. DeVito	123

INDEX OF EXHIBITS

- - -

(No Exhibits)

<p>MR. BARRETT: [18] 144/12 165/2 165/23 166/12 166/17 167/1 167/10 167/13 167/20 167/24 168/4 168/8 168/13 168/20 170/8 171/5 172/8 172/14</p> <p>MR. CARBONE: [1] 160/8</p> <p>MR. DEVITO: [15] 118/10 118/21 122/21 123/25 125/3 125/6 130/21 131/8 131/10 137/8 146/10 148/19 149/3 151/18 164/11</p> <p>MR. HUNTER: [21] 119/23 120/3 121/1 121/24 145/9 147/3 147/21 148/1 149/6 154/18 155/14 156/17 156/24 157/9 157/14 157/20 161/16 164/12 167/16 169/17 172/2</p> <p>MR. KARASEK: [76]</p> <p>MR. LOVENHEIM: [30] 123/2 141/8 143/6 143/14 144/4 144/7 145/6 150/5 150/9 150/21 151/8 151/10 154/9 154/15 155/2 155/13 155/22 156/14 156/20 157/5 157/11 157/19 158/8 160/1 160/4 161/5 162/11 169/22 170/3 170/18</p> <p>MR. PRIDE: [27] 115/3 117/11 143/8 143/18 145/12 146/3 146/21 158/23 160/16 161/9 162/19 163/10 164/24 167/12 167/22 168/2 169/13 169/18 169/25 170/4 170/9 170/14 171/1 171/7 171/20 172/5 172/11</p> <p>MR. VOGT: [4] 144/6 144/9 144/16 145/11</p> <p>MR. WOLF: [20] 141/23 142/6 150/13 151/19 154/10 154/17 154/22 155/5 155/18 156/4 158/13 158/18 162/2 162/6 163/15 164/3 168/6 168/9 168/15 168/21</p> <p>VOICE: [3] 162/5 162/8 166/8</p> <p>\$</p> <p>\$229.95 [1] 174/12 \$414.95 [1] 174/14</p>	<p>'Cause [2] 119/20 150/1</p> <p>-</p> <p>-----\$414.95 [1] 174/14</p> <p>-----\$229.95 [1] 174/12</p> <p>0</p> <p>0103 [1] 112/15</p> <p>1</p> <p>10 [3] 113/12 134/23 148/12</p> <p>10.00 [1] 174/13</p> <p>103 [1] 112/15</p> <p>10th [3] 126/14 138/10 138/12</p> <p>11 [2] 113/13 130/16</p> <p>111 [1] 111/7</p> <p>1155 [1] 111/11</p> <p>12 [1] 113/14</p> <p>123 [1] 114/6</p> <p>13 [1] 113/15</p> <p>131 [2] 152/16 162/4</p> <p>14 [3] 113/16 137/11 174/4</p> <p>14th [1] 137/15</p> <p>15 [1] 113/17</p> <p>15-day [1] 139/4</p> <p>16 [1] 113/18</p> <p>17 [1] 113/19</p> <p>175 [1] 111/7</p> <p>175.00 [1] 174/12</p> <p>18018 [1] 112/11</p> <p>18356 [1] 112/4</p> <p>18360 [3] 111/24 112/7 174/1</p> <p>18372-0103 [1] 112/15</p> <p>19 [1] 117/16</p> <p>1A [5] 115/17 141/24 142/1 151/22 174/6</p> <p>1B [9] 115/16 115/20 115/23 141/23 151/25 152/13 153/12 154/14 156/8</p> <p>2</p> <p>20 [2] 130/16 141/4</p> <p>2005 [1] 158/1</p> <p>2007 [5] 155/4 156/1 158/1 159/12 159/16</p> <p>2009 [5] 123/14 153/1 155/5 155/9 169/6</p> <p>2010 [1] 169/7</p> <p>2011 [2] 130/17 169/7</p> <p>2021 [6] 111/4 115/15 126/14 136/16 137/15 138/17</p> <p>2022 [6] 111/13 115/2 172/19 173/4 174/4 174/11</p>	<p>21 [2] 143/12 147/17</p> <p>21-day [1] 143/14</p> <p>22 [1] 174/22</p> <p>240 [1] 162/9</p> <p>261 [1] 112/3</p> <p>28 [1] 141/7</p> <p>3</p> <p>30 [6] 140/24 142/17 143/12 147/17 163/2 164/8</p> <p>30-day [3] 139/4 140/2 140/20</p> <p>34 [2] 125/4 125/8</p> <p>35 [1] 135/11</p> <p>38 [1] 112/11</p> <p>4</p> <p>40 [1] 116/14</p> <p>47 [1] 166/11</p> <p>49-22 [1] 174/22</p> <p>4:00 [1] 165/1</p> <p>5</p> <p>509 [2] 111/24 173/25</p> <p>550 acres [1] 130/4</p> <p>570 [2] 111/25 174/1</p> <p>5th [1] 137/21</p> <p>6</p> <p>60 [1] 162/14</p> <p>63 [1] 174/12</p> <p>6:00 [6] 163/5 163/11 164/9 165/1 169/14 170/11</p> <p>6:07 [2] 111/13 115/4</p> <p>6:50 [1] 148/14</p> <p>7</p> <p>7 o'clock [1] 148/16</p> <p>711 [1] 112/7</p> <p>7766 [2] 111/25 174/1</p> <p>7:00 [3] 148/12 148/12 148/14</p> <p>7:35 [1] 172/19</p> <p>9</p> <p>992-7766 [2] 111/25 174/1</p> <p>9th [8] 163/11 164/8 164/13 164/25 169/14 170/11 170/23 172/1</p> <p>A</p> <p>ability [1] 173/6</p> <p>able [9] 119/2 128/1 128/2 134/1 134/7 136/10 140/21 153/17 164/9</p> <p>about [21] 111/13 131/12 136/12 137/25 140/9 140/12 142/23 142/24 145/8 145/19 147/8 149/8 150/20</p>	<p>153/12 154/21 155/1 157/16 157/17 159/14 161/3 162/14</p> <p>above [3] 111/10 172/18 174/10</p> <p>above-captioned [2] 111/10 174/10</p> <p>Absolutely [1] 156/18</p> <p>absorbed [1] 164/24</p> <p>accept [1] 134/5</p> <p>access [7] 152/5 153/12 153/13 154/9 155/17 155/21 156/3</p> <p>accommodate [1] 164/19</p> <p>accomplish [1] 164/15</p> <p>accomplished [1] 124/16</p> <p>according [2] 123/6 157/2</p> <p>acknowledging [1] 133/16</p> <p>acquired [1] 127/8</p> <p>acres [1] 130/4</p> <p>across [5] 151/25 154/12 154/13 155/2 156/12</p> <p>acting [2] 140/22 140/22</p> <p>action [3] 173/8 173/9 173/11</p> <p>active [1] 149/9</p> <p>actually [3] 135/17 141/24 150/15</p> <p>add [1] 160/22</p> <p>added [1] 125/14</p> <p>addition [4] 125/18 129/13 129/17 143/23</p> <p>address [8] 118/8 118/9 118/16 119/16 121/21 138/2 170/2 171/23</p> <p>adjourn [5] 170/18 170/19 171/3 171/7 171/8</p> <p>adjourned [2] 172/7 172/18</p> <p>adversarial [1] 135/14</p> <p>affect [1] 147/8</p> <p>affected [2] 136/1 161/25</p> <p>affecting [2] 135/25 151/7</p> <p>afford [3] 139/11 139/11 162/24</p> <p>after [6] 129/7 134/24 136/13 148/16 171/20 171/23</p> <p>again [23] 117/5 118/15 118/23 119/24 122/4 127/19 131/12 139/9 141/6 142/13 143/14 147/17 148/7 151/2 152/24 153/17 153/20</p>	<p>155/10 158/10 163/1 165/4 169/25 170/23</p> <p>against [2] 172/4 172/10</p> <p>agencies [1] 158/8</p> <p>ago [3] 144/22 153/20 168/17</p> <p>agree [23] 120/7 120/1: 121/2 127/13 127/19 127/23 129/5 129/6 129/16 130/24 132/1 133/18 133/21 134/1 140/19 142/5 143/12 145/2 149/4 149/24 159/6 161/6 169/14</p> <p>agreed [5] 124/9 127/1: 129/9 130/7 165/13</p> <p>agreeing [4] 142/23 143/3 147/7 165/6</p> <p>agreement [72]</p> <p>agreements [3] 132/2 133/3 133/4</p> <p>ahead [6] 120/20 137/9 142/22 146/16 146/25 148/11</p> <p>aligned [1] 140/14</p> <p>all [45] 117/8 117/13 120/21 120/22 124/2 133/22 134/6 137/2 138/25 140/14 143/18 143/21 144/24 146/1 150/12 152/17 154/21 155/1 155/24 156/12 156/17 157/11 157/17 158/4 158/5 158/8 159/14 159/16 159/19 160/23 161/25 163/7 164/5 165/9 166/9 166/10 166/11 166/21 167/5 167/21 168/14 170/7 171/9 172/6 172/14</p> <p>allot [1] 148/25</p> <p>allow [8] 122/3 139/14 146/6 146/21 150/17 160/18 161/11 167/5</p> <p>allowing [1] 166/14</p> <p>allows [1] 127/19</p> <p>alluded [1] 152/21</p> <p>almost [1] 152/21</p> <p>already [3] 124/4 145/1 160/18</p> <p>also [18] 116/2 116/2 120/9 122/10 124/15 129/6 129/16 133/21 135/4 145/16 146/5 146/7 149/22 152/9 158/2 160/7 162/10 164/19</p> <p>although [1] 142/9</p> <p>am [4] 139/17 173/7 173/8 173/10</p> <p>amazed [1] 145/8</p>
--	---	--	---	---

A				
<p>amend [2] 126/12 126/14 amended [5] 111/4 115/15 125/14 126/7 134/2 amendment [32] 115/20 115/23 124/4 125/18 126/10 126/23 127/4 127/25 129/13 129/18 130/6 130/8 130/12 130/12 130/13 130/25 131/1 131/6 131/8 131/15 131/16 133/10 133/10 133/13 133/24 138/17 138/17 150/20 158/6 160/21 169/7 169/8 amendments [19] 111/4 124/8 124/9 124/16 127/13 129/9 129/22 129/24 130/2 130/2 131/20 132/11 132/13 132/16 132/20 133/4 133/6 133/19 169/10 among [2] 154/4 155/10 amount [2] 158/11 174/9 ample [3] 159/14 159/21 160/1 and Oakdale [1] 168/13 and/or [1] 139/15 ANDERSON [6] 112/3 171/4 171/14 171/14 172/9 172/13 ANDREW [2] 112/6 113/4 Ann [1] 113/16 another [8] 138/23 143/13 147/17 150/5 150/23 156/13 161/8 169/12 answer [16] 122/15 126/1 126/2 128/1 128/2 133/8 136/19 143/4 143/11 143/16 144/23 145/4 155/15 155/16 157/20 168/3 answers [1] 126/23 Anthony [1] 113/5 any [35] 117/9 124/16 125/18 125/23 126/21 126/23 127/13 127/25 129/4 129/5 129/8 129/17 130/5 134/17 137/1 138/22 139/15 141/12 141/18 142/4 142/17 146/5 147/23 153/6 153/13 154/1 156/3 157/12 161/1 161/15 169/4 169/19 170/6 173/8 173/9 anybody [2] 157/16</p>	<p>157/23 anyone [8] 117/24 122/12 159/17 159/18 160/10 160/15 164/1 167/20 anything [8] 121/23 127/19 127/24 135/22 142/22 147/12 153/9 164/14 anyway [1] 121/13 anywhere [1] 171/19 apologize [2] 116/2 116/9 apparently [1] 120/18 appear [1] 168/18 appearance [3] 115/25 151/20 174/12 APPEARANCES [1] 112/1 appellants [3] 132/15 134/7 140/17 appendix [4] 120/3 120/4 120/5 120/7 applicant [4] 112/5 114/4 139/10 161/12 application [3] 111/3 115/14 155/12 appreciate [3] 119/24 131/4 146/4 appropriate [1] 133/7 approval [7] 115/15 133/17 144/10 144/19 149/18 149/25 154/6 approve [3] 130/18 131/19 169/10 approved [5] 124/5 127/22 129/18 144/4 160/22 approving [2] 130/25 131/14 approximately [2] 161/23 168/19 Arabic [3] 125/17 129/6 129/16 arbitrate [1] 160/25 are [71] area [6] 144/21 152/21 152/23 154/13 155/22 156/14 areas [1] 153/4 aren't [1] 122/5 argument [1] 137/13 around [1] 135/20 arrangement [1] 149/8 arrive [2] 126/22 134/15 as [38] 115/13 115/21 115/24 119/14 123/7 123/24 125/22 127/1 127/2 128/19 128/23 131/7 131/8 132/10 134/18 138/4 141/7 142/11 147/16 149/11 149/12 150/10 150/11</p>	<p>152/3 152/7 152/11 152/21 154/12 155/7 155/8 155/11 155/25 158/7 158/11 158/12 162/3 162/7 170/14 ask [14] 117/19 118/1 122/3 122/9 122/12 129/20 139/8 140/6 141/10 146/11 161/18 163/24 167/11 171/13 asked [9] 126/14 135/17 135/20 135/23 136/3 136/7 136/12 153/4 153/5 asking [13] 122/5 128/10 128/17 128/24 129/3 130/15 142/16 158/6 161/22 167/4 167/17 168/5 171/22 asks [1] 122/6 Assignment [2] 125/8 125/9 assist [1] 141/4 association [22] 112/8 141/25 142/3 151/21 151/22 152/1 152/16 153/2 153/3 154/3 154/6 159/12 159/18 160/3 162/4 162/19 164/20 167/13 167/14 168/11 168/12 168/19 assuming [3] 117/23 140/4 150/1 assured [1] 139/17 attempting [1] 145/24 attention [2] 120/23 132/17 attorney [16] 118/2 118/11 118/21 118/23 122/3 122/4 122/6 122/20 139/22 141/15 148/17 149/16 167/3 167/16 168/5 173/9 attorney-client [1] 167/16 attorneys [4] 122/8 141/18 143/17 147/23 available [2] 139/7 139/25 availed [1] 134/17 aware [14] 118/22 118/25 123/11 123/12 123/16 124/15 129/1 132/11 132/19 136/25 147/14 157/17 170/20 170/21 aye [5] 170/7 170/8 170/9 171/9 171/10</p>	<p>143/22 147/18 148/3 148/7 148/12 148/15 148/16 151/17 158/10 159/16 159/16 161/4 161/20 166/6 166/24 166/25 167/8 169/25 BARRETT [5] 111/16 113/19 116/2 144/14 168/7 based [1] 116/16 basically [2] 123/14 160/9 be [102] Bear [1] 137/23 because [29] 115/17 115/23 118/20 121/14 127/4 128/2 135/14 135/16 135/18 135/22 135/24 136/22 141/7 143/19 146/23 148/6 148/7 149/11 150/25 151/11 156/20 159/15 159/19 160/14 165/16 167/8 169/2 171/19 172/7 become [5] 135/14 149/13 159/19 160/1 166/1 becomes [3] 149/10 161/7 169/11 bed [1] 139/15 been [17] 123/6 130/7 137/24 141/13 144/2 144/4 152/14 153/17 158/1 158/3 158/7 161/15 165/13 165/13 165/16 169/11 168/17 before [16] 111/10 124/3 127/7 133/9 134/2 135/13 140/24 141/9 143/20 149/19 151/5 156/17 157/7 159/16 163/14 168/10 began [1] 138/18 beginning [1] 115/9 behalf [5] 118/3 118/12 118/23 157/21 168/18 behalf of [1] 118/12 being [10] 116/15 117/8 121/22 122/19 123/15 150/21 153/2 155/9 156/20 158/21 believe [15] 115/16 115/17 117/16 118/2 119/25 121/19 123/12 130/12 139/21 141/19 152/21 155/12 161/15 162/5 166/21 best [3] 169/23 169/24 173/6 Bethlehem [1] 112/11 between [9] 118/5 121/8 123/13 126/3</p>	<p>140/23 145/6 160/20 162/23 163/19 big [1] 159/15 Bill [1] 113/14 binding [1] 121/13 bit [1] 144/15 blame [2] 160/10 160/1 blank [1] 121/17 blockheads [1] 139/23 board [21] 111/1 111/1 115/5 116/16 117/9 124/4 129/2 129/12 134/2 140/5 140/6 148/7 148/25 158/22 162/18 163/2 167/25 168/1 168/14 168/18 171/10 body [2] 121/10 121/12 both [8] 130/7 143/17 144/11 150/7 162/24 162/24 163/13 164/10 bound [2] 128/16 128/20 Bower [3] 113/15 113/18 132/6 BOX [4] 111/24 112/3 112/15 173/25 break [2] 148/17 149/11 BRIAN [7] 111/16 144/14 144/17 164/25 165/19 167/23 172/13 Brian's [1] 168/23 Bridget [3] 113/7 136/6 143/2 brief [1] 148/17 briefly [1] 163/16 bring [4] 120/23 129/2 171/17 171/18 bringing [2] 132/17 172/10 broughal [3] 112/9 112/12 112/12 broughal-devito.com [2] 112/12 112/12 brought [5] 126/10 134/12 141/13 145/1 171/16 buffering [1] 158/18 Building [1] 111/11 built [1] 142/2 burger [1] 121/20</p> <hr/> <p>C Cadwallader [3] 113/1 116/1 132/5 call [3] 123/16 128/23 161/19 called [6] 118/5 118/17 135/21 135/21 136/13 154/22 came [2] 136/24 153/19 can [62] 116/22 116/22 122/9 122/10 122/11 122/24 122/25 123/3</p>

C				D
can... [54] 124/24 125/14 126/2 126/3 127/12 127/21 134/14 137/5 138/3 138/12 139/21 139/24 140/3 141/4 141/5 142/11 143/10 143/12 145/22 145/25 146/4 146/17 147/3 147/15 147/19 147/20 148/9 148/17 148/18 149/4 149/15 149/25 151/6 151/8 155/7 158/24 159/6 160/21 161/4 161/12 161/14 162/15 164/18 166/2 166/23 167/11 168/3 168/7 168/7 169/13 170/2 170/17 171/13 171/23 can't [11] 115/11 122/25 138/8 139/5 139/24 140/18 149/21 149/22 149/23 160/20 161/20 cannot [3] 150/17 151/3 172/1 captioned [3] 111/10 131/19 174/10 Carbone [11] 113/8 113/9 118/18 120/1 120/17 120/21 121/3 132/6 132/6 159/9 160/4 Carbone's [1] 163/17 care [2] 161/3 161/16 careful [2] 149/17 166/19 case [21] 118/20 119/19 121/24 122/21 140/25 141/1 141/13 145/15 146/7 146/20 147/5 147/8 147/19 147/20 149/12 164/11 164/21 166/7 166/8 170/23 170/24 caveat [1] 134/3 certain [1] 153/8 certainly [6] 119/6 148/21 148/24 151/1 151/6 160/8 certified [1] 137/13 certify [2] 173/3 173/7 cetera [3] 115/19 117/18 118/8 Chair [4] 146/2 163/2 163/14 164/5 Chair's [2] 146/14 146/19 Chairman [2] 111/16 164/12 Chairperson [1] 111/15 chance [6] 119/2 119/25 121/7 121/19 127/4 143/4	change [7] 124/10 124/12 125/18 126/17 129/13 129/17 142/24 changed [1] 125/14 changes [8] 119/16 126/15 126/16 129/8 136/2 143/25 144/3 144/18 changing [7] 124/9 138/16 150/1 150/3 150/4 150/7 150/7 Charge [1] 174/9 CHARLES [4] 112/14 112/14 113/3 141/15 Charlie [3] 144/5 144/13 145/1 cheap [1] 141/21 chief [2] 119/19 121/24 choice [2] 166/5 166/16 Cjvogtlaw [1] 112/16 clarify [3] 116/10 146/22 172/3 clear [7] 118/7 131/6 146/24 157/24 158/11 168/10 168/25 clearance [1] 136/13 client [15] 127/13 135/16 135/18 142/8 144/18 146/12 146/18 148/6 149/5 150/16 150/17 150/19 153/11 153/17 167/16 clients [11] 127/23 127/24 135/6 138/5 139/23 139/25 141/16 142/11 143/24 147/15 148/21 clock [1] 147/16 collectively [2] 128/23 132/7 colored [1] 120/15 combined [1] 144/12 come [20] 118/13 118/20 136/23 140/24 143/22 147/6 147/9 147/18 148/3 149/1 159/19 159/21 160/14 166/7 166/24 166/25 168/3 169/25 170/22 172/1 comes [1] 132/4 coming [4] 137/13 144/15 152/18 159/24 commencing [1] 111/13 comment [15] 120/17 122/13 122/14 122/14 122/16 122/17 140/12 143/23 144/17 145/7 159/7 159/10 163/17 170/22 170/25 commercial [2] 144/19 145/6 committed [1] 143/3	Common [1] 129/19 communicated [1] 157/17 communication [2] 136/11 169/22 community [1] 161/24 compare [2] 119/6 119/25 compared [1] 119/15 compelling [2] 127/18 129/5 complete [1] 163/8 completed [2] 117/15 142/1 completely [1] 134/7 compliance [1] 172/8 complicated [3] 139/5 161/9 166/22 compromise [1] 139/10 concern [5] 145/5 148/23 149/5 161/18 168/24 concerned [2] 143/24 165/4 concerns [7] 134/11 138/2 138/2 138/18 138/19 153/12 164/19 Conditional [1] 111/5 conditionally [1] 143/10 conditions [1] 169/20 confirm [1] 146/12 conflicting [1] 118/5 connect [1] 154/13 connecting [1] 154/21 connection [2] 156/19 157/10 connects [1] 154/16 consensus [2] 145/17 147/9 consider [5] 139/16 140/5 162/25 163/24 171/22 considered [3] 150/24 152/15 164/3 consistent [1] 119/7 consisting [1] 151/23 construction [3] 154/20 154/22 158/2 consumed [1] 164/24 contact [3] 140/16 170/13 171/12 contained [3] 124/5 134/18 134/22 contains [1] 124/15 contested [1] 166/4 context [1] 153/11 continuance [2] 142/8 145/20 continuation [1] 163/12 continue [6] 140/25 151/18 152/19 166/24 166/25 172/1 continued [3] 111/9	156/6 174/10 control [2] 139/24 139/24 controlled [1] 160/3 controlling [1] 145/18 controverted [1] 164/23 conversatiøn [3] 135/2 135/4 148/22 convey [1] 130/3 copies [1] 130/23 copy [4] 120/2 124/23 130/8 130/17 corporation [2] 112/17 153/3 correct [34] 120/6 120/13 121/16 121/18 124/6 124/20 125/7 125/10 125/15 125/24 126/4 126/8 127/8 127/10 128/20 131/9 131/16 132/9 132/12 132/21 133/5 135/10 135/13 136/16 137/4 145/5 155/14 156/5 158/14 162/6 167/24 168/15 169/1 173/5 corrected [1] 141/19 correctly [7] 125/20 129/14 131/20 131/22 132/3 132/8 153/23 could [22] 117/19 117/25 119/22 120/17 126/9 126/11 126/22 127/15 135/21 136/4 136/5 137/18 138/23 139/6 139/14 142/18 144/23 146/16 147/25 148/5 153/7 164/17 couldn't [1] 171/17 counsel [4] 163/13 170/13 171/22 171/23 county [6] 119/4 119/8 120/10 121/16 127/22 129/19 couple [6] 127/2 135/13 143/5 144/16 144/25 154/23 course [1] 122/9 court [16] 118/5 127/22 129/18 130/16 130/17 131/13 132/18 133/17 133/25 140/24 160/22 165/6 165/6 165/10 165/17 169/10 court-filed [1] 118/5 cover [1] 137/16 covered [1] 136/21 CRAMER [1] 112/6 created [1] 119/10 creates [1] 119/10 cross [3] 114/6 122/10 123/8 csmlawyer.com [1]	112/8 current [1] 132/24 currently [1] 152/5 cute [1] 127/6 cutting [1] 157/22

<p>D</p> <p>determining... [1] 156/25</p> <p>developed [2] 115/18 144/2</p> <p>developer [2] 132/14 172/5</p> <p>development [9] 115/7 115/18 132/4 151/23 152/13 152/25 157/9 157/18 161/25</p> <p>DeVITO [33] 112/9 112/10 114/6 118/2 118/10 118/12 118/23 122/20 123/8 123/23 124/25 125/3 125/25 130/20 131/5 137/7 139/19 142/11 143/8 145/15 146/10 147/4 148/5 148/11 148/13 148/17 149/17 151/2 151/8 151/13 163/23 167/10 169/15</p> <p>DeVito's [2] 141/3 150/2</p> <p>devito.com [2] 112/12 112/12</p> <p>dialogue [3] 135/15 135/24 136/14</p> <p>did [21] 115/25 119/9 119/25 121/14 121/16 125/19 126/5 127/7 129/13 129/15 131/20 131/22 132/7 134/23 134/25 138/21 153/6 156/16 159/22 172/9 172/12</p> <p>didn't [14] 120/22 122/15 127/4 129/21 130/5 133/11 135/2 144/16 159/18 159/25 160/13 160/14 163/23 167/3</p> <p>differences [6] 121/8 121/10 126/9 138/1 166/24 169/13</p> <p>different [5] 120/5 134/16 144/8 150/4 165/6</p> <p>differs [1] 126/17</p> <p>difficult [2] 116/21 149/10</p> <p>difficulties [1] 119/3</p> <p>diligence [1] 165/5</p> <p>direct [1] 155/21</p> <p>directed [3] 155/7 155/20 158/12</p> <p>direction [2] 161/19 173/6</p> <p>directly [3] 136/1 142/10 156/7</p> <p>directors [1] 168/15</p> <p>disagree [3] 123/25 133/20 145/5</p>	<p>disagreeing [1] 142/23</p> <p>discourse [1] 134/14</p> <p>discretionary [1] 146/8</p> <p>discuss [7] 126/17 126/21 134/8 135/7 138/11 140/6 148/23</p> <p>discussion [4] 138/19 142/23 147/7 170/6</p> <p>discussions [6] 149/9 153/6 153/18 154/4 163/19 165/20</p> <p>display [1] 138/15</p> <p>disputes [1] 134/11</p> <p>distance [1] 166/18</p> <p>do [50] 115/12 117/25 118/3 118/8 118/8 118/16 118/19 118/19 118/19 119/12 120/10 122/8 122/15 124/23 128/10 129/20 130/8 130/17 130/23 135/6 138/8 139/1 139/2 139/3 142/4 142/6 143/11 148/24 149/14 150/1 151/6 151/10 151/13 153/24 155/15 156/15 158/22 160/6 161/12 162/25 165/23 166/25 167/25 167/25 168/16 169/2 170/1 170/5 171/3 173/2</p> <p>docket [1] 146/8</p> <p>document [7] 118/5 119/4 119/8 120/11 120/12 131/3 131/19</p> <p>documents [11] 117/20 117/23 120/10 120/14 120/14 120/15 144/24 154/20 158/2 165/6 165/18</p> <p>does [8] 122/2 147/8 147/22 149/9 152/22 164/10 164/25 166/11</p> <p>doesn't [8] 116/13 133/9 142/14 153/20 165/22 166/3 166/10 169/24</p> <p>doing [5] 135/22 150/6 157/12 163/12 165/4</p> <p>don't [56] 116/24 117/9 118/15 122/24 124/21 127/18 128/9 128/10 128/11 128/24 128/25 129/2 129/3 129/24 129/25 130/1 130/19 133/8 133/20 137/1 137/11 137/17 139/1 139/2 139/2 139/23 140/2 140/5 141/13 141/14 142/7 142/22 144/14 145/5 146/8 146/14 147/4 147/5 147/9 147/25 157/25</p>	<p>159/8 160/25 161/3 163/21 164/1 165/11 165/11 165/23 166/2 166/5 166/16 166/18 168/24 169/2 171/19</p> <p>done [12] 119/19 122/17 140/3 140/18 148/3 156/21 156/23 157/13 163/8 169/4 169/4 169/6</p> <p>DONNA [4] 111/23 173/2 173/13 173/25</p> <p>DONNELLY [3] 162/17 162/17 168/17</p> <p>double [1] 122/6</p> <p>double-teaming [1] 122/6</p> <p>down [12] 119/2 119/6 122/17 135/7 139/5 147/15 149/5 152/19 163/3 163/4 163/17 165/14</p> <p>downloaded [1] 121/5</p> <p>draft [4] 120/5 120/24 121/9 133/10</p> <p>drafted [1] 133/11</p> <p>drag [1] 140/18</p> <p>Drive [32] 152/2 152/4 152/12 153/10 153/14 154/10 154/11 154/15 154/22 154/24 154/25 155/24 156/2 156/3 156/5 156/8 156/9 156/9 156/24 157/4 157/8 157/14 157/16 157/19 157/24 157/24 157/25 161/25 162/1 162/10 162/13 162/14</p> <p>due [2] 165/4 174/14</p> <p>duly [1] 123/6</p> <p>duration [1] 127/25</p> <p>during [1] 149/19</p> <p>E</p> <p>e-mail [4] 118/18 118/23 118/25 119/14</p> <p>e-mails [1] 137/18</p> <p>earlier [1] 137/12</p> <p>East [1] 111/12</p> <p>effect [2] 158/15 170/2</p> <p>effectively [1] 117/15</p> <p>effort [2] 117/19 138/9</p> <p>efforts [1] 151/16</p> <p>egress [5] 152/12 152/13 156/7 158/15 158/19</p> <p>either [7] 121/7 130/6 139/2 139/2 139/3 156/10 168/24</p> <p>elaborate [3] 125/25 126/3 134/20</p> <p>electronically [2] 117/17 117/24</p>	<p>eliminated [3] 155/4 157/8 157/10</p> <p>eliminating [1] 156/3</p> <p>else [4] 116/13 121/23 147/10 170/17</p> <p>else's [2] 135/25 159/17</p> <p>employee [2] 173/8 173/9</p> <p>end [5] 122/13 145/19 146/1 172/6 172/8</p> <p>Engage [1] 169/21</p> <p>engaged [4] 167/11 167/12 168/6 168/18</p> <p>Engineer [1] 111/18</p> <p>engineered [1] 158/7</p> <p>engineering [2] 156/16 157/13</p> <p>enough [4] 119/14 130/20 163/3 163/13</p> <p>entails [1] 152/11</p> <p>entered [2] 151/20 152/25</p> <p>entertain [1] 170/17</p> <p>entire [4] 120/11 125/9 135/25 164/21</p> <p>entrances [1] 156/1</p> <p>environmental [1] 158/4</p> <p>errors [1] 120/10</p> <p>ESQ [7] 111/17 112/6 112/10 112/10 112/14 113/3 113/4</p> <p>et [3] 115/19 117/18 118/8</p> <p>even [6] 141/4 141/10 153/7 164/21 165/11 170/23</p> <p>evening [11] 115/4 115/10 119/5 122/23 123/2 123/9 123/10 125/22 132/10 132/23 164/1</p> <p>event [1] 173/10</p> <p>events [1] 137/22</p> <p>ever [2] 127/19 156/16</p> <p>every [3] 128/9 128/9 158/3</p> <p>everybody [2] 120/15 122/25</p> <p>everyone [7] 115/10 117/17 121/6 122/2 148/18 170/20 170/21</p> <p>everyone's [1] 148/10</p> <p>exact [1] 119/11</p> <p>exactly [2] 137/17 137/18</p> <p>Examination [2] 114/6 123/8</p> <p>examined [1] 122/10</p> <p>example [2] 120/11 138/20</p> <p>excuse [5] 144/13 144/13 152/4 152/6</p>	<p>162/15</p> <p>execution [1] 129/12</p> <p>exhibit [7] 118/17 118/17 120/1 123/24 124/1 131/7 131/8</p> <p>exhibits [7] 114/13 114/15 117/16 118/5 121/5 121/5 123/23</p> <p>exist [1] 127/20</p> <p>existence [1] 123/13</p> <p>existing [3] 143/25 155/8 162/3</p> <p>exit [1] 145/9</p> <p>expect [2] 153/21 172/15</p> <p>expected [1] 165/8</p> <p>expert [1] 128/13</p> <p>explains [1] 134/12</p> <p>express [1] 155/8</p> <p>extended [1] 163/18</p> <p>extent [1] 146/7</p> <p>F</p> <p>fact [11] 125/22 130/5 132/23 140/10 140/12 140/20 142/4 146/12 149/1 166/3 170/21</p> <p>facts [1] 127/20</p> <p>fair [3] 124/11 133/2 142/3</p> <p>faith [3] 140/22 140/22 148/22</p> <p>fall [1] 160/20</p> <p>familiar [1] 128/7</p> <p>family [2] 161/23 162/1</p> <p>far [1] 150/11</p> <p>fault [4] 159/17 160/4 160/6 160/12</p> <p>favor [3] 130/4 170/7 171/9</p> <p>fawolf [1] 112/8</p> <p>February [8] 111/12 115/2 141/7 141/7 172/19 173/4 174/4 174/11</p> <p>Fee [1] 174/12</p> <p>feeding [1] 157/3</p> <p>feeling [1] 117/15</p> <p>feelings [1] 150/19</p> <p>Fera [2] 113/6 135/23</p> <p>few [3] 158/8 165/17 168/17</p> <p>figure [2] 116/23 143/1</p> <p>figure's [1] 162/12</p> <p>file [1] 120/10</p> <p>filed [2] 118/5 172/4</p> <p>files [1] 130/23</p> <p>final [6] 120/7 121/6 121/9 143/4 154/5 158/</p> <p>finally [1] 122/12</p> <p>financially [1] 173/10</p> <p>find [4] 135/24 137/18 146/25 159/14</p>
--	---	--	---	--

F
fine [4] 119/13 128/25
 151/19 163/6
finish [2] 119/4 119/5
firm [1] 137/4
first [24] 118/21 126/2
 129/21 129/24 130/12
 130/24 130/25 131/2
 131/6 131/13 131/14
 133/4 133/18 135/9
 135/12 136/17 136/22
 138/9 140/6 145/23
 148/5 160/25 167/2
 169/7
five [7] 126/15 136/4
 138/16 140/8 140/8
 147/3 148/11
flows [1] 152/8
focused [1] 140/17
foisted [1] 153/19
folks [3] 115/4 152/15
 152/19
follow [4] 138/23 142/6
 144/10 146/2
follow-up [1] 138/23
followed [1] 145/18
following [1] 136/12
follows [1] 123/7
forced [1] 157/11
foregoing [1] 173/3
forever [3] 138/8 139/1
 140/3
forging [1] 146/16
form [4] 116/20 116/22
 116/24 117/3
forth [2] 125/13 125/19
forward [7] 121/22
 126/7 136/25 147/6
 147/13 149/2 153/22
forwarded [2] 137/19
 137/19
found [1] 120/1
four [1] 159/12
fourth [1] 148/7
Fox [1] 111/11
frame [5] 127/25 134/24
 146/13 147/7 148/25
frank [1] 119/1
free [1] 169/21
front [6] 116/22 116/24
 124/22 130/8 133/13
 137/7
Frutchey [1] 138/15
fully [4] 121/19 130/4
 155/20 173/5
further [1] 173/7
futile [1] 117/19

G
garbled [1] 144/15
gave [2] 131/3 136/8
general [1] 142/16
generated [1] 157/18

generates [1] 157/2
get [18] 116/22 126/5
 127/4 127/4 138/23
 140/17 142/24 143/13
 143/20 156/18 158/17
 159/5 161/1 161/4
 162/23 164/21 166/3
 171/19
gets [1] 142/16
getting [1] 158/10
Giovannini [1] 113/5
give [3] 140/8 142/14
 163/2
given [4] 117/10 122/17
 167/7 170/24
gives [2] 134/13 163/12
giving [1] 140/21
gmail.com [2] 112/4
 112/16
go [28] 115/9 115/20
 119/18 120/19 121/14
 126/7 128/10 132/24
 133/3 134/9 136/18
 137/9 138/8 140/14
 142/22 146/25 146/25
 148/7 148/11 148/15
 151/17 155/24 157/4
 159/9 163/9 163/16
 165/10 166/6
goes [2] 156/12 159/16
going [30] 115/5 119/5
 119/20 121/21 133/13
 139/1 139/13 142/10
 146/13 148/15 150/11
 150/14 151/16 153/22
 153/25 154/1 155/1
 155/16 157/8 157/18
 159/14 159/16 162/23
 163/5 163/15 164/7
 166/1 167/10 170/25
 172/7
good [11] 115/4 115/10
 122/22 123/2 123/9
 123/10 140/22 140/22
 148/21 149/17 166/5
goodness [1] 120/22
got [8] 125/1 136/13
 138/11 145/18 147/10
 149/16 158/3 160/22
graciously [1] 136/25
grant [1] 116/16
granted [2] 113/2 116/3
Greg [2] 117/4 117/5
guess [2] 140/17 167/5

H
had [29] 117/14 119/1
 119/3 119/25 121/7
 121/15 121/19 126/16
 126/22 126/23 133/13
 134/25 135/2 135/13
 136/22 136/23 137/1
 137/16 138/19 139/22

141/22 142/4 143/4
 148/20 159/13 159/21
 160/1 160/19 166/20
hair [2] 145/11 145/12
half [3] 163/6 164/21
 170/23
hand [1] 124/25
handle [1] 118/4
happen [4] 149/23
 153/20 166/10 166/11
happened [2] 160/16
 163/18
happens [2] 166/9
 169/1
hard [1] 121/17
has [14] 116/20 118/21
 122/12 144/3 145/1
 145/8 145/21 146/6
 153/17 154/3 160/5
 164/22 164/23 172/6
have [101]
haven't [7] 119/1 119/24
 121/7 121/18 141/13
 163/22 171/20
having [3] 117/20 123/6
 155/21
he [20] 116/13 119/15
 123/1 138/19 139/22
 139/24 139/24 141/3
 141/15 142/5 146/20
 147/15 147/18 147/19
 148/6 167/3 167/6 167/7
 167/9 168/2
he's [7] 131/5 143/19
 146/20 149/17 167/4
 167/8 167/17
hear [28] 115/11 122/24
 122/25 138/18 141/11
 143/8 143/8 143/9
 143/17 143/19 143/22
 145/21 145/23 146/7
 146/20 146/22 151/5
 151/9 151/14 151/14
 161/4 161/20 168/7
 168/8 170/1 170/5 171/3
 172/12
heard [7] 141/22 142/3
 143/5 154/3 158/25
 163/22 167/8
hearing [32] 111/9
 115/6 115/13 115/25
 117/14 133/16 133/23
 137/22 141/3 147/11
 147/18 150/13 155/11
 163/5 163/6 163/7 163/8
 166/4 166/14 166/24
 166/25 167/6 167/7
 167/9 169/3 169/4
 169/11 170/3 170/10
 172/2 172/18 174/10
heck [1] 167/21
HEILAKKA [2] 111/18
 162/15

held [2] 111/9 174/10
hell [1] 165/12
her [1] 116/3
here [51] 115/13 115/20
 115/23 116/4 116/25
 117/22 118/2 118/12
 118/23 122/4 122/23
 123/3 124/3 125/22
 126/22 131/6 132/10
 133/1 134/12 134/18
 138/4 139/6 141/15
 141/15 141/17 141/21
 142/10 143/14 143/17
 146/1 146/15 146/23
 147/23 149/11 150/10
 152/10 153/11 153/21
 155/17 155/18 155/19
 161/20 164/2 165/12
 167/6 167/7 167/9
 168/16 169/13 169/25
 170/22
hereby [1] 173/2
hesitating [1] 133/8
Highway [1] 156/19
him [6] 117/20 122/21
 151/6 161/14 167/18
 172/12
hired [1] 167/17
his [14] 117/15 117/16
 136/5 142/6 142/11
 143/2 145/15 147/19
 147/20 148/2 148/6
 148/22 155/8 167/11
hold [3] 123/22 136/19
 159/4
Holland [1] 152/3
Hollow [13] 152/4 152/8
 152/19 154/17 154/18
 156/2 156/8 156/10
 156/13 156/20 156/20
 157/3 157/11
Holly [3] 113/17 116/1
 132/5
homeowners [5] 141/25
 153/3 159/11 159/18
 162/19
homes [4] 157/1 161/23
 162/3 162/14
hope [3] 122/25 169/23
 169/24
hopefully [2] 149/24
 164/3
hoping [1] 149/15
hours [2] 146/1 159/24
household [2] 116/13
 117/6
housekeeping [2]
 115/24 118/1
houses [3] 126/18
 135/25 138/20
how [22] 115/12 118/3
 118/16 122/2 139/17
 143/13 146/15 147/8

148/19 149/14 152/22
 153/15 156/25 157/1
 157/4 158/22 161/22
 161/23 162/1 169/2
 169/5 170/16
However [1] 141/15
hullabaloo [1] 159/15
hundred [1] 121/4
HUNTER [41] 112/2
 114/5 117/14 118/2
 118/7 119/13 119/18
 119/22 121/23 123/2
 123/6 123/9 123/11
 123/24 127/6 128/5
 133/2 133/21 139/8
 139/17 140/9 141/10
 142/5 142/14 142/18
 142/21 143/10 144/23
 148/22 151/1 152/21
 155/7 156/22 158/22
 161/22 162/8 162/11
 163/10 163/20 169/16
 170/12
Hunter's [2] 121/22
 131/7
husband [4] 116/3
 116/12 117/4 136/5

I
I'd [8] 125/25 136/21
 143/3 145/7 145/14
 146/15 151/9 159/10
I'll [8] 119/1 119/5
 122/23 124/21 132/2
 136/18 163/16 170/6
I'm [69]
I'm really [1] 144/14
I've [14] 115/12 123/11
 125/1 132/3 136/3 136/1
 139/19 142/3 143/1
 143/11 144/24 165/16
 166/6 166/11
Ian [1] 113/18
identical [1] 120/6
ignoring [1] 134/6
Ill [4] 125/5 125/6 125/7
 162/9
IllG [4] 125/4 125/12
 125/12 129/7
illustrative [1] 121/11
impact [8] 152/14
 152/20 152/22 155/22
 156/11 156/13 157/13
 157/22
impacted [3] 142/10
 153/8 153/15
impose [1] 169/19
imposing [1] 164/14
Inc [6] 112/8 112/17
 132/4 141/25 152/25
 168/12
include [1] 133/11
included [1] 120/7

<p>I</p> <p>incorrect [2] 120/1 120/8</p> <p>independent [1] 153/2</p> <p>INDEX [3] 113/2 114/2 114/13</p> <p>indicate [1] 174/24</p> <p>indicated [3] 128/5 153/23 169/16</p> <p>indicates [1] 127/22</p> <p>indicating [1] 135/6</p> <p>individual [3] 117/2 117/10 140/13</p> <p>individuals [4] 113/2 128/21 139/16 143/1</p> <p>infer [1] 132/22</p> <p>information [5] 137/1 137/21 143/18 148/2 160/13</p> <p>ingress [1] 158/15</p> <p>injunction [1] 165/10</p> <p>insisting [1] 145/20</p> <p>instance [1] 167/2</p> <p>instead [4] 135/14 136/8 138/20 158/6</p> <p>intended [3] 120/15 140/11 140/11</p> <p>intent [3] 126/20 148/8 148/9</p> <p>interested [2] 144/18 173/10</p> <p>interpret [1] 152/11</p> <p>interrupt [1] 144/14</p> <p>interrupted [1] 164/6</p> <p>intersection [1] 157/3</p> <p>Inv [1] 174/22</p> <p>Invoice [1] 174/24</p> <p>involved [12] 136/15 137/3 137/4 141/3 153/5 154/7 159/19 160/11 160/12 165/16 166/13 167/4</p> <p>iron [1] 138/12</p> <p>is [152]</p> <p>isn't [3] 128/13 144/8 160/5</p> <p>issue [19] 117/9 118/4 118/8 118/16 118/17 134/6 142/17 150/5 152/22 155/17 155/17 155/19 158/11 158/18 158/18 158/19 158/25 160/11 161/2</p> <p>issues [12] 126/10 126/21 135/7 138/11 141/12 144/25 148/23 149/4 158/4 159/19 167/1 170/2</p> <p>it [133]</p> <p>it'd [1] 143/20</p> <p>it's [68]</p> <p>item [3] 118/1 120/1 121/23</p>	<p>items [4] 115/22 126/13 134/3 138/18</p> <p>its [4] 140/12 153/5 153/12 153/15</p> <p>itself [2] 133/10 160/3</p> <p>IV [1] 112/16</p> <p>J</p> <p>JACOB [1] 111/15</p> <p>jam [1] 140/7</p> <p>January [1] 137/21</p> <p>January 5th [1] 137/21</p> <p>JoAnn [2] 113/13 116/3</p> <p>joint [3] 130/18 131/19 133/15</p> <p>JON [1] 111/18</p> <p>JORDAN [1] 112/6</p> <p>JR [2] 112/10 113/5</p> <p>judge [4] 131/2 131/14 149/13 166/6</p> <p>judges [2] 149/12 149/22</p> <p>JULIA [2] 111/18 121/15</p> <p>Julia's [1] 120/23</p> <p>June [5] 126/11 126/14 134/23 138/12 138/12</p> <p>June 10 [1] 134/23</p> <p>June 10th [2] 126/14 138/12</p> <p>just [59] 116/10 119/2 120/22 121/3 121/9 122/9 123/22 125/2 128/5 131/4 131/6 132/20 134/21 138/21 139/11 140/9 140/20 141/2 144/3 144/15 145/7 145/13 145/24 146/5 146/7 146/16 147/1 147/14 147/16 149/19 149/23 150/24 151/17 155/16 156/4 156/12 157/24 158/10 158/24 159/4 159/10 160/10 160/12 160/15 162/13 163/8 163/16 164/7 165/1 165/3 165/8 165/14 165/25 166/19 167/17 168/5 168/20 171/15 171/25</p> <p>just saying [1] 147/1</p> <p>K</p> <p>KARASEK [14] 111/17 115/9 116/11 117/2 118/11 119/1 122/22 132/23 136/23 136/24 141/9 141/24 142/18 153/23</p> <p>Keating [1] 113/7</p> <p>keep [4] 115/11 146/16 147/12 172/7</p> <p>KENDERDINE [5] 111/23 173/2 173/13</p>	<p>173/25 174/22</p> <p>keys [1] 143/5</p> <p>kids [1] 115/12</p> <p>kind [5] 119/14 121/20 122/16 130/20 159/1</p> <p>knew [2] 136/15 137/3</p> <p>Knob [6] 126/19 135/24 137/25 152/23 155/22 156/14</p> <p>know [52] 115/10 116/12 119/10 121/4 123/1 124/21 127/18 128/4 128/10 128/11 128/25 128/25 129/2 129/4 129/25 130/1 133/9 136/21 137/1 137/12 137/17 140/5 141/4 141/6 141/12 141/13 141/14 142/25 143/2 145/16 145/22 146/16 147/5 147/5 147/25 152/3 156/15 158/20 159/3 159/5 159/8 164/1 165/11 165/11 166/18 167/3 167/3 167/21 168/2 169/2 169/20 170/16</p> <p>knowledge [3] 128/19 128/24 133/3</p> <p>known [3] 139/20 150/20 159/20</p> <p>knows [1] 122/2</p> <p>L</p> <p>L.L.P [1] 112/9</p> <p>L.P [2] 112/16 112/17</p> <p>lack [1] 140/10</p> <p>Ladd [2] 113/10 113/11</p> <p>lake [1] 151/25</p> <p>Lakeside [11] 152/12 153/9 154/10 154/11 154/22 154/24 156/5 156/8 156/9 157/8 157/24</p> <p>Lakeview [5] 154/25 155/25 157/8 157/24 157/25</p> <p>land [2] 111/4 130/3</p> <p>landscaping [1] 158/18</p> <p>Lane [6] 126/19 135/24 137/25 152/23 155/22 156/14</p> <p>language [1] 144/24</p> <p>large [1] 151/22</p> <p>larger [1] 151/12</p> <p>last [13] 115/25 117/14 118/18 135/11 136/12 137/22 144/16 158/8 167/6 167/7 167/9 168/25 169/3</p> <p>late [1] 171/4</p> <p>later [1] 145/22</p> <p>law [4] 112/14 123/7</p>	<p>166/17 172/8</p> <p>lawyer [2] 149/17 166/11</p> <p>lawyers [2] 117/18 141/12</p> <p>lead [3] 134/14 142/6 146/3</p> <p>learn [1] 145/8</p> <p>learned [1] 115/12</p> <p>least [7] 141/11 143/7 143/17 145/14 145/23 151/7 164/17</p> <p>leave [4] 146/14 159/1 169/12 170/11</p> <p>Lee [1] 113/15</p> <p>left [2] 150/4 167/1</p> <p>legible [3] 118/7 119/10 120/15</p> <p>LEO [3] 112/10 118/12 118/23</p> <p>Leodevito [1] 112/12</p> <p>less [2] 164/22 164/23</p> <p>let [15] 115/10 116/21 119/18 123/1 133/3 136/19 137/6 139/8 145/14 148/5 151/14 151/14 160/24 160/25 171/21</p> <p>let's [5] 138/12 143/9 143/19 151/13 169/12</p> <p>letter [11] 136/20 136/21 136/22 136/23 136/24 136/25 137/10 137/12 137/13 137/15 137/16</p> <p>level [1] 163/19</p> <p>Libby [1] 162/17</p> <p>lies [1] 160/6</p> <p>light [1] 133/2</p> <p>Ligi [1] 113/16</p> <p>like [27] 116/6 119/5 121/17 125/25 128/8 128/11 136/21 139/11 142/8 142/21 142/25 143/2 143/3 143/12 143/14 145/7 145/14 145/17 146/15 151/9 151/16 159/10 159/22 164/9 164/16 165/1 171/6</p> <p>limited [1] 153/14</p> <p>line [1] 139/4</p> <p>link [1] 121/15</p> <p>LISA [4] 112/10 118/25 124/25 130/20</p> <p>Lisapereira [1] 112/12</p> <p>list [1] 136/20</p> <p>listen [2] 139/24 166/1</p> <p>little [2] 144/15 149/10</p> <p>live [3] 116/13 146/6 161/3</p> <p>LLC [5] 111/3 112/2 112/14 112/17 115/14</p>	<p>loaded [3] 116/5 116/1 139/9</p> <p>loading [1] 162/1</p> <p>long [2] 115/20 166/18</p> <p>longer [1] 163/9</p> <p>look [9] 117/19 117/24 119/25 121/5 121/7 121/14 133/14 137/6 137/18</p> <p>looked [1] 117/20</p> <p>looking [7] 117/13 119/8 121/6 123/23 131/5 141/5 157/21</p> <p>looks [2] 119/5 151/15</p> <p>loop [5] 149/24 161/13 161/14 164/18 168/24</p> <p>lot [2] 158/25 165/5</p> <p>lots [1] 162/5</p> <p>LOVENHEIM [5] 111/11 156/23 170/5 170/8 171/2</p> <p>M</p> <p>Ma'am [1] 162/15</p> <p>made [10] 116/3 118/2; 118/25 136/25 149/16 150/9 157/8 164/24 165/20 171/2</p> <p>mail [4] 118/18 118/23 118/25 119/14</p> <p>mails [1] 137/18</p> <p>maintain [1] 152/18</p> <p>maintenance [1] 152/2</p> <p>make [21] 119/6 120/14 120/17 121/3 122/16 132/2 139/6 139/25 142/21 143/5 144/3 145/4 145/15 151/5 151/7 159/7 159/10 164/10 170/4 170/19 170/21</p> <p>makes [3] 160/18 160/24 161/1</p> <p>making [4] 126/15 156/4 164/2 166/21</p> <p>management [1] 158/5</p> <p>Manager [1] 111/18</p> <p>manages [1] 168/12</p> <p>managing [1] 153/3</p> <p>many [12] 139/20 139/20 139/22 157/1 157/1 157/4 159/24 159/24 161/22 161/23 162/1 165/16</p> <p>map [3] 120/6 120/23 120/25</p> <p>maps [2] 121/9 121/11</p> <p>March [11] 138/9 138/10 141/6 141/8 163/5 163/11 164/8 164/13 164/25 169/14 170/11</p> <p>March 10th [1] 138/10</p>
---	---	--	---	--

M March 9 [2] 141/8 163/5 March 9th [5] 164/8 164/13 164/25 169/14 170/11 Market [1] 112/11 Martha [7] 113/8 132/5 136/3 136/6 136/7 136/20 137/16 matter [16] 111/10 117/11 136/15 137/11 141/17 142/16 145/25 147/16 149/3 150/9 151/16 163/4 164/17 166/4 171/25 174/10 may [16] 115/21 115/22 121/8 121/9 121/18 127/23 142/13 142/14 146/10 146/11 148/25 152/14 152/14 164/20 165/14 167/8 maybe [6] 119/15 143/3 149/20 154/24 165/14 165/14 McMANUS [1] 112/6 me [54] 115/10 115/11 116/21 116/22 116/24 118/24 119/18 122/24 122/25 127/12 128/5 128/10 128/15 129/3 129/6 129/16 130/24 132/1 133/3 133/13 133/21 134/1 134/21 135/6 135/10 135/12 135/19 136/3 136/14 136/19 136/23 136/25 136/25 137/5 137/6 137/7 137/10 137/13 137/23 139/8 139/24 144/13 144/13 144/15 151/14 152/4 152/6 162/15 163/2 165/3 168/7 168/8 171/21 173/3 mean [9] 118/15 119/4 120/3 146/8 146/23 147/9 159/9 160/20 163/23 meaning [1] 118/7 meaningful [1] 148/22 means [4] 152/12 152/12 156/7 158/15 meant [3] 137/8 139/9 140/7 meet [5] 126/21 134/8 146/13 148/21 149/18 meeting [12] 115/5 129/10 135/13 138/11 138/15 138/23 155/11 162/22 165/1 169/5 171/24 172/7 meetings [2] 140/1 160/14	meets [1] 149/25 member [1] 166/20 members [1] 127/2 membership [1] 140/12 mentioned [2] 116/21 124/5 met [2] 126/14 134/23 might [4] 116/23 127/20 147/10 150/3 minute [4] 122/14 146/11 150/22 155/23 minutes [5] 122/18 140/8 140/8 146/17 148/11 misheard [1] 154/25 mispronounced [1] 116/1 Miss [3] 116/4 118/18 120/1 Miss Carbone [2] 118/18 120/1 Miss Morris [1] 116/4 missing [2] 120/11 120/13 misstate [1] 172/10 mistake [1] 163/21 misunderstood [1] 147/2 models [1] 157/2 modern [1] 161/2 modification [3] 125/18 129/13 129/17 modifications [3] 125/11 125/12 129/8 modified [2] 125/14 155/9 moment [5] 119/12 137/23 142/19 143/22 145/14 moments [1] 168/17 money [1] 159/23 Monroe [4] 119/4 119/8 127/22 129/19 month [3] 139/14 139/14 140/23 months [1] 143/11 more [7] 143/12 143/12 143/14 145/8 145/8 155/19 166/21 Morris [3] 116/3 116/4 116/9 most [2] 152/3 153/7 mostly [1] 154/24 motion [15] 130/17 131/19 133/15 169/9 170/1 170/4 170/5 170/6 170/7 170/18 170/19 171/2 171/6 171/8 171/9 Mount [4] 152/4 152/8 152/19 156/10 Mountain [2] 144/21 154/12 mouth [1] 159/23	move [2] 147/9 147/11 moved [1] 144/21 moving [2] 147/12 149/2 Mr [122] Mr. [10] 116/16 116/20 116/25 136/5 143/1 163/2 164/5 164/12 170/5 171/2 Mr. Chair [2] 163/2 164/5 Mr. Chairman [1] 164/12 Mr. Lovenheim [2] 170/5 171/2 Mr. Norris [1] 116/16 Mr. Stockbridge [3] 116/25 136/5 143/1 Mr. William [1] 116/20 Mrs. [1] 118/25 Mrs. Lisa [1] 118/25 MS [11] 116/6 116/10 116/14 116/18 120/17 120/21 121/3 130/21 135/4 162/15 162/17 Ms. [1] 168/17 Ms. Donnelly [1] 168/17 much [6] 121/18 148/13 163/9 164/22 164/23 168/21 Municipal [1] 111/11 must [3] 125/18 129/18 154/7 mutual [1] 134/15 my [50] 115/11 117/4 118/24 120/21 122/25 125/25 126/2 127/13 127/23 127/24 131/6 132/17 132/19 133/8 135/6 135/16 135/18 135/19 136/8 137/3 137/22 138/5 138/9 139/25 141/5 142/8 143/24 144/17 144/18 145/4 146/12 146/18 147/6 148/8 148/8 148/21 149/5 150/16 150/17 150/18 151/20 153/11 153/17 156/11 160/4 165/4 165/5 165/17 173/5 173/6 myself [4] 121/19 139/6 165/24 166/20	need [10] 116/12 133/12 133/12 139/11 140/7 140/14 145/2 149/9 158/20 165/21 needed [1] 160/13 needs [2] 140/17 166/22 negative [1] 140/12 negotiation [4] 149/22 159/3 166/2 167/4 negotiations [2] 149/13 150/25 net [2] 155/21 158/14 never [8] 126/23 136/23 137/1 138/22 138/23 157/6 157/22 166/6 new [3] 157/9 157/18 161/25 newspaper [1] 159/20 newspapers [1] 159/15 next [5] 147/11 150/11 162/22 163/5 170/2 nice [1] 143/21 nine [1] 143/11 no [50] 114/4 114/15 121/8 121/10 121/25 122/6 124/1 124/1 125/1 125/17 125/23 126/3 127/5 128/2 129/3 129/6 130/19 132/13 134/15 134/25 135/20 136/10 136/17 140/23 143/24 144/3 144/18 145/8 145/25 146/4 146/15 146/15 146/15 146/24 155/16 157/4 157/20 158/19 160/5 160/9 162/23 163/7 165/3 165/11 165/25 165/25 167/17 169/11 172/13 174/22 nobody [3] 134/24 135/22 135/25 nobody's [1] 160/12 non [6] 143/25 144/11 144/19 152/21 160/11 171/8 non-issue [1] 160/11 non-residential [3] 143/25 144/11 144/19 none [1] 170/7 nonprofit [1] 153/2 normally [2] 122/1 122/2 Norris [9] 113/13 116/6 116/7-116/8 116/8 116/10 116/14 116/16 116/18 North [2] 152/7 162/9 not [113] Notary [1] 173/14 note [2] 119/9 122/13 noted [2] 123/24 131/7 notes [4] 117/14 131/6	136/20 137/16 nothing [5] 121/20 157/15 157/16 160/5 170/17 noticed [1] 129/10 notification [1] 136/22 notion [1] 134/5 November [1] 136/16 now [34] 115/18 115/2- 117/13 117/22 118/8 118/19 122/4 126/13 127/3 127/6 131/18 132/4 139/22 140/23 141/3 141/6 144/9 146/16 146/25 147/17 147/19 149/12 149/21 152/17 155/24 159/1 159/6 161/3 161/13 162/20 163/22 171/13 172/6 172/8 number [5] 117/16 125/2 136/8 144/22 174/24 numbers [2] 136/4 136/8 numeral [2] 125/6 125/
			O o'clock [1] 148/16 Oakdale [5] 151/23 152/6 152/16 167/23 168/13 Oakland [1] 152/6 oath [1] 120/19 objecting [1] 154/9 objection [3] 115/22 130/5 152/11 objectors [2] 123/16 128/23 obligation [1] 145/23 obstruct [1] 134/7 obviously [4] 116/16 119/10 149/11 158/14 Occupancy [1] 156/19 occur [1] 140/4 occurred [1] 170/14 off [6] 140/23 149/25 150/1 153/7 157/22 169/10 offer [1] 163/18 offered [1] 145/21 office [3] 111/18 135/1- 138/15 OFFICES [1] 112/14 oh [2] 120/21 141/19 okay [21] 117/5 122/1 126/6 126/24 128/12 131/17 131/21 136/14 141/20 141/22 145/11 147/2 149/6 150/13 150/21 158/9 158/21 163/11 164/7 164/20 169/19	

<p>O</p> <p>once [1] 154/24</p> <p>one [29] 116/19 118/1 118/16 120/1 120/18 120/23 123/19 123/22 128/16 128/20 131/4 137/23 139/13 140/1 141/20 143/23 144/18 146/4 147/4 149/20 150/7 156/1 156/2 156/7 157/25 159/4 161/17 165/15 171/5</p> <p>one thing [1] 161/17</p> <p>only [15] 115/23 121/12 132/14 132/16 133/8 135/14 138/25 140/1 141/19 143/23 144/17 149/14 155/22 161/13 163/6</p> <p>open [2] 134/10 169/21</p> <p>opened [1] 155/25</p> <p>opinion [3] 145/16 153/5 155/8</p> <p>opportunity [6] 142/24 148/20 153/6 159/14 160/1 170/24</p> <p>opposed [1] 158/12</p> <p>option [1] 166/5</p> <p>order [7] 130/11 130/14 130/17 130/25 131/13 132/1 165/6</p> <p>Orig [1] 174/12</p> <p>other [26] 115/22 117/2 119/20 134/9 135/20 137/1 139/16 140/24 141/11 141/12 141/18 147/23 147/23 150/7 150/23 154/16 156/6 156/8 157/7 157/9 161/15 161/19 161/21 162/12 166/5 170/2</p> <p>other people [1] 161/21</p> <p>ought [1] 141/10</p> <p>our [14] 115/8 120/2 120/8 122/13 130/3 138/15 158/5 159/17 159/23 159/23 165/1 165/15 171/20 171/20</p> <p>ourselves [2] 166/14 166/15</p> <p>out [37] 115/18 116/23 126/12 126/21 135/9 135/11 135/12 135/23 136/7 137/18 138/13 138/17 140/2 142/2 142/25 143/13 145/3 145/23 146/7 146/23 149/24 151/6 152/8 152/18 156/7 156/9 156/12 159/14 160/8 161/13 162/20 163/24 164/18 166/7 166/15 168/24 169/25</p>	<p>outside [1] 146/17</p> <p>over [9] 115/8 115/9 116/14 119/20 122/21 122/23 144/21 161/8 161/11</p> <p>owner [1] 123/15</p> <p>owners [14] 112/8 151/21 151/22 152/15 153/1 154/2 154/6 162/4 164/20 167/13 167/14 168/11 168/19 171/5</p> <p>owns [1] 152/1</p> <p>P</p> <p>P.C [1] 112/6</p> <p>P.E [1] 111/18</p> <p>p.m [2] 111/13 172/19</p> <p>P.O [4] 111/24 112/3 112/15 173/25</p> <p>PA [7] 111/12 111/24 112/4 112/7 112/11 112/15 174/1</p> <p>packet [2] 131/7 131/8</p> <p>page [16] 114/4 119/6 119/6 119/11 119/11 120/11 120/12 125/4 125/8 130/24 131/2 131/13 131/18 132/1 132/25 165/10</p> <p>pages [6] 111/7 119/9 119/15 121/17 137/16 174/12</p> <p>Pam [1] 113/19</p> <p>Pamela [1] 116/2</p> <p>part [16] 115/19 124/8 124/19 149/13 149/22 150/25 151/3 151/22 152/10 153/21 154/3 158/3 165/20 166/1 169/6 169/9</p> <p>participate [7] 127/16 139/18 139/20 153/5 153/17 159/21 163/19</p> <p>participation [1] 132/20</p> <p>particular [2] 143/6 149/3</p> <p>particularly [1] 152/16</p> <p>parties [41] 122/3 122/5 122/5 122/9 123/14 123/15 125/19 125/23 126/4 129/8 129/9 129/12 133/7 133/23 134/11 139/12 141/11 145/23 150/17 151/2 151/4 154/4 155/11 159/1 159/6 161/5 162/24 163/13 164/11 164/15 165/9 165/9 165/9 165/13 166/6 166/13 166/23 169/13 171/16 171/18 173/8</p> <p>partner [3] 118/24 143/2 171/15</p>	<p>partners [1] 127/7</p> <p>parts [1] 134/9</p> <p>party [22] 113/2 116/4 116/16 117/10 117/18 117/18 118/21 129/5 142/9 149/8 150/16 150/19 153/4 153/24 159/25 160/1 160/18 160/21 161/15 167/4 167/7 171/15</p> <p>pass [1] 122/20</p> <p>past [5] 126/11 136/6 140/9 163/18 163/20</p> <p>pause [1] 142/18</p> <p>payment [1] 174/24</p> <p>people [17] 117/18 121/4 122/8 122/24 136/10 139/5 141/23 143/21 146/6 159/12 160/20 160/22 161/3 161/15 161/21 164/9 168/25</p> <p>percentage [1] 145/6</p> <p>PEREIRA [4] 112/10 118/25 130/21 135/4</p> <p>perhaps [1] 142/8</p> <p>permission [1] 151/14</p> <p>permit [2] 156/19 158/3</p> <p>permitted [1] 158/7</p> <p>person [3] 140/16 164/10 168/2</p> <p>pertain [1] 130/2</p> <p>Peter [1] 113/12</p> <p>Phase [6] 142/1 151/22 151/25 152/13 153/12 156/8</p> <p>phases [1] 150/15</p> <p>phone [4] 112/3 136/4 136/7 136/8</p> <p>photographs [1] 138/14</p> <p>pick [1] 147/18</p> <p>place [1] 129/4</p> <p>placed [1] 133/12</p> <p>placing [1] 160/15</p> <p>plan [18] 111/3 111/4 115/15 124/5 124/13 126/13 126/16 134/2 143/14 147/5 147/12 150/3 155/4 155/25 156/1 158/1 158/1 158/2</p> <p>Planned [1] 115/7</p> <p>plays [1] 159/3</p> <p>Pleas [1] 129/19</p> <p>please [5] 123/1 132/3 141/18 162/16 174/24</p> <p>PM [7] 148/14 148/14 163/5 163/11 164/9 169/14 170/11</p> <p>pocket [1] 147/10</p> <p>point [12] 115/8 122/11 127/21 132/19 133/14 135/1 137/24 142/12 142/24 144/4 156/11</p>	<p>161/2</p> <p>pointed [1] 138/17</p> <p>pointing [1] 160/7</p> <p>points [1] 140/13</p> <p>portion [2] 143/25 144/11</p> <p>portions [1] 144/20</p> <p>posed [1] 115/22</p> <p>position [7] 146/14 146/20 147/20 147/21 149/2 151/5 151/15</p> <p>possibly [1] 166/14</p> <p>Praecipe [1] 115/25</p> <p>PRD [17] 111/3 124/5 124/13 124/15 126/10 126/15 126/18 138/17 144/8 144/20 145/8 155/9 156/6 156/7 158/2 158/5 158/16</p> <p>PRDs [3] 144/1 144/11 145/6</p> <p>predecessor [2] 124/10 124/11</p> <p>prejudice [2] 147/20 147/21</p> <p>premature [1] 145/19</p> <p>prepared [4] 119/12 134/5 137/17 164/1</p> <p>preparing [1] 133/10</p> <p>present [8] 121/24 133/11 140/25 140/25 147/8 147/12 147/19 147/20</p> <p>presentation [3] 118/9 119/19 151/7</p> <p>presented [6] 123/24 126/15 126/20 129/18 157/22 169/9</p> <p>preservation [16] 112/13 118/3 118/24 120/2 122/19 126/11 130/4 132/5 139/12 139/15 148/24 152/24 164/18 169/15 170/12 172/3</p> <p>preserve [1] 115/19</p> <p>president [7] 126/25 126/25 131/14 135/22 140/15 162/18 168/16</p> <p>presumably [1] 137/17</p> <p>previous [1] 155/25</p> <p>previously [1] 153/18</p> <p>PRIDE [5] 111/15 164/7 168/23 171/11 172/14</p> <p>primarily [1] 144/20</p> <p>primary [1] 152/12</p> <p>principle [2] 142/16 145/2</p> <p>prior [4] 117/21 123/15 129/12 137/22</p> <p>private [5] 152/2 152/18 153/14 155/20 158/12</p> <p>privilege [2] 167/16</p>	<p>167/20</p> <p>probably [4] 121/4 141/5 151/11 153/7</p> <p>problem [5] 119/11 122/24 142/4 142/7 165/3</p> <p>problematic [2] 149/14 169/11</p> <p>procedure [6] 124/16 124/19 124/19 125/13 134/12 150/25</p> <p>procedures [4] 115/9 134/13 134/17 134/21</p> <p>proceed [7] 134/1 134/16 146/10 148/2 148/19 158/23 170/16</p> <p>proceeding [4] 150/18 151/4 166/23 168/20</p> <p>proceedings [4] 134/7 147/22 148/9 154/5</p> <p>proceeds [2] 150/9 166/4</p> <p>process [7] 115/17 127/16 133/14 133/18 140/10 153/22 166/2</p> <p>produced [1] 118/6</p> <p>project [3] 126/6 165/2 166/3</p> <p>projecting [1] 122/24</p> <p>properly [2] 129/10 161/16</p> <p>property [4] 115/19 123/16 127/8 144/2</p> <p>proposal [2] 152/10 155/12</p> <p>proposed [6] 111/4 126/18 151/24 153/12 154/12 156/19</p> <p>provide [2] 170/22 170/25</p> <p>provided [2] 117/17 117/24</p> <p>provides [1] 129/7</p> <p>provision [3] 128/3 128/8 128/11</p> <p>provisions [2] 134/10 153/8</p> <p>public [18] 111/9 115/6 122/13 122/13 122/14 129/10 130/3 133/15 133/23 155/11 155/11 155/21 158/12 159/20 170/22 170/25 173/14 174/10</p> <p>pull [2] 119/3 124/24</p> <p>pulling [1] 119/3</p> <p>purposes [1] 121/12</p> <p>pursued [1] 134/25</p> <p>put [8] 136/20 139/14 140/2 154/20 159/23 159/23 163/23 166/14</p> <p>putting [2] 161/7 161/1</p>
--	--	--	---	--

<p>Q</p> <p>question [26] 116/5 116/11 118/18 119/22 122/15 126/2 128/1 129/3 129/20 131/12 134/20 136/19 139/9 143/16 147/4 147/6 151/12 152/22 155/6 161/7 161/8 164/13 165/4 171/4 171/11 171/22</p> <p>questioned [1] 122/10</p> <p>questions [7] 117/20 122/4 122/5 122/7 122/9 122/12 126/22</p> <p>quickly [2] 158/24 171/13</p> <p>quite [3] 119/10 142/10 165/17</p> <hr/> <p>R</p> <p>R.P.R [2] 173/2 173/13</p> <p>raise [1] 130/5</p> <p>raised [1] 161/18</p> <p>raising [1] 115/12</p> <p>Re [2] 111/3 174/6</p> <p>reach [5] 136/5 136/5 136/7 136/10 161/14</p> <p>reached [4] 135/9 135/11 135/12 135/23</p> <p>read [11] 116/21 121/17 125/19 128/6 128/7 129/13 131/20 131/22 132/2 132/3 132/7</p> <p>real [1] 115/12</p> <p>realize [2] 120/22 134/15</p> <p>really [9] 136/1 141/16 144/14 149/17 150/17 152/22 155/22 160/20 161/9</p> <p>reason [6] 129/21 133/8 138/25 145/25 146/23 160/15</p> <p>reasonable [2] 139/18 162/21</p> <p>recall [2] 128/9 135/6</p> <p>recap [1] 137/12</p> <p>receive [2] 115/25 133/22</p> <p>recently [1] 166/20</p> <p>recess [2] 146/11 148/14</p> <p>recognize [1] 126/6</p> <p>recognized [1] 143/21</p> <p>recommend [3] 120/6 120/9 163/1</p> <p>recommending [1] 117/9</p> <p>reconcile [1] 145/1</p> <p>reconvene [2] 115/5 170/10</p> <p>reconvening [1] 154/5</p>	<p>record [4] 120/7 128/10 148/16 148/16</p> <p>recorded [2] 119/3 119/8</p> <p>recreation [1] 154/13</p> <p>recuse [2] 165/21 166/20</p> <p>red [2] 111/11 145/10</p> <p>referred [3] 123/19 134/3 154/23</p> <p>referring [1] 125/3</p> <p>refine [1] 155/17</p> <p>regard [1] 171/1</p> <p>regarding [2] 111/3 165/21</p> <p>regular [2] 129/11 165/1</p> <p>relates [1] 129/4</p> <p>relating [1] 153/9</p> <p>relative [2] 173/7 173/9</p> <p>relevant [2] 141/17 151/12</p> <p>rely [1] 139/21</p> <p>remain [1] 127/15</p> <p>remains [1] 156/6</p> <p>remember [2] 157/25 169/3</p> <p>remove [3] 126/9 134/3 155/13</p> <p>removed [1] 144/21</p> <p>renegotiate [1] 153/25</p> <p>renegotiation [1] 154/1</p> <p>repeat [1] 163/21</p> <p>replacing [1] 121/1</p> <p>reply [1] 137/21</p> <p>Reporter [1] 174/22</p> <p>REPORTING [2] 111/23 173/25</p> <p>represent [5] 128/18 141/23 142/3 167/3 168/18</p> <p>representatives [1] 148/23</p> <p>represented [2] 122/20 141/11</p> <p>representing [3] 137/17 162/18 168/11</p> <p>request [7] 116/3 120/9 127/25 148/17 163/18 163/23 164/2</p> <p>requested [1] 135/18</p> <p>requesting [2] 124/4 124/10</p> <p>requests [2] 134/6 164/19</p> <p>required [2] 127/24 156/18</p> <p>requirement [1] 127/13</p> <p>requires [3] 129/17 144/25 166/17</p> <p>reschedule [1] 139/13</p> <p>rescheduled [1] 142/17</p> <p>researching [1] 137/21</p> <p>residential [4] 115/7</p>	<p>143/25 144/11 144/19</p> <p>residents [6] 135/24 136/4 137/25 152/5 152/16 153/15</p> <p>resigned [1] 166/20</p> <p>resolution [1] 154/2</p> <p>resolve [5] 140/21 151/16 163/4 164/21 169/13</p> <p>resolved [4] 158/4 158/5 162/23 172/1</p> <p>respect [5] 115/14 117/10 118/4 137/11 161/18</p> <p>respectfully [2] 160/17 171/21</p> <p>respond [5] 119/22 127/24 134/14 141/10 164/1</p> <p>responded [1] 134/24</p> <p>response [6] 127/5 134/25 138/22 140/10 163/17 163/22</p> <p>responsible [2] 151/22 152/1</p> <p>rest [6] 145/15 145/21 147/5 147/19 152/20 163/8</p> <p>restricted [1] 153/14</p> <p>retain [1] 158/7</p> <p>review [2] 121/19 127/7</p> <p>reviewed [2] 117/21 123/11</p> <p>right [18] 117/8 117/13 122/16 124/2 126/13 147/17 147/18 147/19 150/12 153/24 155/4 155/24 156/2 157/9 164/5 170/15 172/6 172/14</p> <p>road [41] 111/12 138/15 152/3 152/4 152/4 152/8 152/9 152/18 152/19 152/20 153/15 154/8 154/11 154/17 154/18 154/20 154/21 155/1 155/1 155/3 155/8 155/13 155/17 155/20 155/21 156/2 156/8 156/10 156/10 156/12 156/13 156/20 156/20 156/20 157/3 157/11 157/11 157/22 158/6 158/12 158/13</p> <p>roadway [1] 126/16</p> <p>ROBERT [6] 111/16 132/6 154/19 162/15 165/24 166/19</p> <p>Robert's [1] 145/15</p> <p>role [2] 149/7 159/3</p> <p>rolled [1] 132/17</p> <p>Roman [3] 125/5 125/7 125/12</p>	<p>Ron [7] 115/9 145/13 165/7 165/14 165/20 167/2 169/1</p> <p>Ronald [2] 131/2 131/14</p> <p>RONOLD [1] 111/17</p> <p>room [1] 166/6</p> <p>roughly [2] 151/24 162/2</p> <p>route [2] 156/13 171/18</p> <p>ruminated [1] 164/23</p> <p>run [1] 154/12</p> <p>running [1] 152/3</p> <hr/> <p>S</p> <p>sadly [1] 165/7</p> <p>said [23] 116/9 116/15 117/8 121/15 121/16 121/18 121/23 122/19 132/13 133/9 136/8 138/10 138/12 138/21 140/15 145/13 147/3 150/21 158/11 158/21 168/23 170/1 171/2</p> <p>same [7] 116/13 117/6 119/15 141/7 155/1 165/10 173/5</p> <p>Sarah [1] 112/7</p> <p>sat [1] 165/14</p> <p>satisfaction [1] 148/10</p> <p>Sauvigne [1] 113/12</p> <p>save [1] 145/24</p> <p>saw [1] 136/17</p> <p>say [34] 115/16 119/11 120/21 121/11 125/5 128/13 133/2 139/13 139/20 141/4 141/23 142/4 142/15 142/23 145/13 150/17 150/18 154/9 158/24 159/4 159/5 160/11 160/17 160/24 163/4 163/15 165/19 167/10 168/14 171/9 171/21 171/22 171/25 172/12</p> <p>saying [12] 124/12 127/23 132/10 138/25 140/20 143/15 147/1 149/19 150/23 155/23 160/10 165/24</p> <p>says [1] 129/20</p> <p>schedule [1] 141/5</p> <p>screwed [1] 165/8</p> <p>SDI [8] 132/4 132/14 156/15 156/16 159/13 160/3 160/6 172/5</p> <p>seat [3] 142/12 142/14 142/15</p> <p>seats [1] 141/21</p> <p>second [19] 115/13 116/19 116/20 123/22 126/17 130/13 131/1 131/4 131/7 131/15 131/18 133/3 133/4</p>	<p>133/19 159/4 169/7 170/6 170/6 171/6</p> <p>secretary [2] 111/16 127/1</p> <p>section [5] 125/2 125/4 125/12 129/7 141/23</p> <p>see [12] 116/22 125/8 138/12 139/14 140/3 142/15 148/6 153/20 161/12 164/17 166/5 169/12</p> <p>seeing [2] 165/5 170/7</p> <p>seem [1] 116/24</p> <p>seems [2] 143/7 164/9</p> <p>seen [1] 166/6</p> <p>send [1] 121/15</p> <p>sense [3] 160/18 160/2 161/1</p> <p>sent [2] 137/10 137/12</p> <p>sentence [1] 128/9</p> <p>sentences [1] 144/16</p> <p>separate [1] 150/15</p> <p>September [2] 130/16 130/16</p> <p>September 11 [1] 130/16</p> <p>September 20 [1] 130/16</p> <p>service [1] 167/12</p> <p>services [2] 167/11 168/6</p> <p>session [2] 122/15 122/16</p> <p>set [3] 125/18 139/3 141/6</p> <p>sets [1] 125/13</p> <p>settle [4] 147/16 165/2 166/7 166/23</p> <p>settled [10] 145/25 148/10 163/6 163/7 163/7 164/17 164/22 166/3 170/23 170/24</p> <p>settlement [38] 118/6 120/12 121/11 121/12 123/13 123/21 124/6 125/13 126/7 127/14 127/21 130/18 130/25 131/1 131/15 131/16 131/20 132/2 134/9 134/18 140/15 142/9 149/23 150/2 150/16 151/2 151/12 152/10 153/18 154/4 155/5 155/9 157/7 159/24 165/7 165/21 169/3 169/5</p> <p>settlement's [1] 145/17</p> <p>seven [1] 143/13</p> <p>Severability [1] 125/9</p> <p>shall [1] 129/9</p> <p>share [1] 145/15</p> <p>Sharon [1] 113/11</p> <p>SHAWNEE [60] 111/3</p>
---	--	--	---	---

S
SHAWNEE... [59] 111/3
 112/2 112/4 112/8
 112/13 112/17 112/17
 115/6 115/14 115/15
 118/3 118/24 120/2
 122/19 132/4 132/5
 139/12 139/15 141/25
 144/1 144/1 144/1 144/6
 144/22 151/21 152/2
 152/15 152/20 152/25
 153/1 153/14 154/2
 154/6 154/14 155/24
 156/2 156/3 156/9
 156/24 157/4 157/11
 157/13 157/16 157/19
 159/11 161/24 162/1
 162/4 162/10 162/13
 162/14 167/13 167/14
 167/22 168/11 168/19
 170/11 172/3 174/6
she [3] 116/4 136/8
Shipping [1] 174/13
should [20] 120/13
 121/6 130/7 134/14
 138/21 141/10 143/8
 143/8 143/16 149/20
 150/24 153/13 159/5
 163/3 164/8 165/12
 165/13 166/19 170/20
 171/22
show [1] 127/12
side [7] 118/9 119/2
 119/2 119/21 150/23
 154/16 157/9
sides [1] 143/17
sign [4] 133/9 149/25
 150/1 153/6
signatories [1] 132/14
signatory [1] 130/6
signature [2] 132/18
 165/17
signatures [1] 132/16
signed [14] 120/16
 125/19 125/23 126/3
 129/7 129/22 131/2
 131/13 133/4 133/7
 133/15 133/22 165/5
 169/10
significant [2] 146/6
 162/13
Significantly [1] 153/1
silent [1] 127/15
simple [3] 145/4 145/10
 161/8
simply [4] 122/14
 127/19 166/22 167/17
since [5] 115/24 120/17
 124/21 149/7 170/17
single [1] 161/22
sir [6] 119/18 131/22
 135/10 168/9 169/18

171/11
sit [15] 119/2 119/6
 122/17 125/22 132/10
 134/18 135/7 138/4
 139/5 146/1 147/15
 163/3 163/3 163/16
 166/1
sitting [3] 149/11
 149/12 169/3
six [1] 115/12
Ski [1] 112/17
skill [1] 173/6
Slope [2] 152/7 162/9
small [1] 136/2
SMITHFIELD [18] 111/1
 111/10 123/15 124/3
 129/11 129/24 130/1
 130/6 132/7 132/11
 132/24 133/16 136/1
 136/24 159/13 172/4
 172/10 174/5
so [98]
society [15] 112/13
 118/3 118/24 120/2
 122/20 126/11 132/5
 139/12 139/15 148/24
 152/24 164/18 169/16
 170/12 172/4
sole [1] 158/15
solicitor [3] 111/17
 115/9 132/24
solve [1] 161/12
some [13] 119/3 119/9
 119/16 127/18 128/21
 129/21 144/12 145/25
 149/1 152/8 152/15
 153/19 163/19
somehow [1] 164/19
something [7] 120/8
 140/23 145/20 158/24
 163/15 163/16 167/10
sometimes [1] 139/23
somewhere [1] 116/13
sorry [8] 131/24 144/16
 159/25 161/20 164/5
 168/10 172/9 172/16
sort [3] 116/22 145/3
 150/10
sought [2] 134/8 134/8
sounds [1] 145/17
south [1] 151/17
speak [8] 115/21 135/19
 135/21 138/5 143/1
 146/9 146/18 148/20
speaking [2] 144/5
 165/20
special [1] 129/11
specific [2] 138/1
 156/14
specifically [8] 115/6
 115/16 137/25 147/24
 153/9 153/13 155/19
 157/15

spelled [1] 116/8
spending [1] 139/6
spoke [2] 138/10 168/17
spot [1] 163/23
SPS [34] 126/17 126/20
 126/25 127/1 127/1
 127/1 127/13 128/18
 128/21 129/21 130/3
 130/4 132/7 132/15
 133/11 134/9 135/11
 135/22 136/14 137/17
 137/25 140/12 140/15
 159/12 160/6 160/8
 161/11 161/13 163/20
 164/12 166/19 171/17
 171/19 172/11
Square [4] 112/17 144/2
 144/6 144/22
stage [10] 111/3 112/2
 115/14 115/16 115/19
 117/22 141/16 143/24
 145/19 174/6
Stages [1] 115/18
stand [5] 122/23 123/3
 141/18 141/19 149/5
standing [1] 143/20
start [1] 169/25
started [2] 120/18 138/8
starts [1] 125/17
state [2] 125/2 156/20
statement [1] 121/22
statistical [1] 157/2
status [7] 113/2 116/4
 116/16 117/10 117/18
 160/18 167/7
steal [3] 118/15 137/8
 150/2
stenographically [1]
 173/3
step [2] 146/17 171/20
stified [1] 170/25
still [5] 138/4 138/14
 143/20 164/9 171/12
Stockbridge [7] 113/14
 116/25 117/1 117/4
 117/7 136/5 143/1
Stockbridge's [1]
 116/20
stop [1] 147/22
stops [1] 147/16
stormwater [1] 158/4
streamline [1] 148/9
Street [2] 112/7 112/11
Stroudsburg [4] 111/12
 111/24 112/7 174/1
study [8] 156/16 156/16
 156/21 156/23 156/25
 157/4 157/6 157/13
stuff [1] 160/23
subject [2] 129/10
 133/23
submit [2] 119/14 136/3
submittal [1] 120/8

submitted [5] 132/17
 133/17 133/25 144/25
 157/16
substantial [2] 121/8
 121/10
Succession [1] 125/8
successor [1] 112/16
such [3] 125/23 128/3
 155/11
sue [1] 159/13
sufficient [1] 164/9
suggest [2] 163/21
 164/8
suggested [2] 135/18
 138/20
suggestion [1] 153/13
suit [2] 172/4 172/10
Sun [2] 144/21 154/12
Sunshine [1] 172/8
supervisor [3] 148/8
 148/8 165/16
supervisor's [16] 111/1
 111/11 115/5 122/11
 122/23 124/4 129/12
 139/3 141/1 148/18
 149/12 149/20 164/14
 164/16 165/15 170/14
suppose [1] 127/15
supposed [1] 140/16
supposing [1] 120/25
sure [25] 116/4 117/12
 119/6 119/23 120/14
 121/3 125/4 129/23
 129/25 130/15 130/21
 131/13 132/2 134/21
 139/25 142/20 143/5
 144/3 145/5 148/20
 149/14 152/3 155/6
 158/21 170/21
surprise [1] 153/19
SVOA [6] 142/21 157/17
 161/19 161/23 162/18
 162/18
swear [1] 159/9
SWETZ [1] 112/6
sworn [1] 123/6

Tannersville [1] 112/15
teaming [1] 122/6
TED [7] 112/2 114/5
 121/16 121/18 123/6
 156/15 171/16
Ted's [1] 171/14
ted.hunter.dev [1]
 112/4
tell [8] 116/15 128/15
 137/5 141/5 143/10
 148/18 165/12 167/20
telling [1] 129/2
tentative [3] 111/4
 115/15 134/2
terms [1] 133/24
testified [3] 122/12
 123/7 123/12
testimony [7] 117/14
 117/15 123/12 123/20
 127/20 151/15 151/17
than [6] 140/23 140/24
 144/8 150/4 163/9
 166/22
Thank [14] 116/18
 118/11 120/4 122/22
 130/22 131/10 131/11
 148/13 151/19 154/7
 162/11 164/4 168/21
 174/24
that [384]
that's [48] 119/13
 120/25 121/12 122/6
 123/19 124/5 125/5
 125/7 128/20 128/25
 132/15 134/2 135/1
 135/9 136/13 137/22
 140/19 141/22 142/2
 142/2 142/10 143/11
 144/2 144/24 145/18
 146/24 150/4 151/19
 154/21 154/25 155/3
 155/18 156/5 158/20
 160/19 160/22 161/13
 162/6 162/20 162/22
 164/7 164/22 165/23
 166/4 166/16 167/5
 167/19 169/5
their [14] 122/3 132/20
 135/25 138/2 139/22
 142/22 149/25 150/19
 163/13 166/23 168/16
 168/18 169/13 170/13
theirs [1] 140/25
them [16] 117/19
 117/25 120/11 126/14
 127/19 128/18 128/23
 129/25 134/23 136/7
 136/9 143/22 149/20
 160/24 162/24 163/3
then [45] 119/18 121/9
 121/14 122/1 122/8
 122/11 122/12 125/10
 126/2 126/22 133/17

<p>T</p> <p>then... [34] 133/24 137/20 137/20 138/10 139/21 140/6 143/22 146/15 147/2 147/17 148/3 148/6 148/18 149/25 150/18 151/8 152/19 152/25 154/13 154/14 156/1 156/9 156/12 157/6 158/11 159/6 160/25 164/20 164/24 165/21 166/2 166/2 166/3 166/7</p> <p>there [47] 115/22 116/2 118/1 119/16 121/8 126/3 127/5 127/18 128/2 128/13 129/7 134/10 134/10 134/21 136/19 137/12 138/19 138/22 140/13 141/7 141/12 141/14 141/18 141/20 142/25 143/24 144/18 145/19 146/7 149/15 155/12 156/1 156/7 156/21 156/23 157/6 157/12 157/15 158/1 161/3 161/24 162/1 162/9 163/24 164/14 169/11 170/6</p> <p>there's [30] 121/4 122/5 127/12 128/8 128/11 132/14 134/11 134/15 134/23 144/3 145/6 145/17 145/25 146/24 150/14 150/15 150/18 150/23 150/23 153/25 154/1 157/3 160/6 161/2 161/2 161/21 162/14 162/23 166/13 170/17</p> <p>these [9] 130/23 135/7 136/1 139/5 150/25 153/18 154/5 165/13 165/17</p> <p>they [54] 118/7 119/7 119/11 122/9 122/10 126/21 126/22 127/15 130/1 130/5 130/7 133/6 133/7 133/12 139/2 139/17 139/20 140/7 140/25 143/2 144/20 144/20 148/19 149/22 149/23 149/25 150/1 151/2 151/3 151/4 152/18 159/13 159/21 159/25 159/25 160/1 160/11 160/12 160/12 160/13 160/13 160/14 160/18 160/21 161/12 161/12 161/15 162/25 166/25 167/5 167/25 167/25 168/14 168/16</p> <p>they're [6] 118/4 121/11 121/17 122/9 140/21</p>	<p>164/18</p> <p>thing [4] 122/16 127/18 161/17 165/8</p> <p>things [5] 138/16 138/22 143/5 147/10 147/12</p> <p>think [64] 118/17 120/13 121/14 122/23 130/7 130/19 136/17 139/1 139/2 139/3 140/7 141/9 141/14 142/8 143/3 143/15 143/20 145/14 145/16 145/18 145/21 145/22 146/5 146/8 146/24 147/6 149/8 151/11 154/1 154/23 155/1 155/3 158/25 159/2 159/5 160/2 160/6 160/17 160/19 160/25 161/2 161/3 161/10 161/17 162/12 162/13 162/21 162/24 163/12 163/25 164/2 164/8 164/16 165/7 165/7 165/21 165/23 165/23 166/2 166/19 167/15 167/19 168/25 169/20</p> <p>thinking [2] 140/9 149/21</p> <p>third [1] 132/18</p> <p>this [102]</p> <p>this all [1] 166/21</p> <p>those [16] 115/21 121/5 121/5 123/14 124/8 130/2 130/2 134/13 138/2 138/22 144/2 152/18 153/3 154/3 159/18 159/19</p> <p>though [2] 146/19 153/7</p> <p>thought [4] 119/15 120/24 121/6 128/5</p> <p>three [15] 122/14 122/18 123/14 124/19 126/18 133/23 138/20 140/1 149/8 155/10 165/9 165/9 166/13 171/16 171/18</p> <p>three-part [1] 124/19</p> <p>three-party [1] 149/8</p> <p>through [8] 118/18 137/6 137/20 137/20 138/16 138/22 154/14 158/8</p> <p>thunder [3] 118/15 137/8 150/3</p> <p>Tim [5] 113/9 136/6 138/19 159/7 160/2</p> <p>time [32] 115/24 117/21 119/17 122/21 127/25 132/15 132/15 133/14 134/13 134/24 135/9 135/12 137/3 137/4</p>	<p>139/4 139/11 145/2 145/25 146/5 146/13 146/21 147/7 148/25 159/21 159/24 160/2 162/24 163/3 163/13 166/9 166/10 166/12</p> <p>timeline [1] 139/4</p> <p>times [2] 135/11 154/24</p> <p>timetable [1] 159/6</p> <p>timetables [1] 134/13</p> <p>Timothy [1] 132/6</p> <p>today [5] 138/4 142/22 157/5 163/12 165/2</p> <p>together [6] 116/12 117/6 136/20 143/13 171/16 171/18</p> <p>told [3] 117/23 134/21 146/15</p> <p>TOM [3] 112/3 171/14 172/9</p> <p>tomorrow [1] 139/6</p> <p>tonight [8] 115/13 134/2 134/19 147/23 148/3 153/21 162/23 163/4</p> <p>too [7] 122/5 122/24 123/4 143/9 149/17 149/21 171/4</p> <p>torpedo [1] 147/10</p> <p>Total [1] 174/14</p> <p>totally [1] 160/3</p> <p>townhomes [3] 157/1 161/24 162/9</p> <p>townhouses [1] 162/8</p> <p>township [38] 111/1 111/10 117/17 120/23 122/2 122/3 122/11 123/15 124/3 128/21 129/11 129/25 130/1 130/6 132/7 132/11 132/19 132/24 133/9 133/11 133/16 136/1 136/24 139/10 139/13 146/5 149/11 152/24 154/6 159/2 159/13 160/7 168/24 170/14 171/12 172/4 172/10 174/5</p> <p>township's [4] 149/7 149/18 159/17 171/23</p> <p>traffic [12] 152/7 152/17 155/20 155/24 156/12 156/16 156/21 156/23 156/25 157/11 157/13 158/12</p> <p>trail [1] 144/10</p> <p>train [1] 137/22</p> <p>transcribed [1] 173/5</p> <p>transcript [4] 136/18 137/6 173/4 173/5</p> <p>treasurer [1] 127/1</p> <p>TRESSLAR [1] 111/18</p> <p>tri [1] 171/15</p> <p>tri-party [1] 171/15</p>	<p>tried [4] 136/3 136/7 143/1 143/11</p> <p>trips [1] 157/2</p> <p>true [2] 124/17 173/4</p> <p>trust [1] 130/3</p> <p>truth [1] 165/12</p> <p>try [12] 115/11 117/19 121/15 136/4 138/1 138/9 147/16 148/9 151/16 163/3 166/7 166/7</p> <p>trying [9] 120/22 127/6 135/23 136/17 137/24 150/2 158/17 160/10 160/10</p> <p>turn [4] 115/8 119/20 131/18 151/7</p> <p>twice [1] 154/24</p> <p>two [36] 117/5 121/7 121/8 126/10 126/13 126/16 129/21 129/24 130/2 130/2 132/13 132/16 134/3 136/1 137/16 138/11 138/18 138/21 140/1 141/25 146/11 146/17 150/15 153/3 156/1 156/4 156/7 159/1 159/6 161/4 162/4 165/8 165/13 166/23 168/20 169/12</p> <p>Twp [2] 111/17 111/18</p> <p>typical [1] 157/2</p>	<p>168/3</p> <p>updated [1] 120/7</p> <p>uploaded [1] 120/14</p> <p>upon [5] 116/17 139/2 142/5 153/19 164/14</p> <p>upper [2] 154/13 155/1</p> <p>us [10] 126/21 132/23 146/1 148/18 151/14 159/12 160/25 161/1 171/12 171/17</p> <p>use [4] 111/4 111/5 152/12 161/24</p> <p>used [2] 145/10 145/1</p> <p>uses [2] 144/2 162/10</p> <p>using [1] 134/22</p> <p>utilized [1] 152/5</p>
		<p>U</p> <p>ultimately [3] 133/17 133/25 154/14</p> <p>unbuilt [1] 162/5</p> <p>under [3] 120/19 127/25 173/5</p> <p>understand [15] 115/22 133/12 138/2 144/16 144/24 145/2 146/2 146/14 146/19 150/14 154/12 155/7 162/3 168/23 171/15</p> <p>understood [2] 127/10 163/25</p> <p>unfortunately [1] 160/19</p> <p>unless [7] 117/16 123/25 133/22 134/3 150/17 154/25 161/14</p> <p>until [7] 118/20 133/22 143/4 143/16 145/19 145/20 161/4</p> <p>up [24] 115/11 118/13 118/20 119/4 119/5 124/24 129/21 132/17 134/10 134/12 136/12 138/23 141/13 141/18 142/11 144/4 145/1 147/18 151/1 152/8 154/14 159/1 165/8</p>	<p>V</p> <p>Valley [38] 111/3 112/1 115/6 115/16 141/25 144/1 151/21 152/2 152/15 152/20 153/1 153/14 154/2 154/6 154/15 155/24 156/2 156/3 156/9 156/24 157/4 157/11 157/14 157/16 157/19 159/11 161/24 162/1 162/4 162/10 162/13 162/14 167/13 167/14 167/22 168/11 168/19 174/6</p> <p>various [1] 158/8</p> <p>vehicles [2] 157/4 157/18</p> <p>version [4] 120/5 120/24 120/25 121/9</p> <p>versus [1] 155/21</p> <p>very [6] 121/17 143/7 143/24 144/18 148/13 168/21</p> <p>via [4] 111/16 118/23 118/25 156/8</p> <p>Vican [2] 131/2 131/14</p> <p>vice [2] 111/16 126/25</p> <p>video [1] 123/4</p> <p>view [2] 140/13 142/25</p> <p>Village [9] 144/1 151/2 151/24 152/6 152/17 152/17 167/24 168/13 168/13</p> <p>villages [2] 142/1 152/1</p> <p>Vince [5] 135/20 135/2 135/23 136/12 138/10</p> <p>Vincent [1] 113/6</p> <p>violation [2] 167/15 167/19</p> <p>virtue [1] 132/20</p> <p>VOGT [7] 112/14 112/1 113/3 141/15 143/9 143/19 143/23</p> <p>voice [5] 115/11 122/2 153/12 154/2 161/20</p> <p>VOLUME [1] 111/7</p>	

V volunteer [1] 165/15 vote [2] 129/11 166/2 voting [1] 165/22	118/13 168/22 well [17] 115/12 119/13 120/19 121/21 126/2 127/2 132/19 142/13 142/13 142/14 145/24 150/8 152/7 155/8 159/19 160/9 164/21	118/20 119/10 124/16 125/13 130/12 132/14 141/16 141/25 150/16 150/19 151/21 151/24 152/2 152/14 155/10 157/25 159/25 162/10 168/12 168/12	157/7 wordsmithing [1] 144/25 work [8] 126/21 130/3 142/22 143/13 145/4 164/10 164/25 169/25 working [1] 154/19 works [7] 122/2 147/15 164/12 164/13 169/15 169/15 169/16 worse [1] 140/23 would [56] 116/15 117/19 120/6 120/9 124/25 126/21 128/13 129/6 129/16 130/20 130/24 131/18 132/1 132/22 133/18 133/21 133/25 134/1 134/20 139/11 139/13 140/4 140/4 141/3 141/6 141/8 142/5 142/8 142/21 142/25 143/2 147/8 147/11 147/12 149/23 150/19 153/15 156/1 158/15 159/4 160/17 160/24 161/25 163/1 163/9 164/16 165/15 165/19 165/23 167/15 169/12 169/19 171/6 171/21 171/25 172/15 wouldn't [3] 128/4 167/20 172/15 writing [2] 125/19 129/7 written [1] 115/25 wrong [2] 163/20 165/14 wrote [1] 137/21 Wyndham [3] 156/16 160/3 160/7 Wyndham/SDI [2] 156/16 160/3	yesterday [3] 119/14 135/2 135/8 yet [2] 115/20 126/5 you [209] you'll [3] 118/20 122/1 123/4 you're [43] 116/19 118/13 118/21 120/19 120/25 122/17 123/12 123/16 124/3 124/9 124/15 125/3 127/17 128/2 128/10 129/2 129/3 129/23 130/15 132/9 132/10 132/16 138/4 140/20 140/21 140/22 144/5 144/15 146/2 147/14 150/12 150/13 155/18 155/23 157/21 163/2 164/2 164/2 165/24 168/22 170/25 171/12 172/10 you've [5] 134/12 142/1 147/10 149/16 169/16 your [38] 116/12 118/9 118/9 118/15 118/20 119/19 119/19 119/22 121/24 122/16 123/11 123/19 124/10 124/10 127/7 128/19 128/24 131/12 134/20 134/22 136/19 137/8 137/24 140/25 144/16 146/2 147/5 147/8 147/10 147/11 147/20 147/21 149/2 151/14 151/17 162/16 168/6 170/25 yourself [2] 134/17 165/22
W wait [3] 118/19 150/22 155/23 want [43] 115/21 118/3 118/8 118/9 118/16 118/19 118/19 121/23 123/3 129/20 139/1 139/3 139/23 140/2 140/5 142/14 142/22 143/21 144/3 144/14 145/13 146/12 146/14 146/22 146/25 148/19 150/19 151/4 153/20 155/15 158/22 159/5 159/10 161/17 162/25 165/25 166/22 167/21 168/24 170/21 170/22 171/12 171/15 want to [1] 155/15 wanted [4] 116/10 117/24 120/21 121/3 wanting [1] 153/11 wants [5] 142/5 146/4 146/20 159/7 168/2 was [107] wasn't [3] 135/16 135/18 168/10 waste [1] 146/5 way [15] 115/20 122/1 134/16 135/20 136/10 139/18 141/21 146/15 147/14 159/16 159/16 160/19 162/20 162/23 169/4 we [147] We'd [1] 121/2 we'll [11] 119/16 121/21 140/6 140/8 142/15 145/4 146/2 148/12 149/5 151/17 151/17 we're [27] 115/5 115/20 115/23 119/5 119/20 126/15 138/16 142/10 142/23 146/13 146/23 147/7 148/15 148/16 150/3 150/10 154/20 155/1 156/2 156/3 158/6 163/12 165/12 166/21 169/3 171/13 172/7 we've [6] 137/24 138/11 143/4 143/5 154/23 158/3 Wednesday [4] 111/12 115/2 172/19 174/10 weeds [1] 161/1 week [3] 118/18 136/12 147/18 welcome [3] 116/19	well [17] 115/12 119/13 120/19 121/21 126/2 127/2 132/19 142/13 142/13 142/14 145/24 150/8 152/7 155/8 159/19 160/9 164/21 went [4] 137/20 137/20 138/16 171/17 were [23] 117/16 117/23 118/7 119/2 119/9 119/15 119/16 123/23 126/16 129/22 130/1 132/16 133/4 133/6 133/7 135/7 138/18 140/24 144/20 159/19 167/10 169/6 169/9 weren't [4] 159/25 160/11 160/12 160/13 west [2] 112/11 151/24 what [55] 117/23 118/6 119/25 120/25 121/16 121/18 121/18 123/16 124/9 126/12 127/14 130/15 132/13 137/1 138/1 138/21 140/6 140/15 141/2 141/22 142/3 142/5 142/15 143/11 143/15 144/3 145/1 145/21 147/2 147/5 149/2 149/7 150/6 150/13 150/22 151/5 151/10 151/14 158/17 158/20 159/3 159/14 160/9 160/16 162/25 163/12 165/23 166/1 166/5 166/16 167/12 168/2 170/14 171/20 171/20 what's [2] 154/8 163/17 whatever [10] 127/20 137/5 139/11 140/1 147/9 149/15 149/24 159/6 160/14 167/1 when [17] 120/16 121/16 122/17 125/5 129/21 134/10 136/13 136/17 136/21 136/23 137/18 155/21 159/12 162/22 169/1 170/22 171/17 where [16] 119/16 126/10 127/12 127/22 127/24 134/14 137/12 147/18 148/6 148/18 150/11 150/18 154/17 158/21 158/22 159/23 Whereupon [1] 172/18 whether [10] 118/4 128/8 129/10 141/2 142/11 147/6 154/3 154/5 159/2 160/21 which [21] 117/16	while [2] 131/5 158/1 who [23] 115/21 116/20 116/23 117/2 117/18 117/24 122/3 122/6 122/8 122/12 132/23 139/23 141/11 149/16 155/6 159/7 161/15 167/11 167/12 167/17 167/21 168/5 168/17 whole [1] 170/24 whom [1] 139/19 why [10] 129/25 129/25 130/1 133/9 138/20 140/19 147/25 153/21 155/18 165/11 will [27] 115/8 118/1 121/15 122/3 122/20 123/16 126/7 139/10 139/17 139/20 139/25 148/24 149/2 149/18 150/8 151/3 151/25 152/19 155/20 155/24 162/22 164/3 169/5 170/10 170/11 170/24 172/8 William [1] 116/20 willing [10] 135/7 138/4 139/16 140/4 141/4 146/13 146/20 146/22 148/21 159/9 window [2] 140/2 140/20 wish [1] 159/11 within [4] 134/22 146/13 148/25 162/4 without [7] 117/20 133/25 147/19 147/21 151/7 151/15 169/4 WITNESSES [1] 114/2 WOLF [24] 112/6 113/4 141/20 141/20 141/21 143/6 143/8 147/24 147/25 149/16 150/12 150/22 154/8 158/10 159/11 161/13 161/18 161/22 162/17 163/14 164/20 167/3 168/3 168/5 Wolf's [2] 151/5 151/15 wondering [1] 150/24 Wooddale [1] 152/6 Woodland [5] 151/24 152/7 152/17 167/23 168/12 word [1] 128/9 words [3] 134/22 156/6	157/7 wordsmithing [1] 144/25 work [8] 126/21 130/3 142/22 143/13 145/4 164/10 164/25 169/25 working [1] 154/19 works [7] 122/2 147/15 164/12 164/13 169/15 169/15 169/16 worse [1] 140/23 would [56] 116/15 117/19 120/6 120/9 124/25 126/21 128/13 129/6 129/16 130/20 130/24 131/18 132/1 132/22 133/18 133/21 133/25 134/1 134/20 139/11 139/13 140/4 140/4 141/3 141/6 141/8 142/5 142/8 142/21 142/25 143/2 147/8 147/11 147/12 149/23 150/19 153/15 156/1 158/15 159/4 160/17 160/24 161/25 163/1 163/9 164/16 165/15 165/19 165/23 167/15 169/12 169/19 171/6 171/21 171/25 172/15 wouldn't [3] 128/4 167/20 172/15 writing [2] 125/19 129/7 written [1] 115/25 wrong [2] 163/20 165/14 wrote [1] 137/21 Wyndham [3] 156/16 160/3 160/7 Wyndham/SDI [2] 156/16 160/3	yesterday [3] 119/14 135/2 135/8 yet [2] 115/20 126/5 you [209] you'll [3] 118/20 122/1 123/4 you're [43] 116/19 118/13 118/21 120/19 120/25 122/17 123/12 123/16 124/3 124/9 124/15 125/3 127/17 128/2 128/10 129/2 129/3 129/23 130/15 132/9 132/10 132/16 138/4 140/20 140/21 140/22 144/5 144/15 146/2 147/14 150/12 150/13 155/18 155/23 157/21 163/2 164/2 164/2 165/24 168/22 170/25 171/12 172/10 you've [5] 134/12 142/1 147/10 149/16 169/16 your [38] 116/12 118/9 118/9 118/15 118/20 119/19 119/19 119/22 121/24 122/16 123/11 123/19 124/10 124/10 127/7 128/19 128/24 131/12 134/20 134/22 136/19 137/8 137/24 140/25 144/16 146/2 147/5 147/8 147/10 147/11 147/20 147/21 149/2 151/14 151/17 162/16 168/6 170/25 yourself [2] 134/17 165/22
			Y yeah [5] 118/22 135/9 157/21 163/14 171/8 year [3] 126/11 135/11 138/9 years [8] 116/14 139/20 144/22 153/19 158/8 165/17 166/11 168/20 Yep [1] 135/5 yes [35] 117/1 117/7 120/4 121/2 123/18 124/14 124/18 125/11 125/16 125/21 127/9 127/11 128/22 130/10 130/23 131/17 131/23 131/25 132/9 132/22 133/1 135/3 135/8 141/20 141/20 141/20 143/11 144/7 154/11 154/18 156/22 158/19 165/3 168/9 169/18	Z zoning [1] 155/12 Zoom [2] 111/16 164/1

P R O C E E D I N G S

Wednesday, February 9, 2022

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3
4 MR. PRIDE: Good evening, folks. It is 6:07,
5 so we're going to reconvene the Board of Supervisors meeting
6 specifically for the public hearing on the Shawnee Valley
7 Planned Residential Development.

8 At this point, I will turn it over to our
9 solicitor, Ron Karasek, to go over the beginning procedures.

10 MR. KARASEK: Good evening, everyone. Let me know
11 if you can't hear me. I try to keep my voice up and with
12 raising six kids I've learned how to do that real well.

13 But, we are here tonight as a second hearing with
14 respect to the application of Shawnee Stage 1, LLC to have
15 an approval of a 2021 amended tentative plan for Shawnee
16 Valley and I believe specifically for Stage 1B and I say
17 that because 1A, I believe, is in the process of
18 development, or it's developed out, Stages 2 and 3 are now
19 part of the preserve property, et cetera, and Stage 4 is a
20 long way to go yet. So, we're here for the 1B amendment.

21 So, those of you who may want to speak as to the
22 other items, understand that there may be an objection posed
23 because we're only here for the 1B amendment.

24 Now, as to housekeeping, since the time of the
25 last hearing I did receive a written Praecipe for Appearance

1 by a Holly Cadwallader. If I mispronounced that name I
2 apologize. And, also, Pamela Barrett and there was also a
3 request made for JoAnn Morris that her husband be granted
4 party status. I'm not sure. Is she here? Miss Morris?
5 And this is not a loaded question.

6 MS. NORRIS: It's not an M, it's an N, like
7 Norris.

8 MR. KARASEK: Norris? I have it spelled Norris,
9 but I said Morris, so I apologize.

10 MS. NORRIS: I just wanted to clarify.

11 MR. KARASEK: And this is not a loaded question,
12 but I need to know that you and your husband are together in
13 the same household. He doesn't live somewhere else?

14 MS. NORRIS: Over 40 years.

15 MR. KARASEK: That being said, I would tell the
16 board, obviously, to grant Mr. Norris party status based
17 upon that.

18 MS. NORRIS: Thank you.

19 MR. KARASEK: You're welcome. A second one is a
20 Mr. William Stockbridge's form has a second name on it who
21 was not mentioned and it's difficult to read. So, let me
22 see if I can get that form in front of me so we can sort of
23 figure out who that might be.

24 I don't seem to have that form in front of me. Is
25 Mr. Stockbridge here?

1 MR. STOCKBRIDGE: Yes.

2 MR. KARASEK: And who was the other individual
3 on that form?

4 MR. STOCKBRIDGE: It was my husband, Greg.

5 MR. KARASEK: Greg? Okay. And, again, the two of
6 you are together in the same household?

7 MR. STOCKBRIDGE: Yes.

8 MR. KARASEK: All right. So, that being said,
9 I don't have any issue in recommending to the board that
10 that individual be given party status with respect to this
11 matter.

12 MR. PRIDE: Sure.

13 MR. KARASEK: All right. Now, in looking at the
14 Notes of Testimony from the last hearing, Mr. Hunter had
15 effectively completed his testimony and the feeling was that
16 unless his exhibits, which I believe are 19 in number, were
17 electronically provided to the township so that everyone,
18 party people who have party status, lawyers, et cetera,
19 could look at them it would be a futile effort to try to ask
20 him questions without having the documents looked at and
21 reviewed prior to that time.

22 So, we are now here at that stage and I'm
23 assuming, from what I was told, that the documents were
24 electronically provided and anyone who wanted to look at
25 them could do that.

1 There is one housekeeping item and I will ask
2 Mr. Hunter -- and I believe Attorney DeVito is here on
3 behalf of the Shawnee Preservation Society. How do you want
4 to handle the issue with respect to the -- whether they're
5 called conflicting exhibits between a court-filed document
6 of the settlement agreement and what you produced, you
7 meaning Mr. Hunter, or that they were not clear and legible,
8 et cetera? Do you want to address that issue now or do you
9 want to address that in your side or your presentation,
10 Mr. DeVito?

11 MR. DEVITO: Thank you, Mr. Karasek. Attorney
12 Leo DeVito here on behalf of --

13 MR. KARASEK: You're welcome to come up to the
14 table.

15 So, again, I don't mean to steal your thunder,
16 but on this one issue how do you want to address this
17 exhibit issue; Exhibit 7 I think that was called into
18 question by Miss Carbone through an e-mail in the last week
19 or so. Do you want to do that now or do you want to wait
20 until we come to your case? Which you'll be up because
21 you're the first party that has an attorney.

22 MR. DEVITO: Yeah. And I was made aware of that
23 via e-mail. Again, Attorney Leo DeVito here on behalf of
24 the Shawnee Preservation Society. With me is my partner,
25 Mrs. Lisa Pereira. Made aware of that via the e-mail.

1 And I'll be frank with you, Mr. Karasek. I haven't had the
2 chance to sit down side to side. We just were able to
3 pull -- we had some difficulties pulling the recorded
4 document at Monroe County. I mean, if we finish up or it
5 looks like we're going to finish up this evening I'll
6 certainly sit down and compare page to page to make sure
7 that they are consistent.

8 In looking at the Monroe County recorded document,
9 the agreement, we did note that some of the pages were not
10 quite legible which created -- you know, obviously creates a
11 problem. But, to say that they are page for page exact I'm
12 not prepared to do that at this moment.

13 MR. KARASEK: Well, that's fine. Mr. Hunter was
14 kind enough to submit an e-mail as of yesterday that
15 compared the pages that he thought were the same and maybe
16 where there were some changes, so we'll address that at that
17 time.

18 So, let me go back to Mr. Hunter, then. Sir,
19 are you done with your presentation on your case in chief?
20 'Cause, if so, we're going to turn it over to the other
21 side.

22 MR. HUNTER: Could I respond to your question?

23 MR. KARASEK: Sure.

24 MR. HUNTER: And, again, I appreciate you haven't
25 had a chance to look at what I did to compare. I believe

1 Miss Carbone found one incorrect item, the Exhibit D that
2 was in our copy of the Shawnee Preservation Society --

3 MR. KARASEK: You mean Appendix D?

4 MR. HUNTER: Appendix D, yes. Thank you. And
5 that appendix was a different -- a draft version of the
6 identical map. So, we would recommend that the correct
7 updated appendix be included in the final record. We agree
8 that that was something that was incorrect in our submittal.

9 We also would recommend or request that the
10 documents that are on file at the county do have errors in
11 them. For example, that document is missing an entire page
12 of the settlement agreement. Page 8 of the document is
13 missing. We think that we should agree to correct the
14 documents and make sure that the documents that are uploaded
15 are the legible, colored documents that everybody intended
16 when it was signed.

17 MS. CARBONE: Could I make a comment since I'm the
18 one that apparently started this?

19 MR. KARASEK: Well, you're not under oath, but go
20 ahead.

21 MS. CARBONE: All I wanted to say is, oh, my
22 goodness. I didn't realize all this. I was just trying to
23 bring it to Julia's attention of the one map on the township
24 that I thought it was a draft version and this is the
25 version of the map. That's what you're supposing

1 replacing --

2 MR. HUNTER: We'd agree to that, yes.

3 MS. CARBONE: So, I just wanted to make sure
4 that -- you know, there's probably a hundred people that
5 have downloaded those exhibits to look at those exhibits,
6 so I thought everyone should be looking at the final --
7 and I haven't had a chance, either, to look at the two and
8 there may be no substantial differences between the two
9 maps. It may be just a draft and, then, a final version
10 with no substantial differences. And it's the body of the
11 settlement -- the maps say they're for illustrative
12 purposes only, so it's the body of the settlement that's
13 binding anyway, so --

14 And, then, I did go and look because I think
15 Julia had said, "I will try and send you the link to the
16 County," and when I did that what Ted said is correct,
17 they're very hard to read and blank pages and like that,
18 so what much of what Ted said may be correct. I haven't
19 had a chance to fully review it myself, but I believe it's
20 kind of a nothing burger.

21 MR. KARASEK: Well, we'll address that going
22 forward. We have Mr. Hunter's statement and, that being
23 said, on that item, Mr. Hunter, anything else you want to
24 present in your case in chief?

25 MR. HUNTER: No.

1 MR. KARASEK: Okay. Then, the way it normally
2 works, so everyone knows how the township does it, normally
3 the township will allow parties who have their attorney ask
4 questions. Now, again, if the attorney is here for the
5 parties the parties aren't asking questions, too. There's
6 no double-teaming. If you have an attorney that's who asks
7 the questions, not you.

8 And, then, the people who do not have attorneys,
9 they're just parties, they can ask questions and, of course,
10 they can also be questioned, cross examined.

11 At that point, then, the township supervisors can
12 ask questions of anyone who has testified and, then, finally
13 we have public comment at the end and note that our public
14 comment is simply a three minute public comment. It's not a
15 question and answer session, it's not a "You didn't do the
16 right thing" kind of session, it's comment. You make your
17 comment and when you're done you sit down. You'll be given
18 three minutes.

19 So, that being said, the Shawnee Preservation
20 Society is represented by Attorney DeVito and we will pass
21 the case over to him at this time.

22 MR. DEVITO: Thank you, Mr. Karasek. Good
23 evening, Supervisors. I think I'll stand over here so that
24 people can hear me. I, too, don't have a problem projecting
25 my voice, so I hope everybody can hear me. If you can't,

1 please let he know.

2 Mr. Hunter, good evening.

3 MR. LOVENHEIM: You can stand here, if you want,
4 and you'll be on video, too.

5 - - -

6 TED HUNTER, having been duly sworn according to
7 law, testified as follows:

8 CROSS EXAMINATION BY MR. DEVITO:

9 Q Mr. Hunter, good evening.

10 A Good evening.

11 Q Mr. Hunter, you are aware -- I've reviewed your
12 testimony and I believe you testified that you're aware of
13 the existence of the settlement agreement between,
14 basically, three parties dated December 8, 2009, those
15 parties being Smithfield Township, the prior owner of this
16 property, and what I will call the objectors. You're aware
17 of that agreement?

18 A Yes.

19 Q And that's the one that you referred to in your
20 testimony?

21 A The settlement agreement.

22 MR. KARASEK: Just hold on for one second,
23 Mr. DeVito. I'm looking at -- in the exhibits that were
24 presented by Mr. Hunter, that is noted as Exhibit 7,
25 unless you disagree.

1 MR. DEVITO: No, no, it was Exhibit 7.

2 MR. KARASEK: All right.

3 Q And you're here before the Smithfield Township
4 Board of Supervisors requesting an amendment to the already
5 approved PRD plan that's mentioned or contained in the
6 settlement agreement. Is that correct?

7 A It is.

8 Q And part of those amendments are dealt with --
9 not the amendments, but you're changing what was agreed to
10 by your predecessor or requesting a change by your
11 predecessor. Is that fair?

12 A Are you saying change to the

13 Q To the PRD plan.

14 A Yes.

15 Q You're also aware that the PRD agreement contains
16 a procedure by which any amendments are to be accomplished.
17 Is that true?

18 A Yes.

19 Q And that procedure is a three-part procedure.
20 Correct?

21 A I don't know. I'll have to defer to you since you
22 have it in front of you.

23 Q Do you have a copy of the agreement?

24 A I can pull it up.

25 MR. DEVITO: Lisa, would you hand --

1 A No, I've got it.

2 MR. KARASEK: Just state the number and section
3 you're referring to, Mr. DeVito.

4 MR. DEVITO: Sure. It's Section IIIIG, Page 34.

5 MR. KARASEK: When you say III that's Roman
6 numeral III?

7 MR. DEVITO: Roman numeral III, that's correct.

8 A On Page 34 I see Assignment -- Succession,
9 Assignment, Severability, Entire Agreement.

10 Q Correct. And, then, G?

11 A Modifications, yes.

12 Q Modifications. That section, IIIIG, Roman IIIIG,
13 sets forth the procedure by which the settlement agreement
14 can be changed, added to, modified or amended. Is that
15 correct?

16 A Yes.

17 Q And it starts with No. 1, Arabic 1, that
18 "Any change, addition, modification or amendment must be set
19 forth in writing signed by the parties." Did I read that
20 correctly?

21 A Yes.

22 Q And, in fact, as we sit here this evening you have
23 no such agreement signed by any of the parties. Is that
24 correct?

25 A So, Mr. DeVito, I'd like to elaborate on my

1 answer.

2 Q Well, you can answer my question first and then
3 you can elaborate. There is no signed agreement between the
4 parties. Is that correct?

5 A We did not get an agreement yet.

6 Q Okay. And you recognize that for this project to
7 go forward the settlement agreement will have to be amended.
8 Is that correct?

9 A Not necessarily. We could remove the differences
10 in the PRD amendment where the two issues that we brought to
11 the preservation society in June of this past year could be
12 taken out of what we amend.

13 Right now we have two items in the plan that we
14 asked to amend with them. We met on June 10th, 2021.
15 We presented the five changes that we're making in the PRD
16 plan. Two of the changes were the roadway that we had to
17 discuss with SPS and the second change that differs from
18 the PRD agreement was the three houses that we proposed on
19 Knob Lane.

20 We presented that to SPS with the intent that
21 they would meet with us, discuss the issues, work out any
22 questions they had, and then we could arrive here with an
23 amendment, but we never had any answers.

24 Q Okay.

25 A That was the president of SPS, the vice president

1 of SPS, the secretary of SPS, and the treasurer of SPS as
2 well as a couple of members.

3 Q Now --

4 A We didn't get a chance to get an amendment because
5 there was no response.

6 Q Now, I'm not trying to be cute, Mr. Hunter, but
7 you did review this agreement before you and your partners
8 acquired this property. Correct?

9 A Yes.

10 Q And you understood it. Correct?

11 A Yes.

12 Q Can you show me in the agreement where there's a
13 requirement that my client, SPS, agree to any amendments to
14 what was agreed to in the settlement agreement?

15 A They could remain silent, I suppose, and not
16 participate in the process.

17 Q So that you're --

18 A I don't know that there is some compelling thing
19 that allows them to simply not agree to anything ever again
20 despite whatever testimony might exist or facts.

21 Q Can you point to the settlement agreement that was
22 approved by the Monroe County Court where it indicates that
23 my clients -- and I'm not saying we may not agree to
24 anything, but where my clients are required to respond to a
25 request for an amendment under any time frame or duration?

1 A I'm not able to answer that question.

2 Q You're not able to answer it because there is no
3 such provision in the agreement?

4 A I wouldn't know.

5 Q I thought you just indicated to me, Mr. Hunter,
6 that you read the agreement.

7 A I read the agreement, but I'm not familiar with
8 that -- whether there's a provision like that in the
9 agreement. I don't recall every word and every sentence.
10 If you're asking me to go on record that I do or don't know,
11 I don't know that there's a provision like that or not.

12 Q Okay.

13 A If you say there isn't, you would be the expert.

14 Q I'm not --

15 A You tell me.

16 Q I'm not the one bound by this agreement. I'm
17 asking you --

18 A SPS is and you represent them.

19 Q -- as to your knowledge of this agreement.

20 That's correct. I'm not the one bound by this. You are,
21 the township is, SPS, and some individuals are.

22 A Yes.

23 Q As I collectively call them, the objectors.

24 And I'm asking you for your knowledge. So, if you don't
25 know, that's fine, you don't know.

1 A I'm not aware of it.

2 Q You're telling the board that you don't know?

3 A On that question you're asking me, no, I don't
4 know of any place in the agreement that relates to
5 compelling any party to agree.

6 Q Would you also agree with me that Arabic No. 2 of
7 Section IIIIG provides that after there is a writing signed
8 by the parties that "Any changes, modifications or
9 amendments of this agreement agreed to by the parties shall
10 be the subject of a properly noticed public meeting (whether
11 regular or special) and vote of the Smithfield Township
12 Board of Supervisors prior to the parties execution of the
13 change, addition, modification or amendment." Did I read
14 that correctly?

15 A You did.

16 Q Would you also agree with me that Arabic 3
17 requires that any change, addition, modification or
18 amendment must be presented to and approved by the Court of
19 Common Pleas of Monroe County?

20 A It says that. I do want to ask the question.
21 For some reason, SPS didn't bring this up when the first two
22 amendments were signed.

23 Q You're sure of that?

24 A The first two amendments don't have Smithfield
25 Township on them and I'm not sure why. I don't know why

1 they were not on. I don't know why Smithfield Township was
2 not on those two amendments. Those two amendments pertain
3 to our work with SPS and the trust for public land to convey
4 550 acres for preservation and SPS was fully in favor of it,
5 so they didn't raise any objection to the fact that
6 Smithfield Township was not a signatory to either amendment,
7 but we, I think, both agreed that they should have been.

8 Q Do you have a copy of the amendment in front of
9 you?

10 A Yes.

11 Q With the order?

12 A I believe so. Which amendment? First amendment
13 or second amendment?

14 Q The Order

15 A I'm not sure what you're asking.

16 Q ... of Court, September 11 -- of September 20,
17 2011. Do you have a copy of the court order and the motion
18 to approve the joint settlement?

19 A I don't think I have it, no.

20 MR. DEVITO: Lisa, would you be kind enough?

21 MS. PEREIRA: Sure.

22 MR. DEVITO: Thank you.

23 A Yes, I do have copies of these in files.

24 Q You would agree with me that the first page is the
25 order approving the first amendment to the settlement

1 agreement and the second amendment to the settlement
2 agreement signed by Judge Ronald E. Vican? First page of
3 the document I gave you.

4 A I appreciate that. Just one second.

5 MR. KARASEK: While he's looking Mr. DeVito,
6 just so I'm clear with my notes here, the first amendment
7 was noted as Exhibit 8 in Mr. Hunter's packet and second
8 amendment as Exhibit 9 in that packet.

9 MR. DEVITO: Correct.

10 MR. KARASEK: Thank you.

11 MR. DEVITO: Thank you.

12 A So, your question again about this?

13 Q Sure. The first page is an Order of Court signed
14 by President Judge Ronald Vican approving the first
15 amendment to the settlement agreement and the second
16 amendment to the settlement agreement. Is that correct?

17 A Okay. Yes.

18 Q Now, if you would turn to the second page,
19 that document is captioned Joint Motion to Approve
20 Settlement Agreement Amendments. Did I read that correctly?

21 A Okay.

22 Q Did I read it correctly, sir?

23 A Yes.

24 Q I'm sorry?

25 A Yes.

1 Q Would you agree with me on Page 2 of the order and
2 settlement agreements -- and I'll read it to you. Make sure
3 I've read it correctly, please.

4 "And now comes Shawnee Development, Inc. (SDI),
5 Shawnee Preservation Society, Holly Cadwallader, Martha
6 Carbone, Timothy Carbone, and Robert L. Bower,
7 collectively, SPS, and Smithfield Township. Did I read
8 that correctly?

9 A Yes, you're correct.

10 Q So, as we sit here this evening you're not saying
11 that Smithfield Township was not aware of the amendments.
12 Is that correct?

13 A No. What I said was I have the two amendments and
14 there's only signatories for SDI, which was the developer at
15 the time, and SPS, the appellants at that time. That's the
16 only signatures that were on the two amendments and you're
17 bringing to my attention that it was rolled up and submitted
18 to the Court with the third signature. So ...

19 Q Well, my point is the township was aware of the
20 amendments just by virtue of their participation in this.
21 Correct?

22 A I would infer that, yes.

23 Q In fact, Mr. Karasek, who is with us this evening,
24 was the current solicitor for Smithfield Township if you go
25 to Page 4.

1 A Yes, it's here.

2 Q Is it fair to say, Mr. Hunter, that in light of
3 the knowledge of the agreements -- let me go back a second.
4 The first and second amendments were signed agreements.
5 Is that correct?

6 A They were amendments.

7 Q And they were signed by the appropriate parties.

8 A My only reason for hesitating to answer is I don't
9 know, and I said this before, why the township doesn't sign
10 the amendment itself. In preparing the draft amendment that
11 I drafted to present to SPS I didn't include the township on
12 it and need to understand if they need to be placed on it,
13 but I was going by the amendment that I had in front of me.

14 Q And the process at that point in time, if you look
15 at the joint motion, was the signed agreement, the public
16 hearing acknowledging that agreement by Smithfield Township,
17 and, then, ultimately submitted to the Court for approval.
18 Would you agree that that was the process for the first and
19 second amendments?

20 A I don't disagree.

21 Q Would you also agree with me, Mr. Hunter,
22 that unless and until you receive a signed agreement by all
23 three parties that is the subject of a public hearing,
24 that agreement and the terms of that amendment, and then
25 ultimately submitted to the Court, without that would you

1 agree with me that you would not be able to proceed with the
2 amended tentative plan that's before this board tonight with
3 a caveat; unless you remove the two items that you referred
4 to?

5 A I'm not prepared to accept that notion that by
6 ignoring all requests to deal with an issue that the
7 appellants are able to obstruct the proceedings completely.

8 We sought to meet, we sought to discuss, and if
9 you go into other parts of the SPS settlement agreement
10 there are provisions that open up to when there are
11 disputes or concerns, there's parties, and it names a
12 procedure that you've not brought up here. It explains
13 those procedures, it gives timetables for the time to
14 respond, and that should lead to a discourse where we can
15 arrive at a mutual agreement or realize that there's no
16 agreement and proceed a different way.

17 Q Have you availed yourself of any of the procedures
18 contained in the settlement agreement as we sit here
19 tonight?

20 A Would you elaborate on your question?

21 Q Sure. You just told me there are procedures
22 contained within the agreement. I'm using your words.

23 A We did. We met with them on June 10. There's a
24 time frame that after that nobody responded.

25 We did. We pursued it and had no response.

1 That's the point.

2 Q And we had a conversation yesterday, didn't we?

3 A Yes.

4 Q And Ms. Pereira was also on that conversation?

5 A Yep.

6 Q Do you recall me indicating to you that my clients
7 were willing to sit down with you and discuss these issues?

8 A Yes. Yesterday.

9 Q Yeah. And that's the first time you reached out
10 to me. Is that correct, sir?

11 A I have reached out to SPS 35 times last year.

12 Q But the first time you reached out to me was a
13 couple days before we had a meeting. Is that correct?

14 A Only because it's become adversarial instead of a
15 dialogue.

16 Q It wasn't because my client --

17 A I actually asked --

18 Q It wasn't because my client requested or suggested
19 that you speak to me in my office?

20 A No, it was the other way around. I asked Vince
21 if I could speak with you. I called Vince. I called the
22 president of SPS because nobody was doing anything. So,
23 I reached out to Vince Della Fera and I asked for trying to
24 find a dialogue with the residents of Knob Lane because this
25 is affecting their houses and nobody else's in the entire

1 Smithfield Township is really affected directly by these two
2 small changes.

3 I've tried to -- I asked Martha to submit to me
4 the phone numbers for the five residents so I could try and
5 reach Mr. Stockbridge and his husband, so I could reach
6 Bridget. I've talked with Martha and Tim in the past and I
7 tried to reach out to them. I asked Martha for the phone
8 numbers and, instead, she said she gave my phone number to
9 them.

10 I have no way to reach the people to be able to
11 have a communication.

12 I asked Vince last week about following up and
13 that's when I called you after I got clearance that it was
14 okay with SPS for me to have this dialogue.

15 Q You knew I was involved in this matter back in
16 November of 2021. Correct?

17 A No. I'm trying to think when I first saw --

18 Q I'll go to the transcript.

19 A Hold on. Let me answer your question. There was
20 a letter -- Martha put together a list of notes. You
21 covered a letter and I'd like to know when the date of that
22 letter was because the first notification I had was the
23 date when Mr. Karasek -- I never had a letter come to me.
24 The letter came to Smithfield Township. Mr. Karasek
25 graciously forward it to me and made me aware of the letter.

1 I never had any other information. So, I don't know what
2 that date was is all I'm --

3 Q And you knew I was involved at that time, that my
4 firm was involved at that time. Correct?

5 A Whatever that date was, can you tell me?

6 Q Let me look through the transcript.

7 MR. KARASEK: I have in front of me, Mr. DeVito,
8 not meant to steal your thunder --

9 MR. DEVITO: Go ahead.

10 MR. KARASEK: -- a letter that you sent to me
11 dated December 14 with respect to this matter and I don't
12 know if there was an earlier letter where you sent a recap
13 of the argument, but I have a certified letter coming to me
14 on that date.

15 A The letter I have is dated December 14th, 2021.
16 It's a cover letter to two pages of notes that Martha had
17 prepared presumably representing SPS. I don't know exactly.
18 I could look in e-mails to find out exactly when it was
19 forwarded and that was forwarded.

20 We then -- I then went through that, went through
21 researching information, and on January 5th wrote a reply
22 prior to the last hearing. That's my train of events.

23 Q Bear with me one moment.

24 A Back to your point, we've been trying to talk to
25 SPS and specifically to the Knob Lane residents about

1 specific details of what the differences are to try and
2 understand their concerns and to address those concerns to
3 the degree that we can.

4 Q As you sit here today, you're still willing to
5 speak with my clients?

6 A It depends.

7 Q It depends?

8 A I can't go on and do this forever. I started in
9 March of this year with my first effort to try and -- I
10 spoke with Vince then on March 10th or so and I said,
11 "We have two issues to discuss. We've got the meeting in
12 June, June 10th." I said, "Let's see if we can iron this
13 out."

14 I have the photographs -- we still have the
15 display in our office on Frutchey Road of that meeting and
16 I went through this -- the five things we're changing in
17 the PRD amendment, the 2021 amendment, and I pointed out
18 the two items that were concerns and began to hear
19 concerns. Tim was there. We had a discussion. He
20 suggested, for example, instead of three houses why not --
21 "What if you did two?" and I said we should just talk
22 through those things, but there was never any response back
23 and I could never get another meeting or a follow-up to
24 that.

25 So, the only reason I'm saying all of that is I'm

1 not going to do this forever and I don't think you want to,
2 either, and I don't think they do, either, and I don't
3 think the supervisors do, either. So, if you want to set a
4 30-day timeline or a 15-day time line it's not that
5 complicated that I can't sit down with these people.
6 I'm spending the day here tomorrow. I could make myself
7 available for that.

8 MR. KARASEK: Let me ask you this, Mr. Hunter,
9 and, again, it's not a loaded question and it's not meant to
10 compromise you. You are the applicant and the township will
11 afford you whatever time you need just like it would afford
12 the Shawnee Preservation Society and the parties, but if the
13 township would say we are going to reschedule this in one
14 month to allow you that month to see if you could put this
15 to bed with the Shawnee Preservation Society and/or any
16 other individuals are you willing to consider that?

17 MR. HUNTER: How am I assured that they will
18 participate in a reasonable way?

19 MR. KARASEK: If we have Mr. DeVito, whom I've
20 known for many, many years, say that they will participate
21 then I believe we can rely upon that.

22 Now, he is their attorney. I have had many
23 clients who sometimes are blockheads and don't want to
24 listen to me and he can't control that, but he can control
25 that "I will make sure that my clients are available for

1 one, two, three meetings, whatever it takes." But, only in
2 a 30-day window -- I don't want to put this out for
3 forever -- to see if it can be done.

4 Assuming that would occur, would you be willing to
5 consider that? I don't know if board is, but I want to
6 first ask you and then we'll discuss with the board what
7 they think. And it's not meant to jam you. If you need
8 five minutes we'll give you five minutes.

9 MR. HUNTER: I'm just thinking about the past
10 process and the lack of response and the fact that -- and
11 this is not intended to -- it's not intended to be a
12 negative comment about SPS or its membership. The fact is
13 that there are individual points of view that are not
14 necessarily all aligned. I need to have -- to go back to
15 what the settlement agreement said. The president of SPS
16 was the person that was supposed to be in contact and I
17 guess the appellants. It needs to be focused to get this
18 done and it can't drag.

19 MR. KARASEK: And I agree with you and that's why
20 I'm saying just a 30-day window. If, in fact, you're not
21 giving -- you're not able to resolve it or they're not
22 acting in good faith or you're not acting in good faith or
23 something between, a month from now we are no worse off than
24 we were before other than 30 days. You come back to court,
25 you continue to present your case, they present theirs,

1 and the supervisors decide the case.

2 I'm just determining whether or not, from what I'm
3 hearing, is now Mr. DeVito's involved and he would be
4 willing to assist -- you know, we can even say 20 days,
5 but I can tell you, looking at my schedule, it's probably --
6 you know, would be set again for -- now, March days are the
7 same as February days because there are 28 days in February,
8 so it would be March 9.

9 MR. LOVENHEIM: Mr. Karasek, I think before we
10 should even ask Mr. Hunter to respond to that we ought to at
11 least hear from the other parties who are represented by
12 lawyers so we know if there are any other issues in this
13 case that haven't been brought up. I don't know, but

14 MR. KARASEK: I don't think there is. I know that
15 Attorney Charles Vogt is here. However, he is here for
16 clients that deal with the Stage 4, which is really not
17 relevant to that matter here.

18 If there are any other attorneys, please stand up
19 and I stand corrected, but I believe it is only Mr. -- oh,
20 there is one -- yes. Okay, yes. Mr. Wolf. Yes, Mr. Wolf.

21 MR. WOLF: Way back here in the cheap seats.

22 MR. KARASEK: That's okay. You heard what I had
23 to say. You represent people in the 1B section.

24 MR. WOLF: Actually, 1A, Mr. Karasek. It's the
25 Shawnee Valley Homeowners Association, Inc., which is two

1 villages completed in Phase 1A.

2 MR. KARASEK: So, that's built out, but, that's
3 fair, you represent the association. You've heard what I've
4 had to say. Do you have any problem with that if, in fact,
5 Mr. Hunter would agree? It depends upon what he wants to
6 do. We have to follow his lead.

7 MR. WOLF: I don't have a problem with a
8 continuance. I think I would like to perhaps -- my client
9 was not a party to the settlement agreement, although it is
10 quite directly impacted, and we're here and that's going to
11 be up to Mr. DeVito and his clients as to whether we can
12 have a seat at the table at this point.

13 MR. KARASEK: Well, again, it may well be that
14 Mr. Hunter doesn't want to give you a seat or it may well be
15 "Have a seat and we'll see what you have to say." But I'm
16 asking on the general principle if this matter gets
17 rescheduled in 30 days if you have any issue with that.

18 MR. HUNTER: Mr. Karasek, could I pause this for
19 a moment?

20 MR. KARASEK: Sure.

21 MR. HUNTER: I would like to have SVOA make --
22 go ahead with their work today. I don't want anything I
23 say about agreeing or disagreeing to the discussion we're
24 talking about to change the opportunity to get that point
25 of view out there. I would like to know that the

1 individuals that I've tried to speak with, Mr. Stockbridge
2 and his partner, Bridget, I would like to know that they
3 are committed to agreeing to it and I think maybe I'd like
4 to defer the final answer to this until we've had a chance
5 to make sure we've heard a couple of the keys things, Mr.
6 Wolf in particular.

7 MR. LOVENHEIM: So, at the very least, it seems we
8 should hear from Mr. DeVito, we should hear from Mr. Wolf --

9 MR. PRIDE: Let's hear from Mr. Vogt, too.

10 MR. HUNTER: I can tell you conditionally the
11 answer is yes, that's what I've tried to do for nine months
12 and 30 more days -- I can agree to more like 21 that we
13 work together and another seven to figure out how we get it
14 here again. So, more like a 21-day plan.

15 MR. LOVENHEIM: But what I'm saying is I think we
16 should table that -- the answer to that question until we at
17 least hear from the attorneys here on both sides so we have
18 all the information.

19 MR. PRIDE: Let's hear from Mr. Vogt because he's
20 still standing, but before we get to that I think it'd be
21 nice to have all the people that want to be recognized at
22 the moment, hear them, and then come back

23 MR. VOGT: I only have one comment. In addition
24 to Stage 4, my clients are very concerned that there be no
25 changes to the existing non-residential portion of the

1 Shawnee Valley and Shawnee Village PRDs. It's the Shawnee
2 Square property that's been developed for those uses and we
3 just want to make sure that there's no changes to what has
4 been approved up to this point.

5 MR. LOVENHEIM: Charlie, you're speaking of
6 Shawnee Square?

7 MR. VOGT: Yes.

8 MR. LOVENHEIM: Isn't that in a different PRD than
9 this is now?

10 MR. VOGT: If you follow the trail of the approval
11 of this, the non-residential portion of both PRDs was
12 combined. Some of the --

13 MR. BARRETT: Excuse me. Excuse me. Charlie,
14 I don't want to interrupt. It's Brian Barrett. I'm really
15 not -- you're coming in garbled to me a little bit. I just
16 didn't understand your last couple of sentences. Sorry.

17 MR. VOGT: My only comment, Brian, was that the --
18 my one client is very interested that there be no changes to
19 the approval for the commercial, the non-residential
20 portions of the PRD. They are primarily -- they were
21 removed from the Sun Mountain area and moved over to
22 Shawnee Square a number of years ago.

23 MR. HUNTER: If I could answer that, that we
24 understand the language that's in all the documents I've
25 submitted requires a couple of wordsmithing issues to

1 reconcile what Charlie has brought up and we already
2 understand it and we agree in principle and need the time
3 to sort that out.

4 So, my simple answer is we'll work that to make
5 sure it's correct. We don't disagree with the concern.
6 There's a percentage of commercial between the PRDs.

7 MR. LOVENHEIM: I'd just like to comment that the
8 more I learn about this PRD the more I'm amazed it has no
9 exit.

10 MR. HUNTER: It's not simple. I used to have red
11 hair, okay?

12 MR. VOGT: I used to have hair.

13 MR. PRIDE: That said, Ron, I just want to say
14 that I think at least in the moment I'd like to let Mr.
15 DeVito make the rest of his case and I share in Robert's
16 opinion on that, but I also think that, you know, if it
17 sounds like there's a consensus the settlement's
18 controlling, that's got to be followed, and I think it's
19 premature to talk about the end stage until there is
20 something. So, I'm not insisting on a continuance until we
21 hear the rest of what has to be offered. I think that,
22 you know, that can be decided later on, but I think that we
23 have an obligation to at least hear out the parties first.

24 MR. KARASEK: Well, I was just attempting to save
25 some time. If the matter can be settled there's no reason

1 for all of us to sit here for hours on end. But, I
2 understand that. You're the Chair and we'll follow your
3 lead.

4 MR. PRIDE: And I can appreciate that no one wants
5 to waste any time, but I also just think that the township
6 has to allow significant deference to the people that live
7 there to an extent and, also, just hear out the case.
8 I mean, I don't think we have a discretionary docket, so to
9 speak.

10 MR. KARASEK: Mr. DeVito, you may proceed.

11 MR. DEVITO: May I ask for a two minute recess?
12 I want to confirm with my client that, in fact, we are
13 going -- we're willing to meet within a time frame. I
14 understand the Chair's position, but I don't want to leave
15 here and then be told "No, no way, no how." I'd like to
16 know that now so we could just keep forging ahead.

17 So, if I can have two minutes to step outside and
18 speak with my client.

19 MR. KARASEK: Understand, though, the Chair's
20 position is he wants to hear the case. He's not willing to
21 allow time --

22 MR. PRIDE: I want to clarify, I'm willing to hear
23 it out, but, I mean, the reason we're here is because
24 there's no agreement and I think that's clear.

25 So, if you want to go find that now, go ahead.

1 I'm just saying --

2 MR. KARASEK: Okay. Then I misunderstood what you
3 said. So, we can take five.

4 MR. HUNTER: Mr. DeVito, one question. I don't
5 know the rest of your case, I don't know what you plan to
6 come forward with. My question, I think, is whether
7 agreeing to the discussion and the time frame we're talking
8 about, does that affect how you present your case? Would it
9 mean that if we don't come to consensus you move whatever
10 else you've got in your pocket that might torpedo things,
11 would that move to the next hearing or are you -- is your
12 plan to present things that would keep anything from moving
13 forward?

14 MR. KARASEK: Just so you're aware, the way it
15 works is that if you and he can sit down with clients and
16 try to settle the matter it's just as if the clock stops
17 right now. In 30 days or, again, 21 days and then another
18 week for the hearing we come back, we pick up right where he
19 is right now and he can present the rest of his case without
20 prejudice to his position and you can present your case
21 without prejudice to your position.

22 MR. HUNTER: And does that stop the proceedings
23 with any other -- the other attorneys that are here tonight?
24 Specifically, Mr. Wolf.

25 MR. KARASEK: I don't know why Mr. Wolf could not

1 be at the table.

2 MR. HUNTER: And proceed with his information
3 tonight so we have that done and then come back to the
4 table --

5 MR. KARASEK: You could, but let Mr. DeVito first
6 talk to his client and see where he is because then we have
7 to go back to the board because, again, I'm not a fourth
8 supervisor. It's not my intent to be a supervisor, it's my
9 intent to try to streamline the proceedings and if it can be
10 settled to everyone's satisfaction so be it.

11 But, go ahead, Mr. DeVito. You have five minutes.
12 It's 10 of 7:00, so we'll be back at 5 of 7:00.

13 MR. DEVITO: Thank you very much.

14 (Recess from 6:50 PM to 7:00 PM.)

15 MR. KARASEK: We're going to go back on the
16 record. It's 7 o'clock and we're back on the record after a
17 brief break at the request of Attorney DeVito and can we --
18 tell us where everyone is and then the supervisors can
19 decide on how they want to proceed.

20 MR. DEVITO: Sure. I had an opportunity to speak
21 with my clients. We are willing to certainly meet, good
22 faith meaningful conversation with Mr. Hunter or his
23 representatives to discuss the issues that are of concern
24 with the preservation society and we will do so certainly
25 within the time frame that this board may allot.

1 MR. KARASEK: And if, in fact, you come to some
2 agreement what will be your position moving forward on this
3 particular matter?

4 MR. DEVITO: If we can agree on the issues of
5 concern for my client we'll stand down.

6 MR. KARASEK: Okay.

7 MR. HUNTER: What is the township's role, since
8 it's a three-party arrangement that I think we talked about,
9 in the discussions? Does it need to be active --

10 MR. KARASEK: It becomes a little difficult
11 because, obviously, the township here is sitting as -- the
12 supervisors are sitting as judges in the case and for now
13 the judge to become a part of the negotiations is
14 problematic. So, I'm not sure how we do that. I'm only
15 hoping that whatever agreement, if there can be an agreement
16 made with you and Attorney Wolf, who you've got to be
17 careful, he's a really good lawyer, and Mr. DeVito is, too,
18 that it will meet the township's approval.

19 But, I was just saying before during the break
20 that the supervisors -- that maybe one of them should be at
21 the table, too, but it can't be now that I'm thinking.
22 They can't be judges and also part of the negotiation and
23 settlement. It just can't happen. So, they would have to
24 be out of the loop and, hopefully, whatever you agree to
25 meets with their approval so that they can then sign off.

1 'Cause they do have to sign off assuming we are changing the
2 settlement agreement. I'm not trying to steal Mr. DeVito's
3 thunder, but if we're changing the plan that might be
4 different than changing the agreement, but that's left for
5 another issue.

6 MR. LOVENHEIM: What are we doing? Are we
7 changing both or changing one or the other?

8 MR. KARASEK: Well, that will be the decision to
9 be made if the matter proceeds.

10 MR. LOVENHEIM: We're sort of in the dark here as
11 far as where this is going next.

12 MR. KARASEK: All right. So, Mr. Wolf, you're
13 okay with what you're hearing?

14 MR. WOLF: If I understand it, there's going to
15 be, actually, two separate phases to this. There's the
16 settlement agreement, which my client is not a party to and
17 cannot really have a say unless the parties allow my client
18 to have a say, and then there's this proceeding where my
19 client is a party which would want to have their feelings
20 known about this amendment.

21 MR. KARASEK: Okay. So, that being said --

22 MR. LOVENHEIM: Wait a minute. What Mr. Wolf is
23 saying is there's other -- there's another side to this.
24 I'm just wondering if that should be considered in this --
25 in these negotiations because it's a part of this procedure.

1 MR. KARASEK: That certainly is up to Mr. Hunter,
2 Mr. DeVito. Again, they are not parties to the settlement
3 agreement so that they cannot be part of that, if you will,
4 but they are parties to this proceeding. So, if you want to
5 hear what Mr. Wolf's position is before you make a decision
6 on this agreement we can certainly do that, take him out of
7 turn to at least make a presentation without affecting
8 Mr. DeVito and then we can --

9 MR. LOVENHEIM: I'd like to hear --

10 MR. KARASEK: -- decide what to do.

11 MR. LOVENHEIM: Because I think it's probably
12 relevant to the larger question of the settlement agreement.

13 MR. KARASEK: So, let's do this, Mr. DeVito, with
14 your permission. Let me hear -- or let us hear what Mr.
15 Wolf's position is without taking testimony and if it looks
16 like the efforts to try to resolve this matter are going
17 south we'll just go back to your testimony and we'll
18 continue on.

19 MR. DEVITO: That's fine. Thank you.

20 MR. WOLF: So, I have entered my appearance on
21 behalf of Shawnee Valley Owners Association, which is the
22 owners association responsible for a large part of Phase 1A
23 of the development consisting of Oakdale Village and
24 Woodland Village which are roughly west of the proposed
25 Phase 1B across the lake, if you will.

1 That association owns and is responsible for
2 maintenance of Shawnee Valley Drive, which is a private
3 road, as I'm sure most of you know, running from Holland
4 Drive -- or Hollow Road, excuse me, to Mount Nebo Road and
5 currently is utilized for access by residents of the
6 Wooddale and Oakland Village -- excuse me, Oakdale and
7 Woodland villages and North Slope as well and that traffic
8 flows out onto Hollow Road or some of it up to Mount Nebo
9 Road, also.

10 The proposal here and part of the settlement
11 agreement, as we interpret it, entails an objection to the
12 use of Lakeside Drive for a means of egress, a primary means
13 of egress, to the Phase 1B development.

14 The impact of that, which may or may not have been
15 considered to some folks, is that Shawnee Valley Owners
16 Association, and particularly the 131 residents of Oakdale
17 Village and Woodland Village, now have all of that traffic
18 coming out onto a private road that they maintain. Those
19 folks will then continue down to Hollow Road or onto Mount
20 Nebo Road, so the impact to the rest of the Shawnee Valley
21 area, as I believe Mr. Hunter alluded to, is almost a non-
22 issue. It really is a question of how does this impact the
23 Knob Lane area.

24 Again, the preservation society and the township
25 and, then, Shawnee Development, Inc. entered into an

1 agreement in 2009. Significantly, Shawnee Valley Owners
2 Association, despite being an independent, nonprofit
3 corporation for managing those two homeowner's association
4 areas, was not a party to that agreement, was not asked to
5 participate, was not asked for its opinion, was not involved
6 in any discussions, and did not have an opportunity to sign
7 off on that even though it could be probably the most
8 impacted by that agreement, certain provisions of that
9 agreement; specifically, anything relating to Lakeside
10 Drive.

11 So, my client is here in the context of wanting to
12 voice its concerns about access to this proposed Phase 1B;
13 specifically, any suggestion that access should be
14 restricted or limited to Shawnee Valley Drive, a private
15 road, and how its residents would be impacted by that
16 decision.

17 Again, my client has not been able to participate
18 previously in these discussions. This settlement agreement
19 was foisted upon it and came to it by some surprise years
20 ago and it doesn't want to see that happen again. That is
21 why we are here tonight and expect to be part of this
22 process going forward.

23 Mr. Karasek, correctly indicated that we are not
24 a party to that agreement, so we do not have a right to
25 renegotiate that agreement if there's going to be a

1 renegotiation. I think if there's going to be any
2 resolution of this the voice of Shawnee Valley Owners
3 Association has to be heard. Whether it's part of those
4 discussions among the parties to the settlement agreement
5 or whether it's in reconvening these proceedings for final
6 approval by the township, Shawnee Valley Owners Association
7 must be involved. Thank you.

8 MR. KARASEK: Mr. Wolf, what's the road that you
9 say you are objecting to have access --

10 MR. LOVENHEIM: Lakeside Drive?

11 MR. WOLF: Lakeside Drive, yes, is the road that
12 is, as I understand, proposed to run across the Sun Mountain
13 recreation area, across the upper dam, and then connect
14 into 1B and then ultimately up through and onto Shawnee
15 Valley Drive.

16 MR. LOVENHEIM: But on the other side it connects
17 to where, Hollow Road?

18 MR. WOLF: Hollow Road, yes.

19 MR. HUNTER: Robert, it's the working name that
20 was put into the construction documents for the road we're
21 talking about, that's all. So, it's the connecting road.
22 It's called Lakeside Drive in the construction

23 MR. WOLF: I think we've referred to it a couple
24 times -- mostly it's Lakeside Drive. Maybe once or twice
25 it's Lakeview Drive, unless I misheard, but that's the

1 road -- I think we're all talking about the same road going
2 across the upper dam.

3 MR. LOVENHEIM: That's the road that -- I think it
4 was in the 2007 plan, right? It was eliminated from the
5 2009 settlement?

6 MR. WOLF: I'm not sure who the question was
7 directed to, but, as I understand it, and Mr. Hunter can
8 express his opinion as well, that road is in the existing
9 PRD that is being modified. In the 2009 settlement
10 agreement, which, again, was an agreement among three
11 parties, not a public hearing at a public meeting such as
12 this on a zoning application, there was a proposal I believe
13 to remove that road.

14 MR. LOVENHEIM: Is that correct?

15 MR. HUNTER: Do you want to answer?

16 MR. KARASEK: No, I'm not going to answer, I just
17 to refine the issue. So, the issue here is road access,
18 that's why you're here.

19 MR. WOLF: The issue here, more specifically,
20 is traffic that will be fully directed onto a private road
21 versus having direct access to a public road when the net
22 impact is really only to the Knob Lane area.

23 MR. LOVENHEIM: So, wait a minute. You're saying
24 right now all the traffic will go onto Shawnee Valley Drive.
25 If Lakeview is opened, as it was in the previous plan,

1 the 2007 plan, then there would be two entrances, one from
2 Hollow Road and one from Shawnee Valley Drive, right? We're
3 not eliminating any access to Shawnee Valley Drive, we're
4 just making two

5 MR. WOLF: That's correct. If the Lakeside Drive
6 is continued into the PRD, in other words it remains in the
7 PRD, there are two means of egress; one directly out to
8 Hollow Road from Phase 1B by Lakeside Drive, the other via
9 Lakeside Drive to Shawnee Valley Drive and then out to
10 either Hollow Road or Mount Nebo Road.

11 So, my point with the impact is that if you take
12 the road across the dam out then all the traffic just goes
13 onto Hollow Road by another route. So, the impact is to the
14 specific area of Knob Lane.

15 MR. LOVENHEIM: Ted, do you know if SDI or
16 Wyndham/SDI ever did a traffic study, an engineering study
17 of all of this before?

18 MR. HUNTER: Absolutely. It's required to get the
19 Highway Occupancy Permit for the proposed connection to
20 Hollow Road because of Hollow Road being a state road.

21 MR. LOVENHEIM: There was a traffic study done?

22 MR. HUNTER: Yes.

23 MR. LOVENHEIM: Was there a traffic study done on
24 Shawnee Valley Drive?

25 MR. HUNTER: The traffic study is determining how

1 many -- the quantity of homes and townhomes and how many
2 trips that generates according to typical statistical models
3 feeding into the intersection of Hollow Road. So, there's
4 no study of how many vehicles go on Shawnee Valley Drive
5 today.

6 MR. LOVENHEIM: There was never a study, then,
7 of -- in other words, before the settlement agreement was
8 made that Lakeside or Lakeview Drive was eliminated going to
9 the new development on the other side of the dam, right?

10 MR. HUNTER: It eliminated the connection to
11 Hollow Road and forced all traffic to Shawnee Valley Road.

12 MR. LOVENHEIM: And in doing so was there any
13 engineering, traffic study done of the impact on Shawnee
14 Valley Drive?

15 MR. HUNTER: There was nothing specifically
16 submitted to anybody about Shawnee Valley Drive. Nothing
17 was communicated that I'm aware of to SVOA about all the
18 vehicles generated by the new development going onto
19 Shawnee Valley Drive.

20 MR. LOVENHEIM: So, the answer is no.

21 MR. HUNTER: Yeah. If you're looking for the
22 impact of cutting off the road, it was never presented to
23 anybody.

24 Just to be clear, Lakeside Drive, Lakeview Drive,
25 I don't remember which one it is, Lakeview Drive is in the

1 2005 plan and the 2007 plan. It's been there for a while in
2 the PRD plan. It's also in the final construction documents
3 that have been part of every permit that we've got. So,
4 environmental issues are all resolved with it, stormwater
5 management is all resolved with it, and it's -- our PRD
6 amendment, instead of deleting the road, we're asking to
7 retain it as it's been engineered, designed, and permitted
8 through all the various agencies for the last few years.

9 MR. LOVENHEIM: Okay.

10 MR. KARASEK: Just getting back to Mr. Wolf again
11 so I'm clear, the issue, then, is, as you said, the amount
12 of traffic directed to a private road as opposed to a public
13 road.

14 MR. WOLF: Correct. And, obviously, the net
15 effect would be a sole means of ingress and egress into the
16 PRD.

17 MR. KARASEK: What I'm trying to get at is it's
18 not a landscaping issue, it's not a buffering issue.

19 MR. WOLF: No, it's an egress issue, yes.

20 MR. KARASEK: That's what I need to know.

21 So, that being said, okay, I'm not sure where
22 Mr. Hunter is or where the board is. How do you want to
23 proceed?

24 MR. PRIDE: Can I say just something quickly?

25 I think that a lot of -- it's not that we heard that issue,

1 but now we kind of have to leave it up to the two parties
2 that are not the township, I think, to decide whether --
3 you know, what role that plays in the negotiation.

4 So, I would say -- hold on one second. I just
5 want to say, you know, I think that we should get to
6 whatever timetable the two parties can agree to now and then
7 decide. But, I have Tim who wants to make a comment, so I
8 don't know if it's --

9 MR. CARBONE: I mean, I'm willing to go swear in,
10 if you want, but I'd just like to make -- comment to Mr.
11 Wolf and I wish that the Shawnee Valley homeowners
12 association was with us in 2007 when SPS and the four people
13 that decided to sue SDI and Smithfield Township and they had
14 ample opportunity to find out all about what was going on
15 because it was in the newspapers and it was a big hullabaloo
16 all the way going back and it goes way back before 2007.
17 And it's not our fault or anyone else's, the township's or
18 anyone, that those -- that homeowners association didn't
19 come and become involved because all those issues were well
20 known to the public. It was in the newspaper, it was on
21 the -- it was -- they had ample time to come and participate
22 like we did.

23 We put our money where our mouth was and we put
24 many, many hours of time into coming to this settlement,
25 which I'm sorry that they didn't -- they weren't a party,

1 but they had ample opportunity to become a party.

2 MR. LOVENHEIM: Tim, at the time I think the
3 association itself was totally controlled by Wyndham/SDI.

4 MR. CARBONE: Not my fault.

5 MR. LOVENHEIM: No, it isn't. It has nothing to
6 do with SPS. I think if there's fault it lies with SDI/
7 Wyndham and also with the township for not pointing this
8 out, but certainly not SPS.

9 MR. CARBONE: Well, no. So, basically what I'm
10 saying -- I'm not trying to blame anyone, I'm just trying to
11 say it's a non-issue. They weren't involved. It was
12 nobody's fault that they weren't involved, they just
13 weren't. They didn't have the information they needed
14 because they didn't come to the meetings for whatever
15 reason. I'm not placing the blame on anyone, it's just
16 what happened.

17 MR. PRIDE: I would respectfully say that I think
18 it makes sense to allow -- they already have party status in
19 this and I think, unfortunately, that's the way it had to
20 fall. You can't really ... I mean, between the people that
21 are party to the amendment, they can decide whether or not
22 to add people, but that's got to be approved by the Court
23 and all that stuff.

24 So, I would say it makes sense to let them talk
25 first and then let us arbitrate that. I don't think it

1 makes sense for us to get into the weeds on any of that.
2 I think there's a point that there's a modern issue that the
3 people that live there now care about it, but I don't think
4 we can get into that until we hear back from the two
5 parties.

6 MR. LOVENHEIM: I agree.

7 MR. KARASEK: The question becomes are we putting
8 this over to another day or not. It's a simple question.
9 It's really not complicated.

10 MR. PRIDE: I think we have to.

11 MR. KARASEK: Are we putting it over to allow SPS
12 and the applicant to see if they can solve it? If they do,
13 SPS is now out of the loop and it's only Mr. Wolf that's in
14 the loop, unless you can reach an agreement with him, and
15 any other party people who believe that they have not been
16 properly taken care of.

17 MR. HUNTER: I have one thing I think I want to
18 ask Mr. Wolf with respect to the concern you raised from the
19 other direction, call it from SVOA.

20 VOICE: We can't hear you back here. I'm sorry,
21 there's other people talking.

22 MR. HUNTER. I was asking Mr. Wolf how many single
23 family homes are in the SVOA and approximately how many
24 townhomes are in the community there that use Shawnee Valley
25 Drive that would be affected by the new development all

1 loading onto Shawnee Valley Drive. How many are there,
2 roughly?

3 MR. WOLF: As I understand, the existing homes
4 within the Shawnee Valley Owners Association are 131 and two
5 unbuilt lots, I believe.

6 VOICE: That's correct.

7 MR. WOLF: As to --

8 MR. HUNTER: The townhouses?

9 VOICE: There are 240 townhomes in North Slope III
10 which also uses Shawnee Valley Drive.

11 MR. HUNTER: Thank you.

12 MR. LOVENHEIM: I think the other figure's
13 significant. It's just Shawnee Valley Drive. I think
14 there's about 60 family homes on Shawnee Valley Drive.

15 MS. HEILAKKA: Excuse me, Robert. Ma'am, can we
16 have your name, please?

17 MS. DONNELLY: Libby Donnelly. Mr. Wolf is
18 representing SVOA. I'm the board president for SVOA
19 homeowners association.

20 MR. PRIDE: Now that that's out of the way,
21 I think we have to have a reasonable agreement to determine
22 when the next meeting date for this will be. That's --
23 there's no way this is going to get resolved tonight between
24 both parties. I think we have to afford them both time to
25 consider what they want to do.

1 MR. KARASEK: I would recommend -- and, again,
2 you're the board, not me, Mr. Chair -- to give 30 days.
3 That should be enough time for them to sit down, try to sit
4 down, resolve the matter, and, if not, you say tonight the
5 next hearing is going to be March 9 at 6:00 PM and if it's
6 settled, fine, and we only have a half a hearing or if it's
7 all settled we have no hearing or if it's not settled we
8 just complete the rest of the hearing and be done with it.
9 But I would not go much longer than that in deference to
10 Mr. Hunter.

11 MR. PRIDE: Okay, March 9th at 6:00 PM, a
12 continuation of what we're doing today. I think that gives
13 both parties enough time, but I defer to their counsel.

14 MR. KARASEK: Before -- yeah, Mr. Chair, Mr. Wolf
15 was going to say something.

16 MR. WOLF: Just something briefly and I'll go sit
17 down. In response to Mr. Carbone's comment of what's
18 happened in the past, I have extended a request and an offer
19 to participate at some level in discussions between Mr.
20 Hunter and SPS. So, if that was the wrong in the past I
21 suggest we don't repeat that mistake.

22 Now, I haven't heard a response on that and I
23 didn't mean to put Mr. DeVito on the spot, but that request
24 is out there, so I ask that you consider that.

25 MR. KARASEK: And I think that it's understood and

1 I don't know if anyone is prepared to respond this evening,
2 but you're here, you're making that request, and I think
3 that hopefully will be considered.

4 MR. WOLF: Thank you.

5 MR. KARASEK: All right, Mr. Chair. I'm sorry,
6 I interrupted you.

7 MR. PRIDE: That's okay. I was just going to
8 suggest March 9th. I think that 30 days should be
9 sufficient at 6:00 PM. It seems like people are still able
10 to make it both in person and on Zoom. Does that work for
11 the parties in this case?

12 MR. DEVITO: Mr. Chairman, it works for SPS.

13 MR. HUNTER: March 9th works. I have a question.
14 Is there anything that the supervisors are imposing upon the
15 parties to accomplish?

16 MR. KARASEK: I think the supervisors would like
17 to see if the matter could be settled, at least with the
18 preservation society so they're out of the loop. If you can
19 also somehow accommodate the requests of -- or concerns of
20 Mr. Wolf and the owners association, okay, then that may
21 well resolve the entire case. But, even if we get half of
22 it settled that's that much less that has to be
23 controverted, that much less that has to be ruminated,
24 consumed, absorbed, and then a decision made.

25 MR. PRIDE: Brian, does March 9th work for you at

1 6:00? Our regular meeting is at 4:00 that day just like
2 today.

3 MR. BARRETT: Yes, no problem with me. I just
4 have a question. I'm concerned -- again, doing my due
5 diligence, I'm seeing that my name's signed to a lot of
6 different documents agreeing to the court order, court
7 settlement, and I think that -- sadly, I think Ron
8 expected -- this is a screwed up thing. It's not just two
9 parties it's the three parties and all three parties have to
10 be on the same page or we go to a court injunction.

11 I don't know -- No. 1, I don't even know why the
12 hell we're here. To tell you the truth, this should have
13 been -- it should have been agreed that these two parties
14 sat down and maybe, just maybe, Ron, and I may be wrong,
15 one of our supervisors -- I would volunteer to be that
16 supervisor because I've been involved with this for many
17 years and my signature is on quite a few of these court
18 documents.

19 MR. KARASEK: I would say, Brian, and this is
20 Ron speaking, that if you are made part of the discussions
21 regarding settlement then I think you need to recuse
22 yourself from voting on the project if it doesn't settle.
23 I think that's what you would have to do. I don't think --

24 MR. BARRETT: Myself and Robert you're saying.

25 MR. KARASEK: No, no, just you. If you want to

1 sit in and listen to what is going on and become part of the
2 negotiation process then I don't think you can then vote on
3 the project if, in fact, it doesn't get settled and then the
4 matter proceeds to a contested hearing. And that's not a
5 good option, but I don't see what other choice you have.
6 I've never seen a judge go with the parties in the back room
7 to try to settle the case and then come out and try to
8 decide the case.

9 VOICE: It happens all the time.

10 MR. KARASEK: It doesn't happen all the time.
11 I've been a lawyer for 47 years. It does not happen all the
12 time.

13 MR. BARRETT: There's three parties involved and
14 we put ourselves, possibly, by allowing this, this hearing,
15 to take ourselves out of it.

16 MR. KARASEK: We don't have a choice. That's what
17 the law requires.

18 MR. BARRETT: I don't know -- I'm long distance
19 from SPS. Robert, I think, should be careful. Just
20 recently resigned member. I had to recuse myself.

21 MR. KARASEK: I believe we're making this all more
22 complicated than it needs to be. We simply want to
23 determine if two parties in the proceeding can settle their
24 differences. If not, we come back and continue the hearing.
25 If they do, we come back and continue the hearing with

1 whatever issues are left.

2 MR. BARRETT: Ron, this is the first instance I
3 know that Attorney Wolf is represent -- I didn't know he was
4 involved and he's asking to be a party to the negotiation,
5 but that's all. I guess if they allow that

6 MR. KARASEK: He was here at the last hearing.
7 He was here at the last hearing and was given party status.
8 Because he's in the back you may not have heard that at the
9 last hearing, but he was here.

10 Mr. DeVito, you were going to say something.

11 MR. BARRETT: Can I ask who engaged his services?

12 MR. KARASEK: Who engaged what service?

13 MR. PRIDE: The Shawnee Valley Owners Association.

14 MR. BARRETT: Shawnee Valley Owner's Association.

15 MR. KARASEK: I think that would be a violation of
16 attorney-client privilege.

17 MR. HUNTER: No, he's just asking simply who hired
18 him.

19 MR. KARASEK: I think that's a violation of a
20 privilege. I wouldn't tell anyone -- --

21 MR. BARRETT: All I want to know is who the heck
22 is Shawnee Valley --

23 MR. PRIDE: Brian, it's Oakdale and Woodland
24 Village, if I'm correct.

25 MR. BARRETT: Do they have a board? Do they have

1 a board?

2 MR. KARASEK: He wants to know what person --

3 MR. PRIDE: Mr. Wolf, you can come up and answer
4 that.

5 MR. BARRETT: Attorney Wolf, I'm just asking who
6 engaged your services?

7 MR. WOLF: Can you hear me, Mr. Barrett? Can you
8 hear me?

9 MR. BARRETT: Yes, sir.

10 MR. WOLF: I'm sorry if I wasn't clear before.
11 I'm representing the Shawnee Valley Owners Association,
12 Inc., which is the association which manages Woodland
13 Village and Oakdale Village.

14 MR. BARRETT: All I say is that they have a board
15 of directors; is that correct?

16 MR. WOLF: They do and their president is here,
17 Ms. Donnelly, who spoke a few moments ago and I have been
18 engaged to appear on their behalf. I represent the board of
19 Shawnee Valley Owners Association and have for approximately
20 two years. So, not just in this proceeding.

21 MR. BARRETT: Thank you very much.

22 MR. WOLF: You're welcome.

23 MR. PRIDE: That said, I understand Brian's
24 concern. I don't want the township out of the loop either,
25 but I think it's clear we have to be the last people to talk

1 when this happens. Correct, Ron?

2 MR. KARASEK: I don't know how we do that because
3 we're sitting at a hearing. Remember, the last settlement
4 agreement was done without any hearing, it was done by way
5 of a meeting, if you will, and that's how the settlement
6 agreement was done in 2009. We were not part of the
7 agreement in 2010 or 2011, the first amendment, second
8 amendment.

9 We were part of the motion that was presented to
10 the Court to approve Amendments 1 and 2 and I signed off on
11 that, but there was no hearing. This becomes problematic,
12 but I would leave that for another day. Let's see if two
13 parties here can resolve their differences.

14 MR. PRIDE: I agree. So, it's March 9th, 6:00 PM.
15 That works for Mr. DeVito, that works for the preservation
16 society, and, Mr. Hunter, you've indicated that works for
17 you.

18 MR. HUNTER: Yes, sir.

19 MR. PRIDE: Okay. So, I would not impose any
20 conditions on that. I think that we have to, you know --

21 MR. KARASEK: Engage in free and open
22 communication.

23 MR. LOVENHEIM: Hope for the best.

24 MR. KARASEK: Hope for the best and if it doesn't
25 work out we come back here and start again.

1 MR. PRIDE: That said, do I hear motion to that
2 effect so we can address the other issues at the next
3 hearing?

4 MR. LOVENHEIM: I make the motion.

5 MR. PRIDE: Motion by Mr. Lovenheim. Do I hear a
6 second? I'll second the motion. Is there any discussion?

7 Seeing none, all in favor of that motion? Aye.

8 MR. LOVENHEIM: Aye.

9 MR. BARRETT: Aye.

10 MR. PRIDE: So, we will reconvene this hearing
11 March 9th at 6:00 PM and we will leave it to the Shawnee
12 Preservation Society and Mr. Hunter to --

13 MR. KARASEK: Or their counsel to contact the
14 supervisors or the township as to what occurred.

15 MR. PRIDE: Right.

16 MR. KARASEK: So we know how to proceed.

17 Since there's nothing else, you can entertain a
18 motion to adjourn.

19 MR. LOVENHEIM: I make a motion to adjourn.

20 MR. KARASEK: And everyone should be aware --
21 I want to make sure that everyone is aware of the fact that
22 if you want to provide public comment when we come here
23 again on the 9th even if half the case is settled or the
24 whole case is settled you will be given an opportunity to
25 provide your public comment. You're not going to be stifled

1 in that regard.

2 MR. PRIDE: That said, Mr. Lovenheim made a motion
3 to adjourn. Do I hear --

4 MR. ANDERSON: Is it too late for a question from
5 one of the owners.

6 MR. BARRETT: I would like to second the motion to
7 adjourn.

8 MR. PRIDE: Yeah, the motion to adjourn is non-
9 debatable. So, all in favor of that motion say aye.

10 BOARD: Aye.

11 MR. PRIDE: And, sir with the question, if you
12 want to contact the township or, if you're still with us,
13 you can ask now quickly, but we're --

14 MR. ANDERSON: This is Tom Anderson and I'm Ted's
15 partner. I just want to understand that it's a tri-party
16 agreement. Ted and I brought the three parties together
17 when we -- we couldn't bring SPS to talk with us, so we went
18 this route to bring the three parties together.

19 If we don't get anywhere with SPS because we
20 haven't what is our -- what is our step after that?

21 MR. PRIDE: Let me say this. I would respectfully
22 say that you should consider asking counsel that question
23 and not the township's counsel. We can address that after
24 that meeting.

25 MR. KARASEK: I would just say that if the matter

1 cannot be resolved come the 9th. We continuè with the
2 hearing.

3 MR. HUNTER: And to clarify? Shawnee Preservation
4 Society filed suit against Smithfield Township and the
5 developer, SDI.

6 MR. PRIDE: Right. But all this has to end now
7 because we adjourned the meeting. So, we're going to keep
8 in compliance with the Sunshine Law, so I will end this now.

9 MR. BARRETT: I'm sorry. Tom Anderson, did you
10 misstate -- you're bringing suit against Smithfield Township
11 and SPS?

12 MR. PRIDE: I did not hear him say that.

13 MR. ANDERSON: No, Brian.

14 MR. PRIDE: All right.

15 MR. BARRETT: I wouldn't expect that you would.
16 I'm sorry.

17

18 (Whereupon, the above hearing adjourned at
19 7:35 p.m. on Wednesday, February 9, 2022.)

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

I, Donna G. Kenderdine, R.P.R., do hereby certify that the foregoing was taken stenographically by me on February 9, 2022, and that this transcript is a true and correct transcript of the same, fully transcribed under my direction, to the best of my ability and skill.

I further certify that I am not a relative or employee of any of the parties in this action; that I am not a relative or employee of any attorney in this action; and that I am not financially interested in the event of this action.



Donna G. Kenderdine, R.P.R.
Notary Public