

BZA HEARING AUGUST 29, 2013

BOARD OF ZONING APPEAL FOR THE

CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, AUGUST 29, 2013 - 7:30 p.m.

-held at-

SENIOR CENTER

860 MASSACHUSETTS AVENUE

CAMBRIDGE, MASSACHUSETTS 02139

PRESENT FOR AUGUST 29, 2013 MEETING:

BOARD MEMBERS:

CONSTANTINE ALEXANDER, CHAIR

BRENDAN SULLIVAN, MEMBER

DOUGLAS MYERS, MEMBER

SUSAN SPURLOCK, MEMBER

JANET GREEN, MEMBER

----- Jill Kourafas, CSR No. 149308 -----

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I N D E X

<u>CASE</u>	<u>PAGE</u>
Case No. 10487: 44 A,B,C Sacramento	10
Case No. 10488: 22 Murdock Street	39
Case No. 10489: 10 Canal Park	55
Case No. 10490: 3 Jefferson Street	72
Case No. 10491: 0 Blanchard Road	87
Case No. 10490: 3 Jefferson Street	95
Case No. 10492: 395 Washington Street	97
Case No. 10493: 166 Prospect Street	143
Case No. 10494: 41 Stearns Street	175
Case No. 10477: 288 Norfolk Street	181
Case No. 10467: 113 Hamilton Street	191

P R O C E E D I N G S

**THURSDAY, AUGUST 29, 2013**

**(7:30 p.m.)**

(Sitting Members: Constantine Alexander, Brendan Sullivan, Douglas Myers, Janet Green.)

CONSTANTINE ALEXANDER: The Chair will call this meeting to order.

The first item of business -- we're only sitting four for this item -- we have a request for an extension of a variance that was previously granted. The variance was for a location at 131 Harvard Street.

There's a letter in the file from Attorney Sean Hope. Attorney Hope represented the petitioner in the original case.

And the letter states as follows: "Please accept this correspondence as an application to extend the statutory one-year time limitation for rights

granted in the above-captioned variance to be exercised for the maximum period of six months as permitted by Mass General Laws Chapter 40A, Section 10. Granting the requested extension will allow the necessary time for the state affordable housing funding awards to be distributed and a building permit application to be submitted.

Thank you for your cooperation."

Unless there's discussion, I would move that we grant the extension requested.

Anyone wishing to discuss the matter?

No.

Okay. The Chair moves the extension be granted as requested with respect to the property at 131 Harvard Street.

All those in favor say "aye."

Four in favor of the extension.

(Favor: Constantine Alexander, Brendan

Sullivan, Douglas Myers, Janet Green.)

CONSTANTINE ALEXANDER: We'll take a brief recess until the fifth member of the Board arrives.

(Brief recess taken.)

(7:40 p.m.)

(Sitting Members: Constantine Alexander,  
Brendan Sullivan, Douglas Myers, Susan Spurlock, Janet  
Green.)

Case No. 10488: 22 Murdock Street. 22  
Murdock, LLC - c/o David Blumsack. Variance: To  
raise roof to increase attic space and a two-story side  
addition. Art. 5.000, Sec. 5.31 (Table of Dimensional  
Requirements.)

CONSTANTINE ALEXANDER: The Chair will next  
call a continued case, Case No. 10448, 222 Brattle  
Street, also known as 220R Brattle Street.

The Chair is in receipt of the letter from the  
counsel for the petitioner, Andrew E. Bram, B-R-A-M,  
and addressed to this Board.

"The petitioner in the above -- petitioner in  
the referenced matter hereby requests that the case be  
continued from

August 29, 2013 to the Board meeting of

December 19, 2013.

Is that the correct date, by the way?

SEAN O'GRADY: I think so. I gave him that date, so I'm hoping the date is correct.

CONSTANTINE ALEXANDER: Okay.

December 19, 2013. The basis for this request is that the Board meeting of June 13, 2013, when this case was opened, the Board suggested that before it heard the matter, it recommended that the petitioner first request the ruling from the Commissioner of Inspectional Services as to whether or not any further approval was needed to complete the parking area in question. This was done by letter to the Commissioner on June 24, 2013. And the Commissioner ruled on August 1, 2013 that no further action was necessary and the petitioners could complete their parking area.

The complaining neighbor has appealed the Commissioner's determination and that appeal is to be heard by the Board on

October 10, 2013. Because any decision following that hearing will not likely be posted with the City Clerk until sometime in early November, any appeal by either party to Superior Court will not need to be filed until the end of November or whenever the 20-day statute appears.

Accordingly, if the Board will grant the requested continuance until December 19, then by that date, the then status of this matter will be clearer and the variance application, if necessary, can be heard.

Thank for your consideration."

Any discussion from any Members of the Board before I ask for public comment?

None.

Anyone wishing to be heard on this?

The Chair notes no one wishes to be heard.

The Chair moves that this case be continued until 7:00 p.m. on December 19th, on this being a waiver

for time for decision having been assigned on the conditions that: (1) The sign announcing or advising of this application be modified to reflect the new date of December 19, and most importantly, the new time of 7:00 p.m.

And further on the condition that to the extent the petitioner wants to submit revised plans or specifications or what have you, they must be in our file by 5:00 p.m. on the Monday before for us to consider them.

All in favor of continuing the case on this basis say "aye."

Five in favor. Case continued.

(Favor: Constantine Alexander, Brendan Sullivan, Douglas Myers, Susan Spurlock, Janet Green.)  
(7:45 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Douglas Myers, Susan Spurlock, Janet Green.)

Case No. 10487, 44 A, B, C Sacramento Street,

Franziska Amacher. Variance: To reconfigure rear decks to make fire escape egress safer and decks more useable. Add wall thickness on entire envelope to increase insulation. Art. 5,000, Sec 5.31 (Table of Dimensional Requirements).

- - -

CONSTANTINE ALEXANDER: We'll return to our regular agenda the first case we'll hear is Case No. 10487, 44 A, BC Sacramento Street. Anyone wishing to be heard on this matter.

Please come forward.

I want to announce we're aware of two other continued cases. One on Hamilton Street and one on Norfolk Street.

Neither of these cases can be heard right now because the petitioner of each case did not properly change the sign.

And therefore, we have to hear the time -- hear them at the at the time the sign posted

which in the case of Hamilton is 9 p.m. and in the case of Norfolk Street is at 9:30 p.m. those cases will to the be heard now. They will be heard later in the evening.

FRANZISKA AMACHER: Franziska Amacher.

F-R-A-N-Z-I-S-K-A. Last name A-M-A-C-H-E-R.

JANET GREEN: Can you speak up?

FRANZISKA AMACHER: So anyhow. We're trying to get a variance for a changed rear deck. And the reason why we want to change the rear deck has to do with the way the curb deck is configured with the egress stair from the third deck being right underneath the egress fire escape.

And so, the fire escape lands right on the stairs, so it's very unsafe kind've condition for egress.

We also wanted to make it deeper and get it further into the backyard which actually is considered the front yard. And the actual setback requirements

are much smaller than what we have here left over.

So this is the first issue.

We also are changing the decks a little upstairs to make them usable and safer to come on to the fire escape, but more usable.

CONSTANTINE ALEXANDER: Can we stop right there?

You make two points. Usable and safer. And safer we understand. You make the point in your advertisement. Usable is something else.

Usable is --

FRANZISKA AMACHER: Usable for egress.

Because it is -- right now you have to climb out of the window to get onto the ladder. But what with we're proposing is to come right from the deck with a little gate to the --

CONSTANTINE ALEXANDER: But aren't you on some of these decks making the deck usable for living space and for tables and people to congregate outside?

FRANZISKA AMACHER: Yes.

CONSTANTINE ALEXANDER: Just so you understand. That's a sensitive issue for this Board because there's privacy implication for abutters. We're sympathetic to safety. Less sympathetic not necessarily fatal, but less sympathetic to people who want to increase their outdoor decks because of the privacy issue for their neighbors.

FRANZISKA AMACHER: What we're doing on the second and first levels, we're pushing the floor plate away from the house that is closest. So actually they gain some distance to the deck.

CONSTANTINE ALEXANDER: How much are you extending deeper into the deck?

FRANZISKA AMACHER: Two and a half feet.

CONSTANTINE ALEXANDER: What is the square footage between the old deck and new deck?

FRANZISKA AMACHER: On the second floor it's -- on the second floor the width is almost the

same, but it is coming out another two and a half feet, and it is set back from this other property.

DOUGLAS MYERS: Two and a half feet for a length of how many feet?

FRANZISKA AMACHER: For a length of 11 feet.

DOUGLAS MYERS: That's an additional 25 square feet?

FRANZISKA AMACHER: Yes. On the third floor, the deck goes from eight foot -- 105 to 85 square feet, so it reduces. And the first floor has a decrease of two -- increase of two and a half times, about 90 feet, and now -- I'm not totally sure about that. I can measure right after going through this.

And then -- so, we have discussed it with the neighbors.

BRUCE PETSCHKEK: We have approval.

CONSTANTINE ALEXANDER: Give your name, please.

BRUCE PETSCHKEK: Bruce Petschek,

P-E-T-S-C-H-E-K.

So we talked to all the four neighbors that abut, got approval from all of them. I have a letter and two emails from them.

CONSTANTINE ALEXANDER: When you say you talked with them about it, did you show them the plans?

BRUCE PETSCHKEK: We showed them the plans.

CONSTANTINE ALEXANDER: Did they understand the size of the decks are being increased and they didn't have a problem?

BRUCE PETSCHKEK: With all three emails are in there.

And we made some modifications for our neighbors' concerns.

CONSTANTINE ALEXANDER: Could you sort've summarize each of the modifications?

BRUCE PETSCHKEK: We had a plan to put the stairs going into the --

FRANZISKA AMACHER: If you look the original

plan, the stairs project out.

And with our modified proposal after talking with the neighbors, we have inserted the stairs into the deck.

BRUCE PETSCHKEK: So Bob and Chris have a house right here. And their kitchen window looks out this way and the stairs that would have extended out would cut off their prettiest view.

CONSTANTINE ALEXANDER: But none of them expressed any concern about the fact that there will be a lot more outside living on the decks?

BRUCE PETSCHKEK: No.

FRANZISKA AMACHER: So the second thing that we're proposing to do is to add the insulation on the outside, therefore reducing the energy use, output and so on. And because the setbacks are quite small, it protrudes another three inches into the setback.

CONSTANTINE ALEXANDER: That's the reason you're here tonight. If you didn't do the insulation

change, would you still need to get zoning relief for the deck modification?

FRANZISKA AMACHER: Yes.

CONSTANTINE ALEXANDER: Because?

FRANZISKA AMACHER: Because -- let's see. It's non-conforming.

CONSTANTINE ALEXANDER: In the rear yard it's conforming, I thought.

JANET GREEN: They don't have a deep rear yard. It's a front yard.

FRANZISKA AMACHER: There's a front yard. You actually have -- front yard setbacks are smaller than the requirements than the rear setbacks. The existing right side setback is only seven feet. Seven and a half feet is required. With our proposal, it will be 6.8 feet. Three inches --

CONSTANTINE ALEXANDER: Okay.

FRANZISKA AMACHER: So that's it.

CONSTANTINE ALEXANDER: That's your

presentation?

FRANZISKA AMACHER: Yes. I have some 3D images here, if you'd like.

CONSTANTINE ALEXANDER: This is the final plan?

FRANZISKA AMACHER: Yes, except the stairs are now inserted.

CONSTANTINE ALEXANDER: Do you have ones with the stairs, the inner stairs? Innies rather than outies like a bellybutton?

FRANZISKA AMACHER: Right here.

CONSTANTINE ALEXANDER: She should have had the stairs modified plans with the stairs inside by 5:00 on Monday previous under our rules. We're not supposed -- we're very clear about this. We don't consider plans. We can deal with this tonight. But you shouldn't be bringing the plans that you want us to approve tonight to us.

FRANZISKA AMACHER: Unfortunately, we had

some difficulty getting in touch with the neighbor.

BRUCE PETSCHKEK: Our neighbors were on vacation.

CONSTANTINE ALEXANDER: You could still put the plans in the file.

FRANZISKA AMACHER: We didn't know that was an objection.

CONSTANTINE ALEXANDER: From your presentation is this plan the same as this plan except for the stairs being innies rather than outies?

FRANZISKA AMACHER: That's right.

CONSTANTINE ALEXANDER: Any questions from Members of the Board at this point?

JANET GREEN: Could you explain the fire egress a little bit? I didn't quite understand that.

FRANZISKA AMACHER: Now it goes onto a flat deck as it comes down. But before it went onto a stairway as it came down.

JANET GREEN: Okay.

FRANZISKA AMACHER: And on the -- on this level, now it's -- you have a little platform for which there's a gate to the fire escape. Before you had to crawl out of the window.

BRENDAN SULLIVAN: Is there a unit on the third floor?

FRANZISKA AMACHER: Yes.

BRENDAN SULLIVAN: What is the second means of egress out of the unit now?

FRANZISKA AMACHER: Fire escape.

BRUCE PETSCHER: Through a window?

BRENDAN SULLIVAN: A legal?

FRANZISKA AMACHER: Yes.

BRENDAN SULLIVAN: In other words, they crawl out this window onto a roof?

BRUCE PETSCHER: Yes. On the third floor.

BRENDAN SULLIVAN: That's hardly code compliant or legal.

FRANZISKA AMACHER: He came back and said it

was.

BRENDAN SULLIVAN: What happens when the person gets on the roof, what do they do, jump?

BRUCE PETSCHKEK: There's a railing. They get on the roof. There's a railing around them and the railing leads them to the fire escape. It has been that way for the 30 years.

CONSTANTINE ALEXANDER: We're not blaming you. You're not the first house or only house that has this issue.

JANET GREEN: On the third floor, they come out of the window and crawl over the railing?

BRUCE PETSCHKEK: No, no. They come out of the window and the railing blocks them from falling off the roof.

CONSTANTINE ALEXANDER: Then they climb over the railing.

BRUCE PETSCHKEK: And then the fire escape is on the wall. Actually, it comes this way (*indicating*),

they back onto it, holding onto the railing. I think there's a picture here. Not the model of safety.

FRANZISKA AMACHER: You can see it's a little --

BRENDAN SULLIVAN: You can fully understand and appreciate the need to improve the fire exit procedure. But I think what is really driving this is the need to capture some interspace being taken up by a stairway, enhance the interior space and push the exit facility to the outside, and you're basically you're gonna wind up with decks and coming down a ladder.

FRANZISKA AMACHER: The interior stairs have been blocked off so there are closets from the third floor.

BRENDAN SULLIVAN: But it should have been a functional interior stairway.

FRANZISKA AMACHER: Way back it was, yeah.

BRENDAN SULLIVAN: They should not be blocked off.

CONSTANTINE ALEXANDER: When did -- when was it blocked off? Recently?

BRUCE PETSCHKEK: Before.

CONSTANTINE ALEXANDER: Before you owned the property?

BRUCE PETSCHKEK: Yes.

CONSTANTINE ALEXANDER: How long have you owned the property?

BRUCE PETSCHKEK: 30 years.

DOUGLAS MYERS: The second floor is a rental unit?

BRUCE PETSCHKEK: Yes.

DOUGLAS MYERS: And the third floor is a rental unit. Did you consider making improvements to the third floor fire egress at the time you considered these other fire egress improvements that you did make?

BRUCE PETSCHKEK: I don't understand.

DOUGLAS MYERS: Did you consider making improvements to the third floor fire egress at the same

time as these other improvements to fire egress which you do propose to make?

BRUCE PETSCHKEK: We do have -- the third floor will be improved as well. There will be a flat deck to walk to the fire escape.

DOUGLAS MYERS: That's the improvement?

BRUCE PETSCHKEK: Yes. There will be a door, and a flat deck to the fire escape.

JANET GREEN: As opposed to a window and a roof?

BRUCE PETSCHKEK: Yes.

CONSTANTINE ALEXANDER: Any other questions?

I'll open the matter up to public testimony.

Anyone wishing to be heard on this matter?

As far as I can tell, it appears no one wishes to be heard.

The Chair is in receipt of three letters from neighbors submitted by the petitioner. The first

letter is from Timothy Rowe, R-O-W-E, who resides at 64 Gorham Street. That's the property directly behind you, if you will?

BRUCE PETSCHKEK: Yes.

CONSTANTINE ALEXANDER: "I'm Bruce Petschek's neighbor. We live at 64 Gorham Street, and a corner of our property touches the rear corner of his property at 44 Sacramento Street. My wife Amy and I have lived at 64 Gorham Street since 1998 and have known Bruce since then. He's particularly famous in our area for his excellent Halloween show for kids. Bruce showed us his plans and we want to communicate to the Board we're in support of them. The proposed changes are practical and do not overly inconvenience us. Bruce has also been easy to work with on issues such as plan for the fence that divides or property. Thank you for your consideration."

We're also in receipt of a letter from Bob Rosa, R-O-S-A.

BRUCE PETSCHKEK: That's an email to me, so some of it is not pertinent.

CONSTANTINE ALEXANDER: Thank you. I will only read the part pertinent. It's signed by Bob Rosa as I indicated and Kris, K-R-I-S, who I assume is his partner if not his spouse. And the letter it's addressed to Mr. Petschek.

"Kris and I looked at the new plans and think they're fine. Thanks."

The rest of the letter is not germane to tonight.

BRUCE PETSCHKEK: That's similar. It gets to a point where we were about fence issues rather than --

CONSTANTINE ALEXANDER: And also an email to Bruce from Dave Wood who resides --

BRUCE PETSCHKEK: On Gorham Street as well.

CONSTANTINE ALEXANDER: Thank you. Because it's not in the letter.

"Thanks for attempting to reach out. Sorry

to have missed you when you came by. We're pleased that the gate and fence issue is off the table for the reasons you have stated. It's ancient history at this point. These plans look fine and are pretty self-explanatory. When do you expect to begin? I'll take out this -- only read what is relevant to what we have to decide. Most of the rest is about the fence which is not before us. I won't read the rest of the letter.

That's the sum and substance of public comment.

Any closing comments you want to make?

FRANZISKA AMACHER: No.

CONSTANTINE ALEXANDER: You don't have to.

I'm going to close all commentary and open the matter up for discussion by the Board.

Anyone have any thoughts, observations, concerns?

BRENDAN SULLIVAN: Well, we've been getting a few of these lately and really what it is, is it's

almost like the dog wagging the tail here. The real aim here is to capturing interior space by eliminating an interior staircase and pushing that to outside of the building. Sure it's very beneficial to the interior of the space, and yet, you're imposing more mass to the outside, and I just can't support it.

CONSTANTINE ALEXANDER: Okay.

Let me say I share your concerns and I concur in the observation about we're seeing these kinds of cases here. I would observe that they're still within the FAR. In other cases, we've had other people do that. They're increasing the FAR. And although you may be, you're not pushing it over the requirements for the district. There are legitimate safety issues here.

My issue, though, still is basically is Brendan's that you're pushing the envelope a little bit in a sense. If you said to me and came before us and said we want to improve the egress for safety reasons,

we're going to reconfigure the decks and the staircase, I would say "Go to it," but you're also creating living space which IS a massing issue.

And I'm not sure HOW I'm going to vote yet, but I'm troubled by that. I think if you had come with a different proposal, you would have no problem getting my vote. But that's -- those are my comments.

Anybody else wish to speak?

JANET GREEN: I do. I really take into account the fact the changes on the interior of the house happened somewhat sometime before the person owned the house. And what they're doing is taking a system that was put into place for the egress for fire at that time and trying to improve it now, so it's safer. It took me awhile to grasp the difference of what it was. But I do feel it's an improvement.

And the other thing I thought, was that, in fact, the part of the letters that didn't refer to the case that we're considering were quite informative

about that relationship of the people in the neighborhood to each other. And as such, I felt more strength from them, those letters because obviously they would have spoken up if they had any concerns about outdoor living space. So I'm inclined to vote for it.

DOUGLAS MYERS: Can I ask that you pass down the sheet?

(Pause.)

Thank you.

CONSTANTINE ALEXANDER: Are we ready for a vote or do people want to make any public comment?

DOUGLAS MYERS: I'll make an additional comment. There's a slight increase in the FAR, but it's very small. The building is already substantially over the ratio and this will increase it further.

But on balance, I think the increase of the FAR is very, very small.

With respect to the deck on the second floor,

the increase is worth noting. On the other hand it's nearly a two and a half foot strip that's 11 feet long. I'm not sure it's gonna greatly -- lead to a greatly increased use of the deck.

FRANZISKA AMACHER: I would like to point out, if I may, that the deck is further away from the house that is closest.

DOUGLAS MYERS: On the side?

FRANZISKA AMACHER: On the side. So really it's a better. On the other side there's no house right around there.

DOUGLAS MYERS: So although the issue is not free from doubt on balance, I'll vote for it.

SUSAN SPURLOCK: I would concur with my two fellow Board members. I think the massing is pretty significant, but I understand the safety concerns and I'm also moved by the support of your immediate abutters, so I would support the request for a variance.

CONSTANTINE ALEXANDER: Thank you.

I think we're ready for a vote unless people want to continue the discussion.

The Chair moves this Board make the following findings with regard to the petition that a literal report through the provisions of the ordinance would involve a substantial hardship to the petitioner; the hardship being that the safety of the occupants of the building would be severely compromised and the situation today is not in any way adequate; the hardship as to owing circumstances relating to the fact that the structure is now a nonconforming structure, so any exterior modification would require zoning relief and the relief may be granted without substantial detriment to the public good or nullifying the substantial derogating the intent or purpose of the ordinance.

The Chair would note this project appears to have unanimous neighborhood support. That certainly, in part, at least the relief being sought is to the benefit of the city by increasing the safety of the

occupants of the structure. And that, otherwise, the relief is rather modest in nature.

On the basis of these findings, the Chair moves that a variance be granted to the petitioner as requested on the condition that the work proceed in accordance with the plot plan dated August 29, '13, prepared by Amacher & Associates and initialed by the Chair.

All those in favor of granting the variance, please say "aye."

Four in favor.

One opposed.

The variance is granted.

(Favor: Constantine Alexander, Douglas Myers, Susan Spurlock, Janet Green.)

(Opposed: Brendan Sullivan.)

(Sitting Members: Constantine Alexander, Janet Green, Douglas Myers, Susan Spurlock, Brendan Sullivan.)

CONSTANTINE ALEXANDER: The Chair will call Case No. 10488, 22 Murdock Street.

Anyone here wish to be heard on this matter?

CHRISTOPHER BLAKE: My name is Christopher Blake, B-L-A-K-E, and David Lumsack L-U-M-S-A-C-K.

CHRISTOPHER BLAKE: So we have --

BRENDAN SULLIVAN: Before you start, there's one issue I really need to raise and that would be the posting sign in that I was a little disappointed when I eventually found it between the screen because the requirement obviously is that it be clearly visible from the public way. And even though Murdock is a private way, we still consider it public. But I had to go around twice before I could see the sign.

And then eventually, I said, "Oh, there it is behind the screen, not clearly visible. And I believe

a neighbor raised the same issue of not seeing the posting, and so I really raise the issue, I'm not sure if the posting requirement had been completely fulfilled and satisfied.

CONSTANTINE ALEXANDER: To follow on with what Mr. Sullivan said, there's a letter in our file received from Anthony Iarrobino, IARROBINO, who resides at 19 Murdock Street and this letter begins with saying: "I did see a posting of the hearing inside a darkly lit window dimly visible from the street. Most neighbors had not noticed it."

And then it says "Two units directly across the street at 23 Murdock Street have new owners as of August 15 and end of July 2013. These owners have not been informed by letter of the hearing, but they may be most affected. No other neighbor I spoke to on Saturday, August 19 (just a few) as the owner at 17 Murdock Street or 15 Murdock Street had not received notice of the hearing. The attic variance -- that goes

on into the merits. I won't get into that. And this person,

Mr. Iarrobino --

ANTHONY IARROBINO: I'm

Mr. Iarrobino.

CONSTANTINE ALEXANDER: No problem. I'm reading your letter anyway. You will have time to add to it.

The letter goes on to say "I respectfully request in view of the above the hearing be postponed so neighbors can discuss the impact of the variances. They might be fine, but there should be more adequate notification, and the Chair would note, I did go by the property and I had a problem finding the sign. It's not the most visible place to put a sign. It was behind a dark screen and sort've up as I recall. One of the windows, it was up a bit.

I think technically it complies with our ordinance. Although that's my judgment and not

necessarily the judgment of the Board.

The person, the new owner, who did not get notice, that's why you have a sign posting. The notice is based upon whatever the registered owners of it on a certain date, and if a property ownership changes after that date, the new owners are not going to get the notice unless the old owners forward the new notice to the new owners. That's between them and not you.

So we have a question at the outset of the adequacy of the notice. If it's inadequate, what we would do is we would postpone the case, continue it to a later date.

Brendan, do you want us to vote on whether to continue the case or...?

BRENDAN SULLIVAN: Well, I raise the issue, and again, I'm not singling you out, but this has been a recurring event that's been happening here with people who have been putting them in the upper windows, putting them in behind screens, and if I go down the

street and I was looking for a sign, and if I cannot see the sign and there was someone coming in -- I mean, Murdock Street was so narrow there was no place for me to go. And I literally -- I'm looking and I said, "There's no sign." I'm thinking usually Gus picks up on the signs, and then, all of a sudden, I happened to look and say, "Oh, there it is."

To me, it was not clearly visible. Very simple to have just put it on the face of the building with duct tape or something, or a poster board or something like that and that would have complied with the requirement to be clearly visible from the public way.

ANTHONY IARROBINO: That was -- my apologies. It was my responsibility to put the sign up. I picked it up from the city. I ran over to the house. If you know the house now, it's literally right on the street, I was -- I thought there was no intention to hide it from anybody. I thought it was the easiest

spot from the street if I put it in the door. I was trying to hide it behind the weather so the weather wouldn't destroy it in the rain. I looked at it and I came outside and I taped it to the window. So it wasn't behind the screen. It was taped to the window itself. I thought either that or the door and the door is in a little bit of an inset. I figured that was the closest to the street.

BRENDAN SULLIVAN: I would have put it right on the face of the house so that everybody could clearly see it.

JANET GREEN: You know the other thing I would say, we talk to people quite a bit about this, because the notification and you probably heard from the case before, the neighbors are coming out and they have seen the plans and there's a sense there's a neighborhood feeling about it. In this case, it's rare to get a letter from somebody saying that they have not seen the sign. I mean, that does indicate something.

And in fact they have gone to the neighbors and people hadn't seen it, so maybe you haven't showed the plans to anyone or whatever, but I just thought that was pretty striking that the sign wasn't visible to the people who lived on what is a very narrow street.

ANTHONY IARROBINO: Some people have seen it.

JANET GREEN: The letter seemed to indicate the person had gone around and spoke to different people.

DAVID BLUMSACK: That's one person speaking.

CONSTANTINE ALEXANDER: That one person is here tonight. I'm going to open it up to public testimony right now only on the question of notice.

DOUGLAS MYERS: What matters is the people who don't see it, that's what matters.

CONSTANTINE ALEXANDER: The people who don't know about it.

DOUGLAS MYERS: That's the people we're

concerned about.

DAVID BLUMSACK: Understood.

BRENDAN SULLIVAN: You know, fairly -- granting a variance that we exceeded our authority in granting a variance not based on statutory requirements, we can probably defend that. Not complying with the public notice requirement, no defense for that.

And the issue has been raised and put out there, and again, it's for your protection as well as for anybody else's. The neighbor across the street could say "I contest the decision based on the fact that it was not clearly visible on the public way."

CONSTANTINE ALEXANDER: Let me point out, let me underscore Brendan's point, which is good: If someone doesn't like the decision we make on the merits, they have 20 days from the time the decision is rendered to the City Clerk to take an appeal to the court. If they fail to do that, the case is over.

If you did not comply with the notice requirements of our statute, there's no 20-day cutoff. Literally, a year or two from now a neighbor could come up and you built your addition and we granted your relief and they could challenge it. And if you lose, you're stuck.

There are cases, frankly not in Cambridge, but other cities where people have been forced to tear down a building they built because they did not adequately give notice. So it's a very important point. We're not being nitpickers.

Okay. But I want to give everybody time to come down to -- on the question of notice to speak if they want to speak. They don't have to.

Sir, do you want to add anything to your letter or does your letter say it all?

ANTHONY IARROBINO: Tony Iarrobino, I-A-R-R-O-B-I-N-O, and I own 19 with my wife. I actually did not know the content of the changes. I

haven't seen a notice. But I did receive in the mail, and I did check that my neighbors had not seen it, my neighbor at 17 and Ron Norton when I checked on Saturday.

So I called down this morning to look at the plans. I had some concerns that I would have loved to talk with the proposers about. But I'm quite concerned that the building, the units next door across the street, 23, both changed hands. Unit 1 was sold July 31 and one was sold August 15. They're not always there. The dog is there and was there this morning. I'm concerned they haven't really figured out and had time to talk about it. I would love to talk with you all a little bit and get -- it could be quiet fine. It seems like a bit of a big change.

CONSTANTINE ALEXANDER: Anyone else wish to be heard?

No one else wishes to be heard.

I -- you can request a continuance from us

based on what you heard or you could say I want to go forward in which case, we'll take a vote to see if we'll go forward. I'll let you speak first.

CHRISTOPHER BLAKE: Which has the least prejudice connected to it?

CONSTANTINE ALEXANDER: Neither has any prejudice connected to it.

CHRISTOPHER BLAKE: We're here -- I was under the impression that notice was clear. This is the first I'm hearing of it. I'm happy to present. Maybe that will address some of the issues.

CONSTANTINE ALEXANDER: Once we present -- no, we've got to decide.

CHRISTOPHER BLAKE: I understand. You either need to make a decision about whether the Board is comfortable going forward giving the context of notification. If it means it -- if we're able to come to the next meeting and it's only simply that kind of change, I think -- we want -- we're trying to be a good

neighbors here. This is not arriving under the cover of darkness. If it would make it comfortable for everybody, I think that we would -- better we should make the err on the side of caution than to sort've move forward.

CONSTANTINE ALEXANDER: I think it's wise, sir. The next one would be October 12. Do we have one in the September slot?

SEAN O'GRADY: September 12 is full.  
September 26 is open.

CONSTANTINE ALEXANDER: Okay. On September 26, how many openings do we have?

SEAN O'GRADY: No cases continued.

CONSTANTINE ALEXANDER: Okay. I'm going make a motion. Let's see how it goes from a vote point of view.

A motion to continue this case until 7:00 p.m. on September 26, is that okay with you, Mr. Blake?

CHRISTOPHER BLAKE: That's fine.

CONSTANTINE ALEXANDER: I will say, by the way, let me take the vote first and I'll make the motion.

So the Chair moves that this case be continued as a case not heard until 7:00 p.m. on September 26 on the conditions that the sign be posted a little more visible, and the date on the sign be changed to September 26 and the time be changed to 7:00 p.m.

We'll hear it earlier. If you don't change the time, we'll hear it the same time as now.

CHRISTOPHER BLAKE: No problem.

CONSTANTINE ALEXANDER: On the further condition that the petitioner sign a waiver of time for decision. We need to have that otherwise we have to turn you down tonight and you don't want that.

Lastly, should you decide you have changes you want to make to the plans to the revised plans, they must be in our file on 5:00 p.m. on the Monday before September 26.

CHRISTOPHER BLAKE: Not a problem.

CONSTANTINE ALEXANDER: All those in favor of continuing the case on this basis, all those in favor say "aye."

Five in favor.

(Favor: Constantine Alexander, Brendan Sullivan, Douglas Myers, Susan Spurlock, Janet Green.)

CONSTANTINE ALEXANDER: You have new neighbors in the neighborhood who bought their houses, reach out to them.

DAVID BLUMSACK: They came in after the fact.

CONSTANTINE ALEXANDER: I think it's a good neighborly thing to do.

- - - -

(8:00 p.m.)

(Sitting Members: Constantine Alexander, Janet Green, Douglas Myers, Susan Spurlock and Brendan Sullivan.)

Case No. 10489: 10 Canal Park, AT&T - c/o David Ford, Centerline Communications. Special Permit: To takeover Nextel's recently decommissioned site by installing 12 panel antennas on Nextel's existing facade mount locations and utilizing the 12 feet by 20 feet rooftop equipment shelter left behind by Nextel.

CONSTANTINE ALEXANDER: The Chair will call Case No. 10489, 10 Canal Park. Anyone here wishing to be heard?

SUSAN ROBERTS: So this is AT&T's presentation with respect to 10 Canal Park, and my name is Susan Roberts, and I represent AT&T. I'm from Anderson & Kreiger, and with me is David Ford from Centerline Communications.

We're here after meeting with the Planning Board last week, and we advised the Planning Board as to what we're doing here is as David just said, we're taking over a decommissioned site from Nextel and using the exact same mounts and locations as Nextel.

CONSTANTINE ALEXANDER: Visually it's exactly the same.

SUSAN ROBERTS: It should look exactly the same. Except the actual and photo sims will be different because Nextel's antennas aren't there. So they actually won't show any antennas. So, you know, no antennas there. And the photo sims will show AT&T's antennas.

Essentially what we're doing is we're going on this very large penthouse, and we're proposing to install 12 antennas, four per each of the alpha, beta and gamma sectors. We're mounting them on the screen wall around the rooftop, and there's an existing screen shelter, and we'll be installing antennas on

the existing equipment shelter.

In addition, there will be remote radio units, radio head units, there will be GPS and other cabling and so forth that will be there. The antennas are all painted to match the brick or shelter depending on which surface they're mounted on.

CONSTANTINE ALEXANDER: Is that the way they're painted now?

DAVID FORD: The equipment shelter is already disguised as brick. So if you look at it, Nextel, it's got a brick face on it.

SUSAN ROBERTS: So essentially AT&T's has taken care to blend -- to use antennas and other equipment that blends with the facilities visually. The building itself is within sort've Cambridgeside Galleria, and there's office buildings there, so it's a commercial area.

If you would like, we can begin to go through the requirements for --

CONSTANTINE ALEXANDER: Before you do that, you said you met with the Planning Board. I didn't see a comment from the Planning Board in the files.

SUSAN ROBERTS: They didn't make a recommendation one way or another. Their view is it's already been there, we don't have anything else to say.

CONSTANTINE ALEXANDER: They did not express any opposition?

SUSAN ROBERTS: They did not.

So, there isn't anything written. There's no recommendation yah or nah from them at all.

CONSTANTINE ALEXANDER: Why don't you go through the requirements.

SUSAN ROBERTS: Okay.

AT&T submitted the application on January 17, and when we submitted the application, we filed an application package actually included a statement of the Zoning Ordinance requirements and AT&T's response.

For purposes of the hearing, we can go through this and this would relate to Section 4.32, Subsection G1, Section 4.40, Footnote 49 of the ordinance.

AT&T's has the requisite licenses. We have filed those. You always make a finding with respect to our licenses. With respect to our choice and placement of antennas, as I said a few minutes ago, AT&T has intended to minimize the visual impact of the facility by sighting it in the exact locations of the existing -- preexisting facility, the Nextel facility, so it won't look any different than what had been approved previously.

Again, we're on the penthouse screen wall along with the screen shelter. The antennas are mounted.

We're in a commercial area, a nonresidential zoning district. There's no need for us to make any proof regarding the nonresidential location that's required by 4.32, G1, No. 3 because we're -- as I said,

we're not in a residential location.

With respect to our radiofrequency coverage, we did search for other alternative locations in the area.

CONSTANTINE ALEXANDER: I don't think you need to make that.

We don't have to make that finding because it's nonresidential use.

SUSAN ROBERTS: I think that's it with respect to the wireless ordinance.

And then with respect to the Special Permit criteria, we, I believe, need to make a finding that the Special Permit would not be a detriment to the public interest and, of course, we would suggest having the facility in this location would serve the public interest by virtue of it in -- by virtue of it being beneficial to AT&T's customers, to the city at large in the event of emergencies.

And that there isn't any kind of material

increase in traffic or patterns of access or egress, nothing that would cause congestion or substantial change in the neighborhood or its character.

There isn't anything about the facility that would adversely effect the neighborhood, as I mentioned above.

It visually blends with the building. Hardly noticeable at all.

There isn't any pollution that's caused by the facility, as you probably have heard. The facilities require monthly maintenance generally. Maybe an hour a month, maybe two hours at the most. If there's more frequent visits to the site, generally there's no issue with regard to traffic. No pollution of water, waterways.

I believe I've mentioned all of the relevant requirements for granting a Special Permit, so at this time, we would ask the Board to acknowledge that our application is complete and to grant us the Special

Permit, and we're very interested in answering any questions, if you have any.

CONSTANTINE ALEXANDER: Thank you.

Any questions from Members of the Board?

BRENDAN SULLIVAN: No, just a couple observations.

If you go to C3, the very top left, it says "proposed AT&T's facade mounted antenna." It looks like that one is above the roof line, if you will. And, again, some of the photo sims are not that clear. But anyhow I would want that to be below the roof line of that.

It may very well be. That might be a slip of the hand. I would ask it not exceed or protrude above the roof of that.

DAVID FORD: Photo 3 --

BRENDAN SULLIVAN: The other observation I would have, as far as the color, I'm not even sure what they are now. But we would want them to be dark in

nature. Not to be simulated brick, but whatever that brick is. I mean, it's obviously a brown on some photo sims and it looks black in others. But I would like it to be the color of the brick, any solid colors.

SUSAN ROBERTS: Which ones are referring to?

DAVID FORD: Photo 3B, Page 8. It shows just about flush -- I think it's just a sleight of hand. We're proposing the same size antennas that were existing and the existing antennas were designed to be flush with the top.

BRENDAN SULLIVAN: That's fine. Okay. My only other -- my opening salvo was Photo 1A, 2A should look more like 3A going forward, and you can tell Mr. Duberry that especially 2B, you know, it's...

CONSTANTINE ALEXANDER: I would underscore that.

BRENDAN SULLIVAN: You come down and we beat up on you and you're the point person and you're getting tired of getting beat up by the Board of Zoning Board

in Cambridge, and -- obviously, someone goes out to take pictures and they send them along and pass them down the line. But they need to have a little be -- be a little more sensitive to what we look for because we do look at them.

CONSTANTINE ALEXANDER: To underscore and emphasize that last point. Where this case a different case than just doing the same thing that's there now, I would not hear this case tonight because of the inadequacy of the photo sims. The only thing that saves you tonight for this case is you're doing exactly what's there now. You really have to -- we've had this with our carriers. We sent them back when they came with photo sims like this when they're all shade and nothing discernable.

BRENDAN SULLIVAN: Maybe routine to them, but not to us.

DOUGLAS MYERS: We're already getting to know the people, so we want to put things on the proper

basis when you come back here again and again, we should have a two-way understanding of this.

SUSAN ROBERTS: Understand, definitely understand.

CONSTANTINE ALEXANDER: Anyone wish to be heard on this matter?

The Chair notes there's no one that wishes to be heard. The Chair doesn't see any letters or other communications in the files, so any final comments before we close all public testimony?

SUSAN ROBERTS: The only final comment I would have is that I appreciate your comments about the photo sims. We'll take care to make sure we don't present anything to you that's too dark or difficult to discern and we'll just ask that you grant our Special Permit for this evening at this point.

CONSTANTINE ALEXANDER: Thank you.

Debate, comments, or do we want to go to a vote?

JANET GREEN: Vote.

CONSTANTINE ALEXANDER: The Chair moves this Board make the following findings: That the petitioner has presented evidence that would appear on its face at least sufficient to demonstrate that they are a duly licensed Federal Communications carrier in good standing; that they have taken steps to minimize the visual impact of what is being proposed to be done. Although I think we want to add a further condition when we get to the vote itself regarding the visual impacts, but steps have been taken to minimize the visual impact.

That the proposal is not in a residential district and other findings are not relevant; that with regard to the Special Permit itself, which is what you're seeking, that what you're proposing to do will not cause hazard, congestion or substantial change in established neighborhood character; that the continued operation of adjacent uses will not be adversely effected by what you are proposing to do; the no

nuisance or hazard will be created to the detriment, health, safety or welfare of the occupant or the citizens of the city; and that the proposed relief will not impair the integrity of the district or adjoining district or otherwise derogate from the intent or purpose of this ordinance.

In regard to this last requirement, the Chair would note that we, this Board, have already approved telecommunications equipment on this property almost identical being proposed, and so those findings we made in the past, which allowed those to go forward would apply equally to this proposal tonight since the neighborhood or the structure itself has not been modified since the time of the last relief that we took.

So on the basis of all of this the Chair moves that a Special Permit be granted to the petitioner to proceed with the work as proposed, subject to the following conditions: That the work proceed in conformity with the photo simulations submitted by the

petitioner; first prepared by Duberry, and the first page which is initialed by the Chair, it's dated 5/30/13. And that -- I'm sorry, I read for the schematics.

For the plans that were prepared not by Duberry but SAI dated 8/30/13.

DAVID FORD: The plans were Duberry itself.

CHAIRMAN MICHAEL GARDNER: And photo simulations also initialed by the Chair that the work to be done with regard to attaching to the penthouse, that the antennas will not protrude above the roof line, and further, that the color of that penthouse be the color that matches the building, but not necessarily -- will not attempt to replicate the pattern of the brick. We want a solid color. The color that's there now. And that this -- these facilities be maintained with regard to the color and visual impact.

If they deteriorate, you need to repair them

and upgrade them. To the extent you discontinue the use of these antennas, that you remove all of these -- of this equipment as promptly as is practical and to restore the building to its prior condition that's reasonably practical.

I think that covers it. That should be it.

All those in favor of granting the Special Permit subject to these conditions, say "aye."

Five in favor.

(Favor: Constantine Alexander, Brendan Sullivan, Douglas Myers, Susan Roberts, Janet Green.)

(8:15 p.m.)

(Sitting Members: Constantine Alexander, Janet Green, Douglas Myers, Susan Spurlock and Brendan Sullivan.)

Case No. 10490: 3 Jefferson Street. 3 Jefferson Street, LLC - c/o Marc J. Truant. Variance: To reconfigure and rebuild exterior fire egress stair, and the egress way from basement of an existing non-conforming three-family dwelling. To rebuild the roof of an existing non-conforming three-family dwelling at a higher elevator. Art. 5.000, Sec. 5.31 (Table of Dimensional Requirements).

Special Permit: To relocate and enlarge window and door openings on the rear elevation of an existing non-conforming three-family dwelling to allow for reconfigured and rebuilt exterior fire egress stair. Art. 8.000, Sec. 8.22.2.C (Non-conforming structure).

CONSTANTINE ALEXANDER: The Chair will call

Case No. 10490, 3 Jefferson Street.

Anyone wishing to be heard on this?

MARC TRUANT: Marc, T-R-U-A-N-T, M-A-R-C.

BRENDAN SULLIVAN: I'd like to raise a thought again just before we get into the merits of it. That the application is to reconfigure and rebuild the fire escape stairs and the egress from the basement so on and so forth, and the Special Permit is to relocate and enlarge windows into an opening that's at the rear elevation of an existing nonconforming piece of land, and to allow for the reconfigurations and the rebuilding the exterior fire egress stair. That was the original application. There have been subsequent changes to that. My understanding is there's no fire egress stair now.

MARC TRUANT: That's correct.

BRENDAN SULLIVAN: I'm wondering how that jives with the application and what is before us now.

CONSTANTINE ALEXANDER: If anything, maybe

I'm wrong, I'm catching up. The advertisement advertises for things that are not going to be -- relief that is not necessarily going to be sought tonight. So you over-advertised. If you under-advertise, that's a real problem. Over advertise, I'm not sure.

BRENDAN SULLIVAN: I'm wondering about the nature of it, and again, I raise it because I didn't want to go through this whole thing and come to a -- and have to reassemble the five of us again. I wanted to get that on the table. And whether or not abutters say, "Well, a fire egress stairway is one animal, decks are a separate issue and a different animal."

MARC TRUANT: Well, I can talk to some of that. These are actually letters from the two rear abutters.

CONSTANTINE ALEXANDER: Before we go forward. Let me elaborate what Brendan is pointing out. He's raising an issue perhaps about inadequate notice through the advertisement. That's a risk to

you, if we decide to go forward tonight.

Someone -- and we grant you relief.

You may have heard the case a couple cases earlier. Someone can come and challenge whatever relief we grant you on the grounds of an inadequate that notice, they can bring that from a year from now. Not within the 20-day period. It's a serious issue Brendan has raised.

MARC TRUANT: I think we can talk about this. Because the, quote/unquote, balconies are not so much balconies, but a response to the alternative means of egress that I'm -- that I come upon because of this -- because of the revision from meeting with the neighbors at the rear.

So it's a three family -- is it okay if I start?

I understand what you're talking about and I understand the risk.

CONSTANTINE ALEXANDER: You have been on the

Board before.

MARC TRUANT: It's possible even tonight some -- we can talk about some things about these balconies.

So it's --

CONSTANTINE ALEXANDER: Before you go forward, Brendan, do you want to put this to a vote? You raised it, and it's fine.

BRENDAN SULLIVAN: I'm just wondering if somebody else comes down and says "Well, I have no problem with the egress stairway. What's there now is horrible and amazingly still there." That's one thing. I can understand the need for that.

Decks or balconies are something totally different. I put myself as somebody -- somebody in the immediate next building, and you may have a good relationship with them, and they say "I didn't understand." Maybe they do. I just raise that. I'm

not saying we shouldn't go forward. I want to make sure the rest of the Board is comfortable with what was advertised and now what is before us.

CONSTANTINE ALEXANDER: I for one, am comfortable. I think it's a legitimate point you're making. At the end of the day, it's your call because we're comfortable, but if a neighbor is not and a court agrees with the neighbor, you're out of luck.

MARC TRUANT: I understand why you're bringing it up. Because it's --

DOUGLAS MYERS: What are the dimension of the balconies in question?

MARC TRUANT: They're shown.

CONSTANTINE ALEXANDER: Two and a half feet.

DOUGLAS MYERS: And the length?

CONSTANTINE ALEXANDER: Juliet balconies. They're balconies you go out and have --

MARC TRUANT: The length is actually -- you have to look at my drawings here. One of the neighbors

writes it right in the letter. One is 10, 6 and 99.

JANET GREEN: 10, six and nine, nine?

MARC TRUANT: Just about halfway.

DOUGLAS MYERS: I'm comfortable if you want to go ahead. The risk is on you. I'm comfortable with those sorts of balconies.

MARC TRUANT: The issue is that the balconies are now -- they now become part -- they're still part of the egress, the second -- what we did is, in talking with the neighbors, because of the original proposal, it was one of the most difficult design challenges I actually ever experienced.

I can't tell you how many different iterations we used to try to get a stair in there.

Because the inspector -- I had work done on the second level, and the inspector said, "Before you can renovate the third floor, you have to do something with this egress.

So after talking with the neighbors about the

original proposal, the three women that own the condominiums, the back, the rear elevation, I decided to use an exemption in the code for a three family, three story.

CONSTANTINE ALEXANDER: Building code.

MARC TRUANT: That if you fully sprinkle it, you have certain fire egress distances, you can -- you may have only one means of egress, however, you need to have like escape windows, rescue windows, et cetera.

And on the -- especially on the third floor here those windows are why too small. And the second floor they're really not much larger. Leaving this door on the second floor which used to serve the fire escape and having another full size doorway up here and having some balcony to go out onto is my attempt to meet that part of the building code whether it be some means of escape at least out of the unit. The units in the building will be fully sprinkled.

So that was the response and the issue with

the abutters with the initial proposal was that their rear porches would almost be touching parts of the fire escape stairs.

The levels were kind've offset, but they're mainly concerned about the security. Somebody climbing up the fire escape and jumping over onto their porches and so forth. Now that these porches are now at least three or four feet away from theirs and they're at different levels, so they feel more comfortable with them.

And in further discussions with the Building Department, it could be -- I don't know, once these balconies are confirmed, if I'm going to build balconies, I have to build them like this. I'm wondering -- I have seen in other places in Cambridge they just put railings right at the face of the building. And, you know, I don't know that I can do that. So that's why I'm asking for this.

CONSTANTINE ALEXANDER: I want to point out

if you decide later on you want -- assuming we approve you to tonight, if you want it put the railings on, you have to come back before us.

Do you still want to go forward tonight with what you have or do you want to spend more time to reconsider what you want to do?

MARC TRUANT: (Pause.)

And that would be because I'm doing other work.

CONSTANTINE ALEXANDER: The work you're going to do is different than the plans we approve tonight?

MARC TRUANT: Even if all the window openings were all the same.

CONSTANTINE ALEXANDER: It would be a case not heard, in my judgment. You wouldn't have to get the same five of us. As soon as you're ready to go and we're ready to hear you, it may be the safer way to go, but it's your call.

Not maybe. But it's the safer way to go. If

you get a change of plans, it would have to be in the Monday before. I want to make sure you understand that.

MARC TRUANT: (Pause.)

Right because --

CONSTANTINE ALEXANDER: You can take another case and you can think about it before.

MARC TRUANT: Because if it was heard and approved like this, if I came back and just wanted railings even at one of the openings versus the other openings?

CONSTANTINE ALEXANDER: Speaking for myself, I wouldn't be enthusiastic if you came back with the new proposal. I would have said you should have done it right the first time.

MARC TRUANT: I understand.

CONSTANTINE ALEXANDER: Again, we'll give you the opportunity to sit around --

MARC TRUANT: No. I'll continue it to

September 26.

Should I just have those letters entered?

CONSTANTINE ALEXANDER: I'll leave them in the file. They'll stay in the file.

MARC TRUANT: Great.

CONSTANTINE ALEXANDER: The Chair moves this case be continued as a case not heard until 7:00 p.m. on September 26 on the conditions -- we can do it later.

MARC TRUANT: I want to check.

CONSTANTINE ALEXANDER: Why don't you check.

MARC TRUANT: I think I'm good on that date.

CONSTANTINE ALEXANDER: If not, October 12 is the next available after that.

SEAN O'GRADY: October 10.

MARC TRUANT: That's my birthday. That would definitely be bad luck. Let's go with October 10.

CONSTANTINE ALEXANDER: The Chair moves this case be continued as a case not heard until 7:00 p.m.

on October 10 on the subject of the following conditions: That the sign that's been posted on there, it has to be continued to be maintained; you got to change the date to October 10 -- do it in Magic Marker -- and change the time to 7:00 p.m., otherwise, we'll not hear it at 7:00 p.m. You will have to stick out.

On the further condition that the petitioner find a waiver of time for decision. And on the final condition to the extent you modify the plans that are now here, the new plans and dimensional form must be in our files no later than 5:00 p.m. on the Monday before October 10.

All those in favor continuing the case on this basis?

Five in favor.

Case continued.

(Favor: Constantine Alexander, Brendan Sullivan, Douglas Myers, Susan Spurlock, Janet Green.

BRENDAN SULLIVAN: Do you want to tell the  
them the 9:30 is not going to be heard.

CONSTANTINE ALEXANDER: We haven't -- I'm  
going to vote, not to hear it.

BRENDAN SULLIVAN: I'm wondering if we  
should appraise them of it.

SEAN O'GRADY: I did.

(8:30 p.m.)

(Sitting Members: Constantine Alexander, Janet Green, Douglas Myers, Susan Spurlock and Brendan Sullivan.)

Case No. 10491: 0 Blanchard Road, David Um.  
Variance: To add rear deck as previously approved in 2008, BZA Case 9716. Art. 5.000, Sec. 5.31 (Table of Dimensional Requirements).

CONSTANTINE ALEXANDER: The Chair will call Case No. 10491, 0 Blanchard Road. Anyone wish to be heard on this?

DAVID UM: Hello. David Um, U-M.

CONSTANTINE ALEXANDER: Did you change your -- or maybe your client did, about the nature of the deck you want?

DAVID UM: Oh, no. Five years ago we got approved for the deck, but we didn't have the money. So for five years my wife has been, you know, regularly bothering me about the deck.

CONSTANTINE ALEXANDER: We can't help you there.

DAVID UM: It took me five years to gather up my pennies and we're resubmitting because it expired.

CONSTANTINE ALEXANDER: But you have changed the plans, too?

DAVID UM: Yes. We made it bigger. My wife really wanted a bigger place to have family over. I think it was Ronjit who looked at the plans and said, "Your deck is way too small: It was small. So I decided to reapply with new dimensions.

CONSTANTINE ALEXANDER: As I looked and compared the plans from the other case and this one, the deck that's 19 feet wide and 22 feet long and before it was ten feet tall and 9 feet two inches long, not dramatically, but you're increasing the size of the deck.

DAVID UM: Yes.

CONSTANTINE ALEXANDER: The rest of your

petition is the same reasons that applied last time should apply this time.

DAVID UM: My wife keeps looking at our two neighbors. I mean, I can't help it. She looks left and right. They have huge big decks. I can't stop her from looking, so what can I do?

CONSTANTINE ALEXANDER: Ever thought of planting big bushes on either side?

DAVID UM: I was thinking about that.

CONSTANTINE ALEXANDER: Cheaper.

DAVID UM: Okay.

CONSTANTINE ALEXANDER: Any questions from Members of the Board?

BRENDAN SULLIVAN: I think in order to foster domestic tranquility --

CONSTANTINE ALEXANDER: The hardship.

BRENDAN SULLIVAN: He's got a hardship.

DAVID UM: Thank you.

CONSTANTINE ALEXANDER: I'll open this to

public testimony.

Anyone wishing to be heard on this matter and support this gentleman who has a problem with his wife.

No wishes to be heard.

I don't think we have any letters in the file. Last time you had a petition from all your neighbors. Not that you need it. I don't think I saw it this time around.

DAVID UM: They're in complete support.

CONSTANTINE ALEXANDER: They know about the new deck and the dimensions?

DAVID UM: We just are peaceful. There's a couple problem neighbors, but they just don't listen to us. But everybody has been supportive and the one in the back is the public golf course and they're very supportive.

CONSTANTINE ALEXANDER: Your big deck would intrude upon your rear yard neighbor, but that's the golf course, it's not like you're going to interfere

with anybody else's lifestyle in the rear.

I'll close public testimony. Comments from Members of the Board or go for a vote?

The Chair moves that this Board make the following findings with respect to the deck proposed to be built: That a literal enforcement of the provisions of the ordinance would involve a substantial hardship to the petitioner. I'm not going to go there.

The hardship being that the ability to enjoy the property that you now live on is limited by the fact that you don't have a deck, particularly since the slope -- the grade of the property in the rear slopes down which diminishes your ability to use your rear yard; that the hardship is owing to circumstances related to the shape and topography of the lot.

As I mentioned, the lot is slanted, if you will. And the relief may be granted without substantial detriment to the public good or nullifying or substantially derogating intent and purpose of the

ordinance.

In this regard, the Chair would note this Board has already granted a variance to the petitioner for substantially the same deck, a smaller deck, but still a deck, number one, and number two, the fact that this deck is in the rear yard and the rear yard abuts a golf course, there's no privacy issues created by a deck which is usually our concern.

And that it appears that the petition, based on the last deck, has unanimous neighborhood support or the neighbors that count, and they expressed no opposition this time.

On the basis of these findings, the Chair moves that a variance be granted to the petitioner on the condition: That the work proceed in accordance with the plans I'm going to initial. These are the final plans that's in our file?

DAVID UM: That's the final plan.

CONSTANTINE ALEXANDER: Whatever you want

tell me are the final plans.

DAVID UM: I put in the description. This is what the architect drew which is the wire.

CONSTANTINE ALEXANDER: I don't need that for purposes of the vote because this is to allow Mr. O'Grady when time comes for building permits and like to match up what you're doing to what we approved.

The condition that the work proceed in accordance with plans proposed by Chan Mok Architects. They're four pages, A 2.0. A 2.1, A 1.1, a side plan 1.4. All four pages initialed by the Chair.

All those in favor of granting the variance on this basis?

Five in favor.

(Favor: Constantine Alexander, Brendan Sullivan, Douglas Myers, Susan Spurlock, Janet Green.)

CONSTANTINE ALEXANDER: Variance granted.

DAVID UM: Thank you so much.

(8:45 p.m.)

(Sitting Members: Constantine Alexander, Janet Green, Douglas Myers, Susan Spurlock and Brendan Sullivan.)

Case No. 10490: 3 Jefferson Street.

3 JEFFERSON STREET LLC C/O MARC J. TRUANT.

Variance: To re-configure and rebuild exterior fire egress stair, and the egress way from basement of an existing non-conforming 3-family dwelling. To rebuild the roof of an existing non-conforming 3-family dwelling at a higher elevation. Art. 5.000, Sec. 5.31 (Table of Dimensional Requirements).

Special Permit: To relocate and enlarge window and door openings on the rear elevation of an existing non-conforming 3-family dwelling to allow for re-configured and rebuilt exterior fire egress stair. Art. 8.000, Sec. 8.22.2.C (Non-Conforming Structure).

CONSTANTINE ALEXANDER: The Chair is gonna reopen Case No. 10490, 3 Jefferson Street.

Anyone here wish to be heard?

MARC TRUANT: I would just like to have the case not heard, but continued to September 26 as opposed to October 10.

CONSTANTINE ALEXANDER: That's a case not heard, the Chair would propose to amend the vote we took to continue the case from October 10 to September 26. The other conditions remain, sign posting, new plans have to be in by 5:00 p.m. the Monday before. A particular sign, make sure you change the date and time.

MARC TRUANT: I'll do that tomorrow.

CONSTANTINE ALEXANDER: Any revised plan, new plan, 5:00 p.m.

All those in favor of amending the prior motion?

Five in favor.

(Favor: Constantine Alexander, Brendan Sullivan, Douglas Myers, Susan Spurlock, Janet Green.)

(8:55 p.m.)

(Sitting Members: Constantine Alexander, Janet Green, Douglas Myers, Susan Spurlock and Brendan Sullivan.)

CONSTANTINE ALEXANDER: Chair will call Case No. 10492, 395 Washington Street.

AMY MUNSAT: Thanks.

CONSTANTINE ALEXANDER: For the record, your name and address please or anybody else who is planning to speak?

AMY MUNSAT: 71 Standish Street in Cambridge.

SALLY HASLANGER: Sally Haslanger, H-A-S-L-A-N-G-E-R. I'm co-owner of the house with Stephen Yablo.

STEPHEN YABLO: I'm the other co-owner, Stephen, P-H, Yablo, Y-A-B-L-O.

CONSTANTINE ALEXANDER: Before we start with the merits, you have been sitting in the audience. We

have once again issues about proper advertisement and notice. I want to review them for the record and we can decide where we go from here.

As I see it, and correct me if I'm wrong, your advertisement is pretty straightforward. Variance to add elevator and street level vestibule to provide full access to an existing family home. Well and good.

Then I look at the file and I see a lot more going on than in the advertisement. I see an extension of the roof, which is related to the elevator, but it's quite different than what you would expect if I were reading the newspaper and seeing the advertisement.

And then further, I see a dormer being added, which I gather, is unrelated. It would appear to be completely unrelated to the elevator.

Now going back, I am prepared, but other Members of the Board may out vote me. I am prepared to go forward with the notice insofar as it relates to the roof modification because it's related to the

elevator, but I have to tell you with regard to that, as I told other people before, that's not a -- it's not a slam dunk. If a neighbor, citizens of the city don't like what you're doing or did, they can challenge -- I'm assuming we grant you relief tonight -- can challenge the relief granted and you will be in trouble, and it's months not years in advance. That's one of the risks of your advertisement the way you wrote it.

The second relates to the dormer and there, if you don't need relief for the dormer and you just want to do it as part of this project, fine. But if it turns out that dormer needs separate relief, you didn't advertise that tonight. If you came back six months, 60 days from now because you found out from the Building Department by the way of dormer needed relief, I'm not going to vote in favor. I'm going to be very blunt, I won't vote in favor. I don't like cases where we see a little now and a little later and we don't get the full picture at once.

If you're comfortable that dormer is fine, you wanted to let us now about it, but it's a matter of right, that's fine. If you're not sure, I would suggest you continue this case until you complete your zoning analysis, and also, I think you have to make your own decision about the roof line and the like it as to you think it's sufficiently covered by your advertisement.

AMY MUNSAT: Let me ask you a question about the roof line because in the way the request was written, my thought was that the -- that the necessary vestibule and the elevator and making it accessible to the rest of the house inherently took in -- there may be some additional square footage and of course roof to get to that. So that's why I was a little confused about that piece being problematic.

I understand about the dormer piece. The dormer is over a stairway. It doesn't add any FAR and we didn't -- that is not related to the elevator. We

did just --

CONSTANTINE ALEXANDER: Go back to your point. I'm prepared to accept your comment regarding the roof. But I'm warning you, others may feel different. We'll hear in a second.

My point is, even if I'm comfortable and everybody is comfortable, you got to understand you will take a risk if you go forward with this case based upon this advertisement you put in. This is your call.

DOUGLAS MYERS: Just as a question: Is the dormer within a setback so in back is zoning relief required?

AMY MUNSAT: The dormer is within the setback as I understand. The first way I understood it's fine. I think it's within the setback. I think it needs relief. I think it's in that setback.

CONSTANTINE ALEXANDER: If you need relief and you want to go forward with the dormer, I suggest we don't hear the case tonight.

AMY MUNSAT: Right. And so, if it's the dormer is the piece that's holding it up, we spoke about that not be an important piece of this. What we're trying to do is get the elevator in.

CONSTANTINE ALEXANDER: You're going to abandon your request for the dormer, that's what you're saying?

AMY MUNSAT: Yes.

CONSTANTINE ALEXANDER: That's your call.

SALLY HASLANGER: Excuse me, if I can talk. That allows for the possibility of a little skylight because the stairwell becomes very dark, and because of changes we're making and so, having natural light on the stairway would be a valuable thing. We don't have to have a variance to have a skylight.

CONSTANTINE ALEXANDER: You will in the setback, it's just like a dormer.

SALLY HASLANGER: So whatever we proposed in terms of that window with the mansard is not important.

CONSTANTINE ALEXANDER: You want go forward tonight. Lets see if other Members of the Board are comfortable that you can go forward tonight. And you understand the risks you're undertaking by going forward tonight.

Does anybody have a problem going forward tonight?

CONSTANTINE ALEXANDER: So there's no problem. Now we can go to the merits.

AMY MUNSAT: Could we hear a little more about what the risks might be? A little clarification of what the risks might be so we understand fully. Is it someone could challenge it in a few months, in a year?

CONSTANTINE ALEXANDER: I don't know what the period of time is, but it could be a year or it could be longer. It's not the 20 days. We can grant you the variance. When the decision gets filed with the City Clerk's Office -- we make the decision tonight -- it gets written up and several weeks from now it gets

filed. If someone has a problem with the relief we granted, they have 20 days to go to court and challenge it. If they don't go in 20 days, case over, they can't do it later on. However, that's with respect to a challenge that we improperly granted the variance on the merits. But in the case of notice, you didn't properly notice in your public advertisement, that case can be brought if someone wants to bring it more than 20 days after our decision is rendered. I don't know for a fact, I'm not sure of this area of the law, but I think it could be as long as a year or longer. That's your risk.

SALLY HASLANGER: Can I ask a couple questions about that?

CONSTANTINE ALEXANDER: I'll try to answer them.

SALLY HASLANGER: So if they're challenging it, do we have to -- and we have done the construction, do we have to tear it out?

CONSTANTINE ALEXANDER: Theoretically, yes, or at least you can't use the elevator. In this case, they would -- the court could. I don't know if it would. They could technically order you to tear it out. People have been ordered to tear down buildings in a situation like that.

I know the case in Somerville where the city forgot to send out all the notices to all the abutters like we do, so no abutter got notice, and the abutter who didn't get notice about a year -- I think it was two years later with respect to the erection of the building, challenged it. The court said, "No notice, the building comes down."

SALLY HASLANGER: We actually have signatures of neighbors with diagrams and explanations. It's difficult because the neighbor to the west of us lives in Seattle, the owners of the building, it's a multifamily, and the owners live in Seattle, and it's very difficult to communicate with

that owner. And actually I've rung the doorbells for many of the people that live there and they're not responsive. So if they have signed something, does that make a difference?

CONSTANTINE ALEXANDER: I'm going farther than I should go. That's a legal question. I can't give you legal advice. I have an opinion, but I don't know the answer.

JANET GREEN: The elevator -- the vestibule and elevator that has been advertised, it's the change in the roof line?

CONSTANTINE ALEXANDER: More to what -- the kind've of work that's proposed to be done is more significant -- if that's the right word -- than what would be suggested by the advertisement.

AMY MUNSAT: In the advertisement for next time, you would say an additional square foot --

CONSTANTINE ALEXANDER: You say modify the roof line in the vestibule to accommodate the elevator,

or words to that effect, if you wish to go forward. I'm not trying to scare you.

AMY MUNSAT: We want to know all the options, the big picture.

STEPHEN YABLO: Somebody takes issue and seeks relief somewhere down the line, the first thing that would happen is that we would kind've have to tear the thing down.

CONSTANTINE ALEXANDER: You would have to hire a lawyer.

STEPHEN YABLO: We have to come back around and seek approval for the properly --

CONSTANTINE ALEXANDER: You could, I guess. We're blue skiing now. But I guess if someone challenged, and they had a right to challenge, and if the court agreed with the challenge, you could -- the variance would not have been properly granted. There would be a period of time and if two years had passed, I guess you could come back before us after changing

the advertisement and correct advertising. It's really in a never world over there.

DOUGLAS MYERS: Well, I have a question for the Board members. It may hint at a different view, but it depends on the answer.

There seems to be a general consensus that a dormer within the setback, that should be in the notice if the Board is going to grant relief. What about modification of a roof line? Why is that less important in terms of the public, the interest of the public notice than installation of a dormer?

CONSTANTINE ALEXANDER: That's a fair point. And the way I rationalize it, I guess the best way of doing it, it is the modification of the roof line is related to what is advertised.

DOUGLAS MYERS: Although there's no mention of roof whatsoever.

CONSTANTINE ALEXANDER: That's the problem.

DOUGLAS MEYERS: Modifying a roof is

significant. To use a legal phrase, it's substantial when you modify a roof.

CONSTANTINE ALEXANDER: That's why I thought about raising it.

JANET GREEN: If you add a vestibule, don't you think you will have a roof?

DOUGLAS MYERS: But it's interesting it says add a street level vestibule.

SALLY HASLANGER: You can't have an elevator without a roof on the elevator.

CONSTANTINE ALEXANDER: You raise a good point, you raise a good point as well. The answer is not cast in concrete and the risks are as a result are yours not ours.

SALLY HASLANGER: We undertake those risks.

STEPHEN YABLO: We undertake those risks.

CONSTANTINE ALEXANDER: The Board is willing to hear the case tonight if the petitioner wants to go forward, am I wrong? I'm willing to.

JANET GREEN: I'm not.

CONSTANTINE ALEXANDER: Well, if we take the vote, you'll be out voted.

Do you want to proceed?

AMY MUNSAT: Yes.

CONSTANTINE ALEXANDER: Now, let's go to the case.

AMY MUNSAT: I was hired by Steve and Sally to make their home accessible. Steve has MS and his home is becoming less and less easy for him to get around. And we looked at the whole home and looked at making it accessible from the outside beginning with -- can I go over here?

CONSTANTINE ALEXANDER: Sure.

AMY MUNSAT: This is their home now. I know it's in the packet that you have. 395 Washington Street and this is the left side where we're talking about putting the elevator and that's the other side where they have a driveway now.

These are some other homes on the street that also show some side entries and gave rise to our final solution that we have right now.

JANET GREEN: So can I ask a question on the picture on the upper left? Is that the building that you were saying the person lives in Seattle?

AMY MUNSAT: Yes. So I think it's a six-unit building that was owned by one person and is slowly being sold off as condos, but the owner owns a few of the units and he lives in Seattle.

SALLY HASLANGER: We have spoken to as many people as we can, but it's hard to get them when they're home.

AMY MUNSAT: So we started by looking at ramps we knew we could do right away and realizing that the -- they're up about four and a half feet from the sidewalk and realizing putting together how much ramp there would be, you can see it's a lot.

This one enters towards the front which we

thought would be nice to have the same entry.

I wanted to show you in the back, we did this. This also continues way in the back. We lose a parking space. And then locating the elevators within the house, these houses that have very symmetrical doorway openings and windows, and there's not a lot of wall space in between, so knowing that we need a ramp, we would still need an elevator inside. You can still see the locations of the elevator became very problematic. We also looked at the idea of having a vestibule and elevator elsewhere on the property.

So that we might do something like this in front where we lose a parking spot, but almost everything also required going into the setback zones or getting rid of their deck and pergola that they have now or moving a back stair and also requiring a variance.

So one of the things I wanted to say is that putting an elevator on the outside without a vestibule

also got complicated because of the need to keep it weather tight with a wheelchair, it requires a certain amount of space in a vestibule which you might think would be smaller, but it ends up being large.

CONSTANTINE ALEXANDER: Can I ask a question? I'm pushing the envelope a little bit on this.

One of the problems, if there is a problem, with what you want to propose is in the front yard. It's increasing the massing in the front yard. It impacts the streetscape. If you put it somewhere's else in the lot, like in the rear, to be sure you might need zoning relief, you'll trade zoning relief for here for there. But at least the neighborhood -- the streetscape is not impacted.

AMY MUNSAT: Our thinking about that were a few things: One, that is very complicated especially in the winter to get a wheelchair all the way in the back. And in terms of aging -- this house will have

this elevator forever. It will be a perfect house as Cambridge is going to this kind've aging place and people with disabilities. And the idea of having it in the front seemed more natural than problematic. It seemed almost like a goal, if we could think of it that way to make it more as important an entry as the other one is. And so the idea of having the one-story vestibule -- so this is our plan that we ended up, the one-story vestibule here, and it was like those pictures I showed you, you got the porch, you have the roof, it takes you down a little bit and then you get to two stories, so the impact on the street -- in fact, they have this fantastic -- Sally is a fantastic gardener and she has amazing plants around, and we're gonna try to keep this tree here if we can and cut it back and have it curve over and create this sort've beautiful entry instead of something that's just tacked onto the side.

SALLY HASLANGER: Can I add a point quickly?

Currently there is our air conditioners because another thing about MS, if your body temperature rises, you have great impact on your symptoms. We have two air conditioners that sit there that are noisy and ugly.

When we talked to the neighbors about putting this, they were delighted.

They would much rather have a vestibule and an elevator. I don't know, but you must have gotten this in your packet, but the impact is actually a very attractive front scape compared to these trees and rat holes, to be honest. We have rat management come and take care of the rat holes, but it's rat holes and these ugly air conditioners. I don't think actually myself think it will have a negative impact but a positive impact on the front of the house.

AMY MUNSAT: And it will be lit and landscaped.

SALLY HASLANGER: And look nice. I'm good

at that.

AMY MUNSAT: I want to show you this image of what we're imagining it would be like. The darker portion, it wouldn't be darker. We will be carrying on the same siding there and we'll have all the detailing that wraps around.

You can see here in the elevation that the detail continues on the same theme and the new roof blends into the other one.

It really carries on that same image.

And so, that's our hope was that this will sort've add to the neighborhood and become an accessible home in Cambridge that's not a little lift on the outside.

So that's it.

CONSTANTINE ALEXANDER: Thank you. You mentioned you have a petition? We have nothing in our file.

SALLY HASLANGER: So it says "We the

undersigned neighbors of Stephen Yablo and Sally Haslanger at 395 Washington Street, Steve has shown us their plans adding an elevator to their house in order to accommodate Steve's disability. We do not object to their plans and urge the City of Cambridge to grant the variance that will allow them to add the elevator.

CONSTANTINE ALEXANDER: Can we have a copy?

SALLY HASLANGER: Yes, definitely. So what I showed them was -- this is the picture of the house with the --

CONSTANTINE ALEXANDER: Which is the same picture in the files?

SALLY HASLANGER: The same picture. These are the pictures of the different possible ramps. And this one was the side scape.

I have to say, I mean, I love my neighborhood, but it's not a beautiful neighborhood. A lot of people just cement their yards. And there's one other single family on the street. So I think that this is a house

in the neighborhood that raises the quality of the neighborhood in terms of property values and such because we have a beautiful garden and it's a beautiful single family and we do take very good care of it and care of our neighbors.

They actually seemed to think that it would be fabulous to have the -- rather than all these ramps and sort stuff like that. We had no -- I didn't encounter a single person also because they love and they don't want Steve to (inaudible), but I didn't encounter a single person who that thought that it would be a detriment to the neighborhood.

CONSTANTINE ALEXANDER: Thank you.

SALLY HASLANGER: I could make copies. Do you have a copper here?

CONSTANTINE ALEXANDER: Not here, no. Why don't you let me put it in the file and you can come down to Inspectional Services and they'll make a copy for you.

Let me open it up for public testimony at this point -- first of all, any questions from any Members of the Board?

I'm going to open up to public testimony. Is there anyone here wishing to be heard on this matter?

Sir, come forward. You need to give your name and address for the stenographer.

ROY BERCAW: I'm Roy Bercaw, B-E-R-C-A-W. And I'm not an expert on the American with Disabilities Act or stuff, but I've been writing a lot about this for many years.

And I think that the petitioner has a right to put whatever -- either a ramp or an elevator because they have to have access to their own residence. And not only that, but I think that my -- what brought my interest to this, I was just listening in is your comment about the impact on the streetscape of an elevator. I think that's an outrage to even bring that comment up.

Let me finish. It's my turn now. I have encountered this in other cities where they have public buildings and they said it wouldn't look right to have an elevator on front of a public building.

So my question was, and I submitted it to the Board of Selectman in that city, I said, "What would it look like if you had a sign in the front of your public building that was an old schoolhouse?" I said, "Black people have to go to the back of the building." I said, "Would you do that?"

So that's when they changed their mind and they allowed the elevator to be put in the front of a public building. It's a private buildings.

I think it's just outrageous in this day and age when there's so many issues about people making negative comments, never mind preventing them physical access.

Don't get me wrong. There are court buildings in this country where people have been

required to crawl because they had no physical access to a court building. Never mind access to the courts in another sense.

But I just think -- I'm just telling you my opinion. I think it was outrageous as to your comment that it would have an impact. A negative impact on the streetscape and the neighbors might be upset and they have to present to you a petition that the neighbors say it's okay.

I just think that's outrageous this year in this city.

CONSTANTINE ALEXANDER: You have a right to express your opinion, sir. But I don't think you listened very well to what I said.

ROY BERCAW: (Inaudible.)

CONSTANTINE ALEXANDER: I have the floor. I gave you the opportunity to speak. Let me speak.

I did not say it would be -- it would impact the streetscape. One of the jobs we do is to ask

questions of the petitioner to draw out all of the issues that might be relevant to the case. I raise it as a straw man. We do this all the time.

You don't come to our hearings. We often raise these issues to see how the petitioner responds. And if you understood my saying it was outrageous that it was going to affect the streetscape, I apologize, I did not say that or mean that. I was just trying to say that's one of the things we have to take into consideration.

As to the American for Disabilities Act that applies to certain kind of structures. It does not give a person a right to modify his or her private structure and ignore all the zoning requirements. We take this into consideration. As you'll hear when we reach a decision, we're going to be very, I thin, very sympathetic to why this elevator is going where it's going to go and why they're doing it.

But don't take the remarks out of context and

suggest that I said something that I did not say.

Thank you.

Anyone else wish to be heard? There's no one else wishing to be heard. We have a petition that the petitioner has read into the record and I don't need to repeat it. It's part of the public file.

Any final comments before we deliberate?

AMY MUNSAT: I don't think so.

No thank you.

CONSTANTINE ALEXANDER: These plans we have in the file that you prepared dated July 24, they're the final plans?

AMY MUNSAT: They're the final plans.

JANET GREEN: Do they have --

AMY MUNSAT: They have the dormer on there.

CONSTANTINE ALEXANDER: We'll deal with that.

The reason I ask the question, and people seem to misunderstand why I ask questions, is the fact that

if we grant relief, we're going to tie it to these plans putting the dormer aside.

If you're going to modify the plans, you have to come back before us. I want to be sure you understand that this is it.

AMY MUNSAT: The only thing is that I noticed there was one coordination problem where there's a window in the vestibule and elevation that I think is missing on the plan.

CONSTANTINE ALEXANDER: Could you draw them on this plan?

AMY MUNSAT: I can draw it on there, yeah.

CONSTANTINE ALEXANDER: Draw it on the plan, if you would.

SALLY HASLANGER: If I could add a point. One of the advantages of having this at the front is that I have to do all the shoveling and to shovel difficult -- I have to do everything that has to do with sort've manual and shovel all the way to the back of

the house in order to get the ramp access to an elevator.  
It would just --

STEPHEN YABLO: The secondary advantage is that I have to live with the person who does it.

BRENDAN SULLIVAN: I just some comments, observations. I guess my initial one is that it will be very, very close. You're going to be three foot four to the property line. The house to the left, almost on the property line, it's within a few inches. You're less than four feet between structures.

SALLY HASLANGER: It's already that way for the full length of the house.

BRENDAN SULLIVAN: I realize that. That's why we have the zoning because they said that's not a good idea. They have yardsticks to measure that's supposed to be 12 feet so they wouldn't replicate or duplicate that kind of thing. And pictures of other houses and so on and so forth, those smarter than I decided that it was a lot better not good to have

something right up to property line because of massing on the site, over building and so on and so forth. I just want to make sure that -- because I did walk the property and I noticed there was a tremendous amount of land around the back. You obviously have the driveway and, yes, it's a very nice backyard area, but that you have explored that and that just isn't possible to do. Not that it's not necessarily desirable, but because, again, I'm very concerned about -- you're less than four feet between buildings.

SALLY HASLANGER: No, I can't believe that.

BRENDAN SULLIVAN: Well, the other property is up -- you're three foot four to your property line. According to the city map, the next door property is just a few inches from their property line.

AMY MUNSAT: I think the city map might be wrong because I think they store things along there.

SALLY HASLANGER: They have the garbage cans come up and down their side.

BRENDAN SULLIVAN: We're debating inches here, but anyhow, it's just that it's going to be very close. I want to make sure that you have explored around the back and that there's absolutely no area there that you can accommodate an elevator.

CONSTANTINE ALEXANDER: From what I heard, I thought there was -- to me was the fact that given the wheelchair access is a real problem, that from the point of view of accomplishing what you want to accomplish with regard to the elevator and access to your structure, the best solution is the front yard. That's what I took away from your comments.

AMY MUNSAT: Yeah, yeah. And we've tried to be sensitive to the neighbors by keeping that front vestibule fairly low and also by really making it really carrying the detailing around.

I do understand that there's still the proximity is there and we'll make sure that Sally keeps that garden --

BRENDAN SULLIVAN: To locate this, and again, I'm very sensitive to the distance because I was in a wheelchair for awhile myself, so I'm very sensitive to this. That there's no practical area around the back to do, this is as far as interior layout of the house is concerned. And again, I understand that as close proximity as possible is very necessary.

AMY MUNSAT: There are other complications that begin to happen. Their basement stairs are located right at the back, so the basement stairs would have to be moved to somewhere else within the house.

There's also the fact that the second level in the back of the house is lower than where Steve needs to get to.

BRENDAN SULLIVAN: Difficult issues.

AMY MUNSAT: Yes.

BRENDAN SULLIVAN: I just wanted get the --

AMY MUNSAT: Yeah, no, I appreciate that.

SALLY HASLANGER: As you know, these houses

are kind've funky with different steps. So part of why we have to do the second floor renovation is that there was no bathroom, I think originally on the second floor, and there's steps down and tight corners that make it impossible to someone in a wheelchair to maneuver on the second floor. And so, to have to make the changes to the basement stairs and -- it would be prohibitively expensive. It would double the cost. We can't afford to have a \$400,000 renovation. I mean, we just can't.

BRENDAN SULLIVAN: Okay. That's all right. I understand that. That answers my thought.

SALLY HASLANGER: I appreciate it. We -- our children used to talk to the neighbor children through the open windows in the mornings when they were having breakfast because it is very close. But we're not increasing -- it will be a larger distance.

SALLY HASLANGER: But it is very close.

AMY MUNSAT: We're continuing the line of the house.

SALLY HASLANGER: We're continuing the line of the house, so it's no closer. It would be a longer distance.

BRENDAN SULLIVAN: If it was than you would bump up against the state building code which is another issue.

SALLY HASLANGER: But we're aware of how close it is.

CONSTANTINE ALEXANDER: Are we ready for a vote?

JANET GREEN: I'm ready.

CONSTANTINE ALEXANDER: The Chair moves that this Board make the following findings: That a literal enforcement of the provisions of our ordinance would involve a substantial hardship to the petitioner, such hardship being that the occupant needs because the physical disabilities to construct an elevator area to make the building more accessible to this person; that the hardship is owing to the location of the structure

as a non-conforming structure and so any modification would require zoning relief, and the relief may be granted without substantial detriment to the public good or nullifying or substantially derogating the intent and purpose of the ordinance.

In this regard, the Chair would note that there seems to be unanimous neighborhood support, that the petitioner has scrupulously attempted to explore all other options with regard to location of this elevator, and this solution proposed before the Board is the most effective and efficacious solution to the problems they have to deal with.

And that one of the goals of the city and certainly this Board is to allow persons to continue to reside in their homes because of advancing age or physical disabilities and granting relief here would allow these folks to continue to occupy a structure they obviously think very highly of and have lived there, it would appear, for a good number of years.

On the basis of all these findings, the Chair moves that a variance be granted to allow the construction of the work proposed in the advertisement on the condition that the work proceed in accordance with plans submitted by the petitioner, prepared by Amy Munsat, MUNSAT, dated July 24, 2013, except that the dormer that's indicated on these plans will not be built, the petitioner having advised they have abandoned those plans and the further condition that the plans have been modified by the addition by hand of a window in the vestibule area and those consist and are part of the plans and are sufficient.

All those in favor of granting the variance --

DOUGLAS MYERS: Should the dormer be stricken out with an X or something?

CONSTANTINE ALEXANDER: I could. I thought verbally I did that. I'd be happy to do it, sure. Good idea. I'll do it after we take the vote.

All those in favor of granting the variance,

say "aye."

Five in favor.

Variance granted.

(Favor: Constantine Alexander, Brendan  
Sullivan, Douglas Myers, Susan Spurlock, Janet Green.)

(9:30 p.m.)

(Sitting Members: Constantine Alexander, Janet Green, Douglas Myers, Susan Spurlock and Brendan Sullivan.)

Case No. 10493: 166 Prospect Street.

Christopher Vuk. Special Permit: Reduction of parking for musicians' space to conduct individual tutoring. Art. 6.000, Sec 6.35 (Reduction of Parking).

CONSTANTINE ALEXANDER: The Chair will call Case No. 10493, 166 Prospect Street.

Anyone wishing to be heard on this matter?

CAMPBELL ELLSWORTH: My name is Campbell Ellsworth, Ellsworth & Associates, 267 Norfolk Street in Cambridge. I'm joined by Christopher Vuk who we'll learn is the tenant of the space, and with Clay Hoener, H-O-E-N-E-R, who is putting together a set of musicians to offer individual lessons in this space.

We're here tonight because a literal

enforcement of the off-street parking regulations would require a number of parking spaces greater than exists in this current space, and we're seeking a Special Permit for that.

I will go into the calculation of that shortly, but I would like these gentlemen to introduce the work they're doing there and the reason why we're here.

CHRISTOPHER VUK: I'm president of the Music Makers Foundation and our intention with this space is to occupy the first floor, to hold a daycare facility for infants, toddlers and preschoolers from the ages of three months to five years. And this is a second location for us. We currently have a facility in East Cambridge that we have run for 15 months. And are our approximate hours we have dropoff for the children is between 7:30 and 8:30 in the morning, Monday through Friday. And we have varies pickup times. We have some classrooms that end as early as 3:00 ending to no longer

than 5:30 p.m. in the evening.

Most of our families do walk to the center. One of the advantageous of us having this facility and why we decided to open the facility here is we have an enormous amount of clients are that one or two or three, four blocks away. We have a minimal need of the parking there for our purposes.

We do offer music classes as the core of our daycare center, called the Rock 'n Roll Daycare and we do have a synergy with Clay Hoener and some of the teachers from -- that are seeking to utilizing the second floor as some of them will be teaching at our daycare some of the music classes.

CONSTANTINE ALEXANDER: So the relief you're seeking is basically with regard to the operation of a daycare center, although you don't say that all in your advertisement. I'm surprised.

CHRISTOPHER VUK: No, it is not. We're seeking relief for use of the second floor.

CONSTANTINE ALEXANDER: Daycare is just by way of background.

CAMPBELL ELLSWORTH: It's actually the combination of the two uses if you calculate the required number of parking spots for the daycare and then the required number of parking spots for the offices up above, that combined number is more than they have right now.

CONSTANTINE ALEXANDER: The daycare, if you didn't want to do music upstairs, you wouldn't have a problem.

CAMPBELL ELLSWORTH: Each of these uses by themselves would be satisfied, but together they're slightly over.

CONSTANTINE ALEXANDER: Thank you.

CLAY HOENER: My name is Clay Hoener. I'm a violin instructor, and I have been at the Longy School of Music of Bard College for -- this would have been my 30th year. And along with my colleagues you may be

aware that community program shut down rather suddenly especially with our experience being there almost 30 years, year after year. And a group of teachers and myself have been very committed to staying in Cambridge. Timing of the announcement being in March, although it may seem like a long time in order to find a facility that would accommodate our type of activity of teaching private lessons to musicians, it's a very short amount of time. And we were able to, after looking high and low throughout Cambridge, to find a synergistic situation with Chris Vuk and be able to team up with him so that a few of us are able to teach in the offices on the second floor at 315 Broadway.

We're very excited about the possibility. We think it's a wonderful opportunity to combine with the Central Square cultural district which was recently verified or validated through the Mass Cultural Counsel last October. We think it's a wonderful opportunity to have this kind of atmosphere in the Central Square

area, and hope you grant us the relief for this parking adjustment so we can go forward with this.

CAMPBELL ELLSWORTH: Just to go over the calculations because there may have been some questions about it.

So the daycare is quite clear. That's called out in Article 6.36.3 B 1, which requires three spots for every two rooms, and Kris has three rooms. So we have multiplied the three by 1.5 to get a 4.5. 4.5 required for his activities downstairs.

Up above, and this is just -- just to give you some information.

This came out of a set of conversations with Ronjit in terms of how to accurately classify what a music instructor does giving individual lessons. The final decision or final conclusion that Ranjit and I came down to what that it was acceptable to use the definition defined in 6.3.64 B, which is the office of an accountant attorney or other nonmedical

professional person which is actually one spot for every 500 square feet. Sp that would give the square footage which is approximately 2700 square feet, that would yield 5 spots required. So we got 4.5, plus 5, that gets you to 9.5 and then we exercise the use of the reduction in 6.35.1, reduction of required parking when you can have a combined spot when uses are sharing a spot effectively. I think that is legitimate of the time difference between the early part of the day when the daycare is operating and the latter part of the day into the evening when the daycare has shut down.

BRENDAN SULLIVAN: Is it correct that you can seek protection under an office designation as opposed to educational because even though you're tutoring, it's really a one on one as opposed to the traditional education which would have an instructor and say more than one student, a number of students? So what you're saying it's really sort've of a one on one in the second floor?

CAMPBELL ELLSWORTH: That's correct.

BRENDAN SULLIVAN: Possibly one, two, three.

On a rare occasion you may have a group or something like that, but it's generally one on one?

CAMPBELL ELLSWORTH: Yes.

BRENDAN SULLIVAN: So you would then -- it's outside of the norm of an educational usage.

CAMPBELL ELLSWORTH: Yes, it moves from the educational use. I think this must be to -- to an office and laboratory use.

BRENDAN SULLIVAN: And the hours of the second floor?

CHRISTOPHER VUK: Primarily be there after school hours after the students get out of their academic school day until about 9:30 at night.

BRENDAN SULLIVAN: Similar to what was going at Longy, obviously. It was weekends, it was --

CHRISTOPHER VUK: Right. I mean, we don't won't have workers and things like that in the building.

They're ten by ten, 13 by 15.

BRENDAN SULLIVAN: Okay.

CAMPBELL ELLSWORTH: Just to that point, if you were to go to the educational, it requires, I think five or six spots, parking pots per classroom which would have thrown this so out of whack and it didn't seem logical to use that. We checked with Ranjit and he felt that was reasonable.

BRENDAN SULLIVAN: Well, the experience doesn't require that. The experience of the building, you went from a donut shop initially to Cambridge College to a less intense use obviously.

CAMPBELL ELLSWORTH: That's it.

CONSTANTINE ALEXANDER: You've addressed very well the reasons why you needed relief.

We go through the reasons why we should grant you relief. I want to make sure we get the record correct. Under 6.35, which you're seeking the Special Permit. It reads: "A Special Permit shall be granted

only if the Board determines and cites evidence in its decisions" -- which is with I'm having this conversation with you now -- "that the lesser amount of parking will not cause excessive congestion, endanger public safety, substantially reduce parking availability for other uses that otherwise adversely impact the neighborhood."

And we should consider the availability of public transportation, the availability and proximity of surplus off-street parking, the availability of public or commercial parking facilities.

Speak to us as part of the record on these issues.

CAMPBELL ELLSWORTH: And some of that, I don't want to read, but some of that, I believe many of your questions are articulated in our second -- or the supporting statements Letter A, and let me just grab down here.

CONSTANTINE ALEXANDER: We have to get it as

part of the record.

CAMPBELL ELLSWORTH: We believe the requirements of the ordinance will be met because, number one, many of the clients walk or use public transportation to get to their lessons, many Cambridge residents living in or near the neighborhood, the location is well served by public transportation and is only a three block walk from the central area MBTA and is on the numbers 64, 68, 83 and 91 bus routes. There's also ample nonresident parking, street parking on Broadway.

CONSTANTINE ALEXANDER: Okay. Good.

SUSAN SPRULOCK: How many spaces are there?

CAMPBELL ELLSWORTH: Six. And our calculation using the shared use gets us to 6.5. We're right there. I mean just over.

JANET GREEN: Do you have bicycle racks and things like that?

CHRISTOPHER VUK: There's a bicycle rack.

There's a set of three, I believe, bicycle racks directly next to the building in front of the church. They did a street renovation.

CONSTANTINE ALEXANDER: Any further questions? I'm opening it up to public testimony.

Anyone wish to be heard on this matter?

The Chair notes no one wishes to be heard.

You go first, you're okay, but the others if you have something new to add to what has been said feel free, but don't come back and repeat it. We get it the first time believe it or not.

KAREN WEINTRAUB: Karen Weintraub,  
W-E-I-N-T-R-A-U-B. I live at 9 Leonard Ave by  
Cambridge Hospital. We were -- I have a 12 year old  
daughter who is taking violin lessons from Clay for five  
years and we were devastated by the closing the Longy.  
She went to her first protest. And we were very  
concerned when Clay was looking around as to where he  
would end up. He talked about Newton. He lives in JP.

I kept calculating how we were going to work our lives around this, and we were really relieved when he came up with this idea of being not only in Cambridge, but pretty much in our neighborhood.

CONSTANTINE ALEXANDER: Since you come from a distance, you're not going to have a problem in your view about the lesser amount of parking?

KAREN WEINTRAUB: My daughter played soccer in the field across the street. We had no problem parking there and we walked there or biked there. There was no issue for us at all.

CONSTANTINE ALEXANDER: Thank you.

CARRIE BUDDINGTON: Carrie Buddington, B-U-D-D-I-N-G-T-O-N. I live at 151 Erie Street that's down here in Cambridgeport, and I've taken lessons from Clay for five years. This puts it within walking distance for me. I'm thrilled to have it here at a close distance for me.

CONSTANTINE ALEXANDER: You will walk, you

won't drive your car?

CARRIE BUDDINGTON: If I had to drive my car, I have a Cambridge parking sticker. I can find on-street parking.

CONSTANTINE ALEXANDER: Yes, sir?

You're next.

LAVERNE ROSE: Laverne Rose, R-O-S-E. Just briefly I want to say my daughter who is here has taken lessons with Clay for the past five years at Longy, and -- actually, come up. We'll make it real quick. And she is 17. She's a senior in high school. As a parent, I wasn't sure how this would end for her. She was able to get back and forth to Longy on her own and it was important that she have access to continue to lessons with Clay especially in her senior year. He has been her teacher and mentor. It was important she have access to him.

SEPTEMBER ROSE: My name is September Rose. I'm 17 senior in high school. I don't drive. Many of

my friends do. I live in Somerville. I feel I don't need to like my friends who live in Lexington and Woburn. It would be convenient for me because I'm sure my mom doesn't want to take a 17 year old to a music lesson and I can get there on my own.

CONSTANTINE ALEXANDER: By the way. Come forward. Is there a pattern? Everybody is a student of music for five years.

ERWIN RAMOS: Erwin Ramos, E-R-W-I-N  
R-A-M-O-S.

I'm a resident. I live across the street. And just lucky to have Clay and Lisa as teacher. I have my daughters here, Athena and Isabella who will be starting this year violin and we're bikers and we're glad they're going to be in the neighborhood. I'm here to support.

CONSTANTINE ALEXANDER: Yes.

ARACELI CAMACHO: Hi. My name is Araceli Camacho, A-R-A-C-E-L-I, C-A-M-A-C-H-O. I have two

children who study piano and take piano as Longy School and very happy that we can continue their music at school in the center of their city. I live close by. So it's very convenient me to continue with that.

CONSTANTINE ALEXANDER: Thank you. Anyone else?

Sir?

KIRIL ALEXANDROV: Kiril, K-I-R-I-L, last name Alexandrove, A-L-E-X-A-N-D-R-O-V.

And I have never taken music lessons from him or anyone else.

I feel like a long-time Cambridge resident. I feel like I have been living in a rock. I had no idea that Longy closed. So the fact that you can continue or have the chance to continue a musical tradition that should be a part of Cambridge is something I want to support. So I didn't come here for this, but certainly I hope you have a chance.

BRENDAN SULLIVAN: It's Longy. It's this

particular program.

CONSTANTINE ALEXANDER: Community programs of Longy have been shut down, but not Longy.

BRENDAN SULLIVAN: Longy merged with Baird.

BRENDAN SULLIVAN: How long has that community program been on Garden Street?

CLAY HOENER: On Garden Street? 70 years or something. A long time. I couldn't give you the exact number.

BRENDAN SULLIVAN: You have been involved with this.

CLAY HOENER: My 30th year.

BRENDAN SULLIVAN: And most people stayed with you how many years?

CLAY HOENER: You know, four to eight years, something like that.

BRENDAN SULLIVAN: That's the usual. I live further up Garden Street and I have been aware of it and I see people coming and going, but it has absolutely

no negative impact at all. So I'm thinking if that program and the people around there haven't complained about it -- I have seen people coming and going after hours or something like that, it's actually quite delightful in a sense, but I cannot imagine it would have any negative impact whatsoever. They're nice people, number one, they're courteous people.

CONSTANTINE ALEXANDER: Anyone else? Let me say on behalf of the Board, I wanted to congratulate all of you for taking the time to sit here and speak on behalf of this program and be concerned citizens of city. We have to be here, we signed up for it. You don't have to. You took the time to come and we appreciate that.

We do have two letters or actually emails I'll read into the file as well to supplement the comments made.

One is from a C. Alan Speight, S-P-E-I-G-H-T.

"We are writing on behalf of the music teachers in the

Cambridge music consortium who would like to use space at 315 Broadway for music lessons. We are strongly in favor of their plans. Our son William, age 7 is a piano student of Deborah Beers, one of the CMC teachers, and we know firsthand how difficult it has been for this small dedicated group of teachers all forced out of space at Longy to find adequate lessons space for their Cambridge pupils. We're residents of the Broadway neighborhood just on a couple blocks on Antrum Street so also have a firsthand sense about neighborhood parking and traffic issues. We're very frankly don't see there being much new additional stress on parking/traffic in this neighborhood as a result of the CMC's quite modest proposal. Our son, for example, would walk to lessons there. And our guess is that many other pupils of the CMC teachers would also be able to either walk or use public transit. In fact, from a planing standpoint a very positive factor of the Broadway/Prospect location is its close proximity to

public transit, Central Square, Red Line and a number of buses. We see this as consistent with what makes Cambridge great and why we have remained residents and public school parents here. Good urban planning that fully includes families and children."

By the way the letter was signed by both Alan and Hallie Speight.

Then we have an email from Claire Messud, M-E-S-S-U-D, who resides at 214 Lexington Avenue.

"I'm writing with regard to the zoning hearing this evening about 166-172 Prospect Street in Cambridge. I understand that a Special Permit is being sought to allow the building's tenants to proceed even though there are fewer parking spaces in the existing parking than the city would normal require, six spaces rather than nine. While the first floor will be used by a daycare, the second floor offices will be used by a collective music teachers giving private individual lessons. These teachers formally employed by Longy

School of Music now discontinued family program have gone to great effort to find a space that will accommodate families like ours who live in Cambridge and have been at risk of losing our children's music instructors. Our daughter has been studying piano for six years as a passionate young musician and extremely fortunate to have Shizue, S-H-I-Z-U-E, Sano, S-A-N-O, one of the future tenants of 166-172 Prospect Street as her teacher. Ms. Sano is an extraordinary pianist and teacher and it's a privilege for our daughter to study with her. For us, as Cambridge residents, the closing of Longy family program was potentially disastrous. We're overjoyed that the teachers whose gifts are so important to the Cambridge community have found a place where they can teach without leaving town. In terms of parking space, I want to stress that the smaller number of spots don't seem to us to pose any problems. We'll be dropping our daughter off for her lessons and picking her up afterwards. I understand

there's room for dropoff and pickup in the parking lot. Most parents were certainly dropoff or pickup or else the students will arrive by bicycle or the T is only a few blocks away. I don't believe there are any large group lessons planned that would involve many cars arriving at the same time. Furthermore, for those like our family who are Cambridge residents, there's Appleton Street permit parking in that area of town. I can't tell you what a boom it is for us and for families like ours to have such amazing teachers present in Cambridge. It's an unequivocal benefit to the community. The teachers look long and hard for a space that would work for them and their pupils. We're extremely excited by the imminent tenancy at Prospect Street given the nature of the use of the building, there's not a need for numerous parking spaces. Individual pupils will come at various times throughout the day and not stay for long periods. Our family urges you, please, to consider the great benefit of these

tenants to the building and this community. Please grant them this Special Permit that will reduce the parking space requirement and enable us to move forward there with their wonderful teaching plan."

And that's it. You must be embarrassed by all the wonderful words you've been hearing. It's a tribute to you.

I will close public testimony. Anything you want to add?

CAMPBELL ELLSWORTH: Just a personal note. I got a 21 year old and 19 year old and a three year old and the 19 year old also went to that community program at Longy. As a very young boy, he was a very talented cellist and now he's at the New England Conservatory due in large part due to the commitment these folks have, and it's extraordinary that they have the drive to keep it among us. It's a wonderful thing.

CONSTANTINE ALEXANDER: I close public testimony. Any comments the Board wants to make or

should we go for a motion?

JANET GREEN: Ready.

CONSTANTINE ALEXANDER: The Chair moves that this Board make the following findings with respect to the Special Permit being asked: That the need for the parking spaces required by the zoning bylaw do not really apply to the nature of the use that's going to be made of the structure; namely, one on one music instruction; that the lesser amount of parking will not cause excessive congestion, endanger public safety, substantially reduce parking availability for other uses or otherwise adversely impact the neighborhood. In this regard there's ample off-street parking in the area, there's proximity to public transit in terms of the Central Square Red Line and bus lines. And further that what is being proposed is a distinct community benefit, that it allows of what would appear to be a disappearing music program, the result of actions taken by Longy School to continue in this community to provide

musical education for the citizens of the city, all of which add to the livability and the attractiveness of Cambridge as a place to live.

And further, we have to make further finding with respect to the Special Permit. Some are repetitive, what I've already spoken about, that what you're seeking to do will not cause congestion, hazard or substantial change in established neighborhood character; that the operation continued operation of adjacent uses will not be adversely effected by the relief you're seeking tonight; that no nuisance or hazard will be created to the detriment of health, safety and welfare of the citizens of the city, and what you're proposing will not impair the integrity of the district or otherwise derogate the intent and purposes of this ordinance. In fact, it will further the intent and purpose of the ordinance which is to make Cambridge a more liveable and attractive city and place to live.

On that basis of all of these findings, the

Chair moves to grant the Special Permit to the petitioner to reduce the amount of parking required. One of them I should point out, the City of Cambridge in recent years has moved to reduce parking requirements and to encourage people to use alternative modes of transportation. The need at one point seemed to be prevalent in the city for off-street parking is no longer as a matter of policy in Cambridge and that that policy of encouraging people to walk and bike will be furthered by not having parking spaces that are not necessary for which you proposed to do.

On the basis of all this, the Board -- the Chair moves that this Board grant a Special Permit to reduce the amount of parking required for this site with respect to the activities you propose to conduct on the site.

All those in favor say "aye."

Five in favor.

(Favor: Constantine Alexander, Brendan

Sullivan, Douglas Myers, Susan Spurlock, Janet Green.)

CONSTANTINE ALEXANDER: Good luck.

(9:50 p.m.)

(Sitting Members: Constantine Alexander, Janet Green, Douglas Myers, Susan Spurlock and Brendan Sullivan.)

Case No. 10494: 41 Stearns Street. John K. Felix. Special Permit: To replace kitchen window on the west wall of the kitchen. Art. 8.000, Sec. 8.22.2.D. (Non-Conforming Structure.)

CONSTANTINE ALEXANDER: The Chair will call Case No. 10494, 41 Stearns Street. Anyone here wish to be heard on this matter?

JOHN FELIX: Good evening. My name is John Felix. I know it's late. I'll try to move along quickly. We're asking for a Special Permit. I own a two-family house on Somerville Avenue in Cambridge, and we have owned the house for 25 years and have proceeded to try to -- we've tried to renovate the house during that time. The first floor apartment has been rented previously most of the time we owned the house. Our

tenants moved out earlier and we have chosen to renovate the kitchen.

The kitchen was modified a number of years ago from a more traditional kitchen to a family style kitchen, and we're making an effort to simplify the kitchen. And one of the changes we would like to make is there was a pair of casement windows, and we would like to return them back to the original condition. That was a double-hung window that we -- so here.

CONSTANTINE ALEXANDER: We have that in our files.

JOHN FELIX: So the -- Ranjit asked me to come here and because it's within the setback.

CONSTANTINE ALEXANDER: You have to get a Special Permit, not a variance. Straightforward.

Any questions from the Board?

Anyone here wish to be heard in this matter?

No one wishes to be heard, the Chair is in receipt of two letters which I'll read into the record.

One is from Matthaeus Wagner and Wynn Huang, H-U-A-N-G, who resides at 44 Stearns Street.

"I'm writing in support of John and Heddy Felix for their kitchen window renovation on Somerville Avenue. The replacement of the current casement window with a new double-hung window would result in that window matching the other windows in their home and the apartment unit."

The other letter is from Dura, D-U-R-A, Winder, W-I-N-D-E-R, who resides at 36 Sherman Street. I'm writing in support of John and Heddy Felix for their kitchen window renovation on the first-floor apartment at 41 Stearns Street. This window will overlook my driveway. They wish to replace the horizontal casement kitchen window with a double hung vertical window to match all the other original windows in their house. I feel this would be a very good improvement to their house and the neighborhood as a whole."

That's it for public commentary. Anything

further you want to add?

JOHN FELIX: NO.

CONSTANTINE ALEXANDER: I close public testimony.

Ready for a vote or do you want to discuss it?

The Chair moves this Board make the following findings with regard to the -- with respect to the Special Permit being sought; that what is being proposed will not cause congestion, hazard, or substantial change in the established neighborhood character; that the continued operation of adjacent uses will not be adversely affected by what is being proposed in this regard, and it will be pointed out it will not create any additional windows which might be privacy issues for abutters. It is just reconfiguring the one window that is there.

No nuisance or hazard will be created to the detriment of the health, safety and welfare of the occupant or the citizens of the city, and that the

proposal used will not impair the integrity of the district or adjoining ordinance. In fact, the relief being sought is modest in nature. It's aesthetically more pleasing than what exists now, that the neighbors most effective of what is being proposed is in support of the petition.

On the basis of these findings, the Chair moves to grant a Special Permit to the petitioner to procedure in accordance with the plans or the photo simulations and drawings submitted by the petitioner all initialed by the Chair.

All those in favor say "aye."

Five in favor.

Good luck.

(Favor: Constantine Alexander, Brendan Sullivan, Douglas Myers, Susan Spurlock, Janet Green.)

(10:10 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Douglas Myers, Susan Spurlock, Janet Green.)

Case No. 10477: 288 Norfolk Street.

AT&T - c/o David Ford, Centerline Communications.

Special Permit: To install 11 panel antennas, 8 will be installed with faux canisters and ballast mounted to then roof, 3 will be facade mounted to the building's elevator shaft and painted to match the brick.

CONSTANTINE ALEXANDER: The Chair will call a continued case, 10477, 288 Norfolk Street.

Anyone wish to be heard on this matter.

Before we start this case, I seem to be noticing a problem in this case. We were explicit that you have to change the sign to reflect the new, and change the time from 9:30 p.m. to what it was before, to 7:00 p.m. And we continued the case on that basis.

You didn't comply with that requirement.

The sign says -- that's why we're hearing you now. It doesn't say 7:00 p.m. The problem this has created is there's at least one neighbor abutter who wishes to be heard on this matter who relied on the fact that the sign said -- she was at the last hearing and relied on fact it was supposed -- the case was supposed to be heard at 7:00. She was here at 7:00. She could not stay until now after 10:00. And felt she is disadvantaged.

She even checked this morning -- recently with the Inspectional Services.

I'm going make a motion. I'm going to vote in favor of my motion that this case be continued forward until a date I know this neighbor can be here. I think it's unfair for us to proceed and not be able to hear the views of the neighbor that didn't prepare anything in writing because they thought she would be speaking to this matter.

I'm sorry to have to do this, but it also

starts from the fact you didn't change the sign like we told you to with respect to the sign.

DAVID FORD: Even the sign said 9:30.

CONSTANTINE ALEXANDER: No, the sign says 9:30. But she heard at the hearing when we continued the case, it was going to be continued to 7:00 p.m.

DAVID FORD: We were notified a few days ago we were being changed to 9:30.

CONSTANTINE ALEXANDER: You were notified two days because I checked -- and other members did too -- I check all the properties that we're going to hear, when I did, I noticed you didn't change the sign. I told Sean to let you folks know that we're not going to hear the case until 9:30. We can't because you didn't change the sign. But now we have a further problem that by not changing it, she didn't know that.

JANET GREEN: She was here at 7:00.

SUSAN ROBERTS: Okay.

JANET GREEN: There was another couple on

vacation tonight, but also wanted to come down.

SUSAN ROBERTS: Just so you know, this is a case where we went to the Planning Board, the Planning Board told us that they would like us to meet with the planning staff and Historical Commission staff, which we did. And in order for us to do that, and come before the Board, which had already been scheduled, we asked for -- to reschedule with you. But we didn't go to that hearing. In other words, we did it by mail. So in other words, neither David nor I were here. We did it by mail through Maria and Sean. We signed the waiver and that was it. We never were here. I apologize to the extent that we didn't know we needed to change the sign to 7:00. She was here and we were not. That's unfortunate.

One question, though, I had for you, if we were going to come back, we know that the September 12 date is filled.

September 26th would be when we would have to come back.

Is there any way that we could open the hearing for the limited purpose of you telling us at least what you think of the design to the extent we need to address any of your concerns? We would like to do that so when we do come back hopefully, if we also address the concerns of the neighbors and/or abutters that we would be able to --

CONSTANTINE ALEXANDER: That's a fair question. I have to point out the consequences. We became a case heard. I won't be here on September 26, unless you want to go forward with four people, you would not be able to have the case heard on September 26. It would be later than that.

And Susan is a one-time special substitute and you would be dragging her back for the other time. I don't think that's a good idea.

DAVID FORD: To add to Susan's point, the reason why I went back to the site is I didn't change the date is I was told we would were continued to the

29th. I was never given a specific time as I would have changed the time to 7:00 p.m. had I known. I left at 9:30.

CONSTANTINE ALEXANDER: Nobody is suggesting bad faith on your part. I want to make that clear. It's unfortunate, but it happened. You have had cases continued for our sites and you know you have to change the time on those sites. We think about it a lot because we do it every two weeks.

I will put it to a vote. I don't think it would be fair to the neighborhood under the circumstances since they relied in good faith what we said at the hearing and what they were told by Special Services Department, and the problem we have is due to you, not malfeasance, but it comes from the fact you didn't change the sign.

DOUGLAS MYERS: When did this individual say she spoke to --

CONSTANTINE ALEXANDER: She advised us

earlier in the evening, around 7:00.

DOUGLAS MYERS: I was in there yesterday and I was told yesterday morning, I was told the hearing was going to be at 9:00 and 9:30.

DAVID FORD: I got an email a few days ago.

CONSTANTINE ALEXANDER: She checked further after she was at the hearing the last time.

SEAN O'GRADY: I don't remember speaking to her if I did. We have known for several days.

DAVID FORD: That's what I'm saying.

SEAN O'GRADY: Tuesday probably. We would have known Wednesday.

DAVID FORD: If she heard it was 9:30 and if it was inconvenience and it didn't go with her schedule --

CONSTANTINE ALEXANDER: Because the hour is late, I'll make a motion.

I move this case be further continued as a case not heard until 7:00 p.m. on September 26th on the

condition that the sign be further modified to reflect the new date now, September 26, and more importantly at 7:00 p.m. for the time.

You've signed a waiver of time for decision. I remind you, if you change your plans between now and then you have to have it in our files the Monday before.

All those in favor of continuing this case on this basis say "aye."

Five in favor.

(Favor: Constantine Alexander, Brendan Sullivan, Douglas Myers, Susan Spurlock, Janet Green.)

CONSTANTINE ALEXANDER: The case will be continued. We will see you September 26.

(10:25 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Douglas Myers, Susan Spurlock, Janet Green.)

BRENDAN SULLIVAN: Are we done?

CONSTANTINE ALEXANDER: Not yet.

The Chair calls 10467, 113 Hamilton Street.

Anyone wish to be heard on this?

THOMAS ROSE: Thomas Rose, I'm an architect in Cambridge. I live in 114 Hamilton Street. I'm representing Matt and Jean Hohenboken, H-O-H-E-N-B-O-K-E-N.

What we're proposing, it's an unusual site where there's two units on a plot. Unit 113 is the unit in the rear, and we're proposing to add to an existing bathroom enough area for a shower and we're making that area about three by five feet and making a connection, extending that line to an existing vestibule, just cleaning up the elevation and adding to -- there's two wooden decks and we're combining it to a terrace and

changing a little of the grades.

CONSTANTINE ALEXANDER: The relief from the zoning is modest too. There's some setback. There's no FAR issues. Because of the nature of the lot, you intrude on setbacks, that's why you're here before us.

THOMAS ROSE: Yes.

CONSTANTINE ALEXANDER: Questions from Members of the Board?

JANET GREEN: No.

CONSTANTINE ALEXANDER: There appears to be none.

I open it up to public testimony.

Anyone here wish to be heard? The Chair notes nobody wishes to be heard. There's no letter in the file. Do you know if your clients spoke to neighbors?

THOMAS ROSE: They spoke to neighbors.

CONSTANTINE ALEXANDER: And?

THOMAS ROSE: As far as I know there's no

objections.

CONSTANTINE ALEXANDER: Any further final comments you want to make?

THOMAS ROSE: I don't think so. It's modest.

CONSTANTINE ALEXANDER: Comments of the Board or go to a vote? These are the final plans?

THOMAS ROSE: The date on that?

CONSTANTINE ALEXANDER: 5/1/13.

THOMAS ROSE: This is the proper one.

CONSTANTINE ALEXANDER: Any difference?

THOMAS ROSE: I was --

CONSTANTINE ALEXANDER: You -- that's right, there was a problem before.

THOMAS ROSE: The front yard setback. I changed that.

CONSTANTINE ALEXANDER: These were submitted in advance. This is not the first time we've seen them?

THOMAS ROSE: No.

CONSTANTINE ALEXANDER: The Chair moves we, the Board, make the following findings: That a literal enforcement of the provisions of the ordinance would cause a substantial hardship to the petitioner, the charge of it being that additional living space is necessary for the property for the occupants of the property or whoever may be occupying it. Hardship is owing to the shape of the lot and nature of the lot. This structure is unusually sited on the lot and the lot is non-conforming. And therefore, any relief modification to the structure requires zoning relief and it may be granted without detriment to the public good or nullifying or substantial derogating for the intent and purpose of the ordinance.

The Chair would note the relief being sought is modest.

There appears to be no neighborhood opposition and that what will be done will improve the

housing stock of the City of Cambridge.

So on the basis of these findings, the Chair moves that variance be granted to the petitioner to proceed on the condition that the work proceed in accordance with plans submitted by the petitioner. They're numbered D1, A 1A and A3, A4, all initialed by the Chair.

All those in favor of the granting the variance say "aye."

Five in favor.

(Favor: Constantine Alexander, Brendan Sullivan, Douglas Myers, Susan Spurlock, Janet Green.)

(Whereupon the proceedings were adjourned.)

ATTACH TO ZBA HEARING AUGUST 19, 2013

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I have read the foregoing transcript of my testimony, and except for any corrections or changes noted above, I hereby subscribe to the transcript as an accurate record of the statements made by me.

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Commonwealth of Massachusetts

Norfolk, ss.

I, Jill Kourafas, a Notary Public in and for the  
Commonwealth of Massachusetts, do hereby certify:

That the hearing herein before set forth is a true  
and accurate record of the proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand  
this 15th day of September 2013.

---

Jill Kourafas  
Certified Shorthand Reporter  
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[1] - 1:138:6

**'13**

[1] - 1:37:17

**0 [3]** - 1:2:7;

1:88:5, 11

**02139**

[1] - 1:1:8

**1 [4]** - 1:7:19;

1:9:11;

1:49:17;

1:149:6

**1.1**

[1] - 1:95:11

**1.4**

[1] - 1:95:11

**1.5**

[1] - 1:149:9

**10 [16]** - 1:2:3,

5; 1:4:4;

1:8:6; 1:55:5,

14, 17;

1:79:1;

1:85:15, 18;

1:86:2, 6, 16;

1:98:9, 13

**10448**

[1] - 1:6:13

**10467**

[2] - 1:2:13;

1:191:7

**10477**

[3] - 1:2:12;

1:181:5, 14

**10487**

[3] - 1:2:3;

1:10:11;

1:11:2

**10488**

[3] - 1:2:4;

1:6:5; 1:39:5

**10489**

[3] - 1:2:5;

1:55:5, 14

**10490**

[6] - 1:2:6, 8;

1:72:5;

1:73:3;

1:97:5;

1:98:4

**10491**

[3] - 1:2:7;  
1:88:5, 11

**10492**

[2] - 1:2:9;  
1:100:6

**10493**

[3] - 1:2:10;  
1:143:5, 11

**10494**

[3] - 1:2:11;  
1:175:5, 11

**105**

[1] - 1:15:18

**10:00**

[1] - 1:182:15

**10:10**

[1] - 1:181:1

**10:25**

[1] - 1:191:1

**11**

[3] - 1:15:13;  
1:35:4;  
1:181:8

**113**

[3] - 1:2:13;  
1:191:7, 16

**114**

[1] - 1:191:11

**12 [9]** - 1:52:2,

4; 1:55:8, 10;  
1:57:1;  
1:85:14;  
1:133:15;  
1:157:1;  
1:185:15

**13 [2]** - 1:7:10;

1:152:10

**131**

[2] - 1:3:13;  
1:4:16

**143 [1]** - 1:2:10

**14903**

[1] - 1:198:13

**149308**

[1] - 1:1:16

**15 [5]** - 1:41:1,

6; 1:49:18;  
1:145:2;

1:152:11

**151**

[1] - 1:158:7

**15th**

[1] - 1:198:10

**166**

[3] - 1:2:10;

1:143:5, 11

**166-172**

[2] - 1:166:3;

1:167:3

**17 [6]** - 1:41:6;

1:49:10;

1:59:7;

1:159:4, 14,

19

**175 [1]** - 1:2:11

**181 [1]** - 1:2:12

**19 [11]** - 1:7:3,

9; 1:8:15;

1:9:13;

1:40:13;

1:41:5;

1:49:6;

1:89:18;

1:169:14;

1:197:1

**191 [1]** - 1:2:13

**1998**

[1] - 1:28:8

**19th [1]** - 1:9:8

**1A**

[2] - 1:64:18;

1:195:19

**2 [1]** - 1:198:14

**2.0**

[1] - 1:95:10

**2.1**

[1] - 1:95:11

**20 [6]** - 1:48:1;

1:55:10;

1:107:19;

1:108:6, 8,

14

**20-day**

[3] - 1:8:11;

1:48:6;

1:75:18

**2008**

[1] - 1:88:7

**2013**

[14] - 1:1:4,  
 10; 1:3:3;  
 1:7:2, 9-10,  
 18-19; 1:8:6;  
 1:41:2;  
 1:141:14;  
 1:197:1;  
 1:198:10

**2017**

[1] - 1:198:14

**21**

[1] - 1:169:14

**214**

[1] - 1:165:19

**22** [5] - 1:2:4;  
 1:6:5; 1:39:5;  
 1:89:18

**220R**

[1] - 1:6:13

**222** [1] - 1:6:13

**23**

[2] - 1:40:19;  
 1:49:17

**24** [3] - 1:7:18;

1:131:4;  
 1:141:14

**25**

[2] - 1:15:15;  
 1:175:18

**26**

[14] - 1:52:5,  
 7, 13; 1:53:2,  
 4, 18;  
 1:84:17;  
 1:85:6;  
 1:98:9, 13;  
 1:186:9, 12;  
 1:189:10;  
 1:190:4

**267**

[1] - 1:143:16

**26th**

[2] - 1:185:16;  
 1:189:8

**2700**

[1] - 1:150:5

**288**

[3] - 1:2:12;  
 1:181:5, 14

**29** [5] - 1:1:4,  
10; 1:3:3;  
1:7:2;  
1:37:17

**29th**

[1] - 1:187:1

**2A**

[1] - 1:64:18

**2B** [1] - 1:65:1

**3** [11] - 1:2:6,

8; 1:60:14;

1:63:17;

1:72:5;

1:73:3;

1:97:5;

1:98:4;

1:181:10

**3-family**

[3] - 1:97:11,  
17

**30**

[3] - 1:23:11;

1:25:19;

1:147:16

**30th**

[2] - 1:147:12;

1:162:13

**31** [1] - 1:49:18

**315**

[2] - 1:148:10;

1:164:6

**36** [1] - 1:178:2

**39** [1] - 1:2:4

**395** [4] - 1:2:9;

1:100:6;

1:116:2;

1:123:9

**3:00**

[1] - 1:145:6

**3A**

[1] - 1:64:18

**3B**

[1] - 1:64:10

**3D**

[1] - 1:19:19

**4.32**

[2] - 1:59:13;

1:60:14

**4.40**

[1] - 1:59:13

**4.5**

**[3]** - 1:149:9;  
1:150:6

**40A [1]** - 1:4:4**41 [4]** - 1:2:11;

1:175:5, 11;  
1:178:4

**44 [5]** - 1:2:3;

1:10:11;  
1:11:2;  
1:28:6;  
1:177:10

**49 [1]** - 1:59:14**5 [2]** - 1:150:6**5.000**

**[1]** - 1:10:16

**5.000**

**[4]** - 1:6:9;  
1:72:12;  
1:88:8;  
1:97:13

**5.31 [5]** - 1:6:9;

1:10:16;  
1:72:13;  
1:88:8;  
1:97:13

**5/1/13**

**[1]** - 1:193:16

**5/30/13**

**[1]** - 1:70:4

**500**

**[1]** - 1:150:3

**55 [1]** - 1:2:5**5:00**

**[6]** - 1:9:18;  
1:20:11;  
1:53:18;  
1:86:15;  
1:98:15;  
1:99:1

**5:30**

**[1]** - 1:145:7

**6 [1]** - 1:79:1**6.000**

**[1]** - 1:143:8

**6.3.64**

**[1]** - 1:149:19

**6.35**

**[2]** - 1:143:8;  
1:153:12

**6.35.1**

[1] - 1:150:8

**6.36.3**

[1] - 1:149:6

**6.5**

[1] - 1:155:16

**6.8**

[1] - 1:19:13

**60** [1] - 1:103:4**617.786.7783**

[1] - 1:1:19

**64**

[4] - 1:27:18;

1:28:4, 8;

1:155:8

**68** [1] - 1:155:8**7** [1] - 1:164:9**70** [1] - 1:162:8**71**

[1] - 1:100:11

**72** [1] - 1:2:6**7:00**

[20] - 1:9:8,

14; 1:52:13;

1:53:1, 5;

1:85:6;

1:86:2, 7-8;

1:182:3, 7,

13-14;

1:183:16;

1:184:10;

1:185:11;

1:187:3;

1:188:4;

1:189:7, 11

**7:30** [3] - 1:1:4;

1:3:4;

1:145:4

**7:40** [1] - 1:6:1**7:45**

[1] - 1:10:7

**8** [2] - 1:64:10;

1:181:8

**8.000**

[3] - 1:72:19;

1:98:1;

1:175:8

**8.22.2.C**

[2] - 1:72:19;

1:98:1

**8.22.2.D**

[1] - 1:175:8

**8/30/13**

[1] - 1:70:7

**83** [1] - 1:155:8**85** [1] - 1:15:18**860** [1] - 1:1:7**87** [1] - 1:2:7**8:00**

[1] - 1:55:1

**8:15**

[1] - 1:72:1

**8:30**

[2] - 1:88:1;

1:145:4

**8:45**

[1] - 1:97:1

**8:55**

[1] - 1:100:1

**9** [3] - 1:11:14;

1:90:1;

1:156:19

**9.5**

[1] - 1:150:7

**90** [1] - 1:16:1**91** [1] - 1:155:8**95** [1] - 1:2:8**97** [1] - 1:2:9**9716**

[1] - 1:88:7

**99** [1] - 1:79:1**9:00**

[1] - 1:188:7

**9:30**

[12] - 1:11:15;

1:87:6;

1:143:1;

1:152:3;

1:182:2;

1:183:12, 14,

18; 1:184:6;

1:187:4;

1:188:8;

1:189:1

**9:50**

[1] - 1:175:1

**A,B,C**

[1] - 1:2:3

**A-L-E-X-A-N-D****-R-O-V**

[1] - 1:161:7

**A-M-A-C-H-E-R**

[1] - 1:12:1

**A3**

[1] - 1:195:19

**A4**

[1] - 1:195:19

**abandon**

[1] - 1:106:5

**abandoned**

[1] - 1:141:17

**ability**

[2] - 1:93:2, 7

**able**

[9] - 1:51:11;

1:148:5, 8-9;

1:159:7;

1:165:5;

1:183:4;

1:186:5, 11

**above-caption**

**ed** [1] - 1:4:2

**absolutely**

[2] - 1:135:10;

1:163:2

**abut**

[1] - 1:16:12

**abuts**

[1] - 1:94:2

**abutter**

[3] - 1:109:17;

1:182:9

**abutters**

[8] - 1:14:7;

1:36:3;

1:74:19;

1:75:6;

1:81:9;

1:109:17;

1:179:11;

1:186:5

**academic**

[1] - 1:152:3

**accept**

[2] - 1:3:18;

1:104:16

**acceptable**

[1] - 1:149:18

**access**

[11] - 1:61:17;

1:101:8;  
 1:126:11;  
 1:127:18;  
 1:128:3;  
 1:132:16;  
 1:135:14, 17;  
 1:159:8, 11

**accessible**

[5] - 1:104:5;  
 1:115:13, 17;  
 1:123:1;  
 1:140:2

**accommodate**

[5] - 1:111:14;  
 1:123:12;  
 1:135:11;  
 1:148:2;  
 1:166:16

**accomplish**

[1] - 1:135:16

**accomplishing**

[1] - 1:135:16

**accordance**

[6] - 1:37:16;  
 1:94:13;  
 1:95:9;  
 1:141:12;  
 1:180:7;  
 1:195:17

**according**

[1] - 1:134:17

**accordingly**

[1] - 1:8:13

**account**

[1] - 1:33:6

**accountant**

[1] - 1:150:1

**accurate**

[2] - 1:197:17;  
 1:198:8

**accurately**

[1] - 1:149:15

**acknowledge**

[1] - 1:62:17

**Act**

[2] - 1:126:6;  
 1:129:18

**action**

[1] - 1:8:1

**actions**

[1] - 1:171:8

**activities**

[2] - 1:149:10;  
1:173:14

**activity**

[1] - 1:148:3

**actual**

[2] - 1:12:16;  
1:56:12

**add**

[20] - 1:10:14;  
1:18:9;  
1:41:15;  
1:49:3;  
1:68:3;  
1:88:6;  
1:101:7;  
1:104:12;  
1:114:6, 9;  
1:121:2;  
1:122:19;  
1:123:15;  
1:132:10;  
1:156:14;  
1:169:12;  
1:171:11;  
1:178:13;  
1:186:17;  
1:191:17

**added**

[1] - 1:101:18

**adding**

[2] - 1:123:10;  
1:192:3

**addition**

[4] - 1:6:8;  
1:48:9;  
1:57:7;  
1:141:19

**additional**

[7] - 1:15:14;  
1:34:14;  
1:104:7;  
1:111:10;  
1:164:19;  
1:179:9;  
1:194:15

**address**

[5] - 1:51:3;  
1:100:9;

1:126:3;

1:186:1, 4

**addressed**

[3] - 1:6:17;

1:29:8;

1:153:8

**adequacy**

[1] - 1:43:2

**adequate**

[3] - 1:36:15;

1:42:1;

1:164:13

**adequately**

[1] - 1:48:15

**adjacent**

[3] - 1:68:14;

1:172:1;

1:179:6

**adjoining**

[2] - 1:69:2;

1:179:18

**adjourned**

[1] - 1:196:9

**adjustment**

[1] - 1:148:19

**advance**

[2] - 1:102:14;

1:194:7

**advancing**

[1] - 1:141:2

**advantage**

[1] - 1:132:19

**advantageous**

[1] - 1:145:10

**advantages**

[1] - 1:132:11

**adversely**

[6] - 1:62:2;

1:68:15;

1:154:2;

1:170:19;

1:172:2;

1:179:7

**advertise**

[3] - 1:74:11;

1:103:3

**advertised**

[4] - 1:74:11;

1:77:17;

1:111:3;

1:113:15

**advertisement**

[16] - 1:13:8;

1:74:8;

1:75:11;

1:101:2, 6,

11, 16;

1:102:15;

1:103:19;

1:105:5;

1:108:12;

1:111:8;

1:112:16;

1:141:11;

1:146:7

**advertises**

[1] - 1:74:8

**advertising**

[1] - 1:112:17

**advice**

[1] - 1:110:18

**advised**

[3] - 1:56:4;

1:141:17;

1:188:3

**advising**

[1] - 1:9:11

**aesthetically**

[1] - 1:180:1

**affect**

[1] - 1:129:13

**affected**

[2] - 1:41:4;

1:179:7

**afford**

[1] - 1:138:5

**affordable**

[1] - 1:4:6

**afterwards**

[1] - 1:167:17

**age**

[3] - 1:127:16;

1:141:2;

1:164:8

**agenda**

[1] - 1:11:1

**ages**

[1] - 1:144:17

**aging**

[2] - 1:119:18;

1:120:1

**ago**

[5] - 1:59:19;  
1:88:17;  
1:176:7;  
1:183:18;  
1:188:10

**agreed**

[1] - 1:112:11

**agrees**

[1] - 1:78:4

**ahead**

[1] - 1:79:5

**aim**

[1] - 1:31:12

**air**

[3] - 1:121:4,  
7, 19

**Alan**

[2] - 1:164:3;  
1:165:17

**ALEXANDER**

[199] - 1:1:12;  
1:3:7; 1:5:3;  
1:6:11; 1:7:8;  
1:10:19;  
1:13:4, 18;  
1:14:4, 17;  
1:15:2;  
1:16:7, 15;  
1:17:1, 8;  
1:18:3, 14,  
19; 1:19:3,  
14, 16;  
1:20:1, 5, 9;  
1:21:3, 7, 12;  
1:23:13;  
1:24:3;  
1:25:11, 14,  
17; 1:27:7;  
1:28:3;  
1:29:4, 17;  
1:30:2;  
1:31:2, 19;  
1:34:10;  
1:36:5;  
1:39:4;  
1:40:10;  
1:41:13;  
1:46:13, 19;

1:47:17;  
1:50:7, 17;  
1:51:5;  
1:52:1, 6, 9,  
16; 1:53:10;  
1:54:1, 8, 13;  
1:55:13;  
1:56:9;  
1:57:13;  
1:58:8, 16;  
1:59:3;  
1:60:19;  
1:63:2;  
1:65:2, 13;  
1:66:14;  
1:67:9, 13;  
1:73:2;  
1:74:6;  
1:75:7;  
1:76:13, 19;  
1:77:19;  
1:78:11, 14;  
1:80:8;  
1:82:11;  
1:83:4, 9;  
1:84:2, 9, 14;  
1:85:1, 4, 9,  
13, 19;  
1:87:8;  
1:88:10, 14;  
1:89:3, 8, 16;  
1:90:4, 12,  
15, 17;  
1:91:2, 6, 18;  
1:92:7;  
1:94:17;  
1:95:3, 19;  
1:98:3, 10,  
19; 1:100:5,  
8, 18;  
1:104:15;  
1:105:14;  
1:106:4, 8,  
17; 1:107:3,  
10, 17;  
1:109:2, 8;  
1:110:16;  
1:111:4, 12;  
1:112:4, 8;  
1:113:11, 18;

1:114:4, 12;  
 1:115:1, 6,  
 10, 19;  
 1:119:1;  
 1:123:4, 16;  
 1:124:2;  
 1:125:8, 11;  
 1:128:14, 19;  
 1:131:2, 9;  
 1:132:4, 8;  
 1:135:12;  
 1:139:10, 13;  
 1:142:7;  
 1:143:10;  
 1:146:4, 12;  
 1:147:2, 8;  
 1:153:7;  
 1:154:17;  
 1:155:11;  
 1:156:6;  
 1:157:14;  
 1:158:4, 12,  
 17; 1:160:2,  
 14; 1:161:3;  
 1:162:1;  
 1:163:11;  
 1:170:4, 8;  
 1:174:2;  
 1:175:10;  
 1:176:15;  
 1:177:1;  
 1:178:15;  
 1:181:13;  
 1:183:13, 19;  
 1:186:6;  
 1:187:5;  
 1:188:3, 11;  
 1:189:4;  
 1:190:3;  
 1:191:6;  
 1:192:6, 12,  
 15; 1:193:5,  
 8, 12, 16, 18;  
 1:194:2, 6,  
 10

**Alexander**

[26] - 1:3:5;  
 1:5:1; 1:6:2;  
 1:10:4, 8;  
 1:38:5;

1:39:1;  
 1:54:5;  
 1:55:2;  
 1:71:16;  
 1:72:2;  
 1:87:2;  
 1:88:2;  
 1:95:16;  
 1:97:2;  
 1:99:5;  
 1:100:2;  
 1:142:15;  
 1:143:2;  
 1:173:18;  
 1:175:2;  
 1:180:14;  
 1:181:2;  
 1:189:19;  
 1:191:2;  
 1:196:5

**ALEXANDROV**

[1] - 1:161:6

**Alexandrove**

[1] - 1:161:7

**allow**

[10] - 1:4:5;  
 1:72:17;  
 1:73:15;  
 1:95:5;  
 1:97:17;  
 1:123:15;  
 1:140:19;  
 1:141:3, 10;  
 1:166:5

**allowed**

[2] - 1:69:10;  
 1:127:12

**allows**

[2] - 1:106:11;  
 1:171:6

**almost**

[8] - 1:15:7;  
 1:31:11;  
 1:69:8;  
 1:81:11;  
 1:118:8;  
 1:120:4;  
 1:133:6;  
 1:147:16

**alpha**

[1] - 1:57:2

**alternative**

[3] - 1:60:17;

1:76:5;

1:173:1

**Amacher**

[3] - 1:10:12;

1:11:19;

1:37:17

**AMACHER**

[33] - 1:11:18;

1:12:3;

1:13:11;

1:14:3, 12,

19; 1:15:5,

12, 16;

1:17:12;

1:18:8, 18;

1:19:1, 7, 15,

18; 1:20:3, 8,

17; 1:21:5,

11, 17;

1:22:2, 9, 12,

15; 1:23:3;

1:24:10;

1:25:2, 7;

1:31:1;

1:35:7, 11

**amazing**

[2] - 1:120:15;

1:168:10

**amazingly**

[1] - 1:77:6

**amend**

[1] - 1:98:11

**amending**

[1] - 1:99:2

**American**

[2] - 1:126:6;

1:129:17

**amount**

[9] - 1:118:17;

1:134:6;

1:145:12;

1:148:4;

1:153:18;

1:157:16;

1:170:16;

1:172:16;

1:173:12

**ample**

[2] - 1:155:9;  
1:171:1

**Amy**

[2] - 1:28:7;  
1:141:13

**AMY**

[28] - 1:100:7,  
11; 1:104:1;  
1:105:9, 18;  
1:106:7;  
1:107:12;  
1:111:9, 17;  
1:115:9, 12;  
1:116:1, 15;  
1:117:4;  
1:119:14;  
1:122:4, 8;  
1:130:19;  
1:131:5, 7,  
19; 1:132:6;  
1:135:1;  
1:136:2, 19;  
1:137:9, 12;  
1:138:19

**analysis**

[1] - 1:103:16

**ancient**

[1] - 1:30:8

**AND/OR**

[1] - 1:198:17

**Anderson**

[1] - 1:55:19

**Andrew**

[1] - 1:6:16

**animal**

[2] - 1:75:1, 3

**announce**

[1] - 1:11:6

**announcement**

[1] - 1:147:19

**announcing**

[1] - 1:9:11

**answer**

[4] - 1:109:3;  
1:110:19;  
1:113:3;  
1:114:14

**answering**

[1] - 1:62:19

**answers**

[1] - 1:138:9

**antenna**

[1] - 1:63:9

**antennas**

[16] - 1:55:9;  
 1:56:14, 17;  
 1:57:1, 5, 10,  
 19; 1:59:19;  
 1:60:9;  
 1:64:13;  
 1:70:13;  
 1:71:5;  
 1:181:8

**Anthony**

[1] - 1:40:12

**ANTHONY**

[4] - 1:41:11;  
 1:44:9;  
 1:46:6;  
 1:49:5

**Antrum**

[1] - 1:164:16

**ANY**

[2] - 1:198:16

**anyhow**

[3] - 1:12:3;  
 1:63:11;  
 1:135:7

**anyway**

[1] - 1:41:14

**apartment**

[3] - 1:176:2;  
 1:177:18;  
 1:178:4

**apologies**

[1] - 1:44:10

**apologize**

[2] - 1:129:13;  
 1:185:9

**APPEAL**

[1] - 1:1:1

**appeal**

[3] - 1:8:5, 9;  
 1:48:3

**appealed**

[1] - 1:8:3

**appear**

[4] - 1:67:16;  
 1:101:19;

1:141:6;  
1:171:7

**Appleton**

[1] - 1:168:7

**application**

[11] - 1:3:19;  
1:4:8; 1:8:17;  
1:9:12;  
1:59:6, 8;  
1:62:17;  
1:73:9, 18;  
1:74:4

**applied**

[1] - 1:90:5

**applies**

[1] - 1:129:18

**apply**

[3] - 1:69:11;  
1:90:6;  
1:170:13

**APPLY**

[1] - 1:198:16

**appraise**

[1] - 1:87:11

**appreciate**

[5] - 1:24:13;  
1:67:3;  
1:137:12;  
1:138:11;  
1:163:18

**approval**

[4] - 1:7:16;  
1:16:6, 12;  
1:112:7

**approve**

[3] - 1:20:16;  
1:82:13;  
1:83:6

**approved**

[6] - 1:60:5;  
1:69:7;  
1:84:6;  
1:88:7, 18;  
1:95:7

**approximate**

[1] - 1:145:2

**ARACELI**

[2] - 1:160:15

**Araceli**

[1] - 1:160:16

**architect**

[2] - 1:95:1;  
1:191:11

**Architects**

[1] - 1:95:10

**area**

[18] - 1:7:17;  
1:8:2;  
1:28:10;  
1:58:5;  
1:60:10, 18;  
1:108:16;  
1:134:8;  
1:135:10;  
1:136:14;  
1:140:1;  
1:142:1;  
1:148:18;  
1:155:7;  
1:168:8;  
1:171:2;  
1:191:18

**arrive**

[1] - 1:168:1

**arrives**

[1] - 1:5:5

**arriving**

[2] - 1:51:15;  
1:168:4

**Art [8]**

- 1:6:8;  
1:72:12, 19;  
1:88:8;  
1:97:13;  
1:98:1;  
1:143:8;  
1:175:8

**art**

[1] - 1:10:16

**Article**

[1] - 1:149:6

**articulated**

[1] - 1:154:14

**aside**

[1] - 1:131:15

**assigned**

[1] - 1:9:10

**Associates**

[2] - 1:37:18;  
1:143:15

**assume**

[1] - 1:29:7

**assuming**

[2] - 1:82:13;  
1:102:11

**AT&T**

[5] - 1:55:5,  
19; 1:59:6,  
19; 1:181:6

**AT&T's**

[7] - 1:55:16;  
1:56:16;  
1:57:18;  
1:59:10, 15;  
1:61:13;  
1:63:8

**Athena**

[1] - 1:160:9

**atmosphere**

[1] - 1:148:17

**ATTACH**

[1] - 1:197:1

**attaching**

[1] - 1:70:12

**attempt**

[2] - 1:70:17;  
1:81:3

**attempted**

[1] - 1:140:13

**attempting**

[1] - 1:30:4

**attic [2]** - 1:6:7;

1:41:7

**Attorney**

[2] - 1:3:15

**attorney**

[1] - 1:150:1

**attractive**

[2] - 1:121:15;  
1:172:12

**attractiveness**

[1] - 1:171:12

**audience**

[1] - 1:101:1

**August**

[6] - 1:7:2, 19;  
1:37:17;  
1:41:1, 5;  
1:49:18

**AUGUST**

[4] - 1:1:4, 10;

1:3:3;  
1:197:1

**authority**

[1] - 1:47:7

**availability**

[5] - 1:154:1,  
5-7; 1:170:18

**available**

[1] - 1:85:14

**Ave**

[1] - 1:156:19

**Avenue**

[3] - 1:166:1;  
1:175:17;  
1:177:14

**AVENUE**

[1] - 1:1:7

**awards**

[1] - 1:4:7

**aware**

[4] - 1:11:6;  
1:139:8;  
1:147:13;  
1:163:1

**awhile**

[2] - 1:33:12;  
1:136:12

**aye**

[10] - 1:4:17;  
1:10:2;  
1:38:1;  
1:54:3;  
1:71:14;  
1:142:12;  
1:173:16;  
1:180:11;  
1:189:17;  
1:196:3

**B-E-R-C-A-W**

[1] - 1:126:5

**B-U-D-D-I-N-G-**

**T-O-N**

[1] - 1:158:6

**background**

[1] - 1:146:13

**backyard**

[2] - 1:12:14;  
1:134:8

**bad**

[2] - 1:85:17;

1:187:6

**Baird**

[1] - 1:162:5

**balance**

[2] - 1:34:18;  
1:35:15

**balconies**

[11] - 1:76:4,  
17; 1:77:9;  
1:78:9, 15;  
1:79:6, 8;  
1:82:4

**balcony**

[1] - 1:81:3

**ballast**

[1] - 1:181:9

**Bard**

[1] - 1:147:11

**based**

[6] - 1:42:13;  
1:47:7, 15;  
1:50:11;  
1:94:6;  
1:105:4

**basement**

[6] - 1:72:9;  
1:73:11;  
1:97:10;  
1:137:2;  
1:138:3

**basis**

[16] - 1:7:9;  
1:10:2;  
1:37:13;  
1:54:2;  
1:66:9;  
1:69:15;  
1:86:18;  
1:94:10;  
1:95:14;  
1:141:8;  
1:172:14;  
1:173:10;  
1:180:5;  
1:182:4;  
1:189:17;  
1:195:14

**bathroom**

[2] - 1:137:17;  
1:191:17

**BC [1]** - 1:11:2

**beat**

[2] - 1:65:5

**beautiful**

[4] - 1:120:19;  
1:124:9, 16

**became**

[2] - 1:118:3;  
1:186:8

**become**

[2] - 1:79:8;  
1:123:1

**becomes**

[1] - 1:106:12

**becoming**

[1] - 1:115:14

**Beers**

[1] - 1:164:9

**begin**

[3] - 1:30:11;  
1:58:6;  
1:137:1

**beginning**

[1] - 1:115:17

**begins**

[1] - 1:40:14

**behalf**

[3] - 1:163:12,  
14; 1:164:4

**behind**

[7] - 1:27:19;  
1:40:4;  
1:42:5;  
1:43:13;  
1:44:17;  
1:45:2;  
1:55:11

**bellybutton**

[1] - 1:20:7

**beneficial**

[2] - 1:31:15;  
1:61:13

**benefit**

[4] - 1:37:8;  
1:168:11;  
1:169:2;  
1:171:6

**Bercaw**

[1] - 1:126:4

**BERCAW**

[2] - 1:126:4;  
1:128:18

**best**

[2] - 1:113:13;  
1:135:18

**beta**

[1] - 1:57:2

**better**

[3] - 1:35:12;  
1:51:17;  
1:133:19

**between**

[9] - 1:15:3;  
1:39:16;  
1:42:18;  
1:117:19;  
1:133:8;  
1:134:12;  
1:145:3;  
1:150:12;  
1:189:14

**bicycle**

[4] - 1:155:17,  
19; 1:156:3;  
1:168:1

**big**

[5] - 1:50:5;  
1:90:9, 13;  
1:92:7;  
1:111:18

**bigger**

[2] - 1:89:10

**bike**

[1] - 1:173:6

**biked**

[1] - 1:158:2

**bikers**

[1] - 1:160:11

**birthday**

[1] - 1:85:16

**bit**

[9] - 1:21:15;  
1:32:12;  
1:42:7;  
1:45:4, 11;  
1:50:4;  
1:119:3;  
1:120:12

**black**

[1] - 1:64:5

**Black**

[1] - 1:127:8

**blake**

[1] - 1:52:14

**BLAKE**

[9] - 1:39:8,  
11; 1:50:15,  
19; 1:51:7;  
1:52:15;  
1:53:9, 19

**Blake**

[1] - 1:39:9

**blaming**

[1] - 1:23:14

**Blanchard**

[3] - 1:2:7;  
1:88:5, 11

**blend**

[1] - 1:57:19

**blends**

[3] - 1:58:1;  
1:62:4;  
1:122:16

**block**

[1] - 1:155:7

**blocked**

[3] - 1:25:3,  
10, 12

**blocks**

[4] - 1:24:1;  
1:145:14;  
1:164:15;  
1:168:2

**blow**

[1] - 1:63:12

**blue**

[1] - 1:112:9

**BLUMSACK**

[3] - 1:46:11;  
1:47:4;  
1:54:11

**Blumsack**

[1] - 1:6:6

**blunt**

[1] - 1:103:7

**board**

[1] - 1:44:6

**BOARD**

[2] - 1:1:1, 11

**Board**

**[56]** - 1:5:5;  
 1:6:17; 1:7:2,  
 10-11; 1:8:5,  
 13; 1:9:2;  
 1:14:6;  
 1:21:13;  
 1:28:12;  
 1:31:6;  
 1:35:18;  
 1:36:8;  
 1:42:10;  
 1:51:9;  
 1:56:4;  
 1:58:10;  
 1:62:17;  
 1:63:4;  
 1:65:7;  
 1:67:14;  
 1:69:6;  
 1:76:14;  
 1:77:16;  
 1:90:18;  
 1:92:13, 15;  
 1:93:17;  
 1:102:3;  
 1:107:5;  
 1:113:1, 6;  
 1:115:1;  
 1:125:17;  
 1:127:5;  
 1:139:14;  
 1:140:15, 19;  
 1:153:15;  
 1:163:12;  
 1:170:5, 9;  
 1:173:11;  
 1:177:4;  
 1:178:19;  
 1:184:17;  
 1:185:2;  
 1:192:13;  
 1:193:13;  
 1:194:11

**Bob**

**[3]** - 1:17:17;  
 1:29:1, 6

**body**

**[1]** - 1:121:6

**boom**

**[1]** - 1:168:8

**bothering**

[1] - 1:89:1

**bought**

[1] - 1:54:9

**boy**

[1] - 1:169:17

**Bram**

[1] - 1:6:17

**BRAM**

[1] - 1:6:17

**Brattle**

[2] - 1:6:13

**breakfast**

[1] - 1:138:14

**Brendan**

[30] - 1:3:5;  
 1:5:2; 1:6:3;  
 1:10:5, 9;  
 1:38:7;  
 1:39:3;  
 1:43:6;  
 1:54:6;  
 1:55:4;  
 1:71:17;  
 1:72:4;  
 1:75:8, 19;  
 1:77:1;  
 1:87:3;  
 1:88:4;  
 1:95:17;  
 1:97:4;  
 1:99:6;  
 1:100:4;  
 1:142:16;  
 1:143:4;  
 1:173:19;  
 1:175:4;  
 1:180:15;  
 1:181:3;  
 1:190:1;  
 1:191:3;  
 1:196:6

**BRENDAN**

[51] - 1:1:12;  
 1:22:7, 10,  
 14, 16;  
 1:23:1, 5;  
 1:24:12;  
 1:25:5, 9;  
 1:31:9;

1:39:12;  
 1:43:8;  
 1:45:6;  
 1:47:5;  
 1:63:5, 18;  
 1:64:16;  
 1:65:4;  
 1:66:5;  
 1:73:7;  
 1:74:3, 14;  
 1:77:3;  
 1:87:5, 10;  
 1:90:19;  
 1:91:3;  
 1:133:2, 12;  
 1:134:15;  
 1:135:6;  
 1:136:10;  
 1:137:8, 10;  
 1:138:8;  
 1:139:5;  
 1:150:16;  
 1:151:7, 12,  
 18; 1:152:5,  
 12; 1:153:1;  
 1:161:18;  
 1:162:4, 6,  
 11, 14, 18;  
 1:191:5

**Brendan's**

[2] - 1:32:11;  
 1:47:18

**brick**

[8] - 1:57:11,  
 16-17;  
 1:64:3, 6;  
 1:70:18;  
 1:181:12

**brief [1]** - 1:5:4

**Brief [1]** - 1:5:6

**briefly**

[1] - 1:159:1

**bring**

[3] - 1:75:17;  
 1:108:14;  
 1:126:17

**bringing**

[2] - 1:20:15;  
 1:78:7

**Broadway**

[4] - 1:148:10;  
1:155:10;  
1:164:7, 15

**Broadway/Pro  
spect**

[1] - 1:165:8

**brought**

[2] - 1:108:13;  
1:126:13

**brown**

[1] - 1:64:4

**BRUCE**

[25] - 1:16:6,  
9, 18; 1:17:4,  
10, 17;  
1:18:7;  
1:21:1;  
1:22:13, 18;  
1:23:8, 19;  
1:24:5;  
1:25:13, 16,  
19; 1:26:3, 9,  
15; 1:27:2, 6;  
1:28:2;  
1:29:2, 14,  
19

**Bruce**

[6] - 1:16:9;  
1:28:3, 9, 11,  
15; 1:29:18

**BUDDINGTON**

[2] - 1:158:5,  
14

**Buddington**

[1] - 1:158:6

**build**

[2] - 1:82:5

**building**

[35] - 1:4:8;  
1:31:15;  
1:34:15;  
1:36:14;  
1:44:5;  
1:48:14;  
1:49:16;  
1:58:2;  
1:62:4;  
1:70:16;  
1:71:8;  
1:77:12;

1:80:8;  
 1:81:4, 6;  
 1:82:8;  
 1:95:6;  
 1:110:1, 3, 8;  
 1:116:13, 16;  
 1:127:3, 7,  
 10, 13;  
 1:128:3;  
 1:134:3;  
 1:139:6;  
 1:140:1;  
 1:152:10;  
 1:153:3;  
 1:156:3;  
 1:168:16;  
 1:169:2

### **Building**

[2] - 1:82:3;  
 1:103:5

### **building's**

[2] - 1:166:6;  
 1:181:11

### **buildings**

[6] - 1:58:4;  
 1:109:14;  
 1:127:1, 14;  
 1:128:1;  
 1:134:12

### **built**

[4] - 1:48:8,  
 14; 1:92:17;  
 1:141:16

### **bump**

[1] - 1:139:6

### **bus**

[2] - 1:155:8;  
 1:171:4

### **buses**

[1] - 1:165:11

### **bushes**

[1] - 1:90:13

### **business**

[1] - 1:3:9

### **bylaw**

[1] - 1:170:12

### **BZA**

[1] - 1:88:7

### **C-A-M-A-C-H-**

### **O**

[1] - 1:160:16

**c/o** [4] - 1:6:6;

1:55:6;

1:72:6;

1:181:6

**C/O** [1] - 1:97:6

**C3** [1] - 1:63:7

**cabling**

[1] - 1:57:9

**calculate**

[1] - 1:146:16

**calculating**

[1] - 1:157:8

**calculation**

[2] - 1:144:9;

1:155:15

**calculations**

[1] - 1:149:3

**CAMACHO**

[1] - 1:160:15

**Camacho**

[1] - 1:160:16

**Cambridge**

[34] - 1:48:13;

1:65:7;

1:82:7;

1:100:12;

1:120:1;

1:123:1, 14;

1:143:16;

1:145:1;

1:147:18;

1:148:6;

1:153:4;

1:155:4;

1:157:1, 12;

1:158:15;

1:161:10, 15;

1:164:5, 14;

1:165:12;

1:166:4, 17;

1:167:7, 11;

1:168:6, 10;

1:171:12;

1:172:11, 18;

1:173:5;

1:175:17;

1:191:11;

1:195:13

**CAMBRIDGE**

[2] - 1:1:2, 8

**Cambridgepor**

t [1] - 1:158:8

**Cambridgesid**

e [1] - 1:58:3

**CAMPBELL**

[13] - 1:143:1

4; 1:146:14;

1:147:5;

1:149:2;

1:151:6, 11,

15; 1:152:13;

1:153:6;

1:154:11, 19;

1:155:14;

1:169:13

**Campbell**

[1] - 1:143:15

**Canal**

[4] - 1:2:5;

1:55:5, 14,

17

**canisters**

[1] - 1:181:9

**cannot**

[2] - 1:43:15;

1:163:8

**cans**

[1] - 1:135:5

**captioned**

[1] - 1:4:2

**capture**

[1] - 1:24:15

**capturing**

[1] - 1:31:12

**CAPTURING**

[1] - 1:1:19

**car**

[2] - 1:158:13,

15

**care**

[5] - 1:57:19;

1:67:5;

1:121:18;

1:124:17

**CARRIE**

[2] - 1:158:5,

14

**carrie**

[1] - 1:158:5

**carrier**

[1] - 1:67:18

**carriers**

[1] - 1:66:2

**carries**

[1] - 1:122:17

**carrying**[2] - 1:122:11;  
1:136:5**cars**

[1] - 1:168:4

**case**

[65] - 1:3:16;  
 1:6:12; 1:7:1,  
 11; 1:9:7;  
 1:10:1, 3;  
 1:11:1, 10,  
 14-15;  
 1:33:17;  
 1:43:4, 7;  
 1:45:12, 15;  
 1:48:4;  
 1:50:12;  
 1:52:12, 19;  
 1:53:1;  
 1:54:2;  
 1:65:15, 17,  
 19; 1:75:14;  
 1:83:10;  
 1:84:3;  
 1:85:5;  
 1:86:1, 18;  
 1:87:1;  
 1:89:17;  
 1:98:8, 10,  
 12; 1:103:15;  
 1:105:4, 16;  
 1:108:8, 11,  
 13; 1:109:10,  
 15; 1:115:2,  
 11; 1:129:7;  
 1:181:14,  
 18-19;  
 1:182:4, 13;  
 1:183:1, 15;  
 1:184:6, 16;  
 1:186:8, 11;  
 1:189:6, 17;  
 1:190:3

**CASE**

[1] - 1:2:2

**Case**

[31] - 1:2:3-1  
 3; 1:6:5, 12;  
 1:10:11;  
 1:11:2;  
 1:39:5;  
 1:55:5, 14;  
 1:72:5;  
 1:73:3;  
 1:88:5, 7, 11;  
 1:97:5;  
 1:98:4;  
 1:100:6;  
 1:143:5, 11;  
 1:175:5, 11;  
 1:181:5

**casement**

[3] - 1:176:11;  
 1:177:15;  
 1:178:7

**cases**

[10] - 1:11:7,  
 9, 16; 1:32:3,  
 5; 1:48:12;  
 1:52:8;  
 1:75:15;  
 1:103:8;  
 1:187:8

**cast**

[1] - 1:114:14

**catching**

[1] - 1:74:7

**caused**

[1] - 1:62:7

**caution**

[1] - 1:51:18

**cellist**

[1] - 1:169:17

**cement**

[1] - 1:124:10

**CENTER**

[1] - 1:1:6

**center**

[4] - 1:145:10,  
 17; 1:146:6;  
 1:161:1

**Centerline**

[3] - 1:55:6;  
 1:56:1;

1:181:6

**Central**

[4] - 1:148:13,  
18; 1:165:10;  
1:171:4

**central**

[1] - 1:155:7

**certain**

[4] - 1:42:14;  
1:80:11;  
1:118:16;  
1:129:18

**certainly**

[4] - 1:37:7;  
1:140:19;  
1:161:17;  
1:167:19

**CERTIFICATE**

[1] - 1:198:1

**CERTIFICATIO**

**N**

[1] - 1:198:16

**Certified**

[1] - 1:198:13

**certify**

[1] - 1:198:6

**CERTIFYING**

[1] - 1:198:17

**cetera**

[1] - 1:80:15

**Chair**

[52] - 1:3:7;  
1:4:14;  
1:6:11, 15;  
1:9:5, 7;  
1:27:15;  
1:36:8;  
1:37:5, 14,  
18; 1:39:4;  
1:42:2;  
1:52:19;  
1:55:13;  
1:66:16;  
1:67:13;  
1:69:6, 16;  
1:70:3, 11;  
1:73:2;  
1:85:4, 19;  
1:88:10;  
1:92:15;

1:93:16;  
 1:94:11;  
 1:95:12;  
 1:98:3, 11;  
 1:139:13;  
 1:140:10;  
 1:141:9;  
 1:143:10;  
 1:156:11;  
 1:170:8;  
 1:172:15;  
 1:173:11;  
 1:175:10;  
 1:177:7;  
 1:178:19;  
 1:180:6, 10;  
 1:181:13;  
 1:191:7;  
 1:192:19;  
 1:194:10;  
 1:195:8, 15;  
 1:196:1

**chair**

[1] - 1:100:5

**CHAIR**

[1] - 1:1:12

**CHAIRMAN**

[1] - 1:70:10

**challenge**

[9] - 1:48:10;  
 1:75:15;  
 1:102:11;  
 1:107:16;  
 1:108:7, 9;  
 1:112:11

**challenged**

[2] - 1:110:2;  
 1:112:10

**challenges**

[1] - 1:79:13

**challenging**

[1] - 1:109:5

**Chan**

[1] - 1:95:9

**chance**

[2] - 1:161:14,  
 17

**change**

[27] - 1:11:11;  
 1:12:5;

1:18:16;  
 1:50:6;  
 1:51:13;  
 1:53:7;  
 1:61:18;  
 1:68:12;  
 1:83:16;  
 1:86:5, 7;  
 1:88:15;  
 1:98:16;  
 1:111:3;  
 1:171:18;  
 1:179:4;  
 1:182:1;  
 1:183:9;  
 1:184:4, 7;  
 1:185:10;  
 1:186:19;  
 1:187:9, 19;  
 1:189:13;  
 1:197:4

**CHANGE**

[6] - 1:197:8

**changed**

[9] - 1:12:4;  
 1:49:17;  
 1:53:4;  
 1:89:9;  
 1:127:11;  
 1:183:18;  
 1:187:2;  
 1:194:5

**changes**

[10] - 1:28:13;  
 1:33:6;  
 1:42:15;  
 1:49:8;  
 1:53:16;  
 1:73:19;  
 1:106:13;  
 1:138:3;  
 1:176:10;  
 1:197:16

**changing**

[4] - 1:12:19;  
 1:112:16;  
 1:184:8;  
 1:192:4

**Chapter**

[1] - 1:4:4

**character**

[4] - 1:61:19;  
 1:68:13;  
 1:171:19;  
 1:179:5

**charge**

[1] - 1:194:15

**cheaper**

[1] - 1:90:15

**check**

[4] - 1:49:9;  
 1:85:8, 10;  
 1:184:2

**checked**

[5] - 1:49:11;  
 1:152:18;  
 1:182:17;  
 1:184:1;  
 1:188:11

**children**

[5] - 1:138:12;  
 1:145:3;  
 1:160:17;  
 1:165:15

**children's**

[1] - 1:166:18

**choice**

[1] - 1:59:18

**chosen**

[1] - 1:176:4

**Chris**

[2] - 1:17:17;  
 1:148:7

**CHRISTOPHE****R**

[13] - 1:39:8,  
 11; 1:50:15,  
 19; 1:51:7;  
 1:52:15;  
 1:53:9, 19;  
 1:144:13;  
 1:146:9;  
 1:152:1, 8;  
 1:155:19

**Christopher**

[3] - 1:39:9;  
 1:143:6, 17

**church**

[1] - 1:156:4

**circumstances**

[3] - 1:36:16;  
1:93:9;  
1:187:14

**cites**

[1] - 1:153:15

**cities**

[2] - 1:48:13;  
1:126:19

**citizens**

[6] - 1:68:19;  
1:102:9;  
1:163:15;  
1:171:10;  
1:172:6;  
1:179:15

**city**

[19] - 1:37:9;  
1:44:11;  
1:61:14;  
1:68:19;  
1:102:10;  
1:109:16;  
1:127:5;  
1:128:13;  
1:134:17;  
1:135:1;  
1:140:18;  
1:161:1;  
1:163:15;  
1:166:8;  
1:171:11;  
1:172:6, 12;  
1:173:3;  
1:179:16

**City [6]** - 1:8:8;

1:48:2;  
1:108:2;  
1:123:13;  
1:172:18;  
1:195:12

**CITY [1]** - 1:1:2

**Claire**

[1] - 1:165:18

**clarification**

[1] - 1:107:14

**classes**

[2] - 1:145:16;  
1:146:3

**classify**

[1] - 1:149:15

**classroom**

[1] - 1:152:16

**classrooms**

[1] - 1:145:6

**CLAY**[4] - 1:147:9;  
1:162:8, 13,  
16**Clay**[9] - 1:143:18;  
1:145:18;  
1:147:9;  
1:157:3, 6;  
1:158:9;  
1:159:2, 9;  
1:160:8**cleaning**

[1] - 1:192:2

**clear**[5] - 1:20:13;  
1:51:2;  
1:63:11;  
1:149:5;  
1:187:7**clearer**

[1] - 1:8:16

**clearly**[6] - 1:39:17;  
1:40:4;  
1:44:3, 8;  
1:45:8;  
1:47:16**Clerk**[2] - 1:8:8;  
1:48:3**Clerk's**

[1] - 1:108:2

**client**

[1] - 1:88:15

**clients**[3] - 1:145:13;  
1:155:2;  
1:193:2**climb**[2] - 1:13:14;  
1:24:4**climbing**

[1] - 1:81:15

**close**

[15] - 1:31:4;

1:66:19;  
 1:92:12;  
 1:133:4;  
 1:135:8;  
 1:136:17;  
 1:138:15, 18;  
 1:139:9;  
 1:158:11;  
 1:161:1;  
 1:165:9;  
 1:169:11;  
 1:170:4;  
 1:178:15

**closed**

[1] - 1:161:12

**closer**

[1] - 1:139:3

**closest**

[3] - 1:14:15;  
 1:35:9;  
 1:45:5

**closets**

[1] - 1:25:4

**closing**

[3] - 1:30:18;  
 1:157:4;  
 1:167:8

**CMC**

[2] - 1:164:10;  
 1:165:5

**CMC's**

[1] - 1:165:2

**co**

[2] - 1:100:14,  
 17

**co-owner**

[2] - 1:100:14,  
 17

**code**

[5] - 1:23:1;  
 1:80:7, 9;  
 1:81:4;  
 1:139:6

**colleagues**

[1] - 1:147:13

**collective**

[1] - 1:166:11

**College**

[2] - 1:147:11;  
 1:153:4

**color**

[7] - 1:63:19;  
 1:64:6;  
 1:70:15, 19;  
 1:71:2

**colors**

[1] - 1:64:7

**combination**

[1] - 1:146:15

**combine**

[1] - 1:148:13

**combined**

[2] - 1:146:19;  
 1:150:10

**combining**

[1] - 1:192:4

**comfortable**

[12] - 1:51:9,  
 16; 1:77:16;  
 1:78:1, 3;  
 1:79:4, 6;  
 1:82:1;  
 1:103:11;  
 1:105:1;  
 1:107:5

**coming**

[6] - 1:15:7;  
 1:24:19;  
 1:43:16;  
 1:45:13;  
 1:163:1, 6

**comment**

[10] - 1:9:2;  
 1:30:17;  
 1:34:12, 14;  
 1:58:10;  
 1:67:3;  
 1:104:17;  
 1:126:14, 17;  
 1:128:7

**commentary**

[2] - 1:31:4;  
 1:178:12

**comments**

[14] - 1:30:18;  
 1:33:3;  
 1:66:19;  
 1:67:4, 10;  
 1:92:13;  
 1:127:17;

1:130:17;  
 1:133:3;  
 1:136:1;  
 1:164:2;  
 1:170:5;  
 1:193:9, 12

**commercial**

[3] - 1:58:5;  
 1:60:10;  
 1:154:8

**Commission**

[2] - 1:184:19;  
 1:198:14

**Commissioner**

[3] - 1:7:14,  
 18

**Commissioner**

's [1] - 1:8:4

**commitment**

[1] - 1:169:19

**committed**

[1] - 1:147:18

**Commonwealt**

h  
 [2] - 1:198:2,  
 5

**communicate**

[2] - 1:28:12;  
 1:110:10

**communicatio**

ns  
 [1] - 1:66:18

**Communicatio**

ns  
 [4] - 1:55:6;  
 1:56:2;  
 1:67:18;  
 1:181:7

**community**

[9] - 1:147:14;  
 1:162:1, 7;  
 1:167:11;  
 1:168:11;  
 1:169:3, 16;  
 1:171:6, 9

**compared**

[2] - 1:89:17;  
 1:121:16

**complained**

[1] - 1:163:5

**complaining**

[1] - 1:8:3

**complete**[5] - 1:7:16;  
1:8:2;  
1:62:18;  
1:91:16;  
1:103:15**completely**[2] - 1:40:8;  
1:101:19**compliant**

[1] - 1:23:2

**complicated**[2] - 1:118:14;  
1:119:16**complications**

[1] - 1:137:1

**complied**

[1] - 1:44:7

**complies**

[1] - 1:42:8

**comply**[2] - 1:48:5;  
1:182:5**complying**

[1] - 1:47:9

**compromised**

[1] - 1:36:14

**concern**[2] - 1:18:4;  
1:94:4**concerned**[8] - 1:47:3;  
1:49:15;  
1:50:1;  
1:81:14;  
1:134:11;  
1:136:16;  
1:157:6;  
1:163:15**concerns**[8] - 1:17:7;  
1:31:8;  
1:32:1;  
1:34:4;  
1:36:1;  
1:49:13;  
1:186:2, 4**conclusion**

[1] - 1:149:17

**concrete**

[1] - 1:114:14

**concur**

[2] - 1:32:2;

1:35:17

**condition**

[15] - 1:9:15;

1:12:12;

1:37:15;

1:53:11;

1:68:3;

1:71:8;

1:86:10, 12;

1:94:12;

1:95:8;

1:141:11, 18;

1:176:12;

1:189:8;

1:195:16

**conditioners**

[3] - 1:121:5,

8, 19

**conditions**

[7] - 1:9:10;

1:53:2;

1:69:18;

1:71:13;

1:85:7;

1:86:3;

1:98:14

**condominiums**

[1] - 1:80:5

**condos**

[1] - 1:116:17

**conduct**

[2] - 1:143:7;

1:173:14

**configure**

[1] - 1:97:8

**configured**

[2] - 1:12:7;

1:97:18

**confirmed**

[1] - 1:82:4

**Conforming**

[2] - 1:98:1;

1:175:9

**conforming**

[11] - 1:19:2,

4; 1:72:9, 11,  
16; 1:73:1;  
1:97:10, 12,  
17; 1:140:4;  
1:195:2

**conformity**

[1] - 1:69:19

**confused**

[1] - 1:104:9

**congestion**

[6] - 1:61:18;  
1:68:12;  
1:153:19;  
1:170:17;  
1:171:18;  
1:179:4

**congratulate**

[1] - 1:163:13

**congregate**

[1] - 1:14:2

**connected**

[2] - 1:50:16,  
18

**connection**

[1] - 1:192:1

**consensus**

[1] - 1:113:4

**consequences**

[1] - 1:186:8

**Conservatory**

[1] - 1:169:18

**consider**

[7] - 1:9:19;  
1:20:13;  
1:26:5, 10;  
1:39:19;  
1:154:4;  
1:169:1

**consideration**

[4] - 1:8:19;  
1:28:18;  
1:129:16;  
1:130:3

**considered**

[2] - 1:12:15;  
1:26:7

**considering**

[1] - 1:33:18

**consist**

[1] - 1:142:1

**consistent**

[1] - 1:165:11

**consortium**

[1] - 1:164:6

**Constantine**

[26] - 1:3:5;  
 1:5:1; 1:6:2;  
 1:10:4, 8;  
 1:38:5;  
 1:39:1;  
 1:54:5;  
 1:55:2;  
 1:71:16;  
 1:72:2;  
 1:87:2;  
 1:88:2;  
 1:95:16;  
 1:97:2;  
 1:99:5;  
 1:100:2;  
 1:142:15;  
 1:143:2;  
 1:173:18;  
 1:175:2;  
 1:180:14;  
 1:181:2;  
 1:189:19;  
 1:191:2;  
 1:196:5

**CONSTANTIN****E**

[199] - 1:1:12;  
 1:3:7; 1:5:3;  
 1:6:11; 1:7:8;  
 1:10:19;  
 1:13:4, 18;  
 1:14:4, 17;  
 1:15:2;  
 1:16:7, 15;  
 1:17:1, 8;  
 1:18:3, 14,  
 19; 1:19:3,  
 14, 16;  
 1:20:1, 5, 9;  
 1:21:3, 7, 12;  
 1:23:13;  
 1:24:3;  
 1:25:11, 14,  
 17; 1:27:7;  
 1:28:3;

1:29:4, 17;  
1:30:2;  
1:31:2, 19;  
1:34:10;  
1:36:5;  
1:39:4;  
1:40:10;  
1:41:13;  
1:46:13, 19;  
1:47:17;  
1:50:7, 17;  
1:51:5;  
1:52:1, 6, 9,  
16; 1:53:10;  
1:54:1, 8, 13;  
1:55:13;  
1:56:9;  
1:57:13;  
1:58:8, 16;  
1:59:3;  
1:60:19;  
1:63:2;  
1:65:2, 13;  
1:66:14;  
1:67:9, 13;  
1:73:2;  
1:74:6;  
1:75:7;  
1:76:13, 19;  
1:77:19;  
1:78:11, 14;  
1:80:8;  
1:82:11;  
1:83:4, 9;  
1:84:2, 9, 14;  
1:85:1, 4, 9,  
13, 19;  
1:87:8;  
1:88:10, 14;  
1:89:3, 8, 16;  
1:90:4, 12,  
15, 17;  
1:91:2, 6, 18;  
1:92:7;  
1:94:17;  
1:95:3, 19;  
1:98:3, 10,  
19; 1:100:5,  
8, 18;  
1:104:15;

1:105:14;  
1:106:4, 8,  
17; 1:107:3,  
10, 17;  
1:109:2, 8;  
1:110:16;  
1:111:4, 12;  
1:112:4, 8;  
1:113:11, 18;  
1:114:4, 12;  
1:115:1, 6,  
10, 19;  
1:119:1;  
1:123:4, 16;  
1:124:2;  
1:125:8, 11;  
1:128:14, 19;  
1:131:2, 9;  
1:132:4, 8;  
1:135:12;  
1:139:10, 13;  
1:142:7;  
1:143:10;  
1:146:4, 12;  
1:147:2, 8;  
1:153:7;  
1:154:17;  
1:155:11;  
1:156:6;  
1:157:14;  
1:158:4, 12,  
17; 1:160:2,  
14; 1:161:3;  
1:162:1;  
1:163:11;  
1:170:4, 8;  
1:174:2;  
1:175:10;  
1:176:15;  
1:177:1;  
1:178:15;  
1:181:13;  
1:183:13, 19;  
1:186:6;  
1:187:5;  
1:188:3, 11;  
1:189:4;  
1:190:3;  
1:191:6;  
1:192:6, 12,

15; 1:193:5,  
8, 12, 16, 18;  
1:194:2, 6,  
10

**construct**

[1] - 1:139:19

**construction**

[2] - 1:109:6;  
1:141:10

**content**

[1] - 1:49:7

**contest**

[1] - 1:47:14

**context**

[2] - 1:51:10;  
1:130:9

**continuance**

[2] - 1:8:14;  
1:50:10

**continue**

[15] - 1:36:7;  
1:43:4, 7;  
1:52:12;  
1:84:16;  
1:98:12;  
1:103:14;  
1:141:1, 4;  
1:159:9;  
1:160:19;  
1:161:2,  
13-14;  
1:171:9

**continued**

[24] - 1:6:12;  
1:7:1; 1:9:8;  
1:10:3;  
1:11:7;  
1:52:8;  
1:53:1;  
1:68:14;  
1:85:5;  
1:86:1, 5;  
1:87:1;  
1:98:8;  
1:172:1;  
1:179:6;  
1:181:14;  
1:182:4;  
1:183:2,  
15-16;

1:187:1, 8;  
 1:189:6;  
 1:190:4

**continues**

[2] - 1:117:14;  
 1:122:15

**continuing**

[6] - 1:10:1;  
 1:54:2;  
 1:86:17;  
 1:138:19;  
 1:139:2;  
 1:189:16

**CONTROL**

[1] - 1:198:17

**convenient**

[2] - 1:159:18;  
 1:161:2

**conversation**

[1] - 1:153:17

**conversations**

[1] - 1:149:14

**cooperation**

[1] - 1:4:9

**coordination**

[1] - 1:132:1

**copies**

[1] - 1:125:10

**copper**

[1] - 1:125:10

**copy**

[2] - 1:123:17;  
 1:125:14

**core**

[1] - 1:145:16

**corner**

[2] - 1:28:5

**corners**

[1] - 1:137:19

**correct**

[8] - 1:7:4, 7;  
 1:74:2;  
 1:101:5;  
 1:112:16;  
 1:150:16;  
 1:151:6;  
 1:153:12

**correction**

[1] - 1:197:4

**corrections**

[1] - 1:197:16

**corresponden**

**ce** [1] - 1:3:18

**cost**

[1] - 1:138:5

**Counsel**

[1] - 1:148:15

**counsel**

[1] - 1:6:16

**count**

[1] - 1:94:8

**country**

[1] - 1:128:1

**couple**

[6] - 1:63:5;

1:75:14;

1:92:2;

1:108:19;

1:164:15;

1:184:13

**course**

[5] - 1:61:10;

1:92:5, 9;

1:94:3;

1:104:8

**court**

[8] - 1:48:3;

1:78:4;

1:108:7;

1:109:11;

1:110:2;

1:112:11;

1:127:19;

1:128:3

**Court**

[1] - 1:8:10

**courteous**

[1] - 1:163:10

**courts**

[1] - 1:128:4

**cover**

[1] - 1:51:15

**coverage**

[1] - 1:60:17

**covered**

[1] - 1:103:19

**covers**

[1] - 1:71:10

**crawl**

[4] - 1:22:5,

17; 1:23:17;  
1:128:2

**create**

[2] - 1:120:18;  
1:179:9

**created**

[5] - 1:68:17;  
1:94:3;  
1:172:4;  
1:179:13;  
1:182:8

**creating**

[1] - 1:32:16

**criteria**

[1] - 1:61:7

**CSR**

[1] - 1:1:16

**cultural**

[1] - 1:148:14

**Cultural**

[1] - 1:148:15

**curb**

[1] - 1:12:6

**current**

[2] - 1:144:6;  
1:177:15

**curve**

[1] - 1:120:18

**customers**

[1] - 1:61:13

**cut**

[2] - 1:18:1;  
1:120:17

**cutoff**

[1] - 1:48:7

**D1**

[1] - 1:195:19

**dark**

[4] - 1:42:5;  
1:64:2;  
1:67:6;  
1:106:13

**darker**

[2] - 1:122:10

**darkly**

[1] - 1:40:15

**darkness**

[1] - 1:51:15

**date**

[18] - 1:7:4, 6;

1:8:15;  
 1:9:13;  
 1:42:14, 16;  
 1:43:5;  
 1:53:4;  
 1:85:12;  
 1:86:6;  
 1:98:17;  
 1:183:2;  
 1:185:15;  
 1:186:19;  
 1:189:9;  
 1:193:15;  
 1:197:5

**dated**

[5] - 1:37:17;  
 1:70:3, 7;  
 1:131:3;  
 1:141:14

**daughter**

[6] - 1:157:2,  
 18; 1:159:1;  
 1:166:19;  
 1:167:6, 16

**daughters**

[1] - 1:160:9

**Dave**

[1] - 1:29:18

**DAVID**

[27] - 1:46:11;  
 1:47:4;  
 1:54:11;  
 1:57:15;  
 1:63:17;  
 1:64:10;  
 1:70:8;  
 1:88:13, 17;  
 1:89:5, 10;  
 1:90:3, 7, 14,  
 16; 1:91:5,  
 16; 1:92:1;  
 1:94:16, 19;  
 1:96:2;  
 1:183:12, 17;  
 1:186:17;  
 1:188:9, 17;  
 1:189:1

**David**

[9] - 1:6:6;  
 1:39:9;

1:55:6;  
 1:56:1, 6;  
 1:88:6, 13;  
 1:181:6;  
 1:185:6

**daycare**

[11] - 1:144:1  
 6; 1:145:17;  
 1:146:2, 6,  
 12, 17;  
 1:147:2;  
 1:149:5;  
 1:150:13, 15;  
 1:166:10

**Daycare**

[1] - 1:145:18

**days**

[10] - 1:48:1;  
 1:103:4;  
 1:108:1, 6, 8,  
 14; 1:183:18;  
 1:184:1;  
 1:188:10, 16

**deal**

[3] - 1:20:14;  
 1:131:9;  
 1:140:17

**debate**

[1] - 1:67:10

**debating**

[1] - 1:135:6

**Deborah**

[1] - 1:164:9

**December**

[5] - 1:7:3, 9;  
 1:8:15; 1:9:8,  
 13

**decide**

[6] - 1:30:12;  
 1:51:6;  
 1:53:15;  
 1:75:12;  
 1:82:12;  
 1:101:4

**decided**

[4] - 1:80:6;  
 1:89:14;  
 1:133:19;  
 1:145:11

**decision**

[15] - 1:8:6;  
 1:9:9;  
 1:47:15, 19;  
 1:48:2;  
 1:51:8;  
 1:53:12;  
 1:86:11;  
 1:103:17;  
 1:108:2, 14;  
 1:130:4;  
 1:149:17;  
 1:189:13

### **decisions**

[1] - 1:153:16

### **deck**

[37] - 1:12:5-  
 8; 1:13:16,  
 19; 1:14:16,  
 18; 1:15:3,  
 17; 1:17:16;  
 1:18:17;  
 1:21:18;  
 1:26:17;  
 1:27:3;  
 1:35:1, 6, 8;  
 1:88:6, 16,  
 18; 1:89:2,  
 13, 18;  
 1:90:2;  
 1:91:19;  
 1:92:7, 17;  
 1:93:5, 19;  
 1:94:1, 4, 6;  
 1:118:9

### **decks**

[13] - 1:10:13;  
 1:12:19;  
 1:13:19;  
 1:14:10;  
 1:17:2;  
 1:18:6;  
 1:24:19;  
 1:32:15;  
 1:75:2;  
 1:77:9;  
 1:90:10;  
 1:192:3

### **decommission**

#### **ed**

[2] - 1:55:8;

1:56:7

**decrease**

[1] - 1:15:19

**dedicated**

[1] - 1:164:11

**deep**

[1] - 1:19:5

**deeper**

[2] - 1:12:13;

1:14:18

**defend**

[1] - 1:47:9

**defense**

[1] - 1:47:10

**defined**

[1] - 1:149:19

**definitely**

[3] - 1:66:13;

1:85:17;

1:123:18

**definition**

[1] - 1:149:19

**deliberate**

[1] - 1:130:18

**delighted**

[1] - 1:121:11

**delightful**

[1] - 1:163:7

**demonstrate**

[1] - 1:67:17

**Department**

[3] - 1:82:3;

1:103:5;

1:187:17

**deposition**

[1] - 1:197:4

**derogate**

[2] - 1:69:3;

1:172:8

**derogating**

[4] - 1:37:3;

1:93:14;

1:140:8;

1:195:6

**description**

[1] - 1:94:19

**design**

[2] - 1:79:12;

1:186:1

**designation**

[1] - 1:150:18

**designed**

[1] - 1:64:14

**desirable**

[1] - 1:134:10

**destroy**

[1] - 1:44:18

**detail**

[1] - 1:122:15

**detailing**

[2] - 1:122:12;

1:136:6

**deteriorate**

[1] - 1:71:3

**determination**

[1] - 1:8:4

**determines**

[1] - 1:153:15

**detriment**

[9] - 1:37:2;

1:61:9;

1:68:17;

1:93:13;

1:125:7;

1:140:7;

1:172:5;

1:179:14;

1:195:5

**devastated**

[1] - 1:157:4

**diagrams**

[1] - 1:110:5

**difference**

[4] - 1:33:13;

1:110:15;

1:150:12;

1:193:19

**different**

[15] - 1:33:1;

1:46:10;

1:56:13;

1:60:5;

1:65:15;

1:75:2;

1:77:10;

1:79:14;

1:81:19;

1:83:5;

1:101:14;

1:104:18;

1:113:2;  
1:124:5;  
1:137:15

**difficult**

[7] - 1:67:6;  
1:79:12;  
1:110:6, 10;  
1:132:13;  
1:137:8;  
1:164:11

**difficulty**

[1] - 1:20:18

**dimension**

[1] - 1:78:9

**Dimensional**

[5] - 1:6:9;  
1:10:17;  
1:72:13;  
1:88:8;  
1:97:14

**dimensional**

[1] - 1:86:14

**dimensions**

[2] - 1:89:15;  
1:91:19

**diminishes**

[1] - 1:93:7

**dimly**

[1] - 1:40:16

**DIRECT**

[1] - 1:198:17

**DIRECTION**

[1] - 1:198:17

**directly**

[3] - 1:27:19;  
1:40:18;  
1:156:3

**disabilities**

[3] - 1:120:2;  
1:139:19;  
1:141:2

**Disabilities**

[2] - 1:126:6;  
1:129:17

**disability**

[1] - 1:123:12

**disadvantaged**

[1] - 1:182:16

**disappearing**

[1] - 1:171:7

**disappointed**

[1] - 1:39:15

**disastrous**

[1] - 1:167:9

**discern**

[1] - 1:67:6

**discernable**

[1] - 1:66:4

**discontinue**

[1] - 1:71:5

**discontinued**

[1] - 1:166:14

**discuss**

[3] - 1:4:12;

1:41:18;

1:178:18

**discussed**

[1] - 1:16:4

**discussion**

[4] - 1:4:10;

1:9:1; 1:31:5;

1:36:7

**discussions**

[1] - 1:82:2

**disguised**

[1] - 1:57:16

**distance**

[7] - 1:14:15;

1:136:11;

1:138:16;

1:139:4;

1:157:15;

1:158:10

**distances**

[1] - 1:80:12

**distinct**

[1] - 1:171:6

**distributed**

[1] - 1:4:7

**district**

[8] - 1:32:8;

1:60:11;

1:68:8;

1:69:2;

1:148:14;

1:172:8;

1:179:17

**divides**

[1] - 1:28:16

**DO**

[1] - 1:197:5

**DOES**

[1] - 1:198:16

**dog**

[2] - 1:31:11;  
1:49:19

**domestic**

[1] - 1:91:1

**done**

[9] - 1:7:17;  
1:68:2;  
1:70:12;  
1:79:18;  
1:84:12;  
1:109:6;  
1:111:6;  
1:191:5;  
1:195:11

**donut**

[1] - 1:153:4

**door**

[9] - 1:27:3;  
1:44:17;  
1:45:3;  
1:49:16;  
1:72:15;  
1:80:19;  
1:97:16;  
1:134:18

**doorbells**

[1] - 1:110:12

**doorway**

[2] - 1:81:2;  
1:117:17

**dormer**

[20] - 1:101:1  
7; 1:102:17;  
1:103:2, 6,  
11; 1:104:11;  
1:105:7, 9,  
16, 19;  
1:106:5, 18;  
1:113:5, 10;  
1:131:7, 15;  
1:141:15;  
1:142:5

**double**

[4] - 1:138:5;  
1:176:13;  
1:177:16;

1:178:7

**double-hung**

[2] - 1:176:13;

1:177:16

**doubt**

[1] - 1:35:15

**Douglas**

[26] - 1:3:6;

1:5:2; 1:6:3;

1:10:5, 9;

1:38:6;

1:39:2;

1:54:6;

1:55:3;

1:71:17;

1:72:3;

1:87:3;

1:88:3;

1:95:17;

1:97:3;

1:99:6;

1:100:3;

1:142:16;

1:143:3;

1:173:19;

1:175:3;

1:180:15;

1:181:3;

1:190:1;

1:191:3;

1:196:6

**DOUGLAS**

[25] - 1:1:13;

1:15:10, 14;

1:26:1, 4, 10,

19; 1:34:6,

13; 1:35:10,

14; 1:46:17;

1:47:2;

1:66:7;

1:78:8, 13;

1:79:4;

1:105:6;

1:112:19;

1:113:16;

1:114:1, 8;

1:142:5;

1:188:1, 5

**down**

[28] - 1:21:18;

1:25:1;  
 1:34:7;  
 1:43:13;  
 1:48:14, 19;  
 1:49:12;  
 1:53:13;  
 1:65:4, 9;  
 1:77:4;  
 1:93:6;  
 1:109:13;  
 1:110:3;  
 1:112:1, 3;  
 1:120:12;  
 1:125:13;  
 1:135:5;  
 1:137:19;  
 1:147:14;  
 1:149:18;  
 1:150:15;  
 1:154:15;  
 1:158:7;  
 1:162:2;  
 1:184:14

**downstairs**

[1] - 1:149:10

**dragging**

[1] - 1:186:14

**dramatically**

[1] - 1:90:1

**draw**

[4] - 1:129:5;  
 1:132:5, 8

**drawings**

[2] - 1:78:18;  
 1:180:8

**drew**

[1] - 1:95:1

**drive**

[4] - 1:158:13;  
 1:159:15;  
 1:170:2

**driveway**

[3] - 1:116:6;  
 1:134:7;  
 1:178:6

**driving**

[1] - 1:24:15

**dropoff**

[3] - 1:145:3;  
 1:167:18

**dropping**

[1] - 1:167:15

**Duberry**[4] - 1:64:19;  
1:70:2, 7**duct**

[1] - 1:44:5

**due**[3] - 1:169:18;  
1:187:17**duly**

[1] - 1:67:17

**dunk**

[1] - 1:102:9

**duplicate**

[1] - 1:133:16

**Dura**

[1] - 1:177:19

**DURA**

[1] - 1:178:1

**during**

[1] - 1:176:1

**dwelling**[6] - 1:72:10,  
12, 17;  
1:97:11, 17**early**[3] - 1:8:9;  
1:145:6;  
1:150:12**easiest**

[1] - 1:44:16

**East**

[1] - 1:145:1

**easy**[2] - 1:28:15;  
1:115:15**education**[2] - 1:151:1;  
1:171:10**educational**[4] - 1:150:18;  
1:151:14, 16;  
1:152:14**effect**[2] - 1:62:2;  
1:111:15**effected**[2] - 1:68:15;  
1:172:2

**effective**

[2] - 1:140:16;  
1:180:2

**effectively**

[1] - 1:150:11

**efficacious**

[1] - 1:140:16

**effort**

[2] - 1:166:15;  
1:176:9

**egress**

[30] - 1:10:14;  
1:12:7, 9, 12;  
1:13:12;  
1:21:15;  
1:22:11;  
1:26:6, 8,  
12-13;  
1:32:14;  
1:33:10;  
1:61:17;  
1:72:8, 18;  
1:73:11, 17;  
1:74:1;  
1:75:1;  
1:76:5;  
1:77:5;  
1:79:9;  
1:80:2, 11,  
13; 1:97:9,  
18

**eight**

[2] - 1:15:17;  
1:162:16

**either**

[6] - 1:8:9;  
1:45:3;  
1:51:8;  
1:90:13;  
1:126:10;  
1:165:6

**elaborate**

[1] - 1:75:8

**elevation**

[8] - 1:72:16;  
1:73:14;  
1:80:6;  
1:97:13, 16;  
1:122:14;  
1:132:3;

1:192:2

**elevator**

[34] - 1:72:12;

1:101:7, 13;

1:102:1, 6;

1:104:5, 14;

1:106:3;

1:109:10;

1:111:1, 14;

1:114:11;

1:116:4;

1:118:1, 3, 5,

13; 1:119:19;

1:121:13;

1:123:11, 15;

1:126:11, 16;

1:127:2, 12;

1:130:5;

1:132:17;

1:135:11, 17;

1:140:1, 14;

1:181:11

**elevators**

[1] - 1:117:16

**eliminating**

[1] - 1:31:13

**ELLSWORTH**

[13] - 1:143:1

4; 1:146:14;

1:147:5;

1:149:2;

1:151:6, 11,

15; 1:152:13;

1:153:6;

1:154:11, 19;

1:155:14;

1:169:13

**Ellsworth**

[2] - 1:143:15

**elsewhere**

[1] - 1:118:5

**email**

[4] - 1:29:2,

18; 1:165:18;

1:188:9

**emails**

[3] - 1:16:13;

1:17:5;

1:164:1

**embarrassed**

[1] - 1:169:9  
**emergencies**  
 [1] - 1:61:14  
**emphasize**  
 [1] - 1:65:14  
**employed**  
 [1] - 1:166:13  
**enable**  
 [1] - 1:169:5  
**encounter**  
 [2] - 1:125:3,  
 5  
**encountered**  
 [1] - 1:126:19  
**encourage**  
 [1] - 1:173:1  
**encouraging**  
 [1] - 1:173:6  
**end**  
 [6] - 1:8:11;  
 1:41:1;  
 1:78:2;  
 1:145:6;  
 1:157:7;  
 1:159:6  
**endanger**  
 [2] - 1:153:19;  
 1:170:17  
**ended**  
 [1] - 1:120:9  
**ending**  
 [1] - 1:145:7  
**ends**  
 [1] - 1:118:18  
**energy**  
 [1] - 1:18:11  
**enforcement**  
 [4] - 1:92:18;  
 1:139:15;  
 1:144:4;  
 1:194:12  
**England**  
 [1] - 1:169:18  
**enhance**  
 [1] - 1:24:17  
**enjoy**  
 [1] - 1:93:3  
**enlarge**  
 [3] - 1:72:15;  
 1:73:13;

1:97:15

**enormous**

[1] - 1:145:12

**entered**

[1] - 1:84:19

**enters**

[1] - 1:117:10

**enthusiastic**

[1] - 1:84:10

**entire**

[1] - 1:10:15

**entries**

[1] - 1:116:8

**entry**

[3] - 1:117:12;

1:120:6, 19

**envelope**

[3] - 1:10:15;

1:32:11;

1:119:2

**equally**

[1] - 1:69:11

**equipment**

[6] - 1:55:11;

1:57:6, 15;

1:58:1;

1:69:7;

1:71:7

**erection**

[1] - 1:110:1

**Erie**

[1] - 1:158:7

**err**

[1] - 1:51:18

**ERRATA**

[1] - 1:197:2

**errata**

[1] - 1:197:6

**ERWIN**

[2] - 1:160:5

**Erwin**

[1] - 1:160:5

**escape**

[16] - 1:10:13;

1:12:9;

1:13:2;

1:22:5, 12;

1:23:11;

1:24:6;

1:26:18;

1:27:3;  
 1:73:10;  
 1:80:14;  
 1:81:1, 5, 11,  
 15

**especially**

[5] - 1:65:1;  
 1:80:16;  
 1:119:16;  
 1:147:15;  
 1:159:9

**essentially**

[2] - 1:56:18;  
 1:57:18

**established**

[3] - 1:68:13;  
 1:171:19;  
 1:179:5

**et** [1] - 1:80:14

**evening**

[7] - 1:11:17;  
 1:67:8;  
 1:145:8;  
 1:150:14;  
 1:166:3;  
 1:175:13;  
 1:188:4

**event**

[2] - 1:43:10;  
 1:61:14

**eventually**

[2] - 1:39:15;  
 1:40:3

**evidence**

[2] - 1:67:15;  
 1:153:15

**exact**

[3] - 1:56:8;  
 1:60:2;  
 1:162:10

**exactly**

[3] - 1:56:10,  
 12; 1:65:19

**example**

[1] - 1:165:3

**exceed**

[1] - 1:63:15

**exceeded**

[1] - 1:47:6

**excellent**

[1] - 1:28:10

**except**

[5] - 1:20:3;

1:21:9;

1:56:12;

1:141:14;

1:197:16

**excessive**

[2] - 1:153:18;

1:170:16

**excited**

[2] - 1:148:11;

1:168:14

**excuse**

[1] - 1:106:10

**exemption**

[1] - 1:80:6

**exercise**

[1] - 1:150:7

**exercised**

[1] - 1:4:2

**existing**

[18] - 1:19:10;

1:55:9;

1:57:4, 6;

1:60:3;

1:64:13;

1:72:9, 11,

16; 1:73:14;

1:97:10, 12,

17; 1:101:9;

1:166:7;

1:191:17;

1:192:1

**exists**

[2] - 1:144:6;

1:180:1

**exit**

[2] - 1:24:14,

17

**expect**

[2] - 1:30:10;

1:101:14

**expensive**

[1] - 1:138:4

**experience**

[3] - 1:147:15;

1:153:2

**experienced**

[1] - 1:79:13

**expert**

[1] - 1:126:5

**expired**

[1] - 1:89:7

**expires**

[1] - 1:198:14

**explain**

[1] - 1:21:14

**explanations**

[1] - 1:110:6

**explanatory**

[1] - 1:30:10

**explicit**

[1] - 1:182:1

**explore**

[1] - 1:140:13

**explored**[2] - 1:134:8;  
1:135:9**express**[2] - 1:58:17;  
1:128:15**expressed**[2] - 1:18:4;  
1:94:8**extend**

[1] - 1:3:19

**extended**

[1] - 1:18:1

**extending**[2] - 1:14:18;  
1:192:1**extension**[6] - 1:3:11;  
1:4:5, 11, 14,  
18; 1:101:12**extent**[5] - 1:9:16;  
1:71:4;  
1:86:12;  
1:185:9;  
1:186:1**exterior**[6] - 1:36:18;  
1:72:7, 18;  
1:73:17;  
1:97:9, 18**extraordinary**[2] - 1:167:5;  
1:170:1

**extremely**

[2] - 1:167:1;  
1:168:14

**F-R-A-N-Z-I-S-****K-A**

[1] - 1:11:19

**fabulous**

[1] - 1:125:1

**facade**

[3] - 1:55:9;  
1:63:8;  
1:181:10

**face**

[5] - 1:44:4;  
1:45:7;  
1:57:17;  
1:67:16;  
1:82:8

**facilities**

[4] - 1:58:2;  
1:62:8;  
1:71:1;  
1:154:8

**facility**

[12] - 1:24:18;  
1:60:2, 4;  
1:61:10;  
1:62:2, 7;  
1:144:16;  
1:145:1,  
11-12;  
1:148:2

**fact**

[22] - 1:18:4;  
1:33:6, 16;  
1:36:17;  
1:45:18;  
1:47:15;  
1:54:12;  
1:93:4;  
1:94:1;  
1:108:15;  
1:120:14;  
1:131:13;  
1:135:14;  
1:137:5;  
1:161:13;  
1:165:7;  
1:172:9;  
1:179:18;

1:182:10, 12;  
1:183:9;  
1:187:19

**factor**

[1] - 1:165:8

**fail** [1] - 1:48:4

**fair**

[3] - 1:113:11;  
1:186:6;  
1:187:13

**fairly**

[2] - 1:47:6;  
1:136:4

**faith**

[2] - 1:187:6,  
15

**falling**

[1] - 1:24:2

**families**

[4] - 1:145:9;  
1:165:15;  
1:166:16;  
1:168:9

**family**

[15] - 1:72:10,  
17; 1:76:9;  
1:80:7;  
1:89:12;  
1:101:9;  
1:124:12, 17;  
1:166:14;  
1:167:8;  
1:168:6;  
1:169:1;  
1:175:16;  
1:176:8

**famous**

[1] - 1:28:10

**fantastic**

[2] - 1:120:14

**FAR**

[6] - 1:32:4, 6;  
1:34:15, 19;  
1:104:13;  
1:192:8

**far**

[4] - 1:27:13;  
1:63:19;  
1:136:15;  
1:193:6

**fatal**

[1] - 1:14:8

**faux**

[1] - 1:181:9

**favor**

[32] - 1:4:17;

1:10:1, 3;

1:37:19;

1:38:2;

1:54:2-4;

1:71:12, 15;

1:86:17, 19;

1:95:13, 15;

1:99:2, 4;

1:103:7;

1:142:3, 11,

13; 1:164:8;

1:173:16;

1:180:11;

1:183:1;

1:189:16, 18;

1:196:2, 4

**Favor**

[13] - 1:5:1;

1:10:4;

1:38:5;

1:54:5;

1:71:16;

1:87:2;

1:95:16;

1:99:5;

1:142:15;

1:173:18;

1:180:14;

1:189:19;

1:196:5

**February**

[1] - 1:198:14

**Federal**

[1] - 1:67:18

**feet**

[27] - 1:15:1,

8, 10-11, 13,

15, 18;

1:16:1;

1:19:11-13;

1:35:4;

1:55:10;

1:78:12;

1:81:18;

1:89:18;  
 1:90:1;  
 1:117:7;  
 1:133:8, 16;  
 1:134:12;  
 1:150:3, 5;  
 1:191:19

**Felix**

[4] - 1:175:6,  
 14; 1:177:13;  
 1:178:3

**FELIX**

[3] - 1:175:13;  
 1:176:17;  
 1:178:14

**fellow**

[1] - 1:35:18

**felt**

[3] - 1:34:1;  
 1:152:19;  
 1:182:15

**fence**

[4] - 1:28:16;  
 1:29:15;  
 1:30:6, 13

**few**

[12] - 1:31:10;  
 1:41:5;  
 1:59:19;  
 1:107:16;  
 1:116:18;  
 1:119:15;  
 1:133:7;  
 1:134:18;  
 1:148:8;  
 1:168:2;  
 1:183:17;  
 1:188:9

**fewer**

[1] - 1:166:7

**field**

[1] - 1:157:19

**fifth** [1] - 1:5:4

**figured**

[2] - 1:45:5;  
 1:50:2

**file**

[16] - 1:3:14;  
 1:9:18;  
 1:21:4;

1:40:12;  
1:53:17;  
1:85:2;  
1:91:13;  
1:94:15;  
1:101:10;  
1:123:6;  
1:125:12;  
1:130:16;  
1:131:3;  
1:164:1;  
1:193:1

**filed**

[5] - 1:8:10;  
1:59:8, 16;  
1:108:2, 5

**files**

[6] - 1:58:11;  
1:66:18;  
1:86:15;  
1:124:3;  
1:176:16;  
1:189:15

**filled**

[1] - 1:185:15

**final**

[15] - 1:20:2;  
1:66:19;  
1:67:2;  
1:86:12;  
1:94:14, 16,  
18; 1:116:9;  
1:130:17;  
1:131:4;  
1:149:16;  
1:193:9, 14

**findings**

[15] - 1:36:9;  
1:37:13;  
1:67:14;  
1:68:8;  
1:69:9;  
1:92:16;  
1:94:10;  
1:139:15;  
1:141:8;  
1:170:10;  
1:172:15;  
1:179:1;  
1:180:5;

1:194:12;  
1:195:14

**fine**

[11] - 1:29:11;  
1:30:9;  
1:42:1;  
1:50:5;  
1:52:15;  
1:64:16;  
1:77:2;  
1:103:1,  
12-13;  
1:105:11

**finish**

[1] - 1:126:18

**fire**

[29] - 1:10:13;  
1:12:9;  
1:13:2;  
1:21:15;  
1:22:4, 12;  
1:23:11;  
1:24:5, 14;  
1:26:6, 11,  
13, 17;  
1:27:3;  
1:33:10;  
1:72:8, 18;  
1:73:10, 17;  
1:74:1;  
1:75:1;  
1:80:11;  
1:81:1, 11,  
15; 1:97:9,  
18

**first**

[25] - 1:3:9;  
1:7:13;  
1:11:1;  
1:12:18;  
1:14:13;  
1:15:19;  
1:23:14;  
1:27:17;  
1:50:14;  
1:51:2;  
1:52:17;  
1:70:2;  
1:84:12;  
1:105:10;

1:112:2;  
 1:125:16;  
 1:144:15;  
 1:156:13, 16;  
 1:157:5;  
 1:166:9;  
 1:176:1;  
 1:178:4;  
 1:194:7

**first-floor**

[1] - 1:178:4

**firsthand**

[2] - 1:164:10,  
 16

**five**

[23] - 1:10:3;  
 1:54:4;  
 1:71:15;  
 1:74:18;  
 1:83:11;  
 1:86:19;  
 1:88:17, 19;  
 1:89:5;  
 1:95:15;  
 1:99:4;  
 1:142:13;  
 1:144:18;  
 1:152:15;  
 1:157:3;  
 1:158:9;  
 1:159:3;  
 1:160:4;  
 1:173:17;  
 1:180:12;  
 1:189:18;  
 1:191:19;  
 1:196:4

**flat**

[3] - 1:21:18;  
 1:26:17;  
 1:27:3

**floor**

[33] - 1:14:14;  
 1:15:6, 17,  
 19; 1:22:8,  
 19; 1:23:16;  
 1:25:4;  
 1:26:1, 4, 6,  
 11, 16;  
 1:35:2;

1:80:1,  
 17-19;  
 1:129:1;  
 1:137:16, 18;  
 1:138:2;  
 1:144:15;  
 1:146:1, 11;  
 1:148:10;  
 1:151:5, 19;  
 1:166:10;  
 1:176:1;  
 1:178:4

**flush**

[2] - 1:64:11,  
 14

**folks**

[3] - 1:141:3;  
 1:170:1;  
 1:184:5

**follow**

[1] - 1:40:10

**following**

[10] - 1:8:7;  
 1:36:9;  
 1:67:14;  
 1:69:18;  
 1:86:3;  
 1:92:16;  
 1:139:14;  
 1:170:9;  
 1:179:1;  
 1:194:11

**follows**

[1] - 1:3:17

**foot**

[5] - 1:15:17;  
 1:35:4;  
 1:111:11;  
 1:133:5;  
 1:134:16

**footage**

[3] - 1:15:3;  
 1:104:7;  
 1:150:4

**Footnote**

[1] - 1:59:14

**FOR**

[2] - 1:1:1, 10

**forced**

[2] - 1:48:14;

1:164:12

**FORD**

[10] - 1:57:15;

1:63:17;

1:64:10;

1:70:8;

1:183:12, 17;

1:186:17;

1:188:9, 17;

1:189:1

**Ford**

[3] - 1:55:6;

1:56:1;

1:181:6

**foregoing**

[1] - 1:197:15

**FOREGOING**

[1] - 1:198:16

**forever**

[1] - 1:119:19

**forgot**

[1] - 1:109:16

**form**

[1] - 1:86:14

**formally**

[1] - 1:166:13

**forth**

[7] - 1:57:9;

1:73:12;

1:81:16;

1:133:18;

1:134:3;

1:159:7;

1:198:7

**fortunate**

[1] - 1:167:2

**forward**

[28] - 1:11:5;

1:42:17;

1:50:12;

1:51:9, 19;

1:64:19;

1:69:10;

1:75:8, 12;

1:77:1, 15;

1:82:16;

1:102:4;

1:105:4, 15;

1:107:4, 6-7,

9; 1:111:15;

1:115:3;  
 1:126:2;  
 1:149:1;  
 1:160:3;  
 1:169:6;  
 1:183:2;  
 1:186:10

**foster**

[1] - 1:91:1

**Foundation**

[1] - 1:144:14

**four**

[16] - 1:3:10;  
 1:4:18;  
 1:16:11;  
 1:38:2;  
 1:57:1;  
 1:81:18;  
 1:95:10;  
 1:117:6;  
 1:133:5, 8;  
 1:134:12, 16;  
 1:145:13;  
 1:162:16;  
 1:186:10

**frankly**

[2] - 1:48:12;  
 1:164:18

**Franziska**

[2] - 1:10:12;  
 1:11:18

**FRANZISKA**

[33] - 1:11:18;  
 1:12:3;  
 1:13:11;  
 1:14:3, 12,  
 19; 1:15:5,  
 12, 16;  
 1:17:12;  
 1:18:8, 18;  
 1:19:1, 7, 15,  
 18; 1:20:3, 8,  
 17; 1:21:5,  
 11, 17;  
 1:22:2, 9, 12,  
 15; 1:23:3;  
 1:24:10;  
 1:25:2, 7;  
 1:31:1;  
 1:35:7, 11

**free**

[2] - 1:35:15;  
1:156:15

**frequent**

[1] - 1:62:11

**Friday**

[1] - 1:145:5

**friends**

[2] - 1:159:15,  
17

**front**

[19] - 1:12:15;  
1:19:6-8;  
1:117:10;  
1:118:7;  
1:119:6;  
1:120:3;  
1:121:15;  
1:122:3;  
1:127:3, 7,  
13; 1:132:12;  
1:135:18;  
1:136:4;  
1:156:4;  
1:194:4

**fulfilled**

[1] - 1:40:9

**full**

[5] - 1:52:4;  
1:81:2;  
1:101:8;  
1:103:10;  
1:133:11

**fully**

[5] - 1:24:12;  
1:80:10;  
1:81:6;  
1:107:15;  
1:165:14

**functional**

[1] - 1:25:6

**funding**

[1] - 1:4:7

**funky**

[1] - 1:137:15

**furthered**

[1] - 1:173:7

**furthermore**

[1] - 1:168:5

**future**

[1] - 1:167:3

**G1**

[2] - 1:59:13;  
1:60:14

**gain**

[1] - 1:14:15

**Galleria**

[1] - 1:58:3

**gamma**

[1] - 1:57:2

**garbage**

[1] - 1:135:5

**garden**

[2] - 1:124:16;  
1:136:9

**Garden**

[3] - 1:162:7,  
19

**gardener**

[1] - 1:120:15

**GARDNER**

[1] - 1:70:10

**gate**

[3] - 1:13:16;  
1:22:4;  
1:30:6

**gather**

[2] - 1:89:6;  
1:101:18

**general**

[1] - 1:113:4

**GENERAL**

[1] - 1:1:3

**General**

[1] - 1:4:4

**generally**

[3] - 1:62:9,  
11; 1:151:10

**gentleman**

[1] - 1:91:9

**gentlemen**

[1] - 1:144:10

**germane**

[1] - 1:29:12

**gifts**

[1] - 1:167:10

**given**

[3] - 1:135:14;  
1:168:15;  
1:187:1

**glad**

[1] - 1:160:11

**goal**

[1] - 1:120:5

**goals**

[1] - 1:140:18

**golf**

[3] - 1:92:5, 9;  
1:94:3

**gonna**

[4] - 1:24:19;  
1:35:5;  
1:98:4;  
1:120:16

**Gorham**

[4] - 1:27:18;  
1:28:4, 8;  
1:29:19

**GPS**

[1] - 1:57:9

**grab**

[1] - 1:154:15

**grade**

[1] - 1:93:6

**grades**

[1] - 1:192:5

**grant**

[17] - 1:4:11;  
1:8:13;  
1:62:18;  
1:67:7;  
1:75:13, 16;  
1:102:11;  
1:108:1;  
1:113:7;  
1:123:14;  
1:131:13;  
1:148:18;  
1:153:11;  
1:169:3;  
1:172:15;  
1:173:11;  
1:180:6

**granted**

[22] - 1:3:12;  
1:4:1, 15;  
1:37:1, 14;  
1:38:4;  
1:48:9;  
1:69:16;

1:93:12, 17;  
 1:94:11;  
 1:96:1;  
 1:102:13;  
 1:108:6, 10;  
 1:112:13;  
 1:140:6;  
 1:141:9;  
 1:142:14;  
 1:153:14;  
 1:195:4, 15

**granting**

[11] - 1:4:5;  
 1:37:19;  
 1:47:6;  
 1:62:15;  
 1:71:12;  
 1:95:13;  
 1:141:3;  
 1:142:3, 11;  
 1:196:2

**grasp**

[1] - 1:33:12

**great**

[5] - 1:85:3;  
 1:121:6;  
 1:165:12;  
 1:166:15;  
 1:169:2

**greater**

[1] - 1:144:6

**greatly**

[2] - 1:35:5

**GREEN**

[23] - 1:1:14;  
 1:12:2;  
 1:19:5;  
 1:21:14;  
 1:22:1;  
 1:23:16;  
 1:27:4;  
 1:33:5;  
 1:45:9;  
 1:46:8;  
 1:67:12;  
 1:79:2;  
 1:111:1;  
 1:114:6;  
 1:115:5;  
 1:116:11;

1:131:6;  
 1:139:12;  
 1:155:17;  
 1:170:7;  
 1:184:10, 12;  
 1:192:14

**Green**

[26] - 1:3:6;  
 1:5:2; 1:6:4;  
 1:10:6, 10;  
 1:38:6;  
 1:39:2;  
 1:54:7;  
 1:55:3;  
 1:71:18;  
 1:72:3;  
 1:87:4;  
 1:88:3;  
 1:95:18;  
 1:97:3;  
 1:99:7;  
 1:100:3;  
 1:142:17;  
 1:143:3;  
 1:174:1;  
 1:175:3;  
 1:180:16;  
 1:181:4;  
 1:190:2;  
 1:191:4;  
 1:196:7

**grounds**

[1] - 1:75:16

**group**

[4] - 1:147:16;  
 1:151:9;  
 1:164:12;  
 1:168:3

**guess**

[6] - 1:112:9,  
 15; 1:113:12;  
 1:133:3;  
 1:165:4

**Gus**

[1] - 1:43:19

**H-A-S-L-A-N-G**

**-E-R**

[1] - 1:100:14

**H-O-H-E-N-B-O**

**-K-E-N**

[1] - 1:191:13

**half**

[8] - 1:14:19;

1:15:8, 10;

1:16:1;

1:19:12;

1:35:3;

1:78:12;

1:117:7

**halfway**

[1] - 1:79:3

**Hallie**

[1] - 1:165:17

**Halloween**

[1] - 1:28:10

**Hamilton**

[5] - 1:2:13;

1:11:7, 14;

1:191:7, 12

**hand**

[5] - 1:35:3;

1:63:15;

1:64:12;

1:141:19;

1:198:10

**hands**

[1] - 1:49:17

**happy**

[3] - 1:51:3;

1:142:8;

1:160:18

**hard**

[2] - 1:117:2;

1:168:12

**hardly**

[2] - 1:23:1;

1:62:5

**hardship**

[13] - 1:36:12,

16; 1:91:2, 4;

1:92:19;

1:93:2, 8;

1:139:17;

1:140:2;

1:194:14, 18

**Harvard**

[2] - 1:3:13;

1:4:16

**HASLANGER**

[24] - 1:100:1

3; 1:106:10,  
 19; 1:108:19;  
 1:109:4;  
 1:110:4;  
 1:114:10, 16;  
 1:117:1;  
 1:121:2;  
 1:122:6;  
 1:123:7, 18;  
 1:124:4;  
 1:125:9;  
 1:132:10;  
 1:133:10;  
 1:134:13;  
 1:135:4;  
 1:137:14;  
 1:138:11, 17;  
 1:139:2, 8

**Haslanger**

[2] - 1:100:13;  
 1:123:9

**hazard**

[6] - 1:68:12,  
 16; 1:171:18;  
 1:172:4;  
 1:179:4, 13

**head**

[1] - 1:57:8

**health**

[3] - 1:68:17;  
 1:172:5;  
 1:179:14

**hear**

[17] - 1:11:2,  
 12-13;  
 1:53:6;  
 1:65:16;  
 1:83:12;  
 1:86:8;  
 1:87:9;  
 1:104:18;  
 1:105:16;  
 1:107:12;  
 1:115:2;  
 1:130:3;  
 1:183:4;  
 1:184:3, 6

**heard**

[55] - 1:7:12;  
 1:8:5, 18;

1:9:4, 6;  
 1:11:3, 9,  
 16-17;  
 1:27:11, 14;  
 1:39:6;  
 1:45:12;  
 1:50:8, 11;  
 1:53:1;  
 1:55:15;  
 1:62:8;  
 1:66:15, 17;  
 1:73:4;  
 1:75:14;  
 1:83:10;  
 1:84:5;  
 1:85:6;  
 1:86:2;  
 1:87:7;  
 1:88:12;  
 1:91:8, 11;  
 1:98:6, 8, 11;  
 1:126:1;  
 1:130:12;  
 1:135:13;  
 1:143:12;  
 1:156:9, 12;  
 1:175:12;  
 1:177:5, 7;  
 1:181:16;  
 1:182:10, 13;  
 1:183:14;  
 1:186:8, 11;  
 1:189:1, 7;  
 1:191:9;  
 1:192:18

### **HEARING**

[2] - 1:1:3;  
 1:197:1

### **hearing**

[18] - 1:8:7;  
 1:40:15;  
 1:41:3, 7, 18;  
 1:51:2;  
 1:59:11;  
 1:166:3;  
 1:169:10;  
 1:182:7, 12;  
 1:183:14;  
 1:185:4, 18;  
 1:187:15;

1:188:7, 12;  
1:198:7

**hearings**

[1] - 1:129:9

**Heddy**

[2] - 1:177:13;  
1:178:3

**held** [1] - 1:1:5

**hello**

[1] - 1:88:13

**help**

[2] - 1:89:3;  
1:90:8

**hereby**

[3] - 1:6:19;  
1:197:16;  
1:198:5

**herein**

[1] - 1:198:7

**hereunto**

[1] - 1:198:9

**hi**

[1] - 1:160:15

**hide**

[2] - 1:44:15,  
17

**high**

[3] - 1:148:5;  
1:159:5, 14

**higher**

[2] - 1:72:12;  
1:97:13

**highly**

[1] - 1:141:5

**hint**

[1] - 1:113:1

**hire**

[1] - 1:112:5

**hired**

[1] - 1:115:12

**Historical**

[1] - 1:184:19

**history**

[1] - 1:30:8

**Hoener**

[3] - 1:143:18;  
1:145:19;  
1:147:9

**HOENER**

[5] - 1:143:19;

1:147:9;  
1:162:8, 13,  
16

**Hohenboken**

[1] - 1:191:13

**hold**

[1] - 1:144:16

**holding**

[2] - 1:24:8;

1:105:19

**holes**

[3] - 1:121:16,

18

**home**

[8] - 1:101:9;

1:115:13, 16;

1:116:1;

1:117:3;

1:123:1;

1:177:18

**homes**

[2] - 1:116:7;

1:141:1

**honest**

[1] - 1:121:17

**Hope**

[2] - 1:3:15

**hope**

[3] - 1:122:18;

1:148:18;

1:161:17

**hopefully**

[1] - 1:186:3

**hoping**

[1] - 1:7:6

**horizontal**

[1] - 1:178:6

**horrible**

[1] - 1:77:6

**Hospital**

[1] - 1:157:1

**hour**

[2] - 1:62:9;

1:189:5

**hours**

[5] - 1:62:10;

1:145:2;

1:151:18;

1:152:2;

1:163:6

**house**

[34] - 1:14:14;  
 1:17:18;  
 1:23:14;  
 1:33:7;  
 1:35:9, 13;  
 1:44:12;  
 1:45:7;  
 1:100:14;  
 1:104:6;  
 1:117:16;  
 1:119:18;  
 1:122:3;  
 1:123:11;  
 1:124:1, 13;  
 1:132:16;  
 1:133:6, 11;  
 1:136:16;  
 1:137:4, 6;  
 1:139:1, 3;  
 1:175:16, 18;  
 1:176:1, 3;  
 1:178:9, 11

**houses**

[4] - 1:54:10;  
 1:117:17;  
 1:133:18;  
 1:137:15

**housing**

[2] - 1:4:7;  
 1:195:12

**HOW**

[1] - 1:32:18

**Huang**

[1] - 1:177:10

**HUANG**

[1] - 1:177:10

**huge**

[1] - 1:90:9

**hung**

[3] - 1:176:13;  
 1:177:16;  
 1:178:7

**iarrobino**

[1] - 1:41:12

**larrobino**

[3] - 1:40:12;  
 1:41:10;  
 1:49:5

**IARROBINO**

[6] - 1:40:13;  
 1:41:11;  
 1:44:9;  
 1:46:6;  
 1:49:5

**idea**

[8] - 1:118:4;  
 1:120:3, 7;  
 1:133:14;  
 1:142:9;  
 1:157:11;  
 1:161:12;  
 1:186:16

**identical**

[1] - 1:69:8

**ignore**

[1] - 1:130:2

**image**

[2] - 1:122:9,  
 17

**images**

[1] - 1:19:19

**imagine**

[1] - 1:163:8

**imagining**

[1] - 1:122:9

**immediate**

[2] - 1:36:2;  
 1:77:11

**imminent**

[1] - 1:168:14

**impact**

[18] - 1:41:19;  
 1:60:1;  
 1:68:1, 6;  
 1:71:2;  
 1:120:13;  
 1:121:7, 15;  
 1:122:2;  
 1:126:15;  
 1:128:7;  
 1:129:4;  
 1:154:3;  
 1:163:3, 9;  
 1:170:19

**impacted**

[1] - 1:119:13

**impacts**

[2] - 1:68:4;  
 1:119:7

**impair**

[3] - 1:69:1;  
 1:172:7;  
 1:179:17

**implication**

[1] - 1:14:6

**important**

[8] - 1:48:16;  
 1:106:1;  
 1:107:2;  
 1:113:8;  
 1:120:6;  
 1:159:8, 11;  
 1:167:10

**importantly**

[2] - 1:9:13;  
 1:189:10

**imposing**

[1] - 1:31:17

**impossible**

[1] - 1:138:1

**impression**

[1] - 1:51:1

**improperly**

[1] - 1:108:10

**improve**

[4] - 1:24:13;  
 1:32:13;  
 1:33:11;  
 1:195:12

**improved**

[1] - 1:26:16

**improvement**

[3] - 1:27:1;  
 1:33:14;  
 1:178:10

**improvements**

[4] - 1:26:6, 8,  
 11, 13

**IN**

[2] - 1:198:9,  
 16

**inadequacy**

[1] - 1:65:17

**inadequate**

[3] - 1:43:3;  
 1:75:10, 17

**inaudible**

[2] - 1:125:5;  
 1:128:18

**INC [1]** - 1:1:18

**inches**

[6] - 1:18:13;  
1:19:13;  
1:90:1;  
1:133:8;  
1:134:19;  
1:135:7

**inclined**

[1] - 1:34:5

**included**

[1] - 1:59:9

**includes**

[1] - 1:165:14

**inconvenience**

[2] - 1:28:14;  
1:189:2

**increase**

[9] - 1:6:7;  
1:10:15;  
1:14:9;  
1:15:19;  
1:34:14,  
17-18;  
1:35:2;  
1:61:16

**increased**

[2] - 1:17:3;  
1:35:6

**increasing**

[5] - 1:32:6;  
1:37:9;  
1:90:2;  
1:119:6;  
1:138:16

**indicate**

[2] - 1:45:18;  
1:46:9

**indicated**

[2] - 1:29:6;  
1:141:15

**indicating**

[1] - 1:24:7

**individual**

[6] - 1:143:8;  
1:144:1;  
1:149:16;  
1:166:12;  
1:168:17;  
1:188:2

**infants**

[1] - 1:144:16

**information**

[1] - 1:149:12

**informative**

[1] - 1:33:18

**informed**

[1] - 1:41:2

**inherently**

[1] - 1:104:6

**initial**

[3] - 1:81:9;

1:94:14;

1:133:3

**initialed**

[6] - 1:37:18;

1:70:3, 11;

1:95:12;

1:180:9;

1:195:19

**inner**

[1] - 1:20:6

**innies**

[2] - 1:20:7;

1:21:9

**inserted**

[2] - 1:17:15;

1:20:4

**inset**

[1] - 1:45:4

**inside**

[3] - 1:20:11;

1:40:15;

1:118:2

**insofar**

[1] - 1:102:5

**Inspectional**

[3] - 1:7:15;

1:125:13;

1:182:18

**inspector**

[2] - 1:79:17

**install**

[2] - 1:57:1;

1:181:7

**installation**

[1] - 1:113:10

**installed**

[1] - 1:181:8

**installing**

[2] - 1:55:8;  
1:57:5

**instead**

[1] - 1:120:19

**instruction**

[1] - 1:170:15

**INSTRUCTION**

**S** [1] - 1:197:3

**instructor**

[3] - 1:147:10;  
1:149:15;  
1:151:2

**instructors**

[1] - 1:166:18

**insulation**

[3] - 1:10:16;  
1:18:10, 16

**integrity**

[3] - 1:69:1;  
1:172:7;  
1:179:17

**intended**

[1] - 1:60:1

**intense**

[1] - 1:153:5

**intent**

[7] - 1:37:3;  
1:69:3;  
1:93:15;  
1:140:8;  
1:172:8, 10;  
1:195:6

**intention**

[2] - 1:44:14;  
1:144:14

**interest**

[4] - 1:61:9,  
12; 1:113:9;  
1:126:13

**interested**

[1] - 1:62:19

**interesting**

[1] - 1:114:8

**interfere**

[1] - 1:92:10

**interior**

[8] - 1:24:17;  
1:25:2, 6;  
1:31:13, 16;  
1:33:7;

1:136:15

**interspace**

[1] - 1:24:16

**introduce**

[1] - 1:144:11

**intrude**

[2] - 1:92:8;

1:192:9

**involve**

[4] - 1:36:11;

1:92:19;

1:139:16;

1:168:4

**involved**

[1] - 1:162:12

**IS** [1] - 1:32:17

**Isabella**

[1] - 1:160:10

**issue**

[22] - 1:12:18;

1:14:5, 11;

1:23:15;

1:30:6;

1:32:10, 17;

1:35:14;

1:39:13;

1:40:6;

1:43:9;

1:47:11;

1:62:12;

1:75:2, 9, 19;

1:79:7;

1:81:9;

1:111:19;

1:139:7;

1:158:2

**issues**

[14] - 1:28:16;

1:29:15;

1:32:9;

1:51:4;

1:94:3;

1:101:1;

1:127:16;

1:129:6, 10;

1:137:8;

1:154:10;

1:164:18;

1:179:10;

1:192:8

**it's..****[1]** - 1:65:1**item [2]** - 1:3:9**iterations****[1]** - 1:79:15**itself****[7]** - 1:45:3;

1:58:2;

1:68:4, 10;

1:69:12;

1:70:9;

1:197:5

**Janet****[26]** - 1:3:6;

1:5:2; 1:6:4;

1:10:6, 10;

1:38:6;

1:39:2;

1:54:7;

1:55:3;

1:71:18;

1:72:3;

1:87:4;

1:88:3;

1:95:18;

1:97:3;

1:99:7;

1:100:3;

1:142:17;

1:143:3;

1:174:1;

1:175:3;

1:180:16;

1:181:4;

1:190:2;

1:191:4;

1:196:7

**JANET****[23]** - 1:1:14;

1:12:2;

1:19:5;

1:21:14;

1:22:1;

1:23:16;

1:27:4;

1:33:5;

1:45:9;

1:46:8;

1:67:12;

1:79:2;

1:111:1;  
 1:114:6;  
 1:115:5;  
 1:116:11;  
 1:131:6;  
 1:139:12;  
 1:155:17;  
 1:170:7;  
 1:184:10, 12;  
 1:192:14

**January**

[1] - 1:59:7

**Jean**

[1] - 1:191:13

**JEFFERSON**

[1] - 1:97:6

**Jefferson**

[7] - 1:2:6, 8;  
 1:72:5;  
 1:73:3;  
 1:97:5;  
 1:98:4

**Jill [3]** - 1:1:16;

1:198:4, 12

**jives**

[1] - 1:74:4

**jobs**

[1] - 1:129:4

**John**

[4] - 1:175:6,  
 14; 1:177:12;  
 1:178:3

**JOHN**

[3] - 1:175:13;  
 1:176:17;  
 1:178:14

**joined**

[1] - 1:143:16

**JP**

[1] - 1:157:8

**judgment**

[3] - 1:42:9;  
 1:83:10

**Juliet**

[1] - 1:78:14

**July**

[4] - 1:41:1;  
 1:49:18;  
 1:131:4;  
 1:141:14

**jump**

[1] - 1:23:7

**jumping**

[1] - 1:81:16

**June**[2] - 1:7:10,  
18**KAREN**[2] - 1:156:18;  
1:157:18**Karen**

[1] - 1:156:18

**keep**[3] - 1:118:15;  
1:120:16;  
1:170:2**keeping**

[1] - 1:136:4

**keeps**[2] - 1:90:7;  
1:136:9**kept**

[1] - 1:157:8

**kids**

[1] - 1:28:11

**kind**[5] - 1:51:12;  
1:61:15;  
1:129:18;  
1:133:17;  
1:148:17**kind've**[6] - 1:12:11;  
1:81:13;  
1:111:5;  
1:112:3;  
1:120:1;  
1:137:15**kinds**

[1] - 1:32:3

**KIRIL**

[2] - 1:161:6

**Kiril**

[1] - 1:161:6

**kitchen**[11] - 1:17:18;  
1:175:7;  
1:176:5-9;  
1:177:13;  
1:178:3, 7

**knowing**

[1] - 1:117:19

**known**[5] - 1:6:13;  
1:28:9;  
1:187:3;  
1:188:15, 19**Kourafas**[3] - 1:1:16;  
1:198:4, 12**Kreiger**

[1] - 1:55:19

**Kris**[3] - 1:29:6,  
10; 1:149:8**KRIS**

[1] - 1:29:7

**L-U-M-S-A-C-K**

[1] - 1:39:10

**laboratory**

[1] - 1:151:17

**ladder**[2] - 1:13:15;  
1:25:1**land**[2] - 1:73:15;  
1:134:6**lands**

[1] - 1:12:10

**landscaped**

[1] - 1:122:5

**large**[5] - 1:56:19;  
1:61:14;  
1:118:19;  
1:168:3;  
1:169:19**larger**[2] - 1:80:19;  
1:138:16**last**[12] - 1:11:19;  
1:56:4;  
1:65:14;  
1:69:5, 13;  
1:90:6;  
1:91:13;  
1:94:6;  
1:148:16;  
1:161:7;

1:182:11;

1:188:12

**lastly**

[1] - 1:53:15

**late**

[2] - 1:175:14;

1:189:5

**lately**

[1] - 1:31:10

**latter**

[1] - 1:150:14

**LAVERNE**

[1] - 1:158:19

**Laverne**

[1] - 1:158:19

**law**

[1] - 1:108:16

**Laws**

[1] - 1:4:4

**lawyer**

[1] - 1:112:5

**layout**

[1] - 1:136:15

**lead**

[1] - 1:35:5

**leads**

[1] - 1:23:10

**learn**

[1] - 1:143:17

**least**

[9] - 1:37:7;

1:50:16;

1:67:16;

1:81:5, 17;

1:109:9;

1:119:11;

1:182:9;

1:185:19

**leave**

[1] - 1:85:1

**leaves**

[1] - 1:116:14

**leaving**

[2] - 1:80:19;

1:167:12

**left**

[8] - 1:12:17;

1:55:11;

1:63:7;

1:90:9;

1:116:3, 12;  
 1:133:6;  
 1:187:3

**legal**

[5] - 1:22:14;  
 1:23:2;  
 1:110:17;  
 1:114:2

**legitimate**

[3] - 1:32:9;  
 1:78:1;  
 1:150:11

**length**

[5] - 1:15:11;  
 1:78:13, 17;  
 1:133:11

**Leonard**

[1] - 1:156:19

**less**

[8] - 1:14:7;  
 1:113:8;  
 1:115:14;  
 1:133:8;  
 1:134:11;  
 1:153:5

**lesser**

[3] - 1:153:17;  
 1:157:16;  
 1:170:15

**lesson**

[1] - 1:160:1

**lessons**

[15] - 1:144:1;  
 1:148:3;  
 1:149:16;  
 1:155:4;  
 1:157:2;  
 1:158:8;  
 1:159:2, 9;  
 1:161:8;  
 1:164:7, 13;  
 1:165:3;  
 1:166:13;  
 1:167:16;  
 1:168:3

**Letter**

[1] - 1:154:15

**letter**

[24] - 1:3:14,  
 17; 1:6:15;

1:7:18;  
 1:16:13;  
 1:27:17;  
 1:28:19;  
 1:29:8, 12;  
 1:30:3, 15;  
 1:40:11, 14;  
 1:41:3, 14,  
 16; 1:45:16;  
 1:46:8;  
 1:49:4;  
 1:79:1;  
 1:165:16;  
 1:177:19;  
 1:193:1

### **letters**

[9] - 1:27:16;  
 1:33:16;  
 1:34:2;  
 1:66:18;  
 1:75:5;  
 1:84:18;  
 1:91:12;  
 1:163:19;  
 1:177:8

### **level**

[5] - 1:22:3;  
 1:79:18;  
 1:101:8;  
 1:114:9;  
 1:137:6

### **levels**

[3] - 1:14:13;  
 1:81:13, 19

### **Lexington**

[2] - 1:159:17;  
 1:166:1

### **License**

[1] - 1:198:13

### **licensed**

[1] - 1:67:18

### **licenses**

[2] - 1:59:15,  
 17

### **lifestyle**

[1] - 1:92:11

### **lift**

[1] - 1:123:2

### **light**

[1] - 1:106:14

**likely**

[1] - 1:8:7

**limitation**

[1] - 1:4:1

**limited**

[2] - 1:93:4;

1:185:18

**LINE**

[1] - 1:197:7

**line**

[19] - 1:63:10,

12; 1:65:10;

1:70:14;

1:103:17;

1:104:2;

1:111:3, 13;

1:112:1;

1:113:8, 14;

1:133:6;

1:134:2, 17,

19; 1:139:1,

3; 1:192:1

**Line**

[2] - 1:165:10;

1:171:4

**lines**

[1] - 1:171:4

**Lisa**

[1] - 1:160:8

**listen**

[1] - 1:92:3

**listened**

[1] - 1:128:16

**listening**

[1] - 1:126:14

**lit**

[2] - 1:40:16;

1:122:4

**literal**

[5] - 1:36:10;

1:92:17;

1:139:15;

1:144:3;

1:194:12

**literally**

[3] - 1:43:18;

1:44:13;

1:48:7

**livability**

[1] - 1:171:11

**live**

[16] - 1:28:4;  
 1:93:3;  
 1:110:9, 12;  
 1:132:19;  
 1:156:19;  
 1:158:6;  
 1:159:15, 17;  
 1:160:7;  
 1:161:1;  
 1:162:19;  
 1:166:17;  
 1:171:13;  
 1:172:13;  
 1:191:11

**liveable**

[1] - 1:172:12

**lived**

[3] - 1:28:8;  
 1:46:4;  
 1:141:5

**lives**

[4] - 1:110:7;  
 1:116:18;  
 1:157:8

**living**

[7] - 1:14:1;  
 1:18:5;  
 1:32:17;  
 1:34:4;  
 1:155:4;  
 1:161:11;  
 1:194:15

**LLC [3]**

[3] - 1:6:6;  
 1:72:6;  
 1:97:6

**locate**

[1] - 1:136:10

**located**

[1] - 1:137:2

**locating**

[1] - 1:117:16

**location**

[9] - 1:3:13;  
 1:60:13, 15;  
 1:61:11;  
 1:140:3, 14;  
 1:144:19;  
 1:155:5;  
 1:165:9

**locations**

[5] - 1:55:10;  
 1:56:8;  
 1:60:3, 18;  
 1:118:2

**logical**

[1] - 1:152:18

**long-time**

[1] - 1:161:10

**Longy**

[16] - 1:147:1  
 1; 1:152:6;  
 1:157:4;  
 1:159:3, 7;  
 1:160:18;  
 1:161:12, 18;  
 1:162:2-4;  
 1:164:13;  
 1:166:14;  
 1:167:8;  
 1:169:16;  
 1:171:8

**look**

[16] - 1:17:12;  
 1:30:9;  
 1:44:2;  
 1:49:12;  
 1:56:11;  
 1:57:16;  
 1:60:5;  
 1:64:18;  
 1:65:12;  
 1:78:18;  
 1:101:10;  
 1:122:6;  
 1:127:2, 6;  
 1:168:12

**looked**

[7] - 1:29:10;  
 1:44:19;  
 1:89:12, 16;  
 1:115:15;  
 1:118:4

**looking**

[7] - 1:43:14,  
 18; 1:90:7,  
 10; 1:117:4;  
 1:148:5;  
 1:157:6

**looks**

[4] - 1:17:19;  
 1:63:9;  
 1:64:5;  
 1:90:9

**lose**

[3] - 1:48:10;  
 1:117:15;  
 1:118:7

**losing**

[1] - 1:166:18

**love**

[3] - 1:50:3;  
 1:124:8;  
 1:125:4

**loved**

[1] - 1:49:14

**low**

[2] - 1:136:4;  
 1:148:6

**lower**

[1] - 1:137:6

**luck**

[4] - 1:78:5;  
 1:85:17;  
 1:174:2;  
 1:180:13

**lucky**

[1] - 1:160:8

**Lumsack**

[1] - 1:39:10

**M-A-R-C**

[1] - 1:73:6

**Magic**

[1] - 1:86:6

**mail**

[3] - 1:49:9;  
 1:185:5, 7

**maintained**

[2] - 1:71:1;  
 1:86:5

**maintenance**

[1] - 1:62:9

**Makers**

[1] - 1:144:14

**malfeasance**

[1] - 1:187:18

**man**

[1] - 1:129:7

**management**

[1] - 1:121:17

**maneuver**

[1] - 1:138:2

**mansard**

[1] - 1:107:2

**manual**

[1] - 1:132:15

**map**[2] - 1:134:18;  
1:135:1**Marc**

[1] - 1:72:6

**MARC**[24] - 1:73:5;  
1:74:2;  
1:75:4;  
1:76:2, 15;  
1:78:6, 10,  
17; 1:79:3, 7;  
1:80:10;  
1:83:1, 7, 19;  
1:84:5, 13,  
16; 1:85:3, 8,  
11, 16;  
1:97:6;  
1:98:7, 18**marc**

[1] - 1:73:5

**March**

[1] - 1:147:19

**Maria**

[1] - 1:185:7

**Marker**

[1] - 1:86:7

**marks**

[1] - 1:197:5

**Mass**[2] - 1:4:4;  
1:148:15**mass**

[1] - 1:31:17

**Massachusetts****S**  
[2] - 1:198:2,  
5**MASSACHUSE****TTS** [2] - 1:1:7**massing**[4] - 1:32:17;  
1:35:19;  
1:119:6;

1:134:2

**match**

[4] - 1:57:11;

1:95:6;

1:178:8;

1:181:11

**matches**

[1] - 1:70:16

**matching**

[1] - 1:177:17

**material**

[1] - 1:61:16

**Matt**

[1] - 1:191:12

**matter**

[21] - 1:4:12;

1:6:19;

1:7:12;

1:8:16;

1:11:4;

1:27:9, 12;

1:31:5;

1:39:7;

1:66:15;

1:91:9;

1:103:13;

1:126:1;

1:143:13;

1:156:10;

1:173:4;

1:175:12;

1:177:6;

1:181:17;

1:182:10;

1:183:7

**matters**

[2] - 1:46:17

**Matthaeus**

[1] - 1:177:9

**maximum**

[1] - 1:4:3

**MBTA**

[1] - 1:155:7

**mean**

[9] - 1:43:16;

1:45:17;

1:64:4;

1:90:8;

1:124:8;

1:129:14;

1:138:6;  
 1:152:8;  
 1:155:16

**means**

[5] - 1:22:11;  
 1:51:11;  
 1:76:5;  
 1:80:13;  
 1:81:5

**measure**

[2] - 1:16:3;  
 1:133:15

**meet**

[2] - 1:81:4;  
 1:184:18

**MEETING**

[1] - 1:1:10

**meeting**

[6] - 1:3:8;  
 1:7:2, 10;  
 1:51:12;  
 1:56:3;  
 1:76:7

**member**

[1] - 1:5:4

**MEMBER**

[4] - 1:1:12

**members**

[3] - 1:35:18;  
 1:113:1;  
 1:184:2

**Members**

[22] - 1:3:5;  
 1:6:2; 1:9:1;  
 1:10:8;  
 1:21:13;  
 1:39:1;  
 1:55:2;  
 1:63:3;  
 1:72:2;  
 1:88:2;  
 1:90:18;  
 1:92:13;  
 1:97:2;  
 1:100:2;  
 1:102:3;  
 1:107:4;  
 1:125:17;  
 1:143:2;  
 1:175:2;

1:181:2;  
1:191:2;  
1:192:13

**MEMBERS**

[1] - 1:1:11

**mention**

[1] - 1:113:17

**mentioned**

[4] - 1:62:3,  
14; 1:93:11;  
1:123:5

**mentor**

[1] - 1:159:11

**merged**

[1] - 1:162:4

**merits**

[6] - 1:41:8;  
1:48:1;  
1:73:9;  
1:100:19;  
1:107:11;  
1:108:11

**Messud**

[1] - 1:165:19

**MESSUD**

[1] - 1:165:19

**met**

[2] - 1:58:9;  
1:155:1

**MEYERS**

[1] - 1:114:1

**MICHAEL**

[1] - 1:70:10

**might**

[11] - 1:41:19;  
1:63:14;  
1:107:13;  
1:118:6, 17;  
1:119:10;  
1:128:9;  
1:129:6;  
1:135:2;  
1:179:10

**mind**

[3] - 1:127:12,  
17; 1:128:4

**minimal**

[1] - 1:145:14

**minimize**

[3] - 1:60:1;

1:68:1, 5

**minutes**

[1] - 1:59:19

**missed**

[1] - 1:30:5

**missing**

[1] - 1:132:3

**misunderstand**

[1] - 1:131:12

**model**

[1] - 1:24:9

**modes**

[1] - 1:173:2

**modest**

[6] - 1:37:11;

1:165:2;

1:179:19;

1:192:7;

1:193:11;

1:195:9

**modification**

[7] - 1:18:17;

1:36:19;

1:102:5;

1:113:7, 14;

1:140:5;

1:195:3

**modifications**

[2] - 1:17:6, 9

**modified**

[7] - 1:9:12;

1:17:14;

1:20:10;

1:69:13;

1:141:19;

1:176:6;

1:189:9

**modify**

[5] - 1:86:13;

1:111:13;

1:114:3;

1:130:1;

1:131:16

**modifying**

[1] - 1:114:1

**Mok**

[1] - 1:95:9

**mom**

[1] - 1:159:19

**Monday**

[8] - 1:9:19;  
 1:20:11;  
 1:53:18;  
 1:83:17;  
 1:86:15;  
 1:98:15;  
 1:145:4;  
 1:189:15

**money**

[1] - 1:88:19

**month**

[1] - 1:62:9

**monthly**

[1] - 1:62:8

**months**

[6] - 1:4:3;  
 1:102:14;  
 1:103:4;  
 1:107:16;  
 1:144:18;  
 1:145:2

**morning**

[5] - 1:49:12;  
 1:50:1;  
 1:145:4;  
 1:182:17;  
 1:188:6

**mornings**

[1] - 1:138:14

**most**

[13] - 1:9:13;  
 1:30:12;  
 1:40:17;  
 1:41:3;  
 1:42:4;  
 1:62:10;  
 1:79:12;  
 1:140:15;  
 1:145:9;  
 1:162:14;  
 1:167:18;  
 1:176:2;  
 1:180:2

**motion**

[8] - 1:52:10,  
 12, 18;  
 1:99:3;  
 1:170:6;  
 1:182:19;

1:183:1;  
1:189:5

**mount**

[1] - 1:55:9

**mounted**

[5] - 1:57:12;  
1:60:9;  
1:63:8;  
1:181:9

**mounting**

[1] - 1:57:3

**mounts**

[1] - 1:56:8

**move**

[5] - 1:4:11;  
1:51:19;  
1:169:5;  
1:175:15;  
1:189:6

**moved**

[4] - 1:36:2;  
1:137:3;  
1:172:19;  
1:176:4

**moves**

[21] - 1:4:14;  
1:9:7; 1:36:8;  
1:37:14;  
1:52:19;  
1:67:14;  
1:69:16;  
1:85:5;  
1:86:1;  
1:92:15;  
1:94:11;  
1:139:14;  
1:141:9;  
1:151:15;  
1:170:9;  
1:172:15;  
1:173:11;  
1:178:19;  
1:180:6;  
1:194:11;  
1:195:15

**moving**

[1] - 1:118:10

**MS**

[2] - 1:115:14;  
1:121:5

**multifamily**

[1] - 1:110:9

**multiplied**

[1] - 1:149:8

**MUNSAT**

[29] - 1:100:7,  
 11; 1:104:1;  
 1:105:9, 18;  
 1:106:7;  
 1:107:12;  
 1:111:9, 17;  
 1:115:9, 12;  
 1:116:1, 15;  
 1:117:4;  
 1:119:14;  
 1:122:4, 8;  
 1:130:19;  
 1:131:5, 7,  
 19; 1:132:6;  
 1:135:1;  
 1:136:2, 19;  
 1:137:9, 12;  
 1:138:19;  
 1:141:14

**Munsat**

[1] - 1:141:14

**Murdock**

[10] - 1:2:4;  
 1:6:5; 1:39:5,  
 18; 1:40:13,  
 19; 1:41:6;  
 1:43:16

**Music**

[3] - 1:144:14;  
 1:147:11;  
 1:166:14

**music**

[15] - 1:145:1  
 6; 1:146:3;  
 1:147:3;  
 1:149:15;  
 1:160:1, 4,  
 19; 1:161:8;  
 1:164:5, 7;  
 1:166:12, 18;  
 1:170:15;  
 1:171:7

**musical**

[2] - 1:161:14;  
 1:171:10

**musician****[1]** - 1:167:1**musicians****[2]** - 1:144:1;

1:148:4

**musicians'****[1]** - 1:143:7**must****[6]** - 1:9:18;

1:53:17;

1:86:14;

1:121:14;

1:151:16;

1:169:8

**MYERS****[24]** - 1:1:13;

1:15:10, 14;

1:26:1, 4, 10,

19; 1:34:6,

13; 1:35:10,

14; 1:46:17;

1:47:2;

1:66:7;

1:78:8, 13;

1:79:4;

1:105:6;

1:112:19;

1:113:16;

1:114:8;

1:142:5;

1:188:1, 5

**Myers****[26]** - 1:3:6;

1:5:2; 1:6:3;

1:10:5, 9;

1:38:6;

1:39:2;

1:54:6;

1:55:3;

1:71:17;

1:72:3;

1:87:3;

1:88:3;

1:95:17;

1:97:3;

1:99:6;

1:100:3;

1:142:16;

1:143:3;

1:173:19;

1:175:3;  
 1:180:15;  
 1:181:3;  
 1:190:1;  
 1:191:3;  
 1:196:6

**nah** [1] - 1:59:1

**name**

[12] - 1:11:19;  
 1:16:8;  
 1:39:8;  
 1:55:18;  
 1:100:9;  
 1:126:3;  
 1:143:14;  
 1:147:9;  
 1:159:13;  
 1:160:15;  
 1:161:7;  
 1:175:13

**namely**

[1] - 1:170:14

**narrow**

[2] - 1:43:17;  
 1:46:5

**natural**

[2] - 1:106:14;  
 1:120:4

**nature**

[9] - 1:37:12;  
 1:64:2;  
 1:74:15;  
 1:88:16;  
 1:168:15;  
 1:170:13;  
 1:179:19;  
 1:192:9;  
 1:194:19

**near**

[1] - 1:155:5

**nearly**

[1] - 1:35:3

**necessarily**

[5] - 1:14:8;  
 1:42:10;  
 1:70:17;  
 1:74:10;  
 1:134:10

**necessary**

[7] - 1:4:6;

1:8:1, 17;  
 1:104:4;  
 1:136:18;  
 1:173:8;  
 1:194:16

**need**

**[30]** - 1:8:10;  
 1:18:16;  
 1:24:13, 15;  
 1:39:13;  
 1:51:8;  
 1:53:12;  
 1:60:12;  
 1:61:1, 7;  
 1:65:10;  
 1:71:3;  
 1:77:8;  
 1:80:13;  
 1:91:14;  
 1:95:3;  
 1:102:18;  
 1:105:14;  
 1:117:19;  
 1:118:1, 15;  
 1:119:10;  
 1:126:2;  
 1:130:15;  
 1:145:14;  
 1:159:16;  
 1:168:16;  
 1:170:11;  
 1:173:2;  
 1:186:1

**needed**

**[4]** - 1:7:16;  
 1:103:6;  
 1:153:8;  
 1:185:10

**needs**

**[4]** - 1:103:2;  
 1:105:12;  
 1:137:7;  
 1:139:18

**negative**

**[5]** - 1:122:2;  
 1:127:17;  
 1:128:8;  
 1:163:2, 9

**neighbor**

**[17]** - 1:8:3;

1:20:19;  
 1:28:4;  
 1:40:5;  
 1:41:4;  
 1:47:13;  
 1:48:8;  
 1:49:10;  
 1:78:4;  
 1:92:8;  
 1:102:9;  
 1:110:7;  
 1:138:13;  
 1:182:9;  
 1:183:3, 5

**neighborhood**

[30] - 1:33:19;  
 1:37:6;  
 1:45:15;  
 1:54:9;  
 1:61:19;  
 1:62:3;  
 1:68:13;  
 1:69:12;  
 1:94:7;  
 1:119:12;  
 1:122:19;  
 1:124:9,  
 13-14;  
 1:125:7;  
 1:140:11;  
 1:154:3;  
 1:155:5;  
 1:157:13;  
 1:160:12;  
 1:164:15, 17;  
 1:165:1;  
 1:171:1, 19;  
 1:178:11;  
 1:179:5;  
 1:187:13;  
 1:195:10

**neighborly**

[1] - 1:54:14

**neighbors**

[32] - 1:14:11;  
 1:16:5, 12;  
 1:17:15;  
 1:21:1;  
 1:27:16;  
 1:40:17;

1:41:18;  
 1:45:13, 19;  
 1:49:10;  
 1:51:14;  
 1:54:9;  
 1:76:8;  
 1:78:19;  
 1:79:11;  
 1:80:3;  
 1:90:8;  
 1:91:14;  
 1:92:2;  
 1:94:8;  
 1:110:5;  
 1:121:10;  
 1:123:8;  
 1:124:18;  
 1:128:9;  
 1:136:3;  
 1:180:2;  
 1:186:4;  
 1:193:2, 4

**neighbors'**

[1] - 1:17:7

**never**

[6] - 1:112:17;  
 1:127:17;  
 1:128:3;  
 1:161:8;  
 1:185:8;  
 1:187:1

**new**

[22] - 1:9:12,  
 14; 1:15:3;  
 1:29:10;  
 1:41:1;  
 1:42:11,  
 16-18;  
 1:54:8;  
 1:84:11;  
 1:86:13;  
 1:89:15;  
 1:91:19;  
 1:98:14;  
 1:99:1;  
 1:122:16;  
 1:156:14;  
 1:164:19;  
 1:177:16;  
 1:182:2;

1:189:9

**New**

[1] - 1:169:18

**newspaper**

[1] - 1:101:15

**Newton**

[1] - 1:157:8

**next**

[10] - 1:6:12;

1:49:16;

1:51:11;

1:52:2;

1:77:11;

1:85:14;

1:111:10;

1:134:18;

1:156:3;

1:158:18

**Nextel**

[5] - 1:55:12;

1:56:7;

1:57:17;

1:60:4

**Nextel's**

[3] - 1:55:7, 9;

1:56:13

**nice**

[4] - 1:117:11;

1:122:6;

1:134:7;

1:163:9

**night**

[1] - 1:152:4

**nine**

[3] - 1:79:2;

1:166:9

**nitpickers**

[1] - 1:48:17

**NO**

[1] - 1:178:14

**nobody**

[2] - 1:187:5;

1:192:19

**noisy**

[1] - 1:121:8

**Non**

[3] - 1:73:1;

1:98:1;

1:175:9

**non**

**[9]** - 1:19:2;  
 1:72:9, 11,  
 16; 1:97:10,  
 12, 17;  
 1:140:4;  
 1:195:2

**Non-conformi**

**ng**

**[3]** - 1:73:1;  
 1:98:1;  
 1:175:9

**non-conformin**

**g [9]** - 1:19:2;  
 1:72:9, 11,  
 16; 1:97:10,  
 12, 17;  
 1:140:4;  
 1:195:2

**nonconformin**

**g**

**[2]** - 1:36:18;  
 1:73:15

**none**

**[3]** - 1:9:3;  
 1:18:3;  
 1:192:16

**nonmedical**

**[1]** - 1:150:2

**nonresident**

**[1]** - 1:155:9

**nonresidential**

**[3]** - 1:60:11,  
 13; 1:61:3

**Norfolk**

**[7]** - 1:2:12;  
 1:11:8, 15;  
 1:143:16;  
 1:181:5, 14;  
 1:198:3

**norm**

**[1]** - 1:151:13

**normal**

**[1]** - 1:166:8

**Norton**

**[1]** - 1:49:11

**NOT**

**[2]** - 1:197:5;  
 1:198:16

**Notary**

**[3]** - 1:197:6;

1:198:4, 14

**notations**

[1] - 1:197:5

**note**

[8] - 1:37:5;

1:42:2;

1:69:6;

1:93:16;

1:140:10;

1:169:14;

1:195:8;

1:197:4

**noted**

[1] - 1:197:16

**notes**

[4] - 1:9:5;

1:66:16;

1:156:11;

1:192:19

**nothing**

[3] - 1:61:17;

1:66:4;

1:123:6

**notice**

[24] - 1:41:7;

1:42:12,

17-18;

1:43:2;

1:46:16;

1:47:10;

1:48:5, 15;

1:49:1, 8;

1:51:1;

1:75:10, 17;

1:101:2;

1:102:4;

1:108:11;

1:109:18;

1:110:2;

1:113:6, 10

**noticeable**

[1] - 1:62:5

**noticed**

[4] - 1:40:17;

1:132:1;

1:134:5;

1:184:4

**notices**

[1] - 1:109:16

**noticing**

[1] - 1:181:19

**notification**

[3] - 1:42:2;

1:45:11;

1:51:10

**notified**

[2] - 1:183:17;

1:184:1

**noting**

[1] - 1:35:2

**November**

[2] - 1:8:9, 11

**nuisance**

[3] - 1:68:16;

1:172:4;

1:179:13

**nullifying**

[4] - 1:37:2;

1:93:14;

1:140:7;

1:195:5

**number**

[14] - 1:93:19;

1:94:1;

1:141:6;

1:144:5;

1:146:16, 19;

1:151:3;

1:155:2;

1:162:10;

1:163:10;

1:165:10;

1:167:14;

1:176:6

**numbered**

[1] - 1:195:18

**numbers**

[1] - 1:155:8

**numerous**

[1] - 1:168:17

**O'GRADY**

[7] - 1:7:5;

1:52:4, 8;

1:85:15;

1:87:12;

1:188:14, 18

**O'Grady**

[1] - 1:95:5

**object**

[1] - 1:123:13

**objection**

[1] - 1:21:6

**objections**

[1] - 1:193:7

**observation**

[2] - 1:32:2;

1:63:19

**observations**

[3] - 1:31:8;

1:63:6;

1:133:3

**observe**

[1] - 1:32:3

**obviously**

[8] - 1:34:3;

1:39:17;

1:64:4;

1:65:8;

1:134:6;

1:141:5;

1:152:6;

1:153:5

**occasion**

[1] - 1:151:8

**occupant**

[3] - 1:68:18;

1:139:18;

1:179:15

**occupants**

[3] - 1:36:13;

1:37:10;

1:194:17

**occupy**

[2] - 1:141:4;

1:144:15

**occupying**

[1] - 1:194:18

**October**

[11] - 1:8:6;

1:52:2;

1:85:14, 18;

1:86:2, 6, 16;

1:98:9, 13;

1:148:16

**OF [5]** - 1:1:1;

1:198:16

**off-street**

[4] - 1:144:4;

1:154:7;

1:171:2;

1:173:4

**offer**

[2] - 1:144:1;  
1:145:16

**Office**

[1] - 1:108:3

**office**

[4] - 1:58:4;  
1:150:1, 17;  
1:151:17

**offices**

[3] - 1:146:18;  
1:148:9;  
1:166:11

**OFFICIAL**

[1] - 1:1:19

**offset**

[1] - 1:81:13

**often**

[1] - 1:129:10

**old**

[9] - 1:15:3;  
1:42:17;  
1:127:8;  
1:157:2;  
1:159:19;  
1:169:14

**on-street**

[1] - 1:158:16

**once**

[4] - 1:51:5;  
1:82:4;  
1:101:1;  
1:103:10

**one**

[76] - 1:3:19;  
1:9:5; 1:11:7;  
1:27:14;  
1:38:3;  
1:39:13;  
1:42:6;  
1:46:11, 13;  
1:49:18;  
1:50:9;  
1:52:2;  
1:58:13;  
1:63:9;  
1:66:16;  
1:75:1;  
1:77:7, 19;

1:78:19;  
 1:79:1, 12;  
 1:80:12;  
 1:84:7;  
 1:89:18;  
 1:92:4;  
 1:94:1;  
 1:102:14;  
 1:116:16;  
 1:117:10;  
 1:118:12;  
 1:119:4, 15;  
 1:120:7-9;  
 1:122:16;  
 1:124:6, 11;  
 1:129:4, 15;  
 1:130:13;  
 1:132:1, 11;  
 1:133:4;  
 1:140:18;  
 1:145:10, 13;  
 1:150:3, 19;  
 1:151:1, 3, 5,  
 7, 10;  
 1:155:2;  
 1:156:11;  
 1:163:10;  
 1:164:3, 9;  
 1:167:3;  
 1:170:14;  
 1:172:17;  
 1:173:2;  
 1:176:9;  
 1:177:7, 9;  
 1:179:11;  
 1:182:9;  
 1:185:13;  
 1:186:13;  
 1:193:17

**one-story**

[2] - 1:120:8

**one-time**

[1] - 1:186:13

**one-year**

[1] - 1:3:19

**ones**

[2] - 1:20:6;

1:64:8

**open**

[11] - 1:27:9;

1:31:5;  
 1:46:14;  
 1:52:5;  
 1:91:6;  
 1:125:15, 18;  
 1:138:13;  
 1:145:11;  
 1:185:18;  
 1:192:17

**opened**

[1] - 1:7:11

**opening**

[3] - 1:64:17;  
 1:73:13;  
 1:156:7

**openings**

[7] - 1:52:7;  
 1:72:15;  
 1:83:8;  
 1:84:8;  
 1:97:16;  
 1:117:18

**operating**

[1] - 1:150:13

**operation**

[5] - 1:68:14;  
 1:146:6;  
 1:172:1;  
 1:179:6

**opinion**

[3] - 1:110:19;  
 1:128:6, 15

**opportunity**

[4] - 1:84:15;  
 1:129:1;  
 1:148:13, 17

**Opposed**

[1] - 1:38:7

**opposed**

[5] - 1:27:4;  
 1:38:3;  
 1:98:9;  
 1:150:18;  
 1:151:1

**opposition**

[3] - 1:58:17;  
 1:94:9;  
 1:195:11

**options**

[2] - 1:111:18;

1:140:13

**or.. [1]** - 1:43:7

**order**

[7] - 1:3:8;

1:90:19;

1:109:12;

1:123:11;

1:132:16;

1:148:1;

1:185:1

**ordered**

[1] - 1:109:13

**Ordinance**

[1] - 1:59:10

**ordinance**

[16] - 1:36:11;

1:37:4;

1:42:9;

1:59:14;

1:61:5;

1:69:4;

1:92:18;

1:93:15;

1:139:16;

1:140:9;

1:155:1;

1:172:9, 11;

1:179:18;

1:194:13;

1:195:7

**original**

[7] - 1:3:16;

1:17:13;

1:73:18;

1:79:11;

1:80:4;

1:176:12;

1:178:9

**originally**

[1] - 1:137:18

**os [1]** - 1:36:16

**otherwise**

[7] - 1:37:11;

1:53:13;

1:69:2;

1:86:8;

1:154:2;

1:170:19;

1:172:8

**outdoor**

[2] - 1:14:10;  
1:34:4

**outies**

[2] - 1:20:7;  
1:21:10

**output**

[1] - 1:18:11

**outrage**

[1] - 1:126:16

**outrageous**

[4] - 1:127:15;  
1:128:6, 12;  
1:129:12

**outset**

[1] - 1:43:1

**outside**

[11] - 1:14:2;  
1:18:5, 10;  
1:24:18;  
1:31:14, 17;  
1:44:19;  
1:115:17;  
1:118:13;  
1:123:2;  
1:151:13

**over-advertise**

**d** [1] - 1:74:11

**overjoyed**

[1] - 1:167:9

**overlook**

[1] - 1:178:5

**overly**

[1] - 1:28:14

**owing**

[4] - 1:36:16;  
1:93:8;  
1:140:3;  
1:194:18

**own**

[7] - 1:49:6;  
1:80:5;  
1:103:17;  
1:126:12;  
1:159:8;  
1:160:1;  
1:175:16

**owned**

[6] - 1:25:15,  
18; 1:33:8;  
1:116:16;

1:175:18;  
1:176:3

**owner**

[6] - 1:41:5;  
1:42:11;  
1:100:14, 17;  
1:110:11;  
1:116:18

**owners**

[8] - 1:41:1;  
1:42:14,  
16-18;  
1:110:8

**ownership**

[1] - 1:42:15

**owns**

[1] - 1:116:18

**P-E-T-S-C-H-E-**

**K**[1] - 1:16:10

**p.m**

[37] - 1:1:4;  
1:3:4; 1:6:1;  
1:9:8, 14, 18;  
1:10:7;  
1:11:14, 16;  
1:52:13;  
1:53:1, 5, 18;  
1:55:1;  
1:72:1;  
1:85:6;  
1:86:2, 7-8,  
15; 1:88:1;  
1:97:1;  
1:98:15;  
1:99:1;  
1:100:1;  
1:143:1;  
1:145:7;  
1:175:1;  
1:181:1;  
1:182:3, 8;  
1:183:16;  
1:187:3;  
1:189:7, 11;  
1:191:1

**package**

[1] - 1:59:8

**packet**

[2] - 1:116:2;  
1:121:14

**Page**

[1] - 1:64:10

**page**

[1] - 1:70:2

**PAGE**

[2] - 1:2:2;

1:197:7

**pages**

[2] - 1:95:10

**painted**

[3] - 1:57:10,

14; 1:181:11

**pair**

[1] - 1:176:11

**panel**

[2] - 1:55:8;

1:181:8

**parent**

[1] - 1:159:5

**parents**

[2] - 1:165:13;

1:167:19

**Park**

[4] - 1:2:5;

1:55:5, 14,

17

**parking**

[40] - 1:7:17;

1:8:2;

1:117:15;

1:118:7;

1:143:7;

1:144:4;

1:145:15;

1:146:16, 18;

1:148:19;

1:150:9;

1:152:16;

1:153:18;

1:154:1, 7-8;

1:155:10;

1:157:17;

1:158:1,

15-16;

1:164:17;

1:166:7;

1:167:13, 18;

1:168:7, 17;

1:169:4;

1:170:11, 16,

18; 1:171:2;  
 1:172:17, 19;  
 1:173:4, 7,  
 13

**Parking)**

[1] - 1:143:9

**parking/traffic**

[1] - 1:165:1

**part**

[17] - 1:29:5;

1:33:16;

1:37:7;

1:79:8;

1:81:4;

1:102:19;

1:130:16;

1:137:16;

1:142:2;

1:150:12, 14;

1:154:9, 18;

1:161:15;

1:169:19;

1:187:6

**particular**

[2] - 1:98:16;

1:161:19

**particularly**

[2] - 1:28:9;

1:93:5

**partner**

[1] - 1:29:7

**parts**

[1] - 1:81:11

**party**

[1] - 1:8:9

**pass**

[2] - 1:34:7;

1:65:9

**passed**

[1] - 1:112:14

**passionate**

[1] - 1:167:1

**past**

[2] - 1:69:10;

1:159:2

**pattern**

[2] - 1:70:18;

1:160:3

**patterns**

[1] - 1:61:16

**Pause**

[3] - 1:34:8;  
1:83:1, 19

**peaceful**

[1] - 1:92:1

**pennies**

[1] - 1:89:6

**penthouse**

[4] - 1:56:19;  
1:60:7;  
1:70:13, 15

**people**

[36] - 1:14:2,  
9; 1:32:5;  
1:33:19;  
1:34:11;  
1:36:7;  
1:43:11;  
1:45:10, 19;  
1:46:4, 6, 10,  
18-19;  
1:47:2;  
1:48:13;  
1:66:8;  
1:102:8;  
1:109:13;  
1:110:12;  
1:117:2;  
1:120:2;  
1:124:10;  
1:127:9, 17;  
1:128:1;  
1:131:12;  
1:162:14;  
1:163:1, 4-5,  
10; 1:173:1,  
6; 1:186:10

**per**

[2] - 1:57:1;  
1:152:16

**perfect**

[1] - 1:119:19

**pergola**

[1] - 1:118:10

**perhaps**

[1] - 1:75:9

**period**

[4] - 1:4:3;  
1:75:19;  
1:107:18;

1:112:14

**periods**

[1] - 1:168:19

**permit**

[2] - 1:4:8;

1:168:7

**Permit**

[28] - 1:55:7;

1:61:7;

1:62:16, 18;

1:67:8;

1:68:10;

1:69:16;

1:71:13;

1:72:14;

1:73:12;

1:97:15;

1:143:6;

1:144:7;

1:153:13;

1:166:5;

1:169:4;

1:170:10;

1:171:15;

1:172:16;

1:173:12;

1:175:6, 16;

1:177:2;

1:179:2;

1:180:6;

1:181:7

**permits**

[1] - 1:95:6

**permitted**

[1] - 1:4:3

**person**

[16] - 1:23:6;

1:33:8;

1:41:9;

1:42:11;

1:46:9, 11,

14; 1:65:5;

1:116:13, 16;

1:125:3, 6;

1:129:19;

1:133:1;

1:140:2;

1:150:2

**personal**

[1] - 1:169:13

**persons**

[1] - 1:140:19

**pertinent**

[2] - 1:29:3, 5

**petition**

[8] - 1:36:9;

1:90:5;

1:91:13;

1:94:6;

1:123:5;

1:128:10;

1:130:14;

1:180:4

**petitioner**

[33] - 1:3:16;

1:6:16,

18-19;

1:7:13;

1:9:16;

1:11:10;

1:27:17;

1:36:12;

1:37:15;

1:53:11;

1:67:15;

1:69:17;

1:70:1;

1:86:11;

1:93:1, 18;

1:94:12;

1:115:3;

1:126:9;

1:129:5, 11;

1:130:14;

1:139:17;

1:140:12;

1:141:13, 16;

1:172:16;

1:180:7, 9;

1:194:14;

1:195:16, 18

**petitioners**

[1] - 1:8:2

**PETSCHEK**

[25] - 1:16:6,

9, 18; 1:17:4,

10, 17;

1:18:7;

1:21:1;

1:22:13, 18;

1:23:8, 19;  
 1:24:5;  
 1:25:13, 16,  
 19; 1:26:3, 9,  
 15; 1:27:2, 6;  
 1:28:2;  
 1:29:2, 14,  
 19

**Petschek**

[2] - 1:16:9;  
 1:29:9

**Petschek's**

[1] - 1:28:4

**PH**

[1] - 1:100:17

**Photo**

[1] - 1:64:18

**photo**

[12] - 1:56:12,  
 16; 1:63:11,  
 17; 1:64:5,  
 10; 1:65:18;  
 1:66:3;  
 1:67:4;  
 1:70:1, 10;  
 1:180:8

**phrase**

[1] - 1:114:2

**physical**

[4] - 1:127:18;  
 1:128:3;  
 1:139:19;  
 1:141:2

**pianist**

[1] - 1:167:5

**piano**

[4] - 1:160:17;  
 1:164:9;  
 1:166:19

**picked**

[1] - 1:44:11

**picking**

[1] - 1:167:16

**picks**

[1] - 1:43:19

**pickup**

[3] - 1:145:5;  
 1:167:18

**picture**

[7] - 1:24:9;

1:103:10;  
 1:111:18;  
 1:116:12;  
 1:124:1, 3

**pictures**

[4] - 1:65:8;  
 1:120:10;  
 1:124:5;  
 1:133:17

**piece**

[5] - 1:73:15;  
 1:104:9, 11;  
 1:105:19;  
 1:106:1

**place**

[8] - 1:33:10;  
 1:42:4;  
 1:43:17;  
 1:89:11;  
 1:120:2;  
 1:167:11;  
 1:171:12;  
 1:172:12

**placement**

[1] - 1:59:18

**places**

[1] - 1:82:7

**plan**

[16] - 1:17:10,  
 13; 1:20:2;  
 1:21:8;  
 1:28:16;  
 1:37:17;  
 1:94:16;  
 1:95:11;  
 1:99:1;  
 1:120:8;  
 1:132:3, 5, 9;  
 1:169:7

**planing**

[1] - 1:165:7

**planned**

[1] - 1:168:4

**Planning**

[6] - 1:56:4;  
 1:58:9, 11;  
 1:184:16

**planning**

[3] - 1:100:10;  
 1:165:14;

1:184:18

**plans**

[46] - 1:9:17;  
 1:16:17, 19;  
 1:20:10, 13,  
 15; 1:21:4;  
 1:28:11;  
 1:29:10;  
 1:30:9;  
 1:45:14;  
 1:46:2;  
 1:49:13;  
 1:53:16;  
 1:70:6, 8;  
 1:83:5, 16;  
 1:86:13;  
 1:89:9, 13,  
 17; 1:94:13,  
 18; 1:95:9;  
 1:98:14;  
 1:123:10, 13;  
 1:131:2, 4-5,  
 14, 16;  
 1:141:12,  
 16-18;  
 1:142:2;  
 1:164:8;  
 1:180:8;  
 1:189:14;  
 1:193:14;  
 1:195:17

**planting**

[1] - 1:90:13

**plants**

[1] - 1:120:16

**plate**

[1] - 1:14:14

**platform**

[1] - 1:22:4

**played**

[1] - 1:157:18

**pleased**

[1] - 1:30:6

**pleasing**

[1] - 1:180:1

**plot**

[2] - 1:37:16;  
 1:191:15

**plus**

[1] - 1:150:6

**point**

[28] - 1:13:8;  
 1:21:13;  
 1:29:15;  
 1:30:8;  
 1:35:8;  
 1:47:17;  
 1:48:16;  
 1:52:11;  
 1:65:5, 14;  
 1:67:8;  
 1:78:1;  
 1:82:12;  
 1:104:16;  
 1:105:1;  
 1:113:12;  
 1:114:13;  
 1:121:2;  
 1:125:16;  
 1:132:11;  
 1:135:15;  
 1:152:14;  
 1:172:18;  
 1:173:3;  
 1:186:7, 17

**pointed**

[1] - 1:179:9

**pointing**

[1] - 1:75:9

**points**

[1] - 1:13:6

**policy**

[2] - 1:173:5

**pollution**

[2] - 1:62:6,  
 12

**porch**

[1] - 1:120:11

**porches**

[3] - 1:81:10,  
 16

**portion**

[1] - 1:122:10

**pose**

[1] - 1:167:15

**positive**

[2] - 1:122:2;  
 1:165:8

**possibility**

[2] - 1:106:11;

1:148:12

**possible**

[4] - 1:76:15;  
1:124:6;  
1:134:9;  
1:136:17

**possibly**

[1] - 1:151:7

**posted**

[4] - 1:8:8;  
1:11:14;  
1:53:3;  
1:86:4

**poster**

[1] - 1:44:6

**posting**

[6] - 1:39:14;  
1:40:6, 8, 15;  
1:42:13;  
1:98:14

**postpone**

[1] - 1:43:4

**postponed**

[1] - 1:41:18

**potentially**

[1] - 1:167:9

**pots**

[1] - 1:152:16

**practical**

[4] - 1:28:14;  
1:71:7, 9;  
1:136:14

**preexisting**

[1] - 1:60:3

**prejudice**

[2] - 1:50:16,  
18

**prepare**

[1] - 1:183:5

**prepared**

[8] - 1:37:17;  
1:70:2, 6;  
1:102:2, 4;  
1:104:16;  
1:131:3;  
1:141:13

**preschoolers**

[1] - 1:144:17

**PRESENT**

[1] - 1:1:10

**present**

[5] - 1:51:3, 6;  
 1:67:5;  
 1:128:10;  
 1:168:10

**presentation**

[3] - 1:19:17;  
 1:21:8;  
 1:55:17

**presented**

[1] - 1:67:15

**president**

[1] - 1:144:13

**prettiest**

[1] - 1:18:2

**pretty**

[5] - 1:30:9;  
 1:35:19;  
 1:46:3;  
 1:101:6;  
 1:157:12

**prevalent**

[1] - 1:173:3

**preventing**

[1] - 1:127:18

**previous**

[1] - 1:20:11

**previously**

[4] - 1:3:12;  
 1:60:6;  
 1:88:7;  
 1:176:2

**primarily**

[1] - 1:152:1

**privacy**

[4] - 1:14:6,  
 10; 1:94:3;  
 1:179:10

**private**

[5] - 1:39:19;  
 1:127:14;  
 1:130:1;  
 1:148:3;  
 1:166:12

**privilege**

[1] - 1:167:6

**problem**

[25] - 1:17:3;  
 1:33:2;  
 1:41:13;

1:42:3;  
 1:53:9, 19;  
 1:74:12;  
 1:77:5;  
 1:91:10;  
 1:92:2;  
 1:107:8, 11;  
 1:108:5;  
 1:113:19;  
 1:119:5;  
 1:132:1;  
 1:135:15;  
 1:147:4;  
 1:157:16;  
 1:158:1;  
 1:181:19;  
 1:182:8;  
 1:184:8;  
 1:187:17;  
 1:194:3

**problematic**

[3] - 1:104:10;  
 1:118:3;  
 1:120:4

**problems**

[3] - 1:119:4;  
 1:140:17;  
 1:167:15

**procedure**

[2] - 1:24:14;  
 1:180:7

**proceed**

[11] - 1:37:16;  
 1:69:17, 19;  
 1:94:13;  
 1:95:8;  
 1:115:8;  
 1:141:12;  
 1:166:6;  
 1:183:4;  
 1:195:16

**proceeded**

[1] - 1:175:19

**proceedings**

[2] - 1:196:8;  
 1:198:8

**professional**

[1] - 1:150:2

**program**

[9] - 1:147:14;

1:161:19;  
 1:162:7;  
 1:163:4, 14;  
 1:166:15;  
 1:167:8;  
 1:169:16;  
 1:171:8

**programs**

[1] - 1:162:2

**prohibitively**

[1] - 1:138:4

**project**

[3] - 1:17:13;  
 1:37:5;  
 1:103:1

**promptly**

[1] - 1:71:7

**proof**

[1] - 1:60:12

**proper**

[3] - 1:66:9;  
 1:101:2;  
 1:193:17

**properly**

[4] - 1:11:11;  
 1:108:12;  
 1:112:7, 13

**properties**

[1] - 1:184:3

**property**

[25] - 1:4:16;  
 1:15:9;  
 1:25:15, 18;  
 1:27:19;  
 1:28:5, 17;  
 1:42:3, 15;  
 1:69:8;  
 1:93:3, 6;  
 1:118:5;  
 1:124:15;  
 1:133:6;  
 1:134:1, 5,  
 16-19;  
 1:194:16

**proposal**

[11] - 1:17:14;  
 1:19:12;  
 1:33:1;  
 1:68:7;  
 1:69:11;

1:79:11;  
 1:80:4;  
 1:81:10;  
 1:84:11;  
 1:165:2;  
 1:179:16

**propose**

[4] - 1:26:14;  
 1:98:11;  
 1:119:5;  
 1:173:14

**proposed**

[17] - 1:28:13;  
 1:63:8;  
 1:68:2, 19;  
 1:69:9, 18;  
 1:92:17;  
 1:95:9;  
 1:107:1;  
 1:111:5;  
 1:140:15;  
 1:141:10;  
 1:171:5;  
 1:173:8;  
 1:179:3, 8;  
 1:180:3

**proposers**

[1] - 1:49:14

**proposing**

[9] - 1:13:15;  
 1:18:9;  
 1:57:1;  
 1:64:12;  
 1:68:11, 16;  
 1:172:7;  
 1:191:14, 17

**Prospect**

[6] - 1:2:10;  
 1:143:5, 11;  
 1:166:4;  
 1:167:4;  
 1:168:15

**protection**

[2] - 1:47:12;  
 1:150:17

**protest**

[1] - 1:157:5

**protrude**

[2] - 1:63:16;  
 1:70:14

**protrudes**

[1] - 1:18:12

**provide**[2] - 1:101:8;  
1:171:10**provisions**[4] - 1:36:10;  
1:92:18;  
1:139:16;  
1:194:13**proximity**[5] - 1:136:8,  
17; 1:154:6;  
1:165:9;  
1:171:3**Public**[3] - 1:197:6;  
1:198:4, 14**public**[46] - 1:9:2;  
1:27:9;  
1:30:17;  
1:34:12;  
1:37:2;  
1:39:18;  
1:44:8;  
1:46:15;  
1:47:9, 16;  
1:61:9, 11;  
1:67:1;  
1:91:7;  
1:92:5, 12;  
1:93:13;  
1:108:12;  
1:113:9;  
1:125:15, 18;  
1:127:1, 3, 7,  
13; 1:130:16;  
1:140:7;  
1:153:19;  
1:154:5, 7;  
1:155:3, 6;  
1:156:7;  
1:165:6, 9,  
13; 1:169:11;  
1:170:5, 17;  
1:171:3;  
1:178:12, 16;  
1:192:17;  
1:195:5

**pupils**

[4] - 1:164:14;  
 1:165:5;  
 1:168:13, 18

**purpose**

[7] - 1:37:3;  
 1:69:3;  
 1:93:15;  
 1:140:9;  
 1:172:10;  
 1:185:18;  
 1:195:7

**purposes**

[4] - 1:59:11;  
 1:95:4;  
 1:145:15;  
 1:172:9

**push**

[1] - 1:24:17

**pushing**

[5] - 1:14:13;  
 1:31:14;  
 1:32:7, 11;  
 1:119:2

**put**

[21] - 1:17:10;  
 1:21:4;  
 1:33:10;  
 1:42:5;  
 1:44:4, 10,  
 16; 1:45:6;  
 1:47:11;  
 1:66:8;  
 1:77:1, 10;  
 1:82:7, 14;  
 1:94:19;  
 1:105:5;  
 1:119:8;  
 1:125:12;  
 1:126:10;  
 1:127:12;  
 1:187:12

**puts**

[1] - 1:158:9

**putting**

[8] - 1:43:12;  
 1:116:4;  
 1:117:8;  
 1:118:13;  
 1:121:11;

1:131:15;  
1:143:19

**quality**

[1] - 1:124:14

**questions**

[14] - 1:21:12;  
1:27:8;  
1:63:1, 3;  
1:90:17;  
1:109:1;  
1:125:17;  
1:129:5;  
1:131:13;  
1:149:4;  
1:154:13;  
1:156:7;  
1:177:4;  
1:192:12

**quick**

[1] - 1:159:4

**quickly**

[2] - 1:121:3;  
1:175:15

**quiet**

[1] - 1:50:5

**quite**

[9] - 1:18:12;  
1:21:15;  
1:33:18;  
1:45:10;  
1:49:15;  
1:101:13;  
1:149:5;  
1:163:7;  
1:165:2

**quote/unquote**

[1] - 1:76:3

**R-A-M-O-S**

[1] - 1:160:6

**R-O-S-A**

[1] - 1:29:1

**R-O-S-E**

[1] - 1:158:19

**rack**

[1] - 1:156:1

**racks**

[2] - 1:155:18;  
1:156:3

**radio**

[2] - 1:57:8

**radiofrecuenc****y**[1] - 1:60:16**railing**[7] - 1:23:8-1  
0, 18; 1:24:1,  
4, 8**railings**[3] - 1:82:8,  
14; 1:84:7**rain**

[1] - 1:44:19

**raise**[11] - 1:6:7;  
1:39:13;  
1:40:7;  
1:43:8;  
1:73:7;  
1:74:15;  
1:77:14;  
1:114:12;  
1:129:7, 10**raised**[4] - 1:40:5;  
1:47:11;  
1:76:1;  
1:77:2**raises**

[1] - 1:124:13

**raising**[2] - 1:75:9;  
1:114:5**RAMOS**

[1] - 1:160:5

**Ramos**

[1] - 1:160:5

**ramp**[4] - 1:117:8;  
1:118:1;  
1:126:10;  
1:132:16**ramps**[3] - 1:117:5;  
1:124:6;  
1:125:2**ran**

[1] - 1:44:12

**Ranjit**[3] - 1:149:17;  
1:152:18;  
1:176:17

**rare**

[2] - 1:45:16;  
1:151:8

**rat**

[4] - 1:121:16

**rather**

[8] - 1:20:7;  
1:21:9;  
1:29:15;  
1:37:11;  
1:121:12;  
1:125:1;  
1:147:14;  
1:166:9

**ratio**

[1] - 1:34:16

**rationalize**

[1] - 1:113:12

**re** [2] - 1:97:8,  
18

**re-configure**

[1] - 1:97:8

**re-configured**

[1] - 1:97:18

**reach**

[3] - 1:30:4;  
1:54:10;  
1:130:4

**read**

[9] - 1:29:5;  
1:30:11, 14;  
1:70:4;  
1:130:14;  
1:154:12;  
1:164:1;  
1:177:8;  
1:197:15

**reading**

[3] - 1:41:14;  
1:101:15;  
1:197:3

**reads**

[1] - 1:153:13

**ready**

[8] - 1:34:10;  
1:36:6;  
1:83:12;  
1:139:10, 12;  
1:170:7;  
1:178:17

**real**

[4] - 1:31:12;  
 1:74:12;  
 1:135:15;  
 1:159:4

**realize**

[1] - 1:133:12

**realizing**

[2] - 1:117:6,  
 8

**really**

[18] - 1:24:15;  
 1:31:10;  
 1:33:5;  
 1:35:12;  
 1:39:13;  
 1:40:7;  
 1:50:2;  
 1:66:1;  
 1:80:18;  
 1:89:11;  
 1:112:17;  
 1:122:17;  
 1:136:5;  
 1:150:19;  
 1:151:4;  
 1:157:10;  
 1:170:13

**reapply**

[1] - 1:89:14

**rear**

[23] - 1:10:13;  
 1:12:4, 6;  
 1:19:3, 6, 10;  
 1:28:6;  
 1:72:15;  
 1:73:14;  
 1:75:6;  
 1:76:8;  
 1:80:5;  
 1:81:10;  
 1:88:6;  
 1:92:8, 11;  
 1:93:6;  
 1:94:2;  
 1:97:16;  
 1:119:9;  
 1:191:16

**REASON**

[6] - 1:197:9

**reason**

[6] - 1:12:5;  
 1:18:15;  
 1:131:11;  
 1:144:12;  
 1:186:18;  
 1:197:4

**reasonable**

[1] - 1:152:19

**reasonably**

[1] - 1:71:9

**reasons**

[5] - 1:30:7;  
 1:32:14;  
 1:90:5;  
 1:153:8, 10

**reassemble**

[1] - 1:74:17

**rebuild**

[5] - 1:72:7,  
 10; 1:73:10;  
 1:97:8, 11

**rebuilding**

[1] - 1:73:16

**rebuilt**

[2] - 1:72:18;  
 1:97:18

**receipt**

[4] - 1:6:15;  
 1:27:15;  
 1:28:19;  
 1:177:8

**receive**

[1] - 1:49:9

**received**

[2] - 1:40:12;  
 1:41:7

**recent**

[1] - 1:172:18

**recently**

[4] - 1:25:12;  
 1:55:7;  
 1:148:14;  
 1:182:18

**recess**

[2] - 1:5:4, 6

**recommendati****on**

[2] - 1:58:13;  
 1:59:1

**recommended**

[1] - 1:7:13

**reconfiguratio****ns**

[1] - 1:73:16

**reconfigure**

[4] - 1:10:13;

1:32:15;

1:72:7;

1:73:10

**reconfigured**

[1] - 1:72:18

**reconfiguring**

[1] - 1:179:11

**reconsider**

[1] - 1:82:18

**record**

[9] - 1:100:9;

1:101:3;

1:130:15;

1:153:12;

1:154:9, 18;

1:177:9;

1:197:17;

1:198:8

**RECORD**

[1] - 1:1:19

**recurring**

[1] - 1:43:10

**Red**

[2] - 1:165:10;

1:171:4

**reduce**

[6] - 1:154:1;

1:169:4;

1:170:18;

1:172:16, 19;

1:173:12

**reduces**

[1] - 1:15:18

**reducing**

[1] - 1:18:10

**Reduction**

[2] - 1:143:6,

9

**reduction**

[2] - 1:150:8

**refer**

[1] - 1:33:17

**referenced**

[1] - 1:6:19

**referring**

[1] - 1:64:9

**reflect**

[3] - 1:9:12;

1:182:2;

1:189:9

**regard**

[16] - 1:36:9;

1:62:12;

1:68:9;

1:69:5;

1:70:12;

1:71:2;

1:93:16;

1:102:7;

1:135:17;

1:140:10, 14;

1:146:5;

1:166:2;

1:171:1;

1:179:1, 8

**regarding**

[3] - 1:60:12;

1:68:4;

1:104:17

**registered**

[1] - 1:42:14

**regular**

[1] - 1:11:1

**regularly**

[1] - 1:89:1

**regulations**

[1] - 1:144:5

**relate**

[1] - 1:59:12

**related**

[5] - 1:93:9;

1:101:13;

1:102:6;

1:104:13;

1:113:14

**relates**

[2] - 1:102:5,

17

**relating**

[1] - 1:36:17

**relationship**

[2] - 1:33:19;

1:77:12

**relevant**

[4] - 1:30:12;  
 1:62:15;  
 1:68:9;  
 1:129:6

**relied**

[3] - 1:182:10,  
 12; 1:187:14

**relief**

[40] - 1:18:17;  
 1:36:19;  
 1:37:1, 8, 11;  
 1:48:9;  
 1:69:1, 14;  
 1:74:9;  
 1:75:13, 16;  
 1:93:12;  
 1:102:12, 18;  
 1:103:2, 6;  
 1:105:8, 12,  
 15; 1:108:6;  
 1:112:1;  
 1:113:7;  
 1:119:10;  
 1:131:14;  
 1:140:5;  
 1:141:3;  
 1:146:4, 10;  
 1:148:19;  
 1:153:9, 11;  
 1:172:3;  
 1:179:18;  
 1:192:6;  
 1:195:3, 8

**relieved**

[1] - 1:157:10

**relocate**

[3] - 1:72:14;  
 1:73:12;  
 1:97:15

**remain**

[1] - 1:98:14

**remained**

[1] - 1:165:12

**remarks**

[1] - 1:130:8

**remember**

[1] - 1:188:14

**remind**

[1] - 1:189:13

**remote**

[1] - 1:57:7

**remove**

[1] - 1:71:6

**rendered**

[2] - 1:48:2;

1:108:15

**renovate**

[3] - 1:79:19;

1:175:19;

1:176:5

**renovation**

[5] - 1:137:17;

1:138:6;

1:156:5;

1:177:14;

1:178:4

**rental**

[2] - 1:26:2, 5

**rented**

[1] - 1:176:2

**reopen**

[1] - 1:98:4

**repair**

[1] - 1:71:4

**repeat**

[2] - 1:130:15;

1:156:16

**repetitive**

[1] - 1:171:16

**replace**

[2] - 1:175:6;

1:178:6

**replacement**

[1] - 1:177:15

**replicate**

[2] - 1:70:17;

1:133:16

**report**

[1] - 1:36:10

**Reporter**

[1] - 1:198:13

**REPORTER**

[1] - 1:198:17

**REPORTERS**

[1] - 1:1:18

**represent**

[1] - 1:55:18

**represented**

[1] - 1:3:15

**representing**

[1] - 1:191:12

**REPRODUCTI****ON**

[1] - 1:198:16

**request**

[8] - 1:3:11;

1:7:9, 13;

1:36:3;

1:41:17;

1:50:10;

1:104:3;

1:106:5

**requested**

[5] - 1:4:5, 11,

15; 1:8:14;

1:37:15

**requests**

[1] - 1:7:1

**require**

[6] - 1:36:19;

1:62:8;

1:140:5;

1:144:5;

1:153:2;

1:166:8

**required**

[13] - 1:19:12;

1:60:13;

1:105:8;

1:118:8;

1:128:2;

1:146:16;

1:149:9;

1:150:6, 9;

1:170:12;

1:172:17;

1:173:13

**required)**

[1] - 1:197:6

**requirement**

[7] - 1:39:16;

1:40:8;

1:44:7;

1:47:10;

1:69:5;

1:169:5;

1:182:6

**requirements**

[12] - 1:12:16;

1:19:9;  
 1:32:8;  
 1:47:8;  
 1:48:6;  
 1:58:7;  
 1:59:4, 10;  
 1:62:15;  
 1:130:2;  
 1:155:1;  
 1:172:19

**Requirements**

[1] - 1:6:10

**Requirements)**

[4] - 1:10:17;  
 1:72:13;  
 1:88:9;  
 1:97:14

**requires**

[4] - 1:118:16;  
 1:149:7;  
 1:152:15;  
 1:195:3

**requiring**

[1] - 1:118:11

**requisite**

[1] - 1:59:15

**reschedule**

[1] - 1:185:3

**rescue**

[1] - 1:80:14

**reside**

[1] - 1:141:1

**residence**

[1] - 1:126:12

**resident**

[2] - 1:160:7;  
 1:161:11

**residential**

[2] - 1:60:15;  
 1:68:8

**residents**

[5] - 1:155:4;  
 1:164:14;  
 1:165:13;  
 1:167:7;  
 1:168:6

**resides**

[6] - 1:27:18;  
 1:29:18;  
 1:40:13;

1:165:19;  
 1:177:10;  
 1:178:1

**respect**

[16] - 1:4:15;  
 1:35:1;  
 1:55:17;  
 1:59:17;  
 1:60:16;  
 1:61:5;  
 1:92:16;  
 1:108:9;  
 1:110:1;  
 1:170:10;  
 1:171:15;  
 1:173:13;  
 1:179:2;  
 1:183:10

**RESPECT**

[1] - 1:198:17

**respectfully**

[1] - 1:41:17

**responds**

[1] - 1:129:11

**response**

[3] - 1:59:10;  
 1:76:5;  
 1:81:8

**responsibility**

[1] - 1:44:10

**responsive**

[1] - 1:110:13

**rest**

[6] - 1:29:12;  
 1:30:13;  
 1:77:16;  
 1:90:4;  
 1:104:6

**restore**

[1] - 1:71:8

**resubmitting**

[1] - 1:89:6

**result**

[4] - 1:114:15;  
 1:165:2;  
 1:171:8;  
 1:177:16

**return**

[2] - 1:10:19;  
 1:176:12

**review**

[1] - 1:101:3

**revised**[3] - 1:9:17;  
1:53:17;  
1:98:19**revision**

[1] - 1:76:7

**rid**

[1] - 1:118:9

**rights**

[1] - 1:4:1

**rise**

[1] - 1:116:9

**rises**

[1] - 1:121:6

**risk**[6] - 1:75:11;  
1:76:12;  
1:79:5;  
1:105:3;  
1:108:18;  
1:166:17**risks**[7] - 1:102:15;  
1:107:6,  
13-14;  
1:114:15, 17,  
19**Road**[3] - 1:2:7;  
1:88:5, 11**ROBERTS**[12] - 1:55:16;  
1:56:11;  
1:57:18;  
1:58:12, 18;  
1:59:5;  
1:61:4;  
1:64:8;  
1:66:12;  
1:67:2;  
1:184:11, 15**Roberts**[2] - 1:55:18;  
1:71:18**Rock**

[1] - 1:145:17

**rock**

[1] - 1:161:12

**Roll**

[1] - 1:145:17

**Ron**

[1] - 1:49:11

**Ronjit**

[2] - 1:89:12;

1:149:14

**roof**

[30] - 1:6:7;

1:22:17;

1:23:6, 9;

1:24:2;

1:27:5;

1:63:10, 12,

16; 1:70:14;

1:72:10;

1:97:11;

1:101:12;

1:102:5;

1:103:17;

1:104:2, 8,

17; 1:111:3,

13; 1:113:8,

14, 17;

1:114:1, 3, 7,

11; 1:120:11;

1:122:16;

1:181:10

**rooftop**

[2] - 1:55:11;

1:57:4

**room**

[1] - 1:167:17

**rooms**

[2] - 1:149:7

**Rosa**

[2] - 1:29:1, 6

**ROSE**

[12] - 1:158:1

9; 1:159:13;

1:191:10;

1:192:11;

1:193:3, 6,

10, 15, 17;

1:194:1, 4, 9

**Rose**

[3] - 1:158:19;

1:159:14;

1:191:10

**routes**

[1] - 1:155:9

**routine**

[1] - 1:66:5

**Rowe**

[1] - 1:27:18

**ROWE**

[1] - 1:27:18

**ROY**

[2] - 1:126:4;  
1:128:18

**Roy**

[1] - 1:126:4

**ruled**

[1] - 1:7:19

**rules**

[1] - 1:20:12

**ruling**

[1] - 1:7:14

**run**

[1] - 1:145:1

**rung**

[1] - 1:110:11

**S-P-E-I-G-H-T**

[1] - 1:164:4

**Sacramento**

[4] - 1:2:3;  
1:10:11;  
1:11:2;  
1:28:7

**safer**

[7] - 1:10:14;  
1:13:1, 7;  
1:33:12;  
1:83:13, 15

**safety**

[12] - 1:14:7;  
1:24:9;  
1:32:9, 14;  
1:36:1, 13;  
1:37:9;  
1:68:18;  
1:153:19;  
1:170:17;  
1:172:5;  
1:179:14

**SAI** [1] - 1:70:7

**SALLY**

[24] - 1:100:1  
3; 1:106:10,  
19; 1:108:19;

1:109:4;  
 1:110:4;  
 1:114:10, 16;  
 1:117:1;  
 1:121:2;  
 1:122:6;  
 1:123:7, 18;  
 1:124:4;  
 1:125:9;  
 1:132:10;  
 1:133:10;  
 1:134:13;  
 1:135:4;  
 1:137:14;  
 1:138:11, 17;  
 1:139:2, 8

**Sally**

[5] - 1:100:13;  
 1:115:13;  
 1:120:14;  
 1:123:9;  
 1:136:9

**salvo**

[1] - 1:64:17

**SAME**

[1] - 1:198:16

**Sano**

[2] - 1:167:2,  
 4

**SANO**

[1] - 1:167:3

**satisfied**

[2] - 1:40:9;  
 1:147:6

**Saturday**

[2] - 1:41:5;  
 1:49:11

**saves**

[1] - 1:65:18

**saw**

[1] - 1:91:15

**scape**

[2] - 1:121:16;  
 1:124:7

**scare**

[1] - 1:111:16

**schedule**

[1] - 1:189:3

**scheduled**

[1] - 1:185:3

**schematics**

[1] - 1:70:5

**school**[6] - 1:152:2;  
1:159:5, 14;  
1:160:19;  
1:165:13**School**[4] - 1:147:11;  
1:160:18;  
1:166:14;  
1:171:9**schoolhouse**

[1] - 1:127:8

**screen**[8] - 1:39:16;  
1:40:4;  
1:42:5;  
1:45:2;  
1:57:3;  
1:60:7**screens**

[1] - 1:43:13

**scrupulously**

[1] - 1:140:12

**SEAN**[7] - 1:7:5;  
1:52:4, 8;  
1:85:15;  
1:87:12;  
1:188:14, 18**Sean**[3] - 1:3:15;  
1:184:5;  
1:185:7**search**

[1] - 1:60:17

**Seattle**[4] - 1:110:7,  
9; 1:116:14,  
19**Sec [9]** - 1:6:9;1:10:16;  
1:72:13, 19;  
1:88:8;  
1:97:13;  
1:98:1;  
1:143:8;  
1:175:8**second**

[25] - 1:14:13;  
 1:15:5;  
 1:18:8;  
 1:22:10;  
 1:26:1;  
 1:35:2;  
 1:79:10, 18;  
 1:80:18;  
 1:102:17;  
 1:104:19;  
 1:137:5, 16,  
 18; 1:138:2;  
 1:144:19;  
 1:146:1, 10;  
 1:148:9;  
 1:151:5, 19;  
 1:154:14;  
 1:166:10

**secondary**

[1] - 1:132:18

**Section**

[3] - 1:4:4;  
 1:59:13

**sectors**

[1] - 1:57:2

**security**

[1] - 1:81:14

**see**

[25] - 1:19:2;  
 1:24:10;  
 1:40:1, 15;  
 1:43:15;  
 1:45:8;  
 1:46:18;  
 1:50:13;  
 1:52:10;  
 1:58:10;  
 1:66:17;  
 1:101:5, 10,  
 12, 17;  
 1:103:9;  
 1:107:4;  
 1:117:9;  
 1:118:2;  
 1:122:14;  
 1:129:10;  
 1:163:1;  
 1:164:18;  
 1:165:11;  
 1:190:4

**seeing**

[3] - 1:32:2;  
1:40:6;  
1:101:15

**seek**

[2] - 1:112:7;  
1:150:17

**seeking**

[8] - 1:68:10;  
1:144:7;  
1:146:1, 5,  
10; 1:153:13;  
1:171:17;  
1:172:3

**seeks**

[1] - 1:112:1

**seem**

[5] - 1:131:12;  
1:148:1;  
1:152:17;  
1:167:14;  
1:181:18

**Selectman**

[1] - 1:127:5

**self**

[1] - 1:30:10

**self-explanator**

y [1] - 1:30:10

**send**

[2] - 1:65:9;  
1:109:16

**SENIOR**

[1] - 1:1:6

**senior**

[3] - 1:159:5,  
10, 14

**sense**

[5] - 1:32:12;  
1:45:14;  
1:128:4;  
1:163:8;  
1:164:17

**sensitive**

[5] - 1:14:5;  
1:65:11;  
1:136:3, 11,  
13

**sent**

[1] - 1:66:2

**separate**

**[2]** - 1:75:2;  
1:103:2

**September**

**[21]** - 1:52:3-  
5, 7, 13;  
1:53:2, 4, 18;  
1:84:17;  
1:85:6;  
1:98:9, 13;  
1:159:13;  
1:185:15;  
1:186:9, 12;  
1:189:8, 10;  
1:190:4;  
1:198:10

**SEPTEMBER**

**[1]** - 1:159:13

**serious**

**[1]** - 1:75:19

**serve**

**[2]** - 1:61:11;  
1:81:1

**served**

**[1]** - 1:155:6

**Services**

**[4]** - 1:7:15;  
1:125:13;  
1:182:18;  
1:187:16

**set [6]** - 1:15:8;

1:143:19;  
1:149:13;  
1:156:2;  
1:198:7, 9

**setback**

**[13]** - 1:12:16;  
1:18:13;  
1:19:11;  
1:105:7, 10,  
12-13;  
1:106:18;  
1:113:5;  
1:118:9;  
1:176:19;  
1:192:8;  
1:194:4

**setbacks**

**[4]** - 1:18:12;  
1:19:9;  
1:192:10

**seven**

[2] - 1:19:11

**several**[2] - 1:108:4;  
1:188:16**severely**

[1] - 1:36:14

**shade**

[1] - 1:66:4

**shaft**

[1] - 1:181:11

**shall**

[1] - 1:153:14

**shape**[2] - 1:93:9;  
1:194:18**share**

[1] - 1:32:1

**shared**

[1] - 1:155:15

**sharing**

[1] - 1:150:10

**SHEET**

[1] - 1:197:2

**sheet**[3] - 1:34:7;  
1:197:5**shelter**[6] - 1:55:11;  
1:57:5, 11,  
15; 1:60:8**Sherman**

[1] - 1:178:2

**Shizue**

[1] - 1:167:2

**SHIZUE**

[1] - 1:167:2

**shop**

[1] - 1:153:4

**short**

[1] - 1:148:4

**Shorthand**

[1] - 1:198:13

**shortly**

[1] - 1:144:10

**shovel**[2] - 1:132:13,  
15**shoveling**

[1] - 1:132:13

**show**

[7] - 1:16:16;  
 1:28:11;  
 1:56:15;  
 1:116:8;  
 1:117:13;  
 1:122:8

**showed**

[5] - 1:16:18;  
 1:28:11;  
 1:46:1;  
 1:120:10;  
 1:123:19

**shower**

[1] - 1:191:18

**shown**

[2] - 1:78:10;  
 1:123:10

**shows**

[1] - 1:64:11

**shut**

[3] - 1:147:14;  
 1:150:15;  
 1:162:2

**side**

[14] - 1:6:8;  
 1:19:11;  
 1:35:10-12;  
 1:51:18;  
 1:90:13;  
 1:95:11;  
 1:116:3, 5, 8;  
 1:121:1;  
 1:124:6;  
 1:135:5

**sidewalk**

[1] - 1:117:7

**siding**

[1] - 1:122:12

**sighting**

[1] - 1:60:2

**sign**

[33] - 1:9:11;  
 1:11:11, 13;  
 1:39:14;  
 1:40:2;  
 1:42:4, 12;  
 1:43:14, 19;  
 1:44:11;  
 1:45:17;

1:46:3;  
 1:53:3, 11;  
 1:86:4;  
 1:98:14, 16;  
 1:127:7;  
 1:182:1, 6,  
 11;  
 1:183:10-13;  
 1:184:4, 7;  
 1:185:10;  
 1:187:19;  
 1:189:8

### **Sign**

[1] - 1:197:5

### **signatures**

[1] - 1:110:5

### **signed**

[6] - 1:29:6;  
 1:110:14;  
 1:163:16;  
 1:165:16;  
 1:185:7;  
 1:189:12

### **significant**

[3] - 1:35:19;  
 1:111:6;  
 1:114:2

### **signs**

[1] - 1:44:1

### **similar**

[2] - 1:29:14;  
 1:152:5

### **simple**

[1] - 1:44:4

### **simplify**

[1] - 1:176:9

### **simply**

[1] - 1:51:12

### **sims**

[7] - 1:56:13,  
 16; 1:63:11;  
 1:64:5;  
 1:65:18;  
 1:66:3;  
 1:67:4

### **simulated**

[1] - 1:64:3

### **simulations**

[3] - 1:70:1,  
 11; 1:180:8

**single**

[4] - 1:124:11,  
16; 1:125:3,  
6

**singling**

[1] - 1:43:9

**sit**

[3] - 1:84:15;  
1:121:8;  
1:163:14

**site**

[8] - 1:55:8;  
1:56:7;  
1:62:11;  
1:134:2;  
1:173:13, 15;  
1:186:18;  
1:191:15

**sited**

[1] - 1:195:1

**sites**

[2] - 1:187:9

**Sitting**

[13] - 1:3:5;  
1:6:2; 1:10:8;  
1:39:1;  
1:55:2;  
1:72:2;  
1:88:2;  
1:97:2;  
1:100:2;  
1:143:2;  
1:175:2;  
1:181:2;  
1:191:2

**sitting**

[2] - 1:3:10;  
1:100:19

**situation**

[3] - 1:36:15;  
1:109:14;  
1:148:7

**six [8] - 1:4:3;**

1:79:2;  
1:103:3;  
1:116:16;  
1:152:15;  
1:155:14;  
1:166:9, 19

**six-unit**

[1] - 1:116:16

**size**

[4] - 1:17:2;  
1:64:13;  
1:81:2;  
1:90:2

**skiing**

[1] - 1:112:9

**skylight**

[2] - 1:106:12,  
16

**slam**

[1] - 1:102:9

**slanted**

[1] - 1:93:11

**sleight**

[1] - 1:64:12

**slight**

[1] - 1:34:14

**slightly**

[1] - 1:147:7

**slip**

[1] - 1:63:15

**slope**

[1] - 1:93:5

**slopes**

[1] - 1:93:6

**slot** [1] - 1:52:3

**slowly**

[1] - 1:116:17

**small**

[7] - 1:18:12;  
1:34:15, 19;  
1:80:17;  
1:89:14;  
1:164:11

**smaller**

[5] - 1:12:17;  
1:19:9;  
1:93:19;  
1:118:18;  
1:167:14

**smarter**

[1] - 1:133:18

**soccer**

[1] - 1:157:19

**sold**

[3] - 1:49:18;  
1:116:17

**solid**

[2] - 1:64:7;  
1:70:18

**solution**

[4] - 1:116:9;  
1:135:18;  
1:140:15

**someone**

[10] - 1:43:15;  
1:47:19;  
1:65:8;  
1:75:12, 15;  
1:107:15;  
1:108:5, 13;  
1:112:10;  
1:138:1

**Somerville**

[4] - 1:109:15;  
1:159:16;  
1:175:17;  
1:177:14

**sometime**

[2] - 1:8:8;  
1:33:8

**somewhat**

[1] - 1:33:7

**somewhere**

[2] - 1:112:1;  
1:137:4

**somewhere's**

[1] - 1:119:8

**son**

[2] - 1:164:8;  
1:165:3

**soon**

[1] - 1:83:11

**sorry**

[3] - 1:30:5;  
1:70:4;  
1:183:8

**sort**

[1] - 1:125:2

**sort've**

[8] - 1:17:9;  
1:42:6;  
1:51:18;  
1:58:3;  
1:120:18;  
1:122:19;  
1:132:14;  
1:151:4

**sorts****[1]** - 1:79:6**sought****[6]** - 1:37:8;  
1:74:10;  
1:166:5;  
1:179:2, 19;  
1:195:9**sp [1]** - 1:150:4**space****[23]** - 1:6:8;  
1:14:1;  
1:24:17;  
1:31:13, 16;  
1:32:17;  
1:34:4;  
1:117:15, 19;  
1:118:17;  
1:143:7, 18;  
1:144:2, 7,  
15; 1:164:6,  
12-13;  
1:166:16;  
1:167:13;  
1:168:12;  
1:169:5;  
1:194:16**spaces****[7]** - 1:144:6;  
1:155:12;  
1:166:7, 9;  
1:168:17;  
1:170:12;  
1:173:7**speaking****[4]** - 1:46:12;  
1:84:9;  
1:183:7;  
1:188:15**special****[1]** - 1:186:13**Special****[29]** - 1:55:7;  
1:61:6, 8;  
1:62:15, 18;  
1:67:7;  
1:68:9;  
1:69:16;  
1:71:13;  
1:72:14;

1:73:12;  
 1:97:15;  
 1:143:6;  
 1:144:7;  
 1:153:13;  
 1:166:5;  
 1:169:4;  
 1:170:10;  
 1:171:15;  
 1:172:15;  
 1:173:12;  
 1:175:6, 16;  
 1:177:2;  
 1:179:2;  
 1:180:6;  
 1:181:7;  
 1:187:16

**specific**

[1] - 1:187:2

**specifications**

[1] - 1:9:17

**Speight**

[2] - 1:164:3;

1:165:17

**spend**

[1] - 1:82:18

**spoken**

[3] - 1:34:3;

1:117:1;

1:171:16

**spot**

[5] - 1:44:16;

1:118:7;

1:150:3, 10

**spots**

[6] - 1:146:16,

18; 1:149:7;

1:150:6;

1:152:15;

1:167:14

**spouse**

[1] - 1:29:8

**sprinkle**

[1] - 1:80:11

**sprinkled**

[1] - 1:81:7

**SPRULOCK**

[1] - 1:155:12

**SPURLOCK**

[2] - 1:1:13;

1:35:17

**Spurlock**

[23] - 1:6:4;

1:10:6, 10;

1:38:6;

1:39:2;

1:54:7;

1:55:3;

1:72:3;

1:87:4;

1:88:3;

1:95:18;

1:97:3;

1:99:7;

1:100:3;

1:142:17;

1:143:3;

1:174:1;

1:175:3;

1:180:16;

1:181:4;

1:190:2;

1:191:4;

1:196:7

**Square**

[4] - 1:148:13,

18; 1:165:10;

1:171:4

**square**

[8] - 1:15:3,

15, 18;

1:104:7;

1:111:10;

1:150:3

**ss** [1] - 1:198:3

**staff**

[2] - 1:184:18

**stair**

[9] - 1:12:7;

1:72:8, 19;

1:73:17;

1:74:1;

1:79:15;

1:97:9, 19;

1:118:11

**staircase**

[2] - 1:31:14;

1:32:15

**stairs**

[17] - 1:12:11;

1:17:11, 13,  
 16, 19;  
 1:20:4, 6,  
 10-11;  
 1:21:9;  
 1:25:3;  
 1:73:10;  
 1:81:12;  
 1:137:2;  
 1:138:3

**stairway**

[7] - 1:21:19;  
 1:24:16;  
 1:25:6;  
 1:75:1;  
 1:77:5;  
 1:104:12;  
 1:106:14

**stairwell**

[1] - 1:106:12

**standing**

[1] - 1:67:19

**Standish**

[1] - 1:100:11

**standpoint**

[1] - 1:165:7

**start**

[4] - 1:39:12;  
 1:76:10;  
 1:100:19;  
 1:181:18

**started**

[1] - 1:117:4

**starting**

[1] - 1:160:10

**starts**

[1] - 1:183:9

**state**

[2] - 1:4:6;  
 1:139:6

**statement**

[1] - 1:59:9

**statements**

[2] - 1:154:15;  
 1:197:17

**states**

[1] - 1:3:17

**status**

[1] - 1:8:16

**statute**

[2] - 1:8:12;  
1:48:6

**statutory**

[2] - 1:3:19;  
1:47:8

**stay**

[3] - 1:85:2;  
1:168:19;  
1:182:14

**stayed**

[1] - 1:162:15

**staying**

[1] - 1:147:18

**Stearns**

[5] - 1:2:11;  
1:175:5, 11;  
1:177:11;  
1:178:5

**stenographer**

[1] - 1:126:3

**Stephen**

[3] - 1:100:15,  
17; 1:123:8

**STEPHEN**

[5] - 1:100:16;  
1:111:19;  
1:112:6;  
1:114:18;  
1:132:18

**steps**

[4] - 1:67:19;  
1:68:5;  
1:137:15, 19

**Steve**

[5] - 1:115:12;  
1:123:10;  
1:125:5;  
1:137:7

**Steve's**

[1] - 1:123:12

**stick**

[1] - 1:86:9

**sticker**

[1] - 1:158:15

**still**

[12] - 1:18:16;  
1:21:4;  
1:32:4, 10;  
1:39:19;  
1:77:7;

1:79:9;  
 1:82:16;  
 1:93:19;  
 1:118:1;  
 1:136:7

**stock**

[1] - 1:195:12

**stop**

[2] - 1:13:4;  
 1:90:10

**store**

[1] - 1:135:2

**stories**

[1] - 1:120:13

**story**

[4] - 1:6:8;  
 1:80:7;  
 1:120:8

**straightforwar**

**d**

[2] - 1:101:7;  
 1:177:3

**straw**

[1] - 1:129:7

**street**

[23] - 1:40:16,  
 19; 1:43:14;  
 1:44:13, 16;  
 1:45:5;  
 1:46:5;  
 1:47:14;  
 1:49:17;  
 1:101:8;  
 1:114:9;  
 1:116:8;  
 1:120:13;  
 1:124:12;  
 1:144:4;  
 1:154:7;  
 1:155:10;  
 1:156:4;  
 1:157:19;  
 1:158:16;  
 1:160:8;  
 1:171:2;  
 1:173:4

**Street**

[59] - 1:2:4, 6,  
 8-13; 1:3:13;  
 1:4:16; 1:6:5,

13-14;  
 1:10:12;  
 1:11:3, 7-8,  
 15; 1:27:19;  
 1:28:5, 7-8;  
 1:29:19;  
 1:39:5;  
 1:40:13, 19;  
 1:41:6;  
 1:43:16;  
 1:72:5;  
 1:73:3;  
 1:97:5;  
 1:98:5;  
 1:100:6, 11;  
 1:116:3;  
 1:123:9;  
 1:143:5, 11,  
 16; 1:158:7;  
 1:162:7, 19;  
 1:164:16;  
 1:166:4;  
 1:167:4;  
 1:168:7, 15;  
 1:175:5, 11;  
 1:177:11;  
 1:178:2, 5;  
 1:181:5, 15;  
 1:191:8, 12

### **STREET**

[1] - 1:97:6

### **streetscape**

[6] - 1:119:8,  
 12; 1:126:15;  
 1:128:8;  
 1:129:4, 13

### **strength**

[1] - 1:34:2

### **stress**

[2] - 1:164:19;  
 1:167:13

### **stricken**

[1] - 1:142:6

### **striking**

[1] - 1:46:3

### **strip**

[1] - 1:35:4

### **strongly**

[1] - 1:164:7

### **structure**

[12] - 1:36:17;  
 1:37:10;  
 1:69:12;  
 1:130:1;  
 1:135:18;  
 1:140:3;  
 1:141:4;  
 1:170:14;  
 1:195:1, 3

**Structure**

[1] - 1:175:9

**Structure)**

[1] - 1:98:2

**structure)**

[1] - 1:73:1

**structures**

[2] - 1:129:19;  
 1:133:9

**stuck**

[1] - 1:48:11

**student**

[3] - 1:151:3;  
 1:160:4;  
 1:164:9

**students**

[3] - 1:151:3;  
 1:152:2;  
 1:168:1

**study**

[2] - 1:160:17;  
 1:167:6

**studying**

[1] - 1:166:19

**stuff**

[2] - 1:125:2;  
 1:126:6

**style**

[1] - 1:176:8

**subject**

[3] - 1:69:18;  
 1:71:13;  
 1:86:3

**submit**

[1] - 1:9:16

**submitted**

[10] - 1:4:8;  
 1:27:16;  
 1:59:6;  
 1:70:1;  
 1:127:4;

1:141:13;  
 1:180:9;  
 1:194:7;  
 1:195:18

**subscribe**

[1] - 1:197:16

**Subsection**

[1] - 1:59:13

**subsequent**

[1] - 1:73:19

**substance**

[1] - 1:30:16

**substantial**

[14] - 1:36:11;

1:37:1, 3;

1:61:18;

1:68:12;

1:92:19;

1:93:13;

1:114:3;

1:139:17;

1:140:6;

1:171:18;

1:179:4;

1:194:14;

1:195:6

**substantially**

[6] - 1:34:16;

1:93:14, 18;

1:140:8;

1:154:1;

1:170:18

**substitute**

[1] - 1:186:14

**sudden**

[1] - 1:44:1

**suddenly**

[1] - 1:147:14

**sufficient**

[2] - 1:67:17;

1:142:2

**sufficiently**

[1] - 1:103:18

**suggest**

[4] - 1:61:10;

1:103:14;

1:105:16;

1:130:9

**suggested**

[2] - 1:7:11;

1:111:7

**suggesting**

[1] - 1:187:6

**Sullivan**

[27] - 1:3:6;  
 1:5:2; 1:6:3;  
 1:10:5, 9;  
 1:38:7;  
 1:39:3;  
 1:40:11;  
 1:54:6;  
 1:55:4;  
 1:71:17;  
 1:72:4;  
 1:87:3;  
 1:88:4;  
 1:95:17;  
 1:97:4;  
 1:99:6;  
 1:100:4;  
 1:142:16;  
 1:143:4;  
 1:173:19;  
 1:175:4;  
 1:180:15;  
 1:181:3;  
 1:190:1;  
 1:191:3;  
 1:196:6

**SULLIVAN**

[51] - 1:1:12;  
 1:22:7, 10,  
 14, 16;  
 1:23:1, 5;  
 1:24:12;  
 1:25:5, 9;  
 1:31:9;  
 1:39:12;  
 1:43:8;  
 1:45:6;  
 1:47:5;  
 1:63:5, 18;  
 1:64:16;  
 1:65:4;  
 1:66:5;  
 1:73:7;  
 1:74:3, 14;  
 1:77:3;  
 1:87:5, 10;  
 1:90:19;

1:91:3;  
 1:133:2, 12;  
 1:134:15;  
 1:135:6;  
 1:136:10;  
 1:137:8, 10;  
 1:138:8;  
 1:139:5;  
 1:150:16;  
 1:151:7, 12,  
 18; 1:152:5,  
 12; 1:153:1;  
 1:161:18;  
 1:162:4, 6,  
 11, 14, 18;  
 1:191:5

**sum**

[1] - 1:30:16

**summarize**

[1] - 1:17:9

**Superior**

[1] - 1:8:10

**supplement**

[1] - 1:164:2

**support**

[14] - 1:28:13;

1:31:18;

1:36:2;

1:37:7;

1:91:9, 17;

1:94:7;

1:140:12;

1:160:13;

1:161:16;

1:177:12;

1:178:2;

1:180:3

**supporting**

[1] - 1:154:14

**supportive**

[2] - 1:92:4, 6

**supposed**

[4] - 1:20:12;

1:133:15;

1:182:12

**surface**

[1] - 1:57:12

**surplus**

[1] - 1:154:6

**surprised**

[1] - 1:146:8

**SUSAN**

[15] - 1:1:13;

1:35:17;

1:55:16;

1:56:11;

1:57:18;

1:58:12, 18;

1:59:5;

1:61:4;

1:64:8;

1:66:12;

1:67:2;

1:155:12;

1:184:11, 15

**Susan**

[26] - 1:6:3;

1:10:5, 9;

1:38:6;

1:39:2;

1:54:6;

1:55:3, 18;

1:71:17;

1:72:3;

1:87:3;

1:88:3;

1:95:17;

1:97:3;

1:99:6;

1:100:3;

1:142:16;

1:143:3;

1:173:19;

1:175:3;

1:180:15;

1:181:3;

1:186:13;

1:190:1;

1:191:3;

1:196:6

**Susan's**

[1] - 1:186:17

**symmetrical**

[1] - 1:117:17

**sympathetic**

[4] - 1:14:7-9;

1:130:5

**symptoms**

[1] - 1:121:7

**synergistic**

[1] - 1:148:7

**synergy**

[1] - 1:145:18

**system**

[1] - 1:33:9

**Table**

[5] - 1:6:9;

1:10:16;

1:72:13;

1:88:8;

1:97:13

**table**

[2] - 1:30:7;

1:74:19

**tables**

[1] - 1:14:1

**tacked**

[1] - 1:121:1

**tail**

[1] - 1:31:12

**takeover**

[1] - 1:55:7

**talented**

[1] - 1:169:17

**tall**

[1] - 1:89:19

**tape**

[1] - 1:44:5

**taped**

[2] - 1:45:1

**teach**

[2] - 1:148:9;

1:167:12

**teacher**

[4] - 1:159:10;

1:160:9;

1:167:4

**teachers**

[11] - 1:145:1

9; 1:147:17;

1:164:5, 10,

12; 1:165:5;

1:166:12;

1:167:10;

1:168:10, 12

**teaching**

[3] - 1:146:2;

1:148:3;

1:169:6

**team**

[1] - 1:148:8

**tear**

[5] - 1:48:14;  
1:109:6,  
12-13;  
1:112:3

**technically**

[2] - 1:42:8;  
1:109:12

**telecommunic  
ations**

[1] - 1:69:7

**temperature**

[1] - 1:121:6

**ten**

[3] - 1:89:19;  
1:152:10

**tenancy**

[1] - 1:168:15

**tenant**

[1] - 1:143:18

**tenants**

[4] - 1:166:6;  
1:167:3;  
1:169:2;  
1:176:3

**terms**

[7] - 1:107:1;  
1:113:9;  
1:119:18;  
1:124:14;  
1:149:14;  
1:167:13;  
1:171:3

**terrace**

[1] - 1:192:4

**testimony**

[14] - 1:27:10;  
1:46:15;  
1:67:1;  
1:91:7;  
1:92:12;  
1:125:16, 19;  
1:156:8;  
1:169:11;  
1:170:5;  
1:178:16;  
1:192:17;  
1:197:4, 16

**THE** [6] - 1:1:1,

19; 1:198:16

**theirs**

[1] - 1:81:18

**theme**

[1] - 1:122:15

**themselves**

[1] - 1:147:6

**theoretically**

[1] - 1:109:9

**therefor**

[1] - 1:197:4

**therefore**

[3] - 1:11:12;

1:18:10;

1:195:2

**thickness**

[1] - 1:10:15

**thin**

[1] - 1:130:5

**thinking**

[4] - 1:43:19;

1:90:14;

1:119:14;

1:163:3

**third**

[12] - 1:12:8;

1:15:17;

1:22:8, 18;

1:23:16;

1:25:4;

1:26:4, 6, 11,

16; 1:79:19;

1:80:16

**THIS**

[1] - 1:198:16

**THOMAS**

[10] - 1:191:1

0; 1:192:11;

1:193:3, 6,

10, 15, 17;

1:194:1, 4, 9

**Thomas**

[1] - 1:191:10

**thoughts**

[1] - 1:31:7

**three**

[24] - 1:17:4;

1:18:13;

1:19:13;

1:27:15;

1:72:10, 17;  
 1:76:9;  
 1:80:4, 7;  
 1:81:17;  
 1:133:5;  
 1:134:16;  
 1:144:18;  
 1:145:13;  
 1:149:7-9;  
 1:151:8;  
 1:155:7;  
 1:156:2;  
 1:169:15;  
 1:191:19

**three-family**

[3] - 1:72:10,  
 17

**thrilled**

[1] - 1:158:10

**throughout**

[2] - 1:148:6;  
 1:168:18

**thrown**

[1] - 1:152:17

**THURSDAY**

[2] - 1:1:4;  
 1:3:3

**tie**

[1] - 1:131:14

**tight**

[2] - 1:118:15;  
 1:137:19

**timing**

[1] - 1:147:18

**Timothy**

[1] - 1:27:17

**tired**

[1] - 1:65:6

**TO**

[2] - 1:197:1;  
 1:198:16

**today**

[1] - 1:36:15

**toddlers**

[1] - 1:144:17

**together**

[3] - 1:117:8;  
 1:143:19;  
 1:147:7

**tomorrow**

[1] - 1:98:18

**tonight**

[27] - 1:18:15;

1:20:14, 16;

1:29:13;

1:46:14;

1:53:14;

1:65:17, 19;

1:69:11;

1:74:10;

1:75:12;

1:76:16;

1:82:13, 17;

1:83:6;

1:102:12;

1:103:3;

1:105:17;

1:107:4, 6-7,

9; 1:108:3;

1:115:2;

1:144:3;

1:172:3;

1:184:13

**Tony**

[1] - 1:49:5

**took**

[7] - 1:33:12;

1:69:14;

1:89:5;

1:98:12;

1:104:6;

1:135:19;

1:163:17

**top**

[2] - 1:63:7;

1:64:15

**topography**

[1] - 1:93:10

**totally**

[2] - 1:16:2;

1:77:10

**touch**

[1] - 1:20:18

**touches**

[1] - 1:28:5

**touching**

[1] - 1:81:11

**towards**

[1] - 1:117:10

**town**

[2] - 1:167:12;  
1:168:8

**trade**

[1] - 1:119:10

**tradition**

[1] - 1:161:14

**traditional**

[2] - 1:151:1;  
1:176:7

**traffic**

[3] - 1:61:16;  
1:62:12;  
1:164:17

**tranquility**

[1] - 1:91:1

**TRANSCRIPT**

[1] - 1:198:16

**transcript**

[4] - 1:197:3,  
5, 15, 17

**transit**

[3] - 1:165:6,  
10; 1:171:3

**transportation**

[4] - 1:154:5;  
1:155:3, 6;  
1:173:2

**tree**

[1] - 1:120:17

**trees**

[1] - 1:121:16

**tremendous**

[1] - 1:134:5

**tribute**

[1] - 1:169:10

**tried**

[2] - 1:136:3;  
1:175:19

**trouble**

[1] - 1:102:13

**troubled**

[1] - 1:32:19

**Truant**

[1] - 1:72:6

**TRUANT**

[25] - 1:73:5;  
1:74:2;  
1:75:4;  
1:76:2, 15;  
1:78:6, 10,

17; 1:79:3, 7;  
 1:80:10;  
 1:83:1, 7, 19;  
 1:84:5, 13,  
 16; 1:85:3, 8,  
 11, 16;  
 1:97:7;  
 1:98:7, 18

**true**

[1] - 1:198:8

**try**

[5] - 1:79:15;  
 1:109:2;  
 1:120:16;  
 1:175:14, 19

**trying**

[7] - 1:12:4;  
 1:33:11;  
 1:44:17;  
 1:51:13;  
 1:106:2;  
 1:111:16;  
 1:129:14

**Tuesday**

[1] - 1:188:18

**turn**

[2] - 1:53:13;  
 1:126:18

**turns**

[1] - 1:103:1

**tutoring**

[2] - 1:143:8;  
 1:150:19

**twice**

[1] - 1:40:1

**two**

[35] - 1:6:8;  
 1:11:6;  
 1:13:6;  
 1:14:19;  
 1:15:8, 10,  
 19; 1:16:1,  
 13; 1:35:3,  
 18; 1:48:7;  
 1:62:10;  
 1:66:10;  
 1:75:6;  
 1:78:11;  
 1:90:1, 8;  
 1:94:1;

1:109:19;  
 1:112:14;  
 1:120:13;  
 1:121:7;  
 1:145:13;  
 1:146:15;  
 1:149:7;  
 1:151:7;  
 1:160:17;  
 1:163:19;  
 1:175:16;  
 1:177:8;  
 1:184:1;  
 1:187:11;  
 1:191:15;  
 1:192:3

**Two**

[1] - 1:40:18

**two-family**

[1] - 1:175:16

**two-story**

[1] - 1:6:8

**two-way**

[1] - 1:66:10

**type**

[1] - 1:148:2

**U-M**

[1] - 1:88:13

**ugly**

[2] - 1:121:9,  
 19

**UM**

[14] - 1:88:13,  
 17; 1:89:5,  
 10; 1:90:3, 7,  
 14, 16;  
 1:91:5, 16;  
 1:92:1;  
 1:94:16, 19;  
 1:96:2

**unanimous**

[3] - 1:37:6;  
 1:94:7;  
 1:140:11

**UNDER**

[1] - 1:198:17

**under**

[7] - 1:20:11;  
 1:51:1, 15;  
 1:74:11;

1:150:17;  
1:153:12;  
1:187:14

**under-advertis**

**e** [1] - 1:74:11

**underneath**

[1] - 1:12:8

**underscore**

[3] - 1:47:18;

1:65:3, 13

**undersigned**

[1] - 1:123:8

**understood**

[3] - 1:47:4;

1:105:11;

1:129:11

**undertake**

[2] - 1:114:16,  
18

**undertaking**

[1] - 1:107:7

**unequivocal**

[1] - 1:168:11

**unfair**

[1] - 1:183:3

**unfortunate**

[2] - 1:185:12;

1:187:7

**unfortunately**

[1] - 1:20:17

**unit**

[10] - 1:22:7,

11; 1:26:2, 5;

1:49:17;

1:81:6;

1:116:16;

1:177:18;

1:191:15

**units**

[7] - 1:40:18;

1:49:16;

1:57:8;

1:81:6;

1:116:18;

1:191:15

**unless**

[4] - 1:4:10;

1:36:6;

1:42:17;

1:186:9

**UNLESS**

[1] - 1:198:17

**unrelated**

[2] - 1:101:18

**unsafe**

[1] - 1:12:11

**unusual**

[1] - 1:191:14

**unusually**

[1] - 1:195:1

**up**

[45] - 1:12:2;

1:24:16, 19;

1:27:9;

1:31:5;

1:34:3;

1:42:6;

1:43:19;

1:44:11;

1:46:15;

1:48:8;

1:65:5;

1:74:7;

1:78:7;

1:81:2, 15;

1:89:6;

1:95:6;

1:105:19;

1:108:4;

1:117:6;

1:118:18;

1:120:9;

1:125:15, 18;

1:126:17;

1:134:1, 16;

1:135:5;

1:139:6;

1:146:18;

1:148:8;

1:149:11;

1:156:7;

1:157:7, 11;

1:159:3;

1:162:19;

1:163:16;

1:167:17;

1:192:2, 17

**upgrade**

[1] - 1:71:4

**upper**

[2] - 1:43:12;  
1:116:12

**upset**

[1] - 1:128:9

**upstairs**

[2] - 1:13:1;  
1:147:3

**urban**

[1] - 1:165:14

**urge**

[1] - 1:123:13

**urges**

[1] - 1:169:1

**usable**

[7] - 1:13:1, 3,  
6, 8, 10-11;  
1:14:1

**usage**

[1] - 1:151:14

**useable**

[1] - 1:10:14

**uses**

[8] - 1:68:14;  
1:146:15;  
1:147:6;  
1:150:10;  
1:154:2;  
1:170:19;  
1:172:2;  
1:179:6

**usual**

[1] - 1:162:18

**utilizing**

[2] - 1:55:10;  
1:146:1

**vacation**

[2] - 1:21:2;  
1:184:13

**validated**

[1] - 1:148:15

**valuable**

[1] - 1:106:15

**values**

[1] - 1:124:15

**Variance**

[5] - 1:6:7;  
1:10:12;  
1:72:7;  
1:88:6;  
1:97:8

**variance**

[30] - 1:3:11;  
 1:4:2; 1:8:17;  
 1:12:4;  
 1:36:4;  
 1:37:14;  
 1:38:1, 4;  
 1:41:8;  
 1:47:6;  
 1:93:17;  
 1:94:11;  
 1:95:14, 19;  
 1:101:7;  
 1:106:16;  
 1:108:1, 10;  
 1:112:12;  
 1:118:11;  
 1:123:14;  
 1:141:9;  
 1:142:4, 12,  
 14; 1:177:2;  
 1:195:15;  
 1:196:3

**variances**

[1] - 1:41:19

**varies**

[1] - 1:145:5

**various**

[1] - 1:168:18

**verbally**

[1] - 1:142:8

**verified**

[1] - 1:148:14

**versus**

[1] - 1:84:8

**vertical**

[1] - 1:178:8

**vestibule**

[16] - 1:101:8;  
 1:104:4;  
 1:111:2, 13;  
 1:114:6, 9;  
 1:118:4, 14,  
 17; 1:120:8;  
 1:121:13;  
 1:132:2;  
 1:136:4;  
 1:142:1;  
 1:192:2

**view**

**[7]** - 1:18:2;  
 1:41:17;  
 1:52:11;  
 1:58:13;  
 1:113:2;  
 1:135:15;  
 1:157:16

**views**

**[1]** - 1:183:5

**violin**

**[3]** - 1:147:10;  
 1:157:2;  
 1:160:11

**virtue**

**[2]** - 1:61:12

**visible**

**[9]** - 1:39:17;  
 1:40:5, 16;  
 1:42:4;  
 1:44:3, 8;  
 1:46:4;  
 1:47:16;  
 1:53:3

**visits**

**[1]** - 1:62:11

**visual**

**[5]** - 1:60:1;  
 1:68:1, 4-5;  
 1:71:2

**visually**

**[3]** - 1:56:9;  
 1:58:2;  
 1:62:4

**volume**

**[1]** - 1:197:5

**vote**

**[28]** - 1:32:19;  
 1:33:2;  
 1:34:5, 11;  
 1:35:15;  
 1:36:6;  
 1:43:6;  
 1:50:13;  
 1:52:11, 17;  
 1:67:11;  
 1:68:4;  
 1:77:2;  
 1:87:9;  
 1:92:14;  
 1:95:4;

1:98:12;  
 1:102:3;  
 1:103:6, 8;  
 1:115:7;  
 1:139:11;  
 1:142:10;  
 1:178:17;  
 1:183:1;  
 1:187:12;  
 1:193:13

**voted**

[1] - 1:115:7

**VUK**

[5] - 1:144:13;  
 1:146:9;  
 1:152:1, 8;  
 1:155:19

**Vuk**

[3] - 1:143:6,  
 17; 1:148:7

**W-E-I-N-T-R-A-****U-B**

[1] - 1:156:19

**wagging**

[1] - 1:31:11

**Wagner**

[1] - 1:177:9

**waiver**

[5] - 1:9:9;  
 1:53:12;  
 1:86:11;  
 1:185:8;  
 1:189:12

**walk**

[9] - 1:26:17;  
 1:134:4;  
 1:145:9;  
 1:155:2, 7;  
 1:158:13;  
 1:165:3, 6;  
 1:173:6

**walked**

[1] - 1:158:1

**walking**

[1] - 1:158:10

**wall**

[6] - 1:10:14;  
 1:24:6;  
 1:57:3;  
 1:60:8;

1:117:19;  
1:175:7

**wants**

[4] - 1:9:16;  
1:108:13;  
1:115:3;  
1:170:6

**warning**

[1] - 1:104:17

**Washington**

[4] - 1:2:9;  
1:100:6;  
1:116:3;  
1:123:9

**water**

[1] - 1:62:13

**waterways**

[1] - 1:62:13

**weather**

[3] - 1:44:18;  
1:118:15

**Wednesday**

[1] - 1:188:19

**week**

[1] - 1:56:4

**weekends**

[1] - 1:152:7

**weeks**

[2] - 1:108:4;  
1:187:11

**WEINTRAUB**

[2] - 1:156:18;  
1:157:18

**Weintraub**

[1] - 1:156:18

**welfare**

[3] - 1:68:18;  
1:172:5;  
1:179:15

**west**

[2] - 1:110:7;  
1:175:7

**whack**

[1] - 1:152:17

**whatsoever**

[2] - 1:113:17;  
1:163:9

**wheelchair**

[5] - 1:118:16;  
1:119:17;

1:135:14;  
 1:136:12;  
 1:138:1

**WHEREOF**

[1] - 1:198:9

**whole**

[3] - 1:74:16;  
 1:115:16;  
 1:178:11

**wide**

[1] - 1:89:18

**width**

[1] - 1:15:6

**wife**

[6] - 1:28:7;  
 1:49:6;  
 1:88:19;  
 1:89:11;  
 1:90:7;  
 1:91:10

**William**

[1] - 1:164:8

**willing**

[2] - 1:115:2,  
 4

**wind**

[1] - 1:24:19

**Winder**

[1] - 1:178:1

**WINDER**

[1] - 1:178:1

**window**

[28] - 1:13:14;  
 1:17:19;  
 1:22:6, 13,  
 17; 1:23:17;  
 1:24:1;  
 1:27:4;  
 1:40:16;  
 1:45:1;  
 1:72:15;  
 1:83:7;  
 1:97:15;  
 1:107:1;  
 1:132:2;  
 1:141:19;  
 1:175:7;  
 1:176:13;  
 1:177:13,  
 15-17;

1:178:3, 5,  
7-8; 1:179:12

**windows**

[12] - 1:42:6;  
1:43:12;  
1:73:13;  
1:80:14, 17;  
1:117:18;  
1:138:13;  
1:176:11;  
1:177:17;  
1:178:9;  
1:179:10

**winter**

[1] - 1:119:16

**wire**

[1] - 1:95:2

**wireless**

[1] - 1:61:5

**wise**

[1] - 1:52:2

**wish**

[15] - 1:33:4;  
1:39:6;  
1:50:8;  
1:66:14;  
1:88:12;  
1:98:6;  
1:111:15;  
1:130:12;  
1:156:9;  
1:175:12;  
1:177:5;  
1:178:6;  
1:181:16;  
1:191:9;  
1:192:18

**wishes**

[9] - 1:9:5;  
1:27:14;  
1:50:9;  
1:66:17;  
1:91:11;  
1:156:11;  
1:177:7;  
1:182:9;  
1:192:19

**wishing**

[10] - 1:4:12;  
1:9:4; 1:11:3;

1:27:11;  
 1:55:15;  
 1:73:4;  
 1:91:8;  
 1:125:19;  
 1:130:13;  
 1:143:12

**WITNESS**

[1] - 1:198:9

**Woburn**

[1] - 1:159:17

**women**

[1] - 1:80:4

**wonderful**

[5] - 1:148:12,  
 16; 1:169:6,  
 9; 1:170:3

**wondering**

[5] - 1:74:3,  
 14; 1:77:3;  
 1:82:6;  
 1:87:10

**Wood**

[1] - 1:29:18

**wooden**

[1] - 1:192:3

**word**

[1] - 1:111:7

**words**

[5] - 1:22:16;  
 1:111:14;  
 1:169:9;  
 1:185:5

**workers**

[1] - 1:152:9

**world**

[1] - 1:112:17

**worth**

[1] - 1:35:2

**wraps**

[1] - 1:122:13

**writes**

[1] - 1:78:19

**writing**

[6] - 1:126:7;  
 1:164:4;  
 1:166:2;  
 1:177:12;  
 1:178:2;  
 1:183:6

**written**

[3] - 1:58:19;  
1:104:3;  
1:108:4

**wrote**

[1] - 1:102:16

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[1] - 1:1:19

**Wynn**

[1] - 1:177:10

**Y-A-B-L-O**

[1] - 1:100:17

**Yablo**

[3] - 1:100:15,  
17; 1:123:8

**YABLO**

[5] - 1:100:16;  
1:111:19;  
1:112:6;  
1:114:18;  
1:132:18

**yah [1] - 1:59:1****yard**

[14] - 1:12:15;  
1:19:4, 6, 8;  
1:92:8;  
1:93:8;  
1:94:2;  
1:119:6;  
1:135:19;  
1:194:4

**yards**

[1] - 1:124:11

**yardsticks**

[1] - 1:133:15

**year**

[20] - 1:3:19;  
1:48:7;  
1:75:18;  
1:107:16, 19;  
1:108:17;  
1:109:19;  
1:128:13;  
1:147:12, 16;  
1:157:2;  
1:159:10, 19;  
1:160:10;  
1:162:13;  
1:169:14

**years**

[23] - 1:23:12;  
 1:25:19;  
 1:88:17, 19;  
 1:89:5;  
 1:102:14;  
 1:109:19;  
 1:112:14;  
 1:126:8;  
 1:141:7;  
 1:144:18;  
 1:147:16;  
 1:157:3;  
 1:158:9;  
 1:159:3;  
 1:160:4;  
 1:162:9, 15,  
 17; 1:166:19;  
 1:172:19;  
 1:175:18;  
 1:176:7

**yesterday**

[2] - 1:188:6

**yield**

[1] - 1:150:6

**young**

[2] - 1:167:1;  
 1:169:17

**ZBA**

[1] - 1:197:1

**zones**

[1] - 1:118:9

**Zoning**

[2] - 1:59:9;  
 1:65:7

**ZONING**

[1] - 1:1:1

**zoning**

[14] - 1:18:17;  
 1:36:19;  
 1:60:11;  
 1:103:15;  
 1:105:8;  
 1:119:10;  
 1:130:2;  
 1:133:13;  
 1:140:5;  
 1:166:3;  
 1:170:12;  
 1:192:7;

1:195:4