

COMMONWEALTH OF MASSACHUSETTS

CITY OF CAMBRIDGE

IN RE: LICENSE COMMISSION DECISION HEARING

Michael Gardner, Chairman
Robert C. Haas, Police Commissioner
Gerald Reardon, Fire Chief

STAFF:

Elizabeth Lint, Executive Officer

-- Held At --

Michael J. Lombardi Municipal Building
831 Massachusetts Avenue
Basement Conference Room
Cambridge, Massachusetts

Tuesday, December 20, 2011

10:00 a.m.

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PAGE

Application: 50 Church Street Realty Trust 3

P R O C E E D I N G S

ELIZABETH LINT: Okay. We are going to begin. This is the License Commission Decision-Making Hearing. Today is Tuesday, December 20, 2011, at 10:12 a.m. We are at the Michael J. Lombardi Municipal Building, 831 Massachusetts Avenue, Basement Conference Room.

Before you are the Commissioners Chairman Michael Gardner, Chief Gerald Reardon, and Commissioner Robert Haas.

The only matter that was left over from the November 15th hearing was 50 Church Street Realty Trust, as the foreclosing approved pledge holder of the all alcoholic beverages as a restaurant license currently held by H2 Ventures at 50 Church Street, petitioning to involuntarily transfer said license to Bowery Cambridge, LLC, doing business as the Sinclair, Joshua Bhatti, manager. Said license if transferred is for

175 seats inside, 52 seats on a seasonal private outdoor patio, and 525 standing. Operating hours would be from 8:00 a.m. to 1:00 a.m. Sunday through Wednesday, and 8:00 a.m. to 2:00 a.m. Thursday through Saturday and the night before a legal holiday.

Applicant is also seeking an entertainment license to and include dancing by patrons, live musical instruments and/or vocalist with amplification, audio tape machines, CDs, playing the music below, at or above conversation level, live TV and comedy shows.

MICHAEL GARDNER: So if I could just set the procedural stage and history here, we had a very lengthy hearing about this application on November 15th. We were scheduled for a Decision Hearing on November 22nd. Unfortunately, Commissioner Haas could not attend that meeting, and Commissioner Reardon and I felt that this is an issue of

enough magnitude and importance that we would like all the commissioners here and wanted Commissioner Haas's perspective in particular on the 22nd.

We had some colloquy with the applicant, some follow-up on certain questions, and I decided to schedule the matter for a decision hearing or a decision meeting today.

We have received in this case a number of written communications both in favor and in opposition to the application. And there having been some concern that the original notice of the November 15th hearing was not as well publicized as some would have liked, we have agreed to break our typical precedent with respect to the conduct of decision hearings and hear, on a limited basis, from members of the public who did not have the opportunity to speak on November 15th.

And I would just suggest to the Commissioners as a possible way of proceeding that we invite any such members of the public to comment first and then, if we have any additional questions for the applicant who obviously is present, that we follow up with those.

Does that sound like a reasonable procedure?

ROBERT HAAS: It does.

MICHAEL GARDNER: So on the matter of the application for 50 Church Street, are there any members of the public who would like to speak on this matter and who have not previously spoken?

AUDIENCE MEMBER: I would.

MICHAEL GARDNER: Please come up and state your name for the record, and spell it for the purposes of the stenographer. And we'd ask you to keep your comments brief.

SHIPPEN PAGE: My name is Shippen

Page, I'm an attorney, and I live at 174 Lakeview Avenue, Cambridge 02138. My first name is Shippen, S-H-I-P-P-E-N, my last name is Page, P-A-G-E.

I represent certain property owners, business owners, and residents of the Church Street area. Thank you all very much for allowing me to speak.

I respect the fact your time is limited and my entry in this case is at the last hour before you make a decision. I respect the fact that the Commission has a wide discretion in granting this transfer of the license. My concerns on behalf of my clients are the process that was followed and to insure that the relevant concerns of the abutters and the residents are satisfactorily addressed.

I have asked for, and Ms. Lint was kind enough to provide me with a copy of the application last night. I have reviewed the

relevant portions of building permits and zoning variances relating to this building. My principal concern is that, until I read the transcript of the hearing on the November 15th hearing, the concept of a performance hall being ancillary to this use as 175 seat restaurant which was never made, to my knowledge, public.

And so while there may have been extensive plans, members of the community who might be affected by this proposal were not adequately apprised of the scale and magnitude of what promises to be a highly successful venture by highly experienced people who know what they are doing and who have a demonstrated interest in having this venture be successful.

The zoning code, as you all know, does not address standees, it addresses seats. And while this may be a matter for the building code and load bearing and the rest,

the question is trash, parking, delivery of huge vans for operating equipment for the band and the like. All of which I'm sure you will take into consideration as you consider this proposal.

There are members of the community who I'm sure would like to be heard on this matter and who had not been previously heard, but I would request that the board review a schematic of the proposed area, examine a map, and make it a part of the public record and satisfy yourselves that in fact an area as dense as Church Street and the access lane into the rear of the premises is satisfactory for handling the anticipated number of people that will be using this, both ingress and egress, and to make sure that the public behavior is well regulated, and the concerns on of the neighbors on Farwell Place, who are a short distance from the building, will be protected from what is now a zero use for the

expired license or the inactive license for Phatt Boys, which was last used in 2006, and will then escalate as soon as this operation is going to roughly 700 to 750 people attending the crowd. The numbers I think are 725 if I'm right for maximum capacity. Those are the essences of my remarks.

I did submit a letter yesterday to Commissioner Singanayagam stating my concerns and perhaps the client's, a copy of which went to Executive Director Lint and the attorney for the proponent, Mr. Rafferty.

And I would be happy to answer any further questions you might have. Thank you very much.

MICHAEL GARDNER: Do you care to identify your clients?

SHIPPEN PAGE: Sure. One client is Pebble Gifford, who lives on Hilliard Street. One client is Thomas Brush, who owns Flat Patty's, one client is Richard Getz.

Virtually all of the residents of Farwell Place including Elizabeth Bartholet, Gary Chapitz, Daniel Aaron, would be among my clients, sir.

MICHAEL GARDNER: We have some correspondence from Mr. Getz, I believe, concerning the issues as an abutter and, as I understood it, certain easement issues, which I'm not sure are necessarily within the province of the Commission.

Can you give us any update on Mr. Getz's specific concerns as outlined in the communication that we received from him.

SHIPPEN PAGE: I cannot because I haven't spoken directly with Mr. Getz. I have only been informed of his concerns by third-parties from conversations with Mr. Brush and Ms. Gifford, so I can't address that.

And I'm aware that it's an enormously complicated matter, both in real estate and

the various departments in the city that are reviewing this matter.

MICHAEL GARDNER: Do we have a copy of Mr. Page's letter?

ELIZABETH LINT: I do.

SHIPPEN PAGE: I have copies for the Commission if you'd like to see it now, sir.

MICHAEL GARDNER: If you have them, we'll take them.

Any other questions?

SHIPPEN PAGE: I'm sorry, Mr. Commissioner, I'm told by Ms. Gifford that it's the trust Mr. Getz represents and not him personally, the family trust, so I'm dealing on last minute information.

GERALD REARDON: Could I ask how you can represent someone that you haven't talked to?

SHIPPEN PAGE: That's an excellent question, Commissioner.

PEBBLE GIFFORD: Well, can I say

something --

MICHAEL GARDNER: Mr. Page, has the floor. Are you Ms. Gifford? I understand that you've had an opportunity to speak at the November 15th hearing.

We are going to talk -- first, we are going to talk to people who haven't spoken before.

SHIPPEN PAGE: Sir, yours is a very good question. I was retained on Saturday afternoon so I'm trying as quickly as I can to get up to speed.

I'm informed by Ms. Gifford and Mr. Brush that Mr. Getz shares the concerns of this group, wishes me to speak for him. He is apparently skiing. I've never spoken to him. I don't know him. And so you can take that into account in determining the weight of my remarks.

GERALD REARDON: I guess I would have to because if you've had no conversation with

him, you don't personally have any firsthand information whether or not --

SHIPPEN PAGE: That's correct.

GERALD REARDON: I just want to make sure we understand this.

And that is the same with -- have you had conversation with the other people you're representing?

SHIPPEN PAGE: I've had conversations with Ms. Bartholet, I've had conversations with Mr. Brush, and I've had conversations with Ms. Gifford. And Mr. Aarons is apparently a 69 year old man who has lived on Farwell Place for a good many years, and Ms. Bartholet, if she chooses to speak, has informed me that he has told her that he would like me to represent him. I've never spoken to Mr. Aarons.

MICHAEL GARDNER: Could you elaborate on any concerns that you had with respect to both access and egress from the building and,

in particular, the issue of the density of Church Street, and you made a reference to the lane in the rear, I believe.

SHIPPEN PAGE: Sure. If one can visualize the service lane -- and I understand that Trinity Properties has a right of way that extends some 15 or 20 feet into the property and then there is some rights of way and various other shared interests in this little cul de sac.

The concerns are that if you are going to have three presentations a night for up to 200 concerts a year, which is what I gather from the transcript may be projected, then my understanding from the music industry, of which I know fairly little, is that you're going to have busses, vans and support vehicles which will be all off-loading audio, sound equipment, instruments, all the rest. It's not one band a night, it could be up to three bands a night.

Now, these are very experienced promoters from what I understand from the transcript. They may have thought this all out, but I want to bring it to the Commissioners' attention so we can all visualize, with all the people who come into Harvard Square, pursuant to Mrs. Jillson's testimony, eight million, you're going to have a lot of vehicles coming in and out of a very narrow service area. And the business owners on Brattle Street whose businesses are supplied from the rear are going to have to deal with this congestion.

MICHAEL GARDNER: Thank you for your clarification about that.

SHIPPEN PAGE: Sure. Thank you.

MICHAEL GARDNER: Any other questions? Anything else you'd like to say, sir?

SHIPPEN PAGE: No. Thank you very much for your time.

MICHAEL GARDNER: Any one else who hasn't spoken before?

AUDIENCE MEMBER: Yes.

MICHAEL GARDNER: Please come forward and state and spell your name for the court reporter.

ELIZABETH BARTHOLET: My name is Elizabeth Bartholet, E-L-I-Z-A-B-E-T-H, B-A-R-T-H-O-L-E-T, and I'm a resident of Farwell Place. I'm Elizabeth Bartholet who Shippen Page just said he was representing.

I want first simply to clarify the level of opposition by everybody that we are aware of on Farwell Place that is an owner there. I'm here, Gary Chapitz, also who lives on Farwell Place is here. I have spoken to Dan Aarons who asked me to represent his views and opposition, and Gary Chapitz has spoken to the other owner residents of Farwell Place. We're all opposed.

We got no notice of this. I only

heard from Pebble Gifford the day before the prior hearing in this case. We've only just had a chance to begin to notify other residents in the area. The people I e-mailed yesterday who live on Gary Street said that they thought everybody on Gary Street would be appalled that they had no notice of this, they were appalled it was happening.

As somebody who has lived on Farwell Place for over 30 years, I've lived through things like the Oxford Ale House, which really seriously destroyed the quality of life on Farwell Place for all the years it was there. There were bottles thrown over my brick wall on a regular basis; noise at 2:00 in the morning such that you could not sleep.

And the description of this proposed place on Church Street is that it is going to be way beyond anything that the Oxford Ale House was in terms of the number of people, the level of noise, the traffic problems, I

think will be absolutely appalling.

And I feel fully represented by Shippen Page, but since they were questions about whether he really represented everybody and their level of opposition to this, I just wanted to speak to that issue.

MICHAEL GARDNER: Thank you. I understand that you did submit a letter previously, an e-mail, before the November 15th hearing?

ELIZABETH BARTHOLET: As soon as I got the notice, yes.

MICHAEL GARDNER: Could you just for the record describe location of Farwell Place in connection with this premises, the distance and sort of the geography and the ways in which you think it would be disruptive to you.

ELIZABETH BARTHOLET: Farwell Place is parallel to Church Street, one very short block away from Harvard Square. And between us and the premises, there is basically the

Church Street parking lot, so it is open air so all the noise comes through.

I can't give you the number of feet in distance, but every time I describe it to a taxi driver, I say it's a super short block, and we can essentially see across, hear across the traffic. We regularly use another route to get to our house is to go down Church Street. And so we are very aware of the traffic problems that already exist on Church Street.

And I can just tell you that when there is a noisy establishment, as with the Oxford Ale House, it is overwhelming on our street.

MICHAEL GARDNER: And how is it that the foot traffic interferes with your residential peace?

ELIZABETH BARTHOLET: Well, what we are worried about, among other things, is that the trucks that will be bringing in equipment,

and the level of the foot traffic if you are talking about 750. I mean, even now there are lines that have to be controlled by police and others getting the Border Street foot traffic, the lines waiting to go into the Border Street Cafe, on the sidewalk.

But if you are talking about a 750 person place or establishment, there are likely to be lines, there are going to be presumably hundreds of people flooding out onto the street in certain hours and they are not going to fit onto the narrow sidewalks.

I mean, the trucks, I can't imagine what's going to happen in terms of the truck traffic on that street.

MICHAEL GARDNER: And by "trucks," you are referring to either the trucks that are there that have to flow now or are you talking about an additional load that comes out of the business?

ELIZABETH BARTHOLET: The additional

load of trucks that will be bringing in band equipment for this live music emporium.

MICHAEL GARDNER: Thank you for that clarification.

Any questions? No questions. Thank you very much.

Any other members who would like to be heard?

AUDIENCE MEMBER: I would.

MICHAEL GARDNER: Sir, please state and spell your name and identify your affiliation on the record.

GARY CHAPITZ: My name is Gary Chapitz, I live at 18 Farwell Place. I own 18 Farwell Place, and I've been there 25 years.

I'm a former investigative reporter for the Boston Globe. I know Denise Jillson well and respect her very much and I've quoted her often. I was very close to one of your predecessors, Perry Anderson.

And I am sensitive to the fact that

we are talking about a space originally occupied by a restaurant called the Atrium. There has been a succession of restaurants that have failed for one reason or another. And I feel badly that there is this empty space, someone owns it and they are not they deriving revenue. So I am sensitive to that.

My concerns -- I don't care about really anything from a zoning point of view. It's my self interest versus someone else's self interest. My self interest is that I will not be able to sleep. I know this from two examples that I can cite.

I've been on the street for 25 years. I was there when the Oxford Ale House was in existence. I don't know if you remember this establishment, but it was loud. And we like the Border because it's quite. But the Oxford Ale House was extremely rowdy. And there were bottles thrown and there was a lot of noise made.

So I just want to repeat what Betsy said. Here's Church Street right here, and here's our residences (indicating). We are a historic homes in a historic district, and there is absolutely no obstruction for sound because it's an open parking lot.

And, yes, there is a brick wall which is about eight feet high, but we all sleep in the rear on second floor bedrooms; so, unfortunately, we are above the brick wall.

And I know I've read something about all the reassurances that are being given that, you know, that the staff will make sure that the young people pouring out of this entertainment center will be quiet.

But, you know, I have two kids, they are young. My daughter is a graduate of the University of Richmond, she's now working in New York. My son is a Marine, he is the Administrative Director of Camp David. They are reasonably successful people.

However, they drink, they drink to excess. They are rowdy. And these are good people, these are good kids. These aren't kids who are in trouble, these aren't kids who use drugs, accept for alcohol, and they are rowdy and their friends are rowdy. Look, I was rowdy when I was a kid. I know what it's like. You have a lot of energy, you want to drink, you want to have fun, and you come pouring out of the -- 750 people come pouring out of this nightclub onto a street where there is no obstruction whatsoever to our homes at 2:00 in the morning.

And, you know, the staff that will be allegedly posted to quiet them down will have a hard time doing that. Because, you know, when you are a kid you make noise, you yell and scream, you are on the phone.

You know, if you're a male, you got to strut your stuff. My son is a great kid but he makes a lot of noise when he has had

too much to drink and he is a Marine. So I am afraid --

MICHAEL GARDNER: Okay. That point I think we get.

GARY CHAPITZ: I'm afraid of the noise. I'm afraid we will be not able to sleep. I'm afraid our property values will plummet as a result.

MICHAEL GARDNER: I, in fact, am not at all familiar with the Oxford Ale House history. Could you just give us a very concise description of the kind of venue it was, what the hours were, and what happened to it, or any efforts at success in sort of solving the problem of whatever it was.

GARY CHAPITZ: It was a bar and dance hall that operated until 2:00 a.m. There were no efforts to mitigate the noise. What finally mitigated it was its closure. I don't know why it closed, but I do know it was taken over by the Border. And the Border is quiet.

I just want to say one other thing that I forgot to mention. There is a club called Passim on Palmer Way. It's folk, it is somewhat quiet, the clientele are older, and they used to put a speaker outside of their establishment to draw in the passersby on the somewhat pedestrian walkway between Church and Bracket. And I had to go over there -- I know the Matt Smith, the manager, and I had to ask him to turn off the speaker because this kind of low decibel speaker on Palmer Way still kept us up. So I can imagine the kind of noise of patrons inebriated -- I mean, you make money through alcohol.

I'm also worried that the ticket price that is envisioned at the moment, in this economy with young people having trouble finding work, isn't going to hold up.

So what I fear is that it will be something -- something else like hip-hop will be brought in to save the day, a lot of money

is going to be put into the build-out of this establishment, and they are going to be desperate to stay afloat and they are going to bring in whatever it takes to generate the revenue so that they can stay in existence.

And I know it happened with Z-Square and I'm afraid it's going to happen here. They will bring in hip-hop, whatever it takes, once the ticket sales aren't happening. And that will increase the noise beyond repair.

I would like to see this restaurant. I like the idea of a restaurant, but I don't like the idea of a nightclub.

MICHAEL GARDNER: Thank you very much.

GARY CHAPITZ: Thank you.

MICHAEL GARDNER: Any other members of the public who would like to be heard that haven't spoken before, please come forward and state and spell your name for the record.

MARILEE MEYER: My name is Marilee Meyer, M-A-R-I-L-E-E, M-E-Y-E-R, and I live at 10 Dana Street, which I know is a fair piece from Harvard Square.

I just got notification of this, being interested in city life, just yesterday, and I follow a lot of city issues. So I'm not up to speed, specifically, I have not walked around Church Street, et cetera. But listening to other testimony, there are a couple things that I can relate to that might be helpful.

During the summer, Plow and Stars, when it closes, their patrons drift through the neighborhood on their way home and they are very disruptive during the weekend and are very loud. And that's not even 500 people. So there is a lot of that kind of impact on residents when the bars are let out.

Number 2. I come from a family of musicians. So when you have performers

letting out at 2:00 and they have their tour busses, those tour busses are going to be idling after 2:00 in the morning, picking up their performers and dispersing.

I relate that to false alarms and fire trucks at the nursing home on Dana Street, which we get quite often. And when a fire truck is idling outside our property, it is incredibly disruptive and with a low-tone drone. So those kinds of trucks really do impact the quality of live.

Number 3. I know the Oxford Ale House, the Border is in there now, and it may be a nice restaurant but on weekends, when people are waiting to get into the restaurant, which doesn't even have the impact that this potential property will, the sidewalks are incredibly jam packed and full and you have to walk in the street to get around from the people waiting to get into the Border. And that's a small portion of what is being

proposed here.

And so I think there are valid reasons -- from somebody from the outside and from somebody who does not live in Harvard Square but frequents it -- that traffic, density, noise, and even the zoning of a restaurant versus a performance center really does have to be reconsidered. Thank you.

MICHAEL GARDNER: Thank you.

Is there anyone else who hasn't spoken before who would like to be heard? No?

AUDIENCE MEMBER: I have something else.

MICHAEL GARDNER: Please come up. Mr. Page has asked to speak to make one more point.

Please identify yourself again for the record.

SHIPPEN PAGE: My name is Shippen Page, I'm an attorney. There is one further point I'd like to make.

In reviewing the application there is a line that says: Is there a connection between the amount of alcohol sold and the lease terms? And the answer is: Yes.

And the question that arises is: If there is an incentive for rental payments to derive from the sale of alcoholic beverages, then it seems that the earlier testimony that was given on November 15th, to the extent that this would be a crowd where people would hold their place in the crowd, seek alcohol rarely, go home after the concert is over, there is a financial incentive to the landlord in this to generate as much money from the sale of alcoholic beverages as possible because it maximizes the rent.

So I would ask you to pay particular attention to that facet because I do think that there is going to be a lot of alcohol consumed. And it's natural that people, as Mr. Page has indicated, it is natural that

people that age would want to consume alcohol in a pleasant environment.

MICHAEL GARDNER: Thank you very much.

Pleasure of the Commissioners?

Mr. Rafferty, I see you are here. Do you want to come up and identify yourself again for the record, please.

JAMES RAFFERTY: Thank you. Good morning Mr. Chairman and members of the Commission. My name is James Rafferty, R-A-F-F-E-R-T-Y, and I represent the applicant, and seated to my left is Joshua Bhatti, B-H-A-T-T-I. Mr. Bhatti is the proposed manager.

Just briefly, thank you for the opportunity. I wanted to just update the Commission on certain events that have occurred since we were last before you on this application.

That evening or shortly the next day,

I extended an invitation to Ms. Gifford and a group to come and tour the premises at a time that was convenient for them and to meet with the operators. I felt it was important since there were a number of assumptions being made about the place that were being done so without the benefit of even understanding the physical space.

And so we were able to schedule such an appointment. And I was pleased that Ms. Bartholet, who testified this morning, as well as Mr. Chapitz, accompanied Ms. Gifford. And we took a tour with Mr. Bhatti and walked through it, and Ms. McMillen of the Defense Fund with Ms. Gifford was also present.

And we spent nearly, I would estimate, close to an hour in the premises explaining the relationship of the dining room, the outdoor patio, where the live entertainment will occur. Because you may gather from the testimony, as recent as this

morning by Attorney Page, a very capable attorney and admittedly arriving at the 11th hour, there is a use of numbers here that really don't tell the full story.

The performance area has a capacity of 525. There will be a ticketed venue. So the number you keep hearing is 700 plus. That represents, of course, the number of people that can be in the performance area and in the restaurant combined. But the notion that at a certain hour 700 patrons will exit, just isn't accurate. The number is probably, on a night when the performance is completely sold, it would be 500, 525.

But you'll recall from the testimony about the way this operates, I would suggest that in many ways there is a far greater control over the capacity in a ticketed environment as proposed here, than as is the case in a traditional nightclub.

And the temptation here is to

continually refer to this as a nightclub and, in fact, it is quite different. And it was for that reason that we spent a fair bit of time in the hearing that many people this morning didn't have the benefit of attending, where the operator walked the Commission through their other venues and their business model to explain how it is that they are able to moderate and control patron activity, because admittedly, that's a fair number of patrons.

We have provided a policy position paper to the Commission, and I was only aware of and learned of Mr. Page's involvement last evening, so I provided him with a copy this morning. But it is an attempt to allow the Commission to understand the amount of planning and management that goes into operating a venue at this particular location.

It is somewhat ironic that the criticism or the concern about loading and

delivery is focused on the performance area when, one, I would suggest the Commission could cite experiences, and abutters would presumably concur, a 300 or 400 seat restaurant, for which this was previously permitted at 300 plus seats, that the amount of food delivery, the amount of trash, the amount of recyclables, I could make the case that that is far more intensive in terms of the infrastructure of the street in the loading areas than what's proposed here.

You'll recall from the testimony of Mr. Glancy, one of the advantages of this operator is that all of the sound equipment and related audio equipment to the performance is going to be fixed in the club -- in the venue.

So where you typically have a band arrive in a nightclub setting, they often bring everything, their own speakers, their own sound boards, their own microphones, all

of that is fixed. So the testimony is that the when the musicians arrive, they will bring little more than their instruments, and that's a highly manageable situation.

I think there has been a misplaced analogy here concerning the Oxford Ale House. The Oxford Ale House is -- and I did personal research on this when I was in college in law school so I'm speaking from direct knowledge -- it was a very active place with limited management, and it had a representation as a rowdy place. In fact, it is one of those places that don't exist anymore for a reason. It was a -- it had a difficult impact on the neighborhood and the environment. And there are people that worked hard to see to it that it was closed. But we are going back 20 plus years now to recall that.

There was a place called Ken's Pub in Central Square that was somewhat notorious 25

years ago. I'm not sure of the relevance of those things. Certainly an abutter doesn't want to return to those days and that's understandable, those who lived through it probably still have vivid memories of it. But there is nothing in this operation that would suggest anything close to that.

One of reasons I wanted Ms. Gifford and her associates to see the space is, it's not predominantly alcohol focused. There is one bar in the performance area and there is one bar in the standing area in the back.

And you'll recall from the testimony there is not a wait service, no one is pushing drinks on I anyone. The testimony from Mr. Bhatti is that the average drink, they estimate, is approximately two drinks per person as they track the revenue.

The last comment that was about a percentage of rent was, frankly, bizarre. It's a typical commercial lease that includes

a percentage rent related to all revenue based upon a break point. They have it at Dunkin' Donuts, they have it at a range of retail locations. So to suggest that because there is a percentage rent here -- what attorney Page was referring to was, in the application documents, the ABC takes the view that, for disclosure purposes, if a landlord is receiving a percentage rent, then the landlord is deemed to have a financial interest in the license and, therefore, the landlord must be vetted through the same process that the applicant is. It's a rather strict standard.

And so in this case, the lease does propose a percentage rent, and I would venture to say -- and Ms. Lint would be a far greater authority than me -- but there are probably hundreds of similar commercial leases where we have to disclose this and landlords have to -- it comes as a surprise to them, but they then need to disclose all this.

But the notion that the landlords would be somehow engaging in activity to encourage an increase in alcohol sales, I'm not sure what Mr. DiGiovanni could do every night other than try to push drinks on people. It is a quite an unusual consent but I think it underlines a lack of understanding. And it may come from not really being familiar with the restaurant and a commercial leasing business. But that is in no way an anomaly and should not give the Commission any pause in assessing this.

And, finally, we have been listening to concerns that are mindful of the impact, so the applicant is prepared this morning to ask the Commission to consider a modification to its request in terms of its entertainment license. And I shared this earlier last week when I met with the some of the neighbors. The applicant would propose that its entertainment license include a 12:30 on

Sunday through Wednesday. The current application looks for the full 1:00 a.m.; and similarly, 1:30 on Thursday, Friday and Saturday.

Now, you'll recall the testimony that the 12:30 and 1:30 are frankly exceptions and not the rule. The average closing time for a performance is closer to midnight.

You'll recall Mr. Glancy's testimony that when the performance is over, there is no further sale of alcohol in that room, so patrons do begin exiting at the conclusion of the performance; the lights come up, the band goes off, if you'll recall that testimony.

So patrons begin leaving as soon as the entertainment concludes. And they may choose to go to the restaurant or they may choose to go to other venues in Harvard Square or places beyond Harvard Square.

But we wouldn't -- we are seeking as a response to concerns that the entertainment

license would be curtailed. And I think it is fair to say that it's the live entertainment that has been the focus of much concern here.

But it should be noted that this live entertainment is part of a restaurant experience, many of the patrons attending the concerts are anticipated to be arriving here for dinner. If a show were to end early, the kitchen is going to stay open late, so they could remain on the premises and have food as well. So there is definitely an opportunity here for the restaurant experience and the entertainment experience go hand-in-hand.

MICHAEL GARDNER: Could I just ask you to comment on with respect to the hours of operation on the entertainment license. Some material from the minutes of the November 15th hearing, I believe it is Mr. Glancy who is speaking and talking about the typical arrangements. He says that, generally speaking, "The typical performance show runs,

generally speaking" -- this is on page 29 of the minutes -- "something like the doors of the concert hall would open at 7:00; and or around 8:00, a supporting act would go on; the opening act usually plays a half-hour or 40 minutes; sometimes there is a second opening act which would also play 40 to 45 minutes; the headliner comes on; the headliner usually plays between 60 to 90 minutes; and that's it.

"So you are talking about 7:00 doors open and shows ending usually at 11:00, 11:30 to 12:00 at the latest is the norm."

Mr. Glancy then went on to elaborate: "We follow what the community wants in terms of if their fans like an earlier door time and an earlier ending time, say on a Sunday night, that's what we'll do. If people like a slightly later time on a Friday or Saturday night, then that's what we'll do. We very much follow what the fans want and what's expected in the community."

So, I guess, given what Mr. Glancy said there with respect to those hours, the fact that, as I understand it, the last Braintree bound train leaves Alewife at 12:15, the last Ashmont bound train leaves Alewife at 12:22, these are a.m., I'm not sure at all I understand the need to have an entertainment license going as late as 12:30 on Sunday to Wednesday or 1:30 on Friday and Saturday.

I mean, if the concerns of the neighborhood are all about all this noise, what is wrong with having the concerts end at 11:00 or 11:30?

JAMES RAFFERTY: The marketplace dictates I think some of the norms around concert times. I think that you would find that the performances of this musical genre typically occur in that time frame.

You used the words, "What's wrong?" I would suggest that is not the standard. It's the first we've heard of that. I think

or I hope I made it clear earlier that even with the 12:30 request, it is largely the exception and not so much the norm. And I think that we firmly stand behind Mr. Glancy's testimony that the likely closing time for most acts is around midnight. The 12:30 time does allow a little bit of flexibility for an occasional deviation from that.

But, you know, we have 1:00 a.m. licenses in the city and we have 2:00 a.m. licenses in the city. I suppose one could ask the question: What's wrong with closing every restaurant or nightclub at 11:00 p.m.? And I imagine there would be some people of a certain demographic and age group who would think that is just fine. I think the operators would suggest otherwise.

And I think that the definition of the "community" might be a little broader than people living within a few hundred feet of the venue. The community includes the patrons

that attend the performances, it also includes people that work in this industry.

And so I think the restaurant/entertainment industry is nocturnal by nature, and I think it would be a hardship to have a closing as early as 11:00 p.m.

MICHAEL GARDNER: Well, let's not confuse the restaurant with the concert because --

JAMES RAFFERTY: I'm talking about the --

MICHAEL GARDNER: I understand. I'm talking about the entertainment license. And you put a lot of emphasis on "this is not a nightclub, this is a concert performance venue." I think we had Mr. Glancy saying "12:00 at the latest is the norm."

JAMES RAFFERTY: And I confirm that, I'm not taking exception with that. I tried to say, and I will repeat it, that we stand by that testimony, it is the norm. We recognize

the application asked for 1:00, we explored scaling it back in response to that and to reflect the reality. The 12:30 allows for some flexibility on occasions when the norm doesn't happen to be occurring. But I think the norm is around midnight and 12:30 provides the flexibility.

MICHAEL GARDNER: And the reason it doesn't -- and I'm not sure I quite get the dynamics here -- is that sort of a musician preference?

JAMES RAFFERTY: Well --

MICHAEL GARDNER: That is sort of what I kind of got from Mr. Glancy. What's going to make the difference as to when the show would end?

JAMES RAFFERTY: My guess would be, and I'll defer to Mr. Bhatti, I would think it would have a lot to do with when the show starts. And there is also a certain set that could run long, and there may be a desire for

an encore. And to have a stop-watch there at midnight and say, "pull the plug at that time," that's the exception. But these are not -- in what I've learned from Mr. Glancy and Mr. Bhatti -- this is not as tightly choreographed and restricted as a play or a musical.

So, yes, I don't think it takes much imagination to understand that there is some factors, whether it's a late-arriving band or whether the first act stayed over longer, or whether there is an acoustical problem getting something to work, they might find themselves extending beyond midnight. I understand the point.

And as I said, we stand by the testimony of Mr. Glancy and the Commission and we are not walking away from that. And if the Commission feels that that's problematic, I'm sure you'll deal with this. But I want to be clear, Mr. Glancy's characterization of

timing is consistent and I'm not suggesting otherwise this morning.

MICHAEL GARDNER: And in terms of traffic and outflow from the performance, would you agree that the T's schedule is an important component to consider?

I take it on the assumption that Harvard Square in general would be better off if a large number of patrons were, in fact, using the T as opposed to bringing in two-, three- or four-occupant vehicles to the neighborhood. I wonder if you could address the question of the T's schedule as it relates to the end of performances.

JAMES RAFFERTY: Well, if the question is: Do I believe there is a relevance to the T schedule? I think I'd have to agree that there is some relevance to that, there are some patrons that do that.

I would say that it is an ongoing issue with the T. There is a lot of post T

closing activity. But to the extent that the T patrons -- to the extent that is a transportation option, I certainly think that's a relevant consideration to the Commission in evaluating the hours here.

MICHAEL GARDNER: I interrupted your presentation. I'll turn it back to you if there was more that you wanted to say.

JAMES RAFFERTY: Very little more beyond wanting to assure the Commission that the fitness of the criteria associated with the transfer of the license, I think, involves a few aspects. The fitness of the operator is chief among them. And in this case I think there is ample testimony as well as letters to the effect that this is an operator that is experienced in a venue of this nature. I was pleased people got to see it because it will represent a significant investment on the part of the operator.

And I will remind the Commission

there was ample testimony from a range of sources at the November hearing as to the benefits associated with this use. There are some times when one feels like the music man is being recast. I mean, the notion that it is loud, it is young people. We have a very strong undergraduate presence in Harvard Square. What has strongly been left out of this is the number of people that can simply walk to this venue.

We have plenty of young people in and around Harvard Square that attend school here, that may find this venue appealing. It is tightly controlled and it's not focused on alcohol, it is really focused on performances. And I think that the issues around management are important and should be closely monitored, and that the Commission has an effective track record.

I can't think of a licensee today that is permitted to engage in the type of

conduct that was so offensive and objectionable many years ago. But that's a credit to the License Commission and citizen advocates who demanded certain changes.

But those venues didn't exit just on Church Street. It was a different time and different era, and I don't think this use of this location, this transfer, would in any way suggest we are going to return to an era where, you will recall, the drinking age in those days was 18. And it wasn't just college kids, it was a very popular high school destination, the Oxford Ale House and some of the other places. And drinking was probably the least of the problematic activities going on at some of these locations.

So this operation and the transfer of this license really is so far removed from that activity, that I think any reason to look unfavorably upon it based upon a 20- or 30-year history of the prior uses is just

unwarranted. I hope the Commission has a copy of the letter.

MICHAEL GARDNER: We do have a copy of that.

And let me just also repeat on the record something that was said at the November 22nd meeting, which was after the November 15th hearing, that Ms. Lint and I took the opportunity to tour the site as well. And some time before the 22nd, I'm not exactly sure now when, but we spent about an hour, hour-and-a-half viewing the site.

Mr. Rafferty, we did get the detailed e-mail from Mr. Getz pointing out what he regarded as some easement issues. I wasn't at all sure that I felt like any of that was necessarily the business of the Commission, but I would like to know if whenever those concerns are taken care of or if there is anything that you think is, in fact, remaining relevant that we should be concerned about.

JAMES RAFFERTY: Well, Mr. Chair, to the extent the Commission deems it relevant, the landlord. Mr. DiGiovanni, is here. He owns this property, he owns the property next door, he owns the fee interest in the driveway, but there are some cross-easements, and he asked me to speak to that and he's here this morning.

MICHAEL GARDNER: All right. I'd like to hear that. Mr. DiGiovanni, can you come up to the front and state and spell your name for the record.

JOHN DiGIOVANNI: My name is John DiGiovanni, D-i-G-I-O-V-A-N-N-I, Trinity Properties.

Yes, I received a copy of that e-mail and actually met with Mr. Getz and walked through the premises with him as well. There are two easements. There is one -- and I actually have a photo if you want to see it and that might help you (indicating photo).

(Handing photo to the Chairman)

JAMES RAFFERTY: The Commission orients itself to the photo, you'll see an area abutting the premises with striped lines at a 45-degree angle, that is parking, that no longer exists. It is in that area that the new entryway was constructed.

So as you look at the plan, you may question where those parking spaces are along that driveway? They are not there any longer, that is where the stairway entrance is to the property.

JOHN DiGIOVANNI: So, I mean, even if we are talking about the easement, I think the most significant point is that we thought very much about the delivery of this. And, quite frankly, one of the potential operators of this was a restaurant of a much larger capacity than the 175, more around the 400 something range.

But, quite frankly, the quite kind of

delivery that they would have would be similar to what the Brew Moon and the previous restaurants were delivering in that back alley as well as on the street. Quite frankly, there is a fair amount of deliveries on the street as well.

We think with this particular use, one of the benefits was, in fact, it will be less deliveries and, quite frankly, less trash to be removed with this type of operation.

What they are really selling is music, is sound. And Mr. Rafferty is correct, that the only thing they are bringing in, and that's later in the afternoon, is their equipment from the band but not any of the sound equipment and so forth, that would be there already. So, quite frankly, it's a smaller restaurant than what that service alley had to handle for many, many years.

As far as rights over the property, they have, that is, Mr. Getz's property that

he manages, is the dominant state over the driveway, which we, in fact, heated. We heated that for safety, we did that for the operation. Because now a driveway that was previously just for vehicles, was now the front entrance to an operation and we wanted a safer situation. We can't control when it snows, and we did that.

So the area in which there is the new pavement, they actually have the dominant estate and have the right over that.

At the end of that 17-foot wide around to the back of our building, we have an easement, and we would be the dominant estate. So we have complete rights over that such that they can't interfere in our deliveries for that space.

But it has worked well, and we don't want it to change in any way. Quite frankly, we think this use has less of an impact in that back area as far as deliveries being made

to this space.

And we anticipate, quite frankly, a way for the bands to go through 50 Church Street, so they would come in right from the street and deliver right up the ramp.

And we talked about this with Josh at great lengths on how we would do that. And even during the morning, we are allowing some deliveries to go right through the front door and not the back alley, so long as they have a staff person and facilitate an easy flow through the building.

So we very much want the back area to look better, we think it does look much better from the street, and we want it to continue to operate that way.

So if there are any questions, particularly about the easement, but it is really straightforward, they have rights over our property, and we have rights over their property in the back.

ROBERT HAAS: How do you plan on using the alleyway?

JOHN DiGIOVANNI: Just as it has been. That is to say, there is a common trash area in the back, there is loading, and there is some parking. Some of the businesses back there do park their vehicles there. We do want to maintain the front area that's on the street in a way that doesn't feel like an alley, that it looks like a sort of an oasis there, and we were even thinking of putting some windows on the side of the Sage Building to make it feel less like an alley.

But as far as use, very much as it has been.

And the majority of the deliveries, I would tell you, are prior to 10:30, 11:00 in the morning getting back there with larger trucks. And then it's very small vans for the deliveries from the flower shop and some deliveries from the food places in smaller

type vans.

ROBERT HAAS: So the issues raised by Mr. Getz have been resolved at this point?

JOHN DiGIOVANNI: I think they have been. We've spoken. I think he is still concerned that this venue might be more than what the Brew Moon or the previous restaurant in there. But we actually think the impact of a smaller venue and a concert hall would have significantly less than the others, which is one of the reasons we saw this as a better choice than a larger restaurant.

MICHAEL GARDNER: Do you expect any deliveries on Church Street?

JOHN DiGIOVANNI: Some deliveries. There is a loading zone there that we would expect some deliveries. And surely from the bands coming in in the mid afternoon, we are going to go allow them to go through the office lobby, if you will. It's something we are concerned about but we think that can be

managed.

JAMES RAFFERTY: You may recall there are multiple points of access into the venue. There is a ramp at 50 Church Street, that if you come up in the pedestrian ramp you could enter the space. There is the new entry at 52 Church Street. And then there is also an entry to the premises down in the area depicted on the picture at the end of the driveway.

MICHAEL GARDNER: My understanding of the 50 Church Street at least the egress for that was not going to be the norm, that would be emergency only. I assume that is true for access as well?

JAMES RAFFERTY: I think it is true, but I was just responding to the delivery question that Mr. DiGiovanni was saying the deliveries could come in.

But I think there has been some rethinking of that on the egress side, and I

know, Josh, there has been some talk about it, that it might be beneficial to have two points of dispersement. So I think that is still under consideration. Is that fair to say?

JOSHUA BHATTI: Yes.

JAMES RAFFERTY: Whatever we -- you know, the neighborhood and the police and fire feel the safest way to get people out of there is; if it's to have them come out through 50 Church Street, we're open to that.

JOHN DiGIOVANNI: Or some combination.

MICHAEL GARDNER: Commissioners, any questions, general questions?

ROBERT HAAS: I guess the other question I have is with respect to we've experienced some issues with respect to people coming out all at once. And we've worked with Fire and Ice to actually separate that. Now, you are compounding that again with people particularly at an entertainment venue where

you're going to expect a large number of people coming out at whatever time that venue ends.

So I'm just trying to reconcile on how we can kind of keep some separation so you don't just have a confluence of people all at once on Church Street. So can you talk a little bit about that?

JOSHUA BHATTI: About the separation between --

ROBERT HAAS: So, for example, at Fire and Ice we had some issues and what happened was various venues all kind of let out at the same time. They all came out, roughly 300 people, into the street and there was some disturbances on the street. And Once the owner of Fire and Ice kind of separated that, they seemed to have abated a lot of those issues.

So I'm just trying to figure out now that if we add a new venue onto Church Street,

there's the potential of them all coming out at the same time just by the very nature of the business.

So how are you going to -- I just got the plan this morning, so I really haven't had a chance to look at it. But can you just talk a little bit about how we can effectively manage people moving without creating a lot of disturbance on the street, when they are all coming out at the same time, and keeping in mind that there are other establishments along Church Street that are potentially coming out at the same time.

JOSHUA BHATTI: John Shaw, the proprietor of Fire and Ice, and I have spoken about, you know, should this come together, how will we communicate and work together

MICHAEL GARDNER: Excuse me. Could you state and spell your name for us, please.

JOSHUA BHATTI: Joshua Bhatti, B-H-A-T-T-I. So we have spoken about having

same similar closing times and working together. And I think it's a lot of communications, both between us and him, us and the police department, in terms of what's best for the neighborhood in terms of times and so forth. And I think that was part of our, you know, voluntarily saying that we'll bring the entertainment hours back a half-hour to give us more time to help those patrons exiting the venue, that it is not at the same time as the restaurants are closing. So that way it isn't 700 people coming out onto Church Street at one time.

The entertainment venue, the musical portion closing a half-hour earlier, which would give ample time to have all those patrons exit. And, again, that is the latest closing time.

In our experience, we do about 1500 concerts a year in a music club setting, so we do have a big number to draw from over past

experiences. So each year with 1500 concerts, we are not picking out 11:30 as a closing time based out of nothing, it is based on operating experience.

So in that time that we'll be closing earlier, as you have more time to look at the security document, we do clearly have a plan of staff, both before the point of egress at the venue as well as out on the sidewalk at the edge of our premises to help guide patrons towards the MBTA, towards the taxi stands, and kind of answer any questions and head off any patrons who are, you know -- again, louder, but not criminal activity, just being disruptive to the neighborhood, and trying to diffuse those and remind them that, "Hey, we are in a neighborhood setting, be respectful."

And we have venues that do operate in neighborhood settings and it has proven very effective for us having that presence there.

Again, like Attorney Rafferty was

saying, you know, people keep trying to tie in the correlation to Oxford Ale House. I wasn't even of age when that venue was operating. But if you open the doors at 2:00 a.m. and let everyone pour out with no monitoring, then yes, the potential for issues is there.

But if we are staffing two to four staff members out there each night, it goes a long way in helping with that; as well as communications with your department, with whatever the best practice is or what's comfortable with your department, whether it is, you know, weekly updates of "these are the anticipated closing times for each of these concerts, this is when they'll be letting out. Should a detail be required or requested, do we provide that?"

I know John Shaw at Fire and Ice had both, he had details and not had details. So I think whatever is most comfortable for the vicinity and the neighborhood.

ROBERT HAAS: Can you talk about some of the venues that are located near residential properties --

JOSHUA BHATTI: Yes. Music Hall. Williamsburg, is in the Williamsburg neighborhood, there is abutting residences there. There is Webster Hall and that's in Union Square in Manhattan, and it is all residential brownstones surrounding it.

And, again, there we work with -- you know, our event staff is there out on the sidewalk making sure people aren't overflowing into the street while they are exiting. It's just not allowed.

And some venues we have put up a bike-rack barricade; for a larger venue that's what we'll put up. But for something like this, I don't think it's requires that.

And I think sometimes it's just having a presence of keeping people on the sidewalk, and we'll do that.

Again, if it's 525 people exiting the venue on a sold-out night, there is a certain level that will -- it takes about 20 minutes to half-an-hour of people buying merchandise, people stopping at the restaurant in the restaurant, so it isn't an exodus of 525 people stumbling out, throwing bottles. I mean, you can't exit the venue with a bottle. I don't know if you could in the past. But it just doesn't happen. We staff -- we overly staff maybe to make sure that that doesn't happen.

ROBERT HAAS: And what's your relationship with the establishment in Boston?

JOSHUA BHATTI: Just a booking relationship. Meaning we book the concerts in there; we don't staff the bars, we don't staff the security. We don't have any management of the venue outside of the actual just concert.

ROBERT HAAS: You are more of a promoter for that venue?

JOSHUA BHATTI: Exactly.

ROBERT HAAS: And you have no intention of bringing --

JOSHUA BHATTI: Right, zero.

ROBERT HAAS: Can you talk a little bit about concerns with respect to the ticket prices and the types of venues you are bringing in the entertainment --

JOSHUA BHATTI: Again, ticket prices, I think it is based on past experience for us. We feel we know what our patrons will pay. If we are pricing a ticket too high, then we are not going to have people show up and we are not going to make money.

We don't pick the ticket prices out of the air. With us, it's a conversation between the band's booking agent and ourselves. We know what the ticket price is. These bands that are coming in are probably playing 30 to 40 cities across the country. Every single ticket price for this band across

the country fluctuates by two or three dollars, depending on the market.

You know, in New York you might get a premium price and in Boston it might be down a dollar, and in Albuquerque, New Mexico, it might be down by three dollars, just based on the economy. We know our numbers, we know our ticket prices. I mean, that wasn't even something that -- we know that we are in the \$12 to \$22 range, somewhere in that venue depending on the act.

In terms of the types of acts, again, I think we spent we some time in the last meeting going through the different types of acts that we brought in. You know, it's primarily rock bands. Again, we do about 1500 concerts in a music club, in a music hall type setting, a younger crowd. I think our track record for the types of acts, you know, speak for themselves, and this is not going to be a different option than any of those other

venues.

MICHAEL GARDNER: Again, if I heard you right, although you are asking for an entertainment license that provides for dancing, you are really not expecting people to dance? That's not what they do?

JOSHUA BHATTI: Right. In dancing, I think that's maybe a -- I don't want to say a peculiarity of what it is on the license, I don't know how far back that goes and --

JAMES RAFFERTY: We weren't quite sure how to classify "swaying to the music," and we thought the more cautious approach would be, depending on one's particular aptitude, they might be doing something akin to dancing. But it's performance based, it's not a dance hall. There is not at DJ sitting up there playing other people's songs.

In fact, I should point out that I was contacted by the administrators noting that we didn't have a DJ license, we hadn't

applied for that in entertainment.

And I checked with the proposed licensee and they said, "No, we don't do that. That's a different type of music. It attracts a different genre. So some of these places where they are spinning records and having a certain type of -- there is no DJ activity, there is all live musical performances.

MICHAEL GARDNER: Are there any other questions?

GERALD REARDON: The egress and access, obviously, will be two modes, one would be an emergency egress type situation and then one would be whatever the ebb and flow is that operates the building.

And, obviously, with people using two it works out better, separating the crowd, it is probably better.

We did talk and I did view the building as well. So we are going to a unified sprinkler system throughout this whole

building. We are going to a new fire alarm system that unified that ties into all the different venues including the Fire and Ice and the --

JOHN DiGIOVANNI: That's correct.

GERALD REARDON: So that would be all digitized so we will know exactly what pieces are going off on the fire command panel?

JOHN DiGIOVANNI: Correct.

GERALD REARDON: And I guess on the ticket pricing, does the band itself, obviously have that sliding scale, do some get more than others?

JOSHUA BHATTI: It is supply and demand. The more established the act is, the larger that the act is -- you know, again, we are not getting the Rolling Stones coming through in a 525 seat capacity venue.

So within that range, there's -- you know, if it's a new act, if it's their first time through, they might want to be more

conservative on the ticket price and keep the ticket at \$14, \$15. You know, it's knowing your demographic of what's coming in. If it's a more established group in the 30's, then you know the market will bear a \$20, \$22 ticket.

MICHAEL GARDNER: So the Commission, at least in recent years, has typically had the policy with a new applicant of not granting a 2:00 a.m. license but going no later than 1:00 a.m. on alcohol, at least for a time period.

JAMES RAFFERTY: Mr. Chairman, just to correct you, that is not the case in a transfer application. The history that you just cited is not accurate. This is a transfer.

MICHAEL GARDNER: Well, that may be a distinction which the Commission will look at.

JAMES RAFFERTY: Just for purposes of accuracy, you stated it's the tradition or the practice of the Commission, and I would say,

in my experience, is not accurate.

MICHAEL GARDNER: Well, thank you for that clarification. I guess I would ask you, in terms of what the difference in legal form would make, when essentially what we are talking about is a brand new operator with whom we have had no experience in the past, which I believe is probably the principal rationale for being unwilling to go to 2:00 a.m. to begin with.

And why, just because there was a 2:00 a.m. license here in 2006, we shouldn't be treating this as a new manager, a new applicant, someone again with whom the City of Cambridge has had zero experience.

JAMES RAFFERTY: Well, I would only say that in terms of the practice of the Commission, the Commission would want to be seen exactly consistent with its practices, nearly every transfer license involves a new operator. Few of them have prior experience

in the city. Perhaps if it's a chain or an operator that conducts the second venue. But it is the nature of transfer applications that they tend to be new entities, new operators, with varying levels of experience, oftentimes, very little here in Cambridge. So I never heard that standard articulated in the transfer hearing that since someone is new.

The licenses have certain -- I think it has its origins in the CAP. The CAP said, "If you were a 2:00, you stayed as a 2:00. If you were a 1:00, you could petition to become a 2:00. There's been some modification to that, but I'm not sure I'm in the position to lay out the policy rationale historically of the Commission on this. But that has been the practice.

MICHAEL GARDNER: I appreciate that. Any other questions?

GERALD REARDON: I have just for clarification. The request being made right

now is 12:30?

JAMES RAFFERTY: On the entertainment license, we are modifying the application --

GERALD REARDON: Sunday through Wednesday, 12:30 --

JAMES RAFFERTY: And Thursday, Friday and Saturday is 1:30.

GERALD REARDON: And the restaurant?

JAMES RAFFERTY: The restaurant would still operate under the 1:00 a.m., Sunday through Wednesday, and 2:00 a.m., Thursday, Friday and Saturday.

ROBERT HAAS: So just to go back, you do see a relevance between the MBTA schedule and a venue of this nature where people are hopefully going to be using mass transit more heavily than just an influx of cars into Harvard Square.

So I am just trying to rock reconcile in my head lining up the schedule for the entertainment venue with the schedule of the

MBTA, just so people have an opportunity to get in and get out. I understand some people would be walking because of their proximity, but I also understand there are going to be other folks trying to make their way into Harvard Square hopefully not just with cars.

JAMES RAFFERTY: Well, I think in response to the Chairman's question, I could see the Commission finding that to be relevant. Also noting that there is lots of nocturnal activity occurring in Cambridge and elsewhere beyond the operating hours of the Red Line or the subway.

But I could understand why the Commission would consider that relevant in acting upon the application.

JOHN DiGIOVANNI: If I can, we have a park facility at the corner of Elliot and JFK and that's open until 2:30 in the morning on those nights. I know Charles Square has capacity, I know University Place has

capacity.

And we hope, quite frankly, in our determination in letting this location, it's something that is a draw to Harvard Square, from all sorts of areas, whether they are coming by bike, by foot, by MBTA, bus, subway, or vehicle. And we think they will be coming here not necessarily to just to hear the music, there may be a number of things. And so we think that is a positive thing. And I think the idea for 2:00 a.m. for the restaurant allows them to stay in this area after the music is done, to stay in there for a bit so it is dispersed over time that folks leave.

JAMES RAFFERTY: To the extent it is relevant, Mr. Bhatti, just wanted to offer a perspective, kind of like a competitive perspective, in terms of other venues in the Cambridge market as well as the Boston market and what the hours mean.

JOSHUA BHATTI: Just with relevance to the closing time. The competing venues that would be operating, not against, but similar venues, have later closing times. Again, it's not something that I think, looking at our track record of the number of shows, we are stating, and we are not trying to misrepresent ourselves, that the majority of the shows will end between 11:00 p.m. and midnight, but having that flexibility to be permitted earlier than that, you know, puts us at a competitive disadvantage with the other operators in the area. So we would like to be able to compete with them.

And, again, I think our track records shows that 90 percent of our shows run to that earlier time frame, but just having that in the license is clearly something that, you know -- if we want to change it or adapt to it, it's quite a process rather than putting that in there.

ROBERT HAAS: In my head, I'm just trying to figure out or trying to strike a balance with respect to your business plan at the same time with the configuration of the street and the other business establishments that are there.

We have an influx of people coming onto that street, it's a narrow street. And, again, people are going to congregate in the street, and by its own very nature is going to create some disturbance in the area. So it's how you move folks around and get people to where they need to go without having people trying to stay waiting for a taxi and just hanging in the street, that's going to generate a lot of noise.

So I'm trying to figure out what that looks like and, again, have some degree of separation, so you just don't have a thousand people coming out onto Church Street.

MICHAEL GARDNER: So something

that -- that's a little troubling to me. And I'll just ask you, any of you, to respond to it. One of the things I sort of worry about it is, okay, if we approve this in some form and you go ahead with what appears to be your significant capital investment, some of which has already been done but there would be substantially more. And then three, six months, nine months, a year later, you say, "We think that the critics are right," and you have very negatively transformed the experience in the square, where are we after that significant capital investment you've made?

JAMES RAFFERTY: Well, Mr. Chair, you can take the view that that's something that ought to give greater pause to the applicant to the Commission, because the Commission has very effective tools at its disposal, including rollbacks of licenses, suspension of licenses. And we certainly don't contemplate

having any such scenarios.

But one could suggest, and I would in this case, that that provides a tremendous incentive for the landlord and the operator to abide by whatever conditions or restrictions are associated with the license, because this business is entirely tied to its entertainment license, and certainly there's the performance part and its restaurant is tied to its CV and alcohol license.

So it is a built-in incentive, I would suggest for the operator, aside from the capital expenditures associated with the build-out, to operate an establishment consistent with the expectations of the Commission. Because their failure to do so would have a colossal economic impact on their business.

MICHAEL GARDNER: Thank you.

GERALD REARDON: That was one of my thoughts all along. I guess this is, looking

at the build-out part and the potential investment, we are probably looking north of \$3 million here combined.

JOHN DiGIOVANNI: With the work that's been in there, absolutely.

GERALD REARDON: That a substantial investment. That was who was one of the things that, you know, obviously, if this is approved predicated on the venue and the reporting of everyone involved, how it's going to operate, then things would be fine.

But, obviously, you know, I would want to know if it turns around and it's not operated properly, you come back in and there's a suspension filed, that every one here has a tremendous amount of money to lose.

And, obviously, the fact that you get a license is a privilege, it's not a right, and it can be reviewed. So I think there is a lot of control here, and I guess I'm glad the question came up. Because I wouldn't want

anyone in great disdain a couple of months from now when they find out they've changed to a different venue and are no longer licensed and they are looking at a tremendous loss several months from now.

JAMES RAFFERTY: I regularly counsel clients, regardless of the makeup of the Commission at any given time, that if they have such difficulty, their economic condition is really not the concern of the Commission. So they really need to comport themselves in a way that does not find them facing disciplinary actions. Because I think the Commission has a very strong record of enforcing regulations and conditions that apply to them.

I don't think it's simply a coincidence that the type of places that you sometimes hear about being bemoaned and deprived from years ago. Frankly, I don't know of any of them that exist today in

today's environment in Cambridge.

MICHAEL GARDNER: Mr. Bhatti, I'm still confused about this competitive disadvantage that you would be placed at. If Mr. Glancy said 12:00 is the latest --

JOSHUA BHATTI: It's the norm.

MICHAEL GARDNER: Well, I think he says 12:00 is the latest. He said, "So we are talking about 7:00 the doors open, and the show is ending at usually 11:00, 11:30, 12:00 at the latest is the norm." So you are right. He said the "latest" and the "norm" in the same sentence.

What, in terms of the competitive disadvantage if there are places where shows are still going at 1:30 up until even last call, because I actually don't know what happens in other places, what is it that puts you at a competitive disadvantage?

Is it customers who say, "Oh, I don't want to go there because the show is over at

midnight"? Or is it the band who says, "No way are we playing at a hick place like that, that's not hip enough to go into the early morning"?

Are the people coming to hear the band? Are they coming to stay out until 1:30 in the morning?

JAMES RAFFERTY: Before he answers that, I just want to focus on -- and I haven't had the benefit of the transcript -- but I believe he was referring to the non-weekend evenings in describing that schedule.

Isn't there a later commentary about on weekends you can go a bit later?

MICHAEL GARDNER: I read the whole transcript this morning and I did not see that. I don't think he wrote out any distinction at all. He says, "The venue we are estimating will probably do 200 shows a year. Our peak times in the year are in the fall and the spring, winter and summer are

slow. It could be one or two shows a week, in prime time four or five times a week. The typical performance show runs, generally speaking, something like" --

JOHN DiGIOVANNI: If I can just say something that relates to your previous question and that the Fire Chief was just talking about, what he saw and I think everyone saw the amount of investment here. The idea that there is a hard stop because you wouldn't dare want to put your license at risk. And if there is a certain program going on, and that they have to turn the lights on at the time that you are suggesting, I think it would get a reputation that it's not as interesting or as good an entertainment location that may be in Boston or otherwise.

And what I can say to you is, we have these conditions in our building and the lease requires that we follow all the laws within the state and the city, so to me the time,

it's important they are able to do their business; but, most importantly, that they are not a disturbance at all in the building. I mean, we have a sound issue inside the building, let alone outside the building, that they are going to have to pass that test.

We are very much concerned about the entire community. We are thinking about not just Church Street people, we are talking about the entire Square that this matter belongs to.

And the idea that he has the ability to perform under that lease and to be able to actually compete is very important to us as well.

And I think the idea of a hard stop, is the concern, you have a norm, but the idea is you have to be able to conduct your businesses.

He has put in significant dollars in this company, as well as we did. We want this

to be successful. And the idea that it would be that tight would be a real concern on our part as well.

JAMES RAFFERTY: Mr. Chairman, there is a recognition in the license with respect to higher demand, and the longer activity on the weekend. So my memory must not be -- it doesn't reflect that if there is not a later reference to it. But I know from Mr. Bhatti that there are acts on the weekends that may not get started much before 11:00, depending on how many warm-up acts there are.

And then there is a whole world of people whose Friday night begins between 10:00 and 11:00 p.m. I assumed, when we were talking about midnight, you were responding to our request to modify the 1:00 a.m. portion to 12:30. And I think even in your recitation of the T schedule there is a later weekend --

MICHAEL GARDNER: No. The schedule is the same for the T. The night owl service

is gone, as recently as December 6th, when the T's general manager said, "There's no money for it, you are not doing it." So these are the weekday and Saturday and Sunday schedules. I don't think they are different at all.

JAMES RAFFERTY: I don't have any familiarity with that, the weekend schedule on the T --

JOHN DiGIOVANNI: You know, that just means folks will be leaving sooner if they are traveling by T. So that may be just one way people will disperse at various times. And if the music is continuing and they have to hit the T, you have a way in the building of letting folks know when the last T scheduled is.

So to me, I think that is clearly one access to Harvard Square, the MBTA, and I think they need to be sensitive to that. And I do think the norm is likely what's going to happen. I just wouldn't want them to be at a

competitive disadvantage, it's setting them up for failure.

JOSHUA BHATTI: Well, if a band were to arrive late, for a variety of reasons, a car breaks down or this, that or the other thing, and we get delayed by a half-hour start time, we do have an unusually early end time, vis-a-vis, similar venues in town. And we are under the constraints of whatever earlier time we have, and the headliner now is delayed in going on, now the show has to end by a certain time by a condition of our license -- and I will state at an earlier time as is customary practice across the city for live music -- then that creates, you know, a problem for us in that, you know, if a headlining act, and you are paying the \$15 to \$20 to see a band and now, because of our stipulation of time, the act isn't necessarily in there that the band is now playing, and the headliner that would normally play a 70 minute set is now cut

down to a 30 minute set, you know, that brings issues.

Again, I would love to go back to our experience as an operator and in our wide number of shows that we do and tell you that our work and our reputation is very important to us, and if we are generally operating, you know, like you said, about 1500 concerts a year, knowing our end times were very important to us, but putting that in as a stipulation should anything change. And if anything does change with the MBTA schedule or if there is a special show that does want to run later, to have to go through the, you know, re-licensing and everything, it makes it difficult for us; it puts us at a competitive disadvantage.

And I think that was part of our thinking was, we acknowledge the concerns of having our entertainment end at the same time as our scheduled closing hour. And it's not

to say that we voluntarily offered this out, but it was one of our lines of thinking of: How do we make this a little easier on the neighborhood, on the neighbors? And that was one idea in our minds of rolling back the entertainment hours a bit, you know, voluntarily.

JAMES RAFFERTY: The other component that I think is worthy of consideration by the Commission is the policy requirement, which I would suggest could become a condition of the license, is that, at the conclusion of the performance there is no further sale of alcohol within that portion of the space.

So in many ways whether it's a 1:00 or 2:00 a.m. alcohol license, they are saying if a show ends on the night that's norm of at 11:00, 11:30, there is no more alcohol service after the performance; they could admittedly go into the restaurant portion or elsewhere. But that is a condition that is being proposed

or offered as a way to mitigate some of these impacts that have been expressed, and that would have the effect of voluntarily reducing the hours that they could serve under an approved liquor license.

MICHAEL GARDNER: Yes, I believe we had that conversation on the 22nd.

JAMES RAFFERTY: That would be their position, is they would -- that their desire is -- I think Mr. Glancy's testimony is once the lights go up, then everybody leaves. So there is no ongoing alcohol service in the room containing the live entertainment after the entertainment concludes.

JOSHUA BHATTI: We are happy to have that as a stipulation as well.

JAMES RAFFERTY: That could have the effect on some evenings of having a liquor license. On the evening that things concluded at 11:00, it would be a weeknight that the license would be allowable to 1:00, it would

effectively be stopping service in that portion of the premises approximately two hours before the others.

ROBERT HAAS: I mean, we can allow that to happen or we can establish a position where there is a floating time for closing in this type of venue as opposed to what we normally do?

ELIZABETH LINT: Sure.

MICHAEL GARDNER: And there are two bars that serve the concert hall, right?

JAMES RAFFERTY: Yes.

MICHAEL GARDNER: There's the one on the first floor sort of off to the side, and there's one on the second floor at the end of the building, at the end of the space sort of opposite the stage?

JOSHUA BHATTI: When you enter the concert venue, there is a small service bar as you enter off to the left; there is the one on the far wall underneath the balcony; and then

there is a small service one as well on the mezzanine.

JAMES RAFFERTY: So there are three. But on the first floor it's a -- if you recall the area where you step down, it is before you step down into the larger space, there is an area that is kind of in the middle there. It would be an eight-foot wide bar as proposed on the floor plan.

So those three bars would not have any alcohol service after the conclusion of the live performance, just as a policy. Kind of like whenever the 7th inning occurs at Fenway Park --

GERALD REARDON: So would you stipulate to a time of simply that when the show is over, the alcohol sales stop?

JAMES RAFFERTY: In those three locations, yes.

JOSHUA BHATTI: In that space.

GERALD REARDON: In that very first

bar when you walk in, is that menu shared with the restaurant at all?

JAMES RAFFERTY: In the floor plan, to the left would be the lounge with the restaurant and there is a bar there. That wouldn't be covered by this. This would be the three bars identified by Mr. Bhatti; the larger in the performance space, the smaller bar, just on the edge of it, and a small bar just in the mezzanine.

MICHAEL GARDNER: Any further questions? The pleasure of the Commission?

ROBERT HAAS: Mr. Chair, I think there is still some more issues that I've got to look at. We just got this plan and I'd like to have more time to kind of review some of the material that we just got.

MICHAEL GARDNER: Okay. So we have a tentative date scheduled for December 29th at 10:00 a.m.?

ELIZABETH LINT: Yes.

MICHAEL GARDNER: Is that a date that works for you?

ROBERT HAAS: No, I won't be here.

GERALD REARDON: Nor I.

MICHAEL GARDNER: Our next scheduled hearing is 6:00 on January 10th. Are you both available for that date?

What about the feasibility if you both are here that day of doing it in the morning? January 10th is our next scheduled day. I mean, we have the week before as well, if we just followed a Thursday, 10:00 a.m. mode there's the 5th.

JAMES RAFFERTY: Would it be fair to assume, Mr. Chairman, that at this point the public testimony of the applicant has concluded.

MICHAEL GARDNER: I think we have given the members of the public the opportunity to speak on this matter and would not anticipate any other additional comment.

Subject to the views of my fellow Commissioners.

JAMES RAFFERTY: At the risk of being pushy, and I've been accused of it before, would there be any opportunity in the prior week, since the meeting presumably involves only the deliberation of the Commissioners?

MICHAEL GARDNER: I'm generally available the week of the 3rd. The Monday, the 2nd, being a holiday.

GERALD REARDON: I can do the 3rd.

ROBERT HAAS: I can do the 3rd after 10:00 and before 2:00.

MICHAEL GARDNER: After 10:00, meaning --

ROBERT HAAS: From 10:00 a.m. on, and I have another meeting at 2:00.

GERALD REARDON: So we can do it at 10:00?

MICHAEL GARDNER: So I'll make the motion that this matter be continued for a

Decision Hearing on January 3rd at 10:00 a.m.

ROBERT HAAS: Seconded.

MICHAEL GARDNER: I see there are some members of the audience who have raised their hands. I'm not sure in terms of scheduling a meeting, I feel it is necessary for public comment. But because I want to be as inclusive as possible, you can each have 30 seconds to state what you've got to say.

This lady in the front, please state your name and spell it for the report.

LUCY TITTMANN: My name is Lucy Tittmann, L-U-C-Y, T-I-T-T-M-A-N-N, and I live at 12 Gary Street, which is south of Mount Auburn Street and within hearing distance of Harvard Square on occasion.

I share the Farwell Place people's concern for the noise they are talking about when this is over, when the entertainment is over.

The reason I'm sitting here now are

two things: One is your talking about a transfer situation where you're going from one enterprise to another of the same nature. But since you are increasing the number of patrons by a large amount, I just want to bring up that I don't think it's a real transfer. I think it's another nature, it isn't just like you're saying.

MICHAEL GARDNER: Thank you for the comment.

LUCY TITTMANN: And the other comment, very briefly, you're talking extensively about the egress and the crowds on the street, whether it's 12:00, 1:00, or 2:00, I think the ingress is incredibly important.

Harvard Square is max'd out when it comes to parking. I walk up and down Church Street all the time and it is just a nightmare walking on that street. There is no parking for anybody; the parking lot is often full. And I cannot imagine 100 or 150 cars trying to

get into the show that starts at 7:00.

Let them come out when they want to. But getting them all in there, and driving all over Harvard Square looking for parking, I think it's a problem.

MICHAEL GARDNER: Thank you. I saw you, Mr. Chapitz, first, so would you come up, please, or you can speak from.

GARY CHAPITZ: Very quickly. I'm a little concerned with the members of the public not being afforded an opportunity to respond and offer a rebuttal. I'll be very quick.

MICHAEL GARDNER: Well, let me say the record will remain open. Anybody who has got any concerns, they can do it through e-mail or written communication or letter to the Commission.

GARY CHAPITZ: Two quick points. One, I am a little suspicious because I hear two opposing, conflicting arguments.

I hear an emphasis on when the first act will start, the time difference between that and the main act. The main act may be an hour to an hour-and-a-half. And when you do the math, it ends at 11:00.

However, I also hear them saying, "But we'd really like to stay open until 1:30." And that makes me suspicious, obviously.

The second thing is that I've not heard any arguments that deal with our concerns. We have no other place to go. It is nice that these people have a nightclub, it's nice that the restaurant workers have work, I'm happy for them. But they can go home. They can go home to a quite repose.

We have no place to go. We have no other place to go. This is our home.

And when young people come out, they make a lot of noise, and I haven't heard anything about how that would be abated. "Oh,

we'll have the staff members out" --

MICHAEL GARDNER: Okay. I get the point. Thank you. Ms. Gifford, you wanted to say something. Thirty seconds, please.

PEBBLE GIFFORD: I question that. You just gave the applicant over a half hour and he spoke before. I spoke before, but I went last. In the last couple of weeks, in reviewing this, and you are telling me I have 30 seconds?

MICHAEL GARDNER: I would very much welcome and appreciate any written comments you wish to provide to us based on either new perspectives that you learned today or anything else you would like to add.

PEBBLE GIFFORD: Well, I heard new information today.

MICHAEL GARDNER: Well, then, I hope you will have the opportunity to share your perspective on that with us in writing.

Is there anyone else who wanted to be

heard?

ELIZABETH BARTHOLET: I'm concerned that nobody can be heard here, and given that there are a lot of people in the neighborhood who are affected and who have just barely gotten notice. Some of them -- like you said one person is limited to 30 seconds. And I think, given that there is new information and that no notice was sent out to the respective people, that there should be an opportunity for people to speak at the next hearing.

MICHAEL GARDNER: Thank you. I would point out to you that the opportunity today was, in fact, extraordinary; we very seldom hear public testimony a second time.

Yes, sir, you wish to say something? Please state and spell your name for the record.

CHARLES TEAGUE: Charles Teague, T-E-A-G-U-E. I was concerned by the -- by Attorney James Rafferty saying that the

economic condition is not a concern of the Commission, but they had all the economic arguments of a competitive disadvantage and perhaps the places on Lansdowne Street which had a tremendous infrastructure for the late night --

THE COURT REPORTER: I cannot hear you back there.

(Multiple voices having discussion. Inaudible for record.)

MICHAEL GARDNER: Okay. Ma'am, please state and spell your name for the record.

JULIA POWELL: Julia Powell, J-U-L-I-A, P-O-W-E-L-L. I was born and raised in Cambridge. I'm a, quote, "young person" which we've been talking about. Therefore, with full disclosure, I work with Shippen Page. I'm an attorney.

So the idea of music coming into Harvard Square is exiting because I'm a young

person. And I just want to state two points. One is that people in the Boston area like things to get out before the T closes. That is an incentive. So you want things to get out, because you want to take the T and not a cab. So hopefully the establishment will realize that.

The second thing, I do not refuse to go to concerts because they get out at 11:00 versus 1:00 a.m. I don't understand what the competitive advantage or disadvantage is of that. I love going to hear music.

The third things is I've gone to almost all of the establishments in New York City where I lived for three and a half years. I thought it was great. I loved music. But I think it is very important to distinguish between an acceptable noise level in Williamsburg or Union Square or anywhere in Brooklyn and Manhattan versus Cambridge. Because what the standard is for acceptable

noise is much higher in New York City. So we should keep that in mind when we are talking about comfortable venues.

MICHAEL GARDNER: Thank you very much. And I would, please, encourage any of you who have more information that you would like to share with us to do so in writing; in fact, written communications are very helpful because we can go back and refer to it. The transcripts are not always as readily accessible to us, so additional e-mail would be helpful.

SHIPPEN PAGE: I have another comment.

MICHAEL GARDNER: Mr. Page?

SHIPPEN PAGE: Thank you for the opportunity. I will not be in town on the 3rd of January. To the extent that it prejudices my clients in any way, I would ask that it be set for another date. But I understand the Commission has their own schedule. I just

wanted to make that clear.

MICHAEL GARDNER: Motion having been made and seconded --

PEBBLE GIFFORD: Excuse me, Commissioner. What about questions that we have -- we don't know what you have -- can we write those out? Will you answer them?

MICHAEL GARDNER: Any questions you may have of the applicant, I would encourage you to direct it towards the applicant.

Any questions that you have of the Commission, you may of course inquire of the Commission.

PEBBLE GIFFORD: And 30 seconds you said I could have. Have you got a floor plan of this project in front of you or in the file? I've come down twice to get a copy and there was --

MICHAEL GARDNER: Well, we definitely saw a plan on the 15th. And I note that Mr. Page asked for a scheme of the area and

we now have that.

PEBBLE GIFFORD: Don't you think we should have a plan?

MICHAEL GARDNER: Excuse me, ma'am. And the plan, the scheme of the drawing of the plans are in the record and available for public inspection.

Is that correct, Ms. Lint?

ELIZABETH LINT: Yes, correct.

MICHAEL GARDNER: Motion having been made and seconded, all those in favor signify by saying "aye." Aye.

ROBERT HAAS: Aye.

GERALD REARDON: Aye.

MICHAEL GARDNER: None opposed. We'll continue this matter until January the 3rd at 10:00 a.m.

Thank you all very much for your patience and cooperation.

(Discussion off the record.)

MICHAEL GARDNER: So at the January

10th meeting, given the letter that we received from the hotel association in connection with their concerns about the decision of the Commission going back to September with regard to third-party contracting, I would appreciate a motion or support for a motion to open the meeting and then go into executive session with the law department so the law department can share with us their perspective about that process.

You said January 10th is busy?

ELIZABETH LINT: It is busy. Have you confirmed their availability?

MICHAEL GARDNER: Another alternative is to schedule -- I haven't confirmed their availability.

What about 10:00 on the 10th? We had talked about that. We had originally planned on that for this 50 Church Street and then James Rafferty asked us to push it forward.

ROBERT HAAS: What about during the

day --

MICHAEL GARDNER: It could be done in the morning. I think the last time we went into Executive Session it was noon or something, this was on the Idenex matter. It doesn't necessarily have to be done then. I can talk to the law department about their availability on the 3rd, just because it is still connected to the holidays and all that.

Okay. So that's what I hope we can do.

Any other business to come before the Commission?

ELIZABETH LINT: No, none.

MICHAEL GARDNER: Motion to adjourn is always in order. Motion to adjourn?

ROBERT HAAS: Seconded.

MICHAEL GARDNER: Motion having been made and seconded to adjourn at approximately noon on December 20th, all those in favor signify by saying "aye." Aye.

ROBERT HAAS: Aye.

GERALD REARDON: Aye.

MICHAEL GARDNER: None opposed, so we are adjourned. Thank you very much.

(Whereupon, the Hearing was adjourned at 12:01 p.m.)

C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS
SUFFOLK, SS.

I, Evelyn M. Slicius, a Certified Shorthand Reporter and Registered Professional Reporter, the undersigned Notary Public, certify that:

I am not related to any of the parties in this matter by blood or marriage and that I am in no way interested in the outcome of this matter.

I further certify that the testimony hereinbefore set forth is a true and accurate transcription of my stenographic notes to the best of my knowledge, skills and ability.

IN WITNESS WHEREOF, I have hereunto set my hand this 26th day of December, 2011.

Evelyn M. Slicius
Notary Public
Certified Shorthand Reporter
License No. 127193
My Commission Expires:
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\$	78:12, 79:10, 92:17, 96:15, 97:21, 104:14, 110:10 1:30 [7] - 42:3, 42:6, 45:9, 79:7, 88:16, 89:6, 106:8	62:12, 63:9, 114:19 500 [2] - 29:17, 35:14 52 [2] - 4:1, 62:6 525 [6] - 4:2, 35:6, 35:14, 70:1, 70:6, 75:18 5th [1] - 101:13	abutters [2] - 7:17, 37:3 abutting [2] - 56:4, 69:6 accept [1] - 25:5 acceptable [2] - 110:18, 110:21 access [6] - 9:13, 14:21, 62:3, 62:15, 74:12, 93:18 accessible [1] - 111:11 accompanied [1] - 34:12 accordance [2] - 118:2, 118:9 account [1] - 13:18 accuracy [1] - 76:20 accurate [4] - 35:12, 76:15, 77:1, 117:10 accused [1] - 102:4 acknowledge [1] - 95:19 acoustical [1] - 49:12 act [13] - 44:4, 44:5, 44:7, 49:11, 72:11, 75:15, 75:16, 75:20, 94:16, 94:19, 106:2, 106:3 acting [1] - 80:16 actions [1] - 87:13 active [1] - 38:10 activities [1] - 53:15 activity [8] - 36:9, 41:2, 51:1, 53:19, 67:14, 74:7, 80:11, 92:6 acts [6] - 46:6, 72:12, 72:15, 72:19, 92:10, 92:12 actual [1] - 70:19 adapt [1] - 82:19 additional [6] - 6:5, 21:19, 21:21, 101:21, 111:11, 118:5 addressed [1] - 7:18 addresses [1] - 8:19 adequately [1] - 8:12 adjourn [3] - 115:15, 115:16, 115:19 adjourned [2] - 116:4, 116:5 Administrative [1] - 24:20 administrators [1] - 73:20 admittedly [3] - 35:2, 36:10, 96:19 advantage [1] - 110:11 advantages [1] - 37:13 advocates [1] - 53:4 affected [2] - 8:11,	108:5 affiliation [1] - 22:12 afforded [1] - 105:11 afloat [1] - 28:3 afraid [5] - 26:2, 26:5, 26:6, 26:7, 28:7 afternoon [3] - 13:11, 57:14, 61:18 age [4] - 33:1, 46:15, 53:10, 68:3 agent [1] - 71:17 ago [3] - 39:1, 53:2, 87:20 agree [2] - 50:5, 50:18 agreed [1] - 5:16 ahead [1] - 84:5 akin [1] - 73:15 alarm [1] - 75:1 alarms [1] - 30:5 Albuquerque [1] - 72:5 alcohol [18] - 25:5, 27:14, 32:3, 32:11, 32:19, 33:1, 39:10, 41:3, 42:11, 52:15, 76:10, 85:10, 96:14, 96:16, 96:18, 97:12, 99:11, 99:17 alcoholic [3] - 3:15, 32:7, 32:15 Ale [11] - 18:11, 18:19, 20:14, 23:15, 23:19, 26:10, 30:12, 38:6, 38:7, 53:13, 68:2 Alewife [2] - 45:4, 45:5 allegedly [1] - 25:15 alley [5] - 57:3, 57:19, 59:10, 60:10, 60:13 alleyway [1] - 60:2 allowable [1] - 97:21 allowed [1] - 69:14 allowing [2] - 7:8, 59:8 allows [2] - 48:3, 81:12 almost [1] - 110:14 alone [1] - 91:5 alternative [1] - 114:14 amount [9] - 32:3, 36:17, 37:6, 37:7, 37:8, 57:5, 86:16, 90:9, 104:5 ample [3] - 51:15, 52:1, 66:16 amplification [1] - 4:10 analogy [1] - 38:6 ancillary [1] - 8:6 AND/OR [1] - 117:21 Anderson [1] - 22:20 angle [1] - 56:5 anomaly [1] - 41:10 answers [1] - 89:8 anticipate [2] - 59:2,	
0	2 [1] - 29:20 20 [6] - 1:15, 3:5, 15:7, 38:18, 53:20, 70:3 200 [2] - 15:13, 89:19 2006 [2] - 10:2, 77:12 2011 [3] - 1:15, 3:5, 117:12 2013 [1] - 117:17 20th [1] - 115:20 22nd [5] - 4:19, 5:4, 54:7, 54:10, 97:7 25 [3] - 22:15, 23:14, 38:21 26th [1] - 117:12 29 [1] - 44:1 29th [1] - 100:19 2:00 [20] - 4:5, 18:15, 25:13, 26:17, 30:1, 30:3, 46:10, 68:4, 76:9, 77:9, 77:12, 78:11, 78:13, 79:11, 81:11, 96:16, 102:13, 102:17, 104:14 2:30 [1] - 80:19 2nd [1] - 102:10	60 [1] - 44:9 617-639-0396 [1] - 1:20 617-786-7783 [1] - 1:20 69 [1] - 14:13 6:00 [1] - 101:6 6th [1] - 93:1	7	70 [1] - 94:21 700 [4] - 10:4, 35:7, 35:11, 66:12 725 [1] - 10:6 750 [4] - 10:4, 21:2, 21:7, 25:10 7:00 [4] - 44:3, 44:10, 88:9, 105:1 7th [1] - 99:13	831 [2] - 1:12, 3:7 8:00 [3] - 4:3, 4:4, 44:4
1	10 [1] - 29:3 100 [1] - 104:21 10:00 [11] - 1:16, 92:14, 100:20, 101:12, 102:13, 102:14, 102:16, 102:19, 103:1, 113:17, 114:17 10:12 [1] - 3:5 10:30 [1] - 60:17 10th [5] - 101:6, 101:10, 114:1, 114:11, 114:17 11:00 [13] - 44:11, 45:13, 46:13, 47:6, 60:17, 82:9, 88:10, 92:11, 92:15, 96:18, 97:20, 106:5, 110:9 11:30 [5] - 44:11, 45:13, 67:2, 88:10, 96:18 11th [1] - 35:2 12 [1] - 103:14 127193 [1] - 117:16 12:00 [6] - 44:12, 47:17, 88:5, 88:8, 88:10, 104:14 12:01 [1] - 116:6 12:15 [1] - 45:4 12:22 [1] - 45:6 12:30 [10] - 41:21, 42:6, 45:8, 46:2, 46:6, 48:3, 48:6, 79:1, 79:5, 92:18 15 [2] - 15:7, 117:17 150 [1] - 104:21 1500 [4] - 66:19, 67:1, 72:16, 95:8 15th [11] - 3:13, 4:17, 5:14, 5:21, 8:4, 13:5, 19:10, 32:9, 43:17, 54:8, 112:20 17-feet [1] - 58:12 174 [1] - 7:1 175 [3] - 4:1, 8:6, 56:19 18 [3] - 22:14, 53:11 1:00 [12] - 4:4, 42:2, 46:9, 48:1, 76:10,	3 [3] - 2:2, 30:12, 86:3 30 [7] - 18:10, 71:20, 95:1, 103:8, 107:10, 108:7, 112:14 30's [1] - 76:4 30-year [1] - 53:21 300 [3] - 37:4, 37:6, 64:15 3rd [7] - 102:9, 102:11, 102:12, 103:1, 111:17, 113:17, 115:8	80 [1] - 94:21 700 [4] - 10:4, 35:7, 35:11, 66:12 725 [1] - 10:6 750 [4] - 10:4, 21:2, 21:7, 25:10 7:00 [4] - 44:3, 44:10, 88:9, 105:1 7th [1] - 99:13	8	831 [2] - 1:12, 3:7 8:00 [3] - 4:3, 4:4, 44:4
	3	90 [2] - 44:9, 82:16	9		
		A			
	40 [3] - 44:5, 44:7, 71:20 400 [2] - 37:4, 56:19 45 [1] - 44:7 45-degree [1] - 56:5	a.m [27] - 1:16, 3:5, 4:3, 4:4, 4:5, 26:17, 42:2, 45:6, 46:9, 46:10, 68:4, 76:9, 76:10, 77:10, 77:12, 79:10, 79:11, 81:11, 92:17, 96:16, 100:20, 101:12, 102:16, 103:1, 110:10, 113:17 Aaron [1] - 11:3 Aarons [3] - 14:12, 14:18, 17:17 abated [2] - 64:18, 106:21 ABC [1] - 40:7 abide [1] - 85:5 absolutely [3] - 19:1, 24:5, 86:5 abutter [2] - 11:7, 39:2	actual [1] - 70:19 adapt [1] - 82:19 additional [6] - 6:5, 21:19, 21:21, 101:21, 111:11, 118:5 addressed [1] - 7:18 addresses [1] - 8:19 adequately [1] - 8:12 adjourn [3] - 115:15, 115:16, 115:19 adjourned [2] - 116:4, 116:5 Administrative [1] - 24:20 administrators [1] - 73:20 admittedly [3] - 35:2, 36:10, 96:19 advantage [1] - 110:11 advantages [1] - 37:13 advocates [1] - 53:4 affected [2] - 8:11,	108:5 affiliation [1] - 22:12 afforded [1] - 105:11 afloat [1] - 28:3 afraid [5] - 26:2, 26:5, 26:6, 26:7, 28:7 afternoon [3] - 13:11, 57:14, 61:18 age [4] - 33:1, 46:15, 53:10, 68:3 agent [1] - 71:17 ago [3] - 39:1, 53:2, 87:20 agree [2] - 50:5, 50:18 agreed [1] - 5:16 ahead [1] - 84:5 akin [1] - 73:15 alarm [1] - 75:1 alarms [1] - 30:5 Albuquerque [1] - 72:5 alcohol [18] - 25:5, 27:14, 32:3, 32:11, 32:19, 33:1, 39:10, 41:3, 42:11, 52:15, 76:10, 85:10, 96:14, 96:16, 96:18, 97:12, 99:11, 99:17 alcoholic [3] - 3:15, 32:7, 32:15 Ale [11] - 18:11, 18:19, 20:14, 23:15, 23:19, 26:10, 30:12, 38:6, 38:7, 53:13, 68:2 Alewife [2] - 45:4, 45:5 allegedly [1] - 25:15 alley [5] - 57:3, 57:19, 59:10, 60:10, 60:13 alleyway [1] - 60:2 allowable [1] - 97:21 allowed [1] - 69:14 allowing [2] - 7:8, 59:8 allows [2] - 48:3, 81:12 almost [1] - 110:14 alone [1] - 91:5 alternative [1] - 114:14 amount [9] - 32:3, 36:17, 37:6, 37:7, 37:8, 57:5, 86:16, 90:9, 104:5 ample [3] - 51:15, 52:1, 66:16 amplification [1] - 4:10 analogy [1] - 38:6 ancillary [1] - 8:6 AND/OR [1] - 117:21 Anderson [1] - 22:20 angle [1] - 56:5 anomaly [1] - 41:10 answers [1] - 89:8 anticipate [2] - 59:2,	
	4				
	5				
	50 [9] - 2:2, 3:13, 3:17, 6:12, 59:3, 62:4,				

<p>101:21 anticipated [3] - 9:15, 43:7, 68:14 ANY [2] - 117:20, 117:20 appalled [2] - 18:7, 18:8 appalling [1] - 19:1 appealing [1] - 52:13 applicant [14] - 4:7, 5:6, 6:5, 33:13, 40:13, 41:15, 41:20, 76:8, 77:14, 84:17, 101:16, 107:6, 112:9, 112:10 applications [1] - 78:3 applied [1] - 74:1 APPLY [1] - 117:20 apply [1] - 87:16 apportment [1] - 34:10 appreciate [3] - 78:18, 107:12, 114:6 apprised [1] - 8:12 approach [1] - 73:13 approve [1] - 84:4 approved [3] - 3:15, 86:9, 97:5 aptitude [1] - 73:15 area [25] - 7:7, 9:10, 9:12, 16:10, 18:4, 35:5, 35:9, 37:1, 39:11, 39:12, 56:4, 56:6, 58:9, 58:21, 59:13, 60:5, 60:8, 62:8, 81:12, 82:13, 83:11, 99:5, 99:7, 110:2, 112:21 areas [2] - 37:11, 81:5 arguments [3] - 105:21, 106:11, 109:3 arises [1] - 32:5 arrangements [1] - 43:20 arrive [3] - 37:19, 38:2, 94:4 arriving [3] - 35:2, 43:7, 49:10 articulated [1] - 78:7 Ashmont [1] - 45:5 aside [1] - 85:12 aspects [1] - 51:13 assessing [1] - 41:12 associated [4] - 51:11, 52:3, 85:6, 85:13 associates [1] - 39:9 association [1] - 114:2 assume [2] - 62:14, 101:15 assumed [1] - 92:15 assumption [1] - 50:7 assumptions [1] -</p>	<p>34:5 assure [1] - 51:10 Atrium [1] - 23:2 attempt [1] - 36:16 attend [3] - 4:20, 47:1, 52:12 attending [3] - 10:5, 36:5, 43:6 attention [2] - 16:5, 32:18 attorney [6] - 7:1, 10:11, 31:20, 35:2, 40:5, 109:19 Attorney [3] - 35:1, 67:21, 108:21 attracts [1] - 74:4 Auburn [1] - 103:15 AUDIENCE [4] - 6:16, 17:3, 22:9, 31:12 audience [1] - 103:4 audio [3] - 4:10, 15:18, 37:15 authority [1] - 40:17 availability [3] - 114:13, 114:16, 115:8 available [3] - 101:7, 102:9, 113:7 Avenue [3] - 1:12, 3:7, 7:2 average [2] - 39:16, 42:7 aware [4] - 11:20, 17:14, 20:9, 36:13 aye [3] - 113:12, 115:21 Aye [5] - 113:12, 113:13, 113:14, 116:1, 116:2</p>	<p>17:7, 17:9, 19:11, 19:18, 20:19, 21:21, 108:2 Bartholet [6] - 11:2, 14:10, 14:15, 17:8, 17:10, 34:11 based [8] - 40:1, 53:20, 67:3, 71:10, 72:6, 73:16, 107:13 Basement [2] - 1:13, 3:7 basis [2] - 5:19, 18:15 bear [1] - 76:5 bearing [1] - 8:21 become [2] - 78:12, 96:11 bedrooms [1] - 24:9 begin [5] - 3:3, 18:3, 42:12, 42:15, 77:10 begins [1] - 92:14 behalf [1] - 7:14 behavior [1] - 9:18 behind [1] - 46:4 belongs [1] - 91:11 below [1] - 4:11 bemoaned [1] - 87:19 beneficial [1] - 63:2 benefit [3] - 34:7, 36:5, 89:10 benefits [2] - 52:3, 57:8 best [3] - 66:5, 68:11, 117:11 Betsy [1] - 24:1 better [6] - 50:8, 59:14, 61:11, 74:17, 74:18 between [12] - 19:20, 27:7, 32:3, 44:9, 64:10, 66:3, 71:17, 79:14, 82:9, 92:14, 106:2, 110:18 beverages [3] - 3:16, 32:7, 32:15 beyond [6] - 18:19, 28:10, 42:19, 49:14, 51:10, 80:12 BHATTI [17] - 63:5, 64:9, 65:14, 65:20, 69:4, 70:15, 71:1, 71:4, 71:9, 73:7, 75:14, 82:1, 88:6, 94:3, 97:15, 98:18, 99:20 Bhatti [12] - 3:20, 33:14, 34:13, 39:16, 48:18, 49:5, 65:20, 81:17, 88:2, 92:9, 100:7 big [1] - 66:21 bike [2] - 69:16, 81:6 bike-rack [1] - 69:16 bit [8] - 36:3, 46:7, 64:8, 65:7, 71:6, 81:14, 89:14, 96:6</p>	<p>bizarre [1] - 39:20 block [2] - 19:20, 20:5 blood [1] - 117:7 board [1] - 9:9 boards [1] - 37:21 book [1] - 70:16 booking [2] - 70:15, 71:17 Border [7] - 21:4, 21:5, 23:18, 26:21, 30:13, 30:20 born [1] - 109:15 Boston [6] - 22:17, 70:14, 72:4, 81:20, 90:17, 110:2 bottle [1] - 70:8 bottles [3] - 18:14, 23:20, 70:7 bound [2] - 45:4, 45:5 Bowery [1] - 3:19 Boys [1] - 10:2 Bracket [1] - 27:8 Braintree [1] - 45:4 brand [1] - 77:6 Brattle [1] - 16:11 break [2] - 5:16, 40:2 breaks [1] - 94:5 Brew [2] - 57:2, 61:7 brick [3] - 18:14, 24:7, 24:10 brief [1] - 6:20 briefly [2] - 33:16, 104:12 bring [7] - 16:4, 28:4, 28:8, 37:20, 38:2, 66:8, 104:5 bringing [6] - 20:21, 22:1, 50:10, 57:13, 71:3, 71:8 brings [1] - 95:1 broader [1] - 46:19 Brooklyn [1] - 110:20 brought [2] - 27:21, 72:15 brownstones [1] - 69:9 Brush [2] - 10:20, 13:14 brush [2] - 11:18, 14:11 build [3] - 28:1, 85:14, 86:1 build-out [3] - 28:1, 85:14, 86:1 built [1] - 85:11 built-in [1] - 85:11 bus [1] - 81:6 business [14] - 3:20, 7:6, 16:10, 21:20, 36:7, 41:10, 54:17, 65:3, 83:3, 83:5, 85:7, 85:18, 91:2, 115:12 businesses [3] - 16:11, 60:6, 91:19</p>	<p>busses [3] - 15:17, 30:2 busy [2] - 114:11, 114:12 buying [1] - 70:4 BY [1] - 117:20</p>
C				
				<p>cab [1] - 110:6 Cafe [1] - 21:6 CAMBRIDGE [1] - 1:2 Cambridge [10] - 1:13, 3:19, 7:2, 77:15, 78:6, 80:11, 81:20, 88:1, 109:16, 110:20 Camp [1] - 24:20 cannot [3] - 11:14, 104:21, 109:7 CAP [2] - 78:10 capable [1] - 35:1 capacity [7] - 10:6, 35:5, 35:18, 56:19, 75:18, 80:21, 81:1 capital [3] - 84:6, 84:13, 85:13 CAPTURING [1] - 1:20 car [1] - 94:5 care [3] - 10:16, 23:8, 54:19 carefully [1] - 118:3 cars [3] - 79:17, 80:6, 104:21 cautious [1] - 73:13 CDs [1] - 4:11 center [2] - 24:15, 31:7 Central [1] - 38:21 certainly [4] - 39:2, 51:3, 84:21, 85:8 CERTIFICATION [1] - 117:19 Certified [2] - 117:4, 117:16 certify [2] - 117:6, 117:9 CERTIFYING [1] - 117:21 cetera [1] - 29:9 chain [1] - 78:1 Chair [2] - 55:1, 84:15 chair [1] - 100:13 chairman [2] - 76:12, 101:15 Chairman [5] - 1:5, 3:10, 33:10, 56:1, 92:4 Chairman's [1] - 80:8 chance [2] - 18:3, 65:6 change [5] - 58:19, 82:19, 95:11, 95:12, 118:7 Change/Correction [1] - 118:11 changed [1] - 87:2</p>
	B			
	<p>B-H-A-T-T-I [2] - 33:14, 65:21 badly [1] - 23:5 balance [1] - 83:3 balcony [1] - 98:21 band [14] - 9:2, 15:20, 22:1, 37:18, 42:13, 49:10, 57:15, 71:21, 75:11, 89:1, 89:6, 94:3, 94:17, 94:20 band's [1] - 71:17 bands [5] - 15:21, 59:3, 61:18, 71:19, 72:16 bar [9] - 26:16, 39:11, 39:12, 98:19, 99:8, 100:1, 100:5, 100:9 barely [1] - 108:5 barricade [1] - 69:16 bars [5] - 29:19, 70:17, 98:11, 99:10, 100:7 BARTHOLET [7] -</p>			

<p>changes [2] - 53:4, 118:4</p> <p>changes/corrections [2] - 118:6, 118:9</p> <p>Chapitz [6] - 11:3, 17:15, 17:18, 22:14, 34:12, 105:7</p> <p>CHAPITZ [6] - 22:13, 26:5, 26:16, 28:16, 105:9, 105:19</p> <p>characterization [1] - 49:21</p> <p>Charles [1] - 80:20</p> <p>CHARLES [1] - 108:19</p> <p>charles [1] - 108:19</p> <p>checked [1] - 74:2</p> <p>chief [1] - 51:14</p> <p>Chief [3] - 1:6, 3:10, 90:7</p> <p>choice [1] - 61:12</p> <p>choose [2] - 42:17, 42:18</p> <p>chooses [1] - 14:15</p> <p>choreographed [1] - 49:6</p> <p>Church [30] - 2:2, 3:13, 3:17, 6:12, 7:6, 9:13, 15:2, 18:18, 19:19, 20:1, 20:8, 20:10, 24:2, 27:7, 29:9, 53:6, 59:3, 61:14, 62:4, 62:7, 62:12, 63:10, 64:7, 64:21, 65:12, 66:12, 83:20, 91:9, 104:17, 114:19</p> <p>cite [2] - 23:13, 37:3</p> <p>cited [1] - 76:15</p> <p>cities [1] - 71:20</p> <p>citizen [1] - 53:3</p> <p>CITY [1] - 1:2</p> <p>City [3] - 77:14, 110:15, 111:1</p> <p>city [8] - 12:1, 29:6, 29:7, 46:10, 46:11, 78:1, 90:21, 94:14</p> <p>clarification [4] - 16:15, 22:4, 77:3, 78:21</p> <p>clarify [1] - 17:12</p> <p>classify [1] - 73:12</p> <p>clear [3] - 46:1, 49:21, 112:1</p> <p>clearly [3] - 67:7, 82:18, 93:17</p> <p>client [3] - 10:18, 10:20, 10:21</p> <p>client's [1] - 10:10</p> <p>clientele [1] - 27:4</p> <p>clients [5] - 7:15, 10:17, 11:4, 87:7, 111:19</p> <p>close [3] - 22:19, 34:17, 39:7</p> <p>closed [2] - 26:20,</p>	<p>38:17</p> <p>closely [1] - 52:17</p> <p>closer [1] - 42:8</p> <p>closes [2] - 29:14, 110:3</p> <p>closing [16] - 42:7, 46:5, 46:12, 47:6, 51:1, 66:1, 66:11, 66:15, 66:18, 67:2, 67:5, 68:14, 82:2, 82:4, 95:21, 98:6</p> <p>closure [1] - 26:19</p> <p>club [4] - 27:2, 37:16, 66:20, 72:17</p> <p>code [2] - 8:18, 8:21</p> <p>coincidence [1] - 87:18</p> <p>college [2] - 38:8, 53:11</p> <p>colloquy [1] - 5:5</p> <p>colossal [1] - 85:17</p> <p>combination [1] - 63:12</p> <p>combined [2] - 35:10, 86:3</p> <p>comedy [1] - 4:12</p> <p>comfortable [3] - 68:12, 68:20, 111:3</p> <p>coming [18] - 16:9, 61:18, 63:18, 64:2, 65:1, 65:10, 65:12, 66:12, 71:19, 75:17, 76:3, 81:6, 81:7, 83:7, 83:20, 89:5, 89:6, 109:20</p> <p>command [1] - 75:8</p> <p>comment [8] - 6:4, 39:19, 43:15, 101:21, 103:7, 104:10, 104:12, 111:14</p> <p>commentary [1] - 89:13</p> <p>comments [2] - 6:20, 107:12</p> <p>commercial [3] - 39:21, 40:18, 41:9</p> <p>COMMISSION [1] - 1:4</p> <p>Commissioner [9] - 1:6, 3:11, 4:19, 4:20, 5:3, 10:9, 12:12, 12:20, 112:5</p> <p>Commissioners [5] - 3:9, 6:2, 33:5, 102:2, 102:7</p> <p>commissioners [2] - 5:2, 63:13</p> <p>Commissioners' [1] - 16:5</p> <p>community [1] - 44:21</p> <p>common [1] - 60:4</p> <p>COMMONWEALTH [2] - 1:1, 117:2</p>	<p>communicate [1] - 65:17</p> <p>communication [2] - 11:13, 105:17</p> <p>communications [4] - 5:11, 66:3, 68:10, 111:8</p> <p>community [6] - 8:10, 9:6, 44:14, 46:19, 46:21, 91:8</p> <p>compete [2] - 82:14, 91:14</p> <p>competing [1] - 82:2</p> <p>competitive [9] - 81:18, 82:12, 88:3, 88:14, 88:19, 94:1, 95:16, 109:3, 110:11</p> <p>complete [1] - 58:15</p> <p>completely [1] - 35:13</p> <p>completing [1] - 118:8</p> <p>complicated [1] - 11:21</p> <p>component [2] - 50:6, 96:8</p> <p>comport [1] - 87:11</p> <p>compounding [1] - 63:20</p> <p>concept [1] - 8:5</p> <p>concern [9] - 5:13, 8:3, 36:21, 43:3, 87:10, 91:17, 92:2, 103:18, 109:1</p> <p>concerned [7] - 54:21, 61:6, 61:21, 91:7, 105:10, 108:2, 108:20</p> <p>concerning [2] - 11:7, 38:6</p> <p>concerns [19] - 7:14, 7:16, 9:18, 10:9, 11:12, 11:16, 13:14, 14:20, 15:11, 23:8, 41:14, 42:21, 45:10, 54:19, 71:6, 95:19, 105:16, 106:12, 114:3</p> <p>concert [9] - 32:12, 44:3, 45:16, 47:8, 47:15, 61:9, 70:19, 98:11, 98:19</p> <p>concerts [10] - 15:13, 43:7, 45:12, 66:20, 67:1, 68:15, 70:16, 72:17, 95:8, 110:9</p> <p>concise [1] - 26:12</p> <p>concluded [2] - 97:19, 101:17</p> <p>concludes [2] - 42:16, 97:14</p> <p>conclusion [4] - 42:12, 96:12, 99:11, 118:9</p> <p>concur [1] - 37:4</p> <p>condition [5] - 87:9, 94:12, 96:11, 96:21, 109:1</p>	<p>conditions [3] - 85:5, 87:15, 90:19</p> <p>conduct [3] - 5:17, 53:1, 91:18</p> <p>conducts [1] - 78:2</p> <p>Conference [2] - 1:13, 3:7</p> <p>configuration [1] - 83:4</p> <p>confirm [1] - 47:18</p> <p>confirmed [2] - 114:13, 114:15</p> <p>conflicting [1] - 105:21</p> <p>confluence [1] - 64:6</p> <p>confuse [1] - 47:8</p> <p>confused [1] - 88:3</p> <p>congestion [1] - 16:13</p> <p>congregate [1] - 83:9</p> <p>connected [1] - 115:9</p> <p>connection [3] - 19:15, 32:2, 114:3</p> <p>consent [1] - 41:6</p> <p>conservative [1] - 76:1</p> <p>consider [4] - 9:4, 41:16, 50:6, 80:15</p> <p>consideration [4] - 9:4, 51:4, 63:4, 96:9</p> <p>consistent [3] - 50:1, 77:19, 85:15</p> <p>constraints [1] - 94:9</p> <p>constructed [1] - 56:7</p> <p>consume [1] - 33:1</p> <p>consumed [1] - 32:20</p> <p>contacted [1] - 73:20</p> <p>containing [1] - 97:13</p> <p>contemplate [1] - 84:21</p> <p>continually [1] - 36:1</p> <p>continued [1] - 102:21</p> <p>continuing [1] - 93:13</p> <p>contracting [1] - 114:6</p> <p>control [4] - 35:18, 36:9, 58:7, 86:20</p> <p>CONTROL [1] - 117:20</p> <p>controlled [2] - 21:3, 52:14</p> <p>convenient [1] - 34:3</p> <p>conversation [5] - 4:12, 13:21, 14:7, 71:16, 97:7</p> <p>conversations [4] - 11:17, 14:9, 14:10, 14:11</p> <p>cooperation [1] - 113:19</p> <p>copies [1] - 12:6</p> <p>copy [8] - 7:20, 10:10, 12:3, 36:15, 54:1, 54:3, 55:16, 112:17</p> <p>correction [1] - 118:6</p> <p>corrections [1] -</p>	<p>118:4</p> <p>correlation [1] - 68:2</p> <p>correspondence [1] - 11:6</p> <p>counsel [1] - 87:6</p> <p>country [2] - 71:20, 72:1</p> <p>couple [3] - 29:11, 87:1, 107:8</p> <p>course [2] - 35:8, 112:12</p> <p>court [1] - 17:5</p> <p>COURT [1] - 109:7</p> <p>covered [1] - 100:6</p> <p>create [1] - 83:11</p> <p>creates [1] - 94:15</p> <p>creating [1] - 65:8</p> <p>credit [1] - 53:3</p> <p>criminal [1] - 67:14</p> <p>criteria [1] - 51:11</p> <p>criticism [1] - 36:21</p> <p>critic [1] - 84:10</p> <p>cross [1] - 55:6</p> <p>cross-easements [1] - 55:6</p> <p>crowd [5] - 10:5, 32:10, 32:11, 72:18, 74:17</p> <p>crowds [1] - 104:13</p> <p>cul [1] - 15:10</p> <p>current [1] - 42:1</p> <p>curtailed [1] - 43:1</p> <p>customary [1] - 94:13</p> <p>customers [1] - 88:20</p> <p>cut [1] - 94:21</p> <p>CV [1] - 85:9</p>
D				
				<p>Dan [1] - 17:17</p> <p>Dana [2] - 29:3, 30:6</p> <p>dance [3] - 26:16, 73:6, 73:17</p> <p>dancing [4] - 4:8, 73:5, 73:7, 73:16</p> <p>Daniel [1] - 11:3</p> <p>dare [1] - 90:11</p> <p>Date [1] - 118:21</p> <p>date [4] - 100:19, 101:1, 101:7, 111:20</p> <p>daughter [1] - 24:17</p> <p>David [1] - 24:20</p> <p>days [2] - 39:3, 53:11</p> <p>de [1] - 15:10</p> <p>deal [3] - 16:13, 49:20, 106:11</p> <p>dealing [1] - 12:14</p> <p>December [6] - 1:15, 3:5, 93:1, 100:19, 115:20, 117:12</p> <p>decibel [1] - 27:11</p> <p>decided [1] - 5:7</p> <p>DECISION [1] - 1:4</p> <p>decision [5] - 5:8,</p>

<p>5:18, 7:11, 114:4 Decision [3] - 3:4, 4:18, 103:1 Decision-Making [1] - 3:4 deemed [1] - 40:10 deems [1] - 55:2 Defense [1] - 34:14 defer [1] - 48:18 definitely [2] - 43:11, 112:19 definition [1] - 46:18 degree [1] - 83:18 delayed [2] - 94:6, 94:10 deliberation [1] - 102:7 deliver [1] - 59:5 deliveries [12] - 57:5, 57:9, 58:16, 58:21, 59:9, 60:16, 60:20, 60:21, 61:14, 61:15, 61:17, 62:19 delivering [1] - 57:3 delivery [6] - 9:1, 37:1, 37:7, 56:16, 57:1, 62:17 demand [2] - 75:15, 92:6 demanding [1] - 53:4 demographic [1] - 46:15 demographic [1] - 76:3 demonstrated [1] - 8:16 Denise [1] - 22:17 dense [1] - 9:13 density [2] - 15:1, 31:6 department [6] - 66:4, 68:10, 68:12, 114:9, 115:7 departments [1] - 12:1 depicted [1] - 62:9 Deponent's [1] - 118:21 deposition [3] - 118:3, 118:3, 118:5 depositions [1] - 118:2 deprived [1] - 87:20 derive [1] - 32:7 deriving [1] - 23:7 describe [2] - 19:14, 20:4 describing [1] - 89:12 description [2] - 18:17, 26:12 desire [2] - 48:21, 97:10 desired [1] - 118:7 desperate [1] - 28:3 destination [1] - 53:13</p>	<p>destroyed [1] - 18:12 detail [1] - 68:16 detailed [1] - 54:13 details [2] - 68:19 determination [1] - 81:3 determining [1] - 13:18 deviation [1] - 46:8 dictates [1] - 45:15 difference [2] - 77:4, 106:2 different [11] - 36:2, 48:15, 53:6, 53:7, 72:14, 72:21, 74:4, 74:5, 75:3, 87:3, 93:5 difficult [2] - 38:15, 95:16 difficulty [1] - 87:9 diffuse [1] - 67:16 DiGiovanni [17] - 41:4, 55:3, 55:10, 55:13, 55:14, 56:13, 60:3, 61:4, 61:15, 62:18, 63:11, 75:5, 75:9, 80:17, 86:4, 90:5, 93:9 DIGIOVANNI [1] - 55:14 digitized [1] - 75:7 dining [1] - 34:18 dinner [1] - 43:8 direct [2] - 38:9, 112:10 DIRECT [1] - 117:20 DIRECTION [1] - 117:21 directly [1] - 11:15 Director [2] - 10:11, 24:20 disadvantage [8] - 82:12, 88:4, 88:15, 88:19, 94:1, 95:17, 109:3, 110:11 disciplinary [1] - 87:13 disclose [2] - 40:19, 40:21 disclosure [2] - 40:8, 109:18 discretion [1] - 7:13 discussion [1] - 109:9 Discussion [1] - 113:20 disdain [1] - 87:1 disperse [1] - 93:12 dispersed [1] - 81:14 dispersement [1] - 63:3 dispersing [1] - 30:4 disposal [1] - 84:19 disruptive [4] - 19:17, 29:16, 30:9, 67:15 distance [4] - 9:20,</p>	<p>19:15, 20:4, 103:15 distinction [2] - 76:18, 89:18 distinguish [1] - 110:17 district [1] - 24:4 disturbance [3] - 65:9, 83:11, 91:3 disturbances [1] - 64:16 DJ [3] - 73:17, 73:21, 74:7 DO [1] - 118:7 documents [1] - 40:7 DOES [1] - 117:20 dollar [1] - 72:5 dollars [3] - 72:2, 72:6, 91:20 dominant [3] - 58:1, 58:10, 58:14 Donuts [1] - 40:3 door [3] - 44:15, 55:5, 59:9 doors [4] - 44:2, 44:10, 68:4, 88:9 draw [3] - 27:6, 66:21, 81:4 drawing [1] - 113:6 drift [1] - 29:14 drink [5] - 25:1, 25:9, 26:1, 39:16 drinking [2] - 53:10, 53:14 drinks [3] - 39:15, 39:17, 41:5 driver [1] - 20:5 driveway [5] - 55:6, 56:10, 58:2, 58:4, 62:10 driving [1] - 105:3 drone [1] - 30:10 drugs [1] - 25:5 Dunkin' [1] - 40:2 during [4] - 29:13, 29:16, 59:8, 114:21 dynamics [1] - 48:10</p>	<p>economy [2] - 27:17, 72:7 edge [2] - 67:10, 100:9 effect [3] - 51:16, 97:3, 97:18 effective [3] - 52:18, 67:20, 84:19 effectively [2] - 65:7, 98:1 efforts [2] - 26:14, 26:18 egress [8] - 9:17, 14:21, 62:12, 62:21, 67:8, 74:11, 74:13, 104:13 eight [3] - 16:8, 24:8, 99:8 eight-foot [1] - 99:8 elaborate [2] - 14:19, 44:13 Elizabeth [4] - 1:9, 11:2, 17:8, 17:10 ELIZABETH [14] - 3:2, 12:5, 17:7, 17:8, 19:11, 19:18, 20:19, 21:21, 98:9, 100:21, 108:2, 113:9, 114:12, 115:14 Elliot [1] - 80:18 elsewhere [2] - 80:12, 96:20 emergency [2] - 62:14, 74:13 emphasis [2] - 47:14, 106:1 emporium [1] - 22:2 empty [1] - 23:5 encore [1] - 49:1 encourage [3] - 41:3, 111:5, 112:9 end [13] - 43:8, 45:12, 48:16, 50:14, 58:12, 62:9, 82:9, 94:7, 94:11, 95:9, 95:20, 98:15, 98:16 ending [3] - 44:11, 44:16, 88:10 ends [3] - 64:3, 96:17, 106:5 energy [1] - 25:8 enforcing [1] - 87:15 engage [1] - 52:21 engaging [1] - 41:2 enormously [1] - 11:20 enter [3] - 62:6, 98:18, 98:20 enterprise [1] - 104:3 entertainment [29] - 4:8, 24:15, 34:20, 41:17, 41:21, 42:16, 42:21, 43:2, 43:5, 43:13, 43:16, 45:7, 47:4, 47:13, 63:21, 66:8, 66:14, 71:8,</p>	<p>73:4, 74:1, 79:2, 79:21, 85:7, 90:16, 95:20, 96:6, 97:13, 97:14, 103:19 entire [2] - 91:8, 91:10 entirely [1] - 85:7 entities [1] - 78:4 entitled [1] - 118:3 entrance [2] - 56:11, 58:6 entry [3] - 7:10, 62:6, 62:8 entryway [1] - 56:7 environment [4] - 33:2, 35:19, 38:16, 88:1 envisioned [1] - 27:16 equipment [8] - 9:2, 15:19, 20:21, 22:2, 37:14, 37:15, 57:15, 57:16 era [2] - 53:7, 53:9 errata [1] - 118:4 escalate [1] - 10:3 essences [1] - 10:7 essentially [2] - 20:6, 77:5 establish [1] - 98:5 established [2] - 75:15, 76:4 establishment [8] - 20:13, 21:8, 23:17, 27:6, 28:2, 70:14, 85:14, 110:6 establishments [3] - 65:11, 83:5, 110:14 estate [3] - 11:21, 58:11, 58:14 estimate [2] - 34:17, 39:17 estimating [1] - 89:19 et [1] - 29:9 evaluating [1] - 51:5 Evelyn [2] - 117:4, 117:15 evenings [2] - 89:12, 97:18 event [1] - 69:11 events [1] - 33:18 exactly [4] - 54:10, 71:1, 75:7, 77:19 examine [1] - 9:10 example [1] - 64:11 examples [1] - 23:13 excellent [1] - 12:19 exception [3] - 46:3, 47:19, 49:3 exceptions [1] - 42:6 excess [1] - 25:2 excuse [2] - 112:4, 113:4 Excuse [1] - 65:18 executive [1] - 114:8 Executive [3] - 1:9, 10:11, 115:4</p>
		E		
		<p>e-mail [5] - 19:9, 54:14, 55:16, 105:17, 111:11 e-mailed [1] - 18:4 early [4] - 43:8, 47:6, 89:3, 94:7 easement [5] - 11:8, 54:15, 56:14, 58:14, 59:18 easements [2] - 55:6, 55:19 easier [1] - 96:3 easy [1] - 59:11 ebb [1] - 74:14 economic [4] - 85:17, 87:9, 109:1, 109:2</p>		

<p>exist [3] - 20:10, 38:13, 87:21 existence [2] - 23:16, 28:5 exit [4] - 35:11, 53:5, 66:17, 70:8 exiting [5] - 42:12, 66:10, 69:13, 70:1, 109:21 exits [1] - 56:6 exodus [1] - 70:6 expect [3] - 61:13, 61:17, 64:1 expectations [1] - 85:15 expected [1] - 44:21 expecting [1] - 73:5 expenditures [1] - 85:13 experienced [4] - 8:14, 16:1, 51:17, 63:17 experiences [2] - 37:3, 67:1 expired [1] - 10:1 Expires [1] - 117:17 explain [1] - 36:8 explaining [1] - 34:18 explored [1] - 48:1 expressed [1] - 97:2 extended [1] - 34:1 extending [1] - 49:14 extends [1] - 15:7 extensive [1] - 8:10 extensively [1] - 104:13 extent [6] - 32:9, 51:1, 51:2, 55:2, 81:16, 111:18 extraordinary [1] - 108:14 extremely [1] - 23:19</p>	<p>29:20 fans [2] - 44:15, 44:20 far [9] - 35:17, 37:9, 40:16, 53:18, 57:20, 58:21, 60:14, 73:10, 98:21 Farwell [14] - 9:19, 11:1, 14:14, 17:10, 17:14, 17:16, 17:19, 18:9, 18:13, 19:14, 19:18, 22:14, 22:15, 103:17 favor [3] - 5:11, 113:11, 115:20 fear [1] - 27:19 feasibility [1] - 101:8 fee [1] - 55:5 feet [4] - 15:7, 20:3, 24:8, 46:20 fellow [1] - 102:1 felt [3] - 4:21, 34:4, 54:16 Fenway [1] - 99:14 few [3] - 46:20, 51:13, 77:21 figure [3] - 64:20, 83:2, 83:17 file [1] - 112:17 filed [1] - 86:15 finally [2] - 26:19, 41:13 financial [2] - 32:13, 40:10 fine [2] - 46:16, 86:11 fire [5] - 30:6, 30:8, 63:7, 75:1, 75:8 Fire [8] - 1:6, 63:19, 64:12, 64:17, 65:15, 68:18, 75:3, 90:7 firmly [1] - 46:4 firsthand [1] - 14:1 fit [1] - 21:12 fitness [2] - 51:11, 51:13 five [1] - 90:2 fixed [2] - 37:16, 38:1 Flat [1] - 10:20 flexibility [4] - 46:7, 48:4, 48:7, 82:10 floating [1] - 98:6 flooding [1] - 21:10 floor [8] - 13:3, 24:9, 98:14, 98:15, 99:4, 99:9, 100:3, 112:15 flow [3] - 21:18, 59:11, 74:15 flower [1] - 60:20 fluctuates [1] - 72:1 focus [2] - 43:3, 89:9 focused [4] - 37:1, 39:10, 52:14, 52:15 folk [1] - 27:3 folks [5] - 80:5, 81:14, 83:12, 93:10, 93:15 follow [6] - 5:6, 6:6,</p>	<p>29:7, 44:14, 44:20, 90:20 follow-up [1] - 5:6 followed [2] - 7:15, 101:12 foot [5] - 20:17, 21:1, 21:4, 81:6, 99:8 foreclosing [1] - 3:14 FOREGOING [1] - 117:19 forgot [1] - 27:2 form [3] - 77:4, 84:4, 118:4 former [1] - 22:16 forth [3] - 57:16, 66:6, 117:10 forward [3] - 17:4, 28:19, 114:20 four [3] - 50:11, 68:7, 90:2 four-occupant [1] - 50:11 frame [2] - 45:18, 82:17 frankly [11] - 39:20, 42:6, 56:17, 56:21, 57:4, 57:9, 57:17, 58:19, 59:2, 81:2, 87:20 frequents [1] - 31:5 Friday [6] - 42:3, 44:18, 45:9, 79:6, 79:12, 92:14 friends [1] - 25:6 front [6] - 55:11, 58:6, 59:9, 60:8, 103:10, 112:16 fully [1] - 19:2 fun [1] - 25:9 Fund [1] - 34:15</p>	<p>102:14, 102:20, 103:3, 104:9, 105:6, 105:14, 107:2, 107:11, 107:18, 108:12, 109:11, 111:4, 111:15, 112:2, 112:8, 112:19, 113:4, 113:10, 113:15, 113:21, 114:14, 115:2, 115:15, 115:18, 116:3 GARY [6] - 22:13, 26:5, 26:16, 28:16, 105:9, 105:19 Gary [7] - 11:2, 17:15, 17:18, 18:5, 18:6, 22:13, 103:14 gather [2] - 15:14, 34:21 general [3] - 50:8, 63:14, 93:2 generally [5] - 43:20, 44:1, 90:3, 95:7, 102:8 generate [3] - 28:4, 32:14, 83:16 genre [2] - 45:17, 74:5 geography [1] - 19:16 Gerald [2] - 1:6, 3:10 GERALD [18] - 12:16, 13:20, 14:4, 74:11, 75:6, 75:10, 78:20, 79:4, 79:8, 85:20, 86:6, 99:15, 99:21, 101:4, 102:11, 102:18, 113:14, 116:2 Getz [8] - 10:21, 11:6, 11:15, 12:13, 13:14, 54:14, 55:17, 61:3 Getz's [2] - 11:12, 57:21 GIFFORD [6] - 12:21, 107:5, 107:16, 112:4, 112:14, 113:2 Gifford [12] - 10:19, 11:18, 12:12, 13:3, 13:13, 14:12, 18:1, 34:1, 34:12, 34:15, 39:8, 107:3 given [7] - 24:13, 45:1, 87:8, 101:19, 108:3, 108:8, 114:1 glad [1] - 86:20 Glancy [9] - 37:13, 43:18, 44:13, 45:1, 47:16, 48:14, 49:4, 49:17, 88:5 Glancy's [4] - 42:9, 46:4, 49:21, 97:10 Globe [1] - 22:17 governing [1] - 118:2 graduate [1] - 24:17 granting [2] - 7:13, 76:9</p>	<p>great [4] - 25:20, 59:7, 87:1, 110:16 greater [3] - 35:17, 40:16, 84:17 group [4] - 13:15, 34:2, 46:15, 76:4 guide [1] - 67:10</p>
F		G		
<p>facet [1] - 32:18 facilitate [1] - 59:11 facility [1] - 80:18 facing [1] - 87:12 FACSIMILE [1] - 1:20 factors [1] - 49:10 failed [1] - 23:4 failure [2] - 85:16, 94:2 fair [7] - 29:3, 36:3, 36:10, 43:2, 57:5, 63:4, 101:14 fairly [1] - 15:16 fall [1] - 89:21 false [1] - 30:5 familiar [2] - 26:10, 41:8 familiarity [1] - 93:7 family [2] - 12:14,</p>	<p>29:7, 44:14, 44:20, 90:20 follow-up [1] - 5:6 followed [2] - 7:15, 101:12 foot [5] - 20:17, 21:1, 21:4, 81:6, 99:8 foreclosing [1] - 3:14 FOREGOING [1] - 117:19 forgot [1] - 27:2 form [3] - 77:4, 84:4, 118:4 former [1] - 22:16 forth [3] - 57:16, 66:6, 117:10 forward [3] - 17:4, 28:19, 114:20 four [3] - 50:11, 68:7, 90:2 four-occupant [1] - 50:11 frame [2] - 45:18, 82:17 frankly [11] - 39:20, 42:6, 56:17, 56:21, 57:4, 57:9, 57:17, 58:19, 59:2, 81:2, 87:20 frequents [1] - 31:5 Friday [6] - 42:3, 44:18, 45:9, 79:6, 79:12, 92:14 friends [1] - 25:6 front [6] - 55:11, 58:6, 59:9, 60:8, 103:10, 112:16 fully [1] - 19:2 fun [1] - 25:9 Fund [1] - 34:15</p>	<p>GARDNER [85] - 4:14, 6:11, 6:17, 10:16, 11:5, 12:3, 12:8, 13:2, 14:19, 16:14, 16:17, 17:1, 17:4, 19:7, 19:13, 20:16, 21:16, 22:3, 22:10, 26:3, 26:9, 28:14, 28:17, 31:9, 31:14, 33:3, 43:14, 47:7, 47:12, 48:8, 48:13, 50:3, 51:6, 54:3, 55:9, 61:13, 62:11, 63:13, 65:18, 73:2, 74:9, 76:6, 76:17, 77:2, 78:18, 83:21, 85:19, 88:2, 88:7, 89:15, 92:20, 97:6, 98:10, 98:13, 100:11, 100:18, 101:1, 101:5, 101:18, 102:8,</p>	<p>102:14, 102:20, 103:3, 104:9, 105:6, 105:14, 107:2, 107:11, 107:18, 108:12, 109:11, 111:4, 111:15, 112:2, 112:8, 112:19, 113:4, 113:10, 113:15, 113:21, 114:14, 115:2, 115:15, 115:18, 116:3 GARY [6] - 22:13, 26:5, 26:16, 28:16, 105:9, 105:19 Gary [7] - 11:2, 17:15, 17:18, 18:5, 18:6, 22:13, 103:14 gather [2] - 15:14, 34:21 general [3] - 50:8, 63:14, 93:2 generally [5] - 43:20, 44:1, 90:3, 95:7, 102:8 generate [3] - 28:4, 32:14, 83:16 genre [2] - 45:17, 74:5 geography [1] - 19:16 Gerald [2] - 1:6, 3:10 GERALD [18] - 12:16, 13:20, 14:4, 74:11, 75:6, 75:10, 78:20, 79:4, 79:8, 85:20, 86:6, 99:15, 99:21, 101:4, 102:11, 102:18, 113:14, 116:2 Getz [8] - 10:21, 11:6, 11:15, 12:13, 13:14, 54:14, 55:17, 61:3 Getz's [2] - 11:12, 57:21 GIFFORD [6] - 12:21, 107:5, 107:16, 112:4, 112:14, 113:2 Gifford [12] - 10:19, 11:18, 12:12, 13:3, 13:13, 14:12, 18:1, 34:1, 34:12, 34:15, 39:8, 107:3 given [7] - 24:13, 45:1, 87:8, 101:19, 108:3, 108:8, 114:1 glad [1] - 86:20 Glancy [9] - 37:13, 43:18, 44:13, 45:1, 47:16, 48:14, 49:4, 49:17, 88:5 Glancy's [4] - 42:9, 46:4, 49:21, 97:10 Globe [1] - 22:17 governing [1] - 118:2 graduate [1] - 24:17 granting [2] - 7:13, 76:9</p>	<p style="text-align: center;">H</p> <p>H2 [1] - 3:17 HAAS [22] - 6:10, 60:1, 61:2, 63:15, 64:11, 69:1, 70:13, 70:20, 71:2, 71:5, 79:13, 83:1, 98:4, 100:13, 101:3, 102:12, 102:16, 103:2, 113:13, 114:21, 115:17, 116:1 Haas's [1] - 5:3 half [9] - 44:5, 54:12, 66:8, 66:15, 70:4, 94:6, 106:4, 107:6, 110:15 half-an-hour [1] - 70:4 half-hour [4] - 44:5, 66:8, 66:15, 94:6 hall [7] - 8:5, 26:17, 44:3, 61:9, 72:17, 73:17, 98:11 Hall [2] - 69:4, 69:7 hand [3] - 43:13, 117:12 hand-in-hand [1] - 43:13 Handing [1] - 56:1 handle [1] - 57:19 handling [1] - 9:15 hands [1] - 103:5 hanging [1] - 83:15 happy [3] - 10:13, 97:15, 106:15 hard [4] - 25:16, 38:17, 90:10, 91:16 hardship [1] - 47:5 Harvard [17] - 16:7, 19:20, 29:4, 31:4, 42:18, 42:19, 50:8, 52:7, 52:12, 79:18, 80:6, 81:4, 93:18, 103:16, 104:16, 105:4, 109:21 head [3] - 67:12, 79:20, 83:1 headliner [4] - 44:8, 94:10, 94:20 headlining [1] - 94:16 hear [12] - 5:18, 20:6, 55:10, 81:8, 87:19, 89:5, 105:20, 106:1, 106:6, 108:15, 109:7, 110:12 HEARING [1] - 1:4 hearing [18] - 3:13,</p>

<p>4:16, 5:8, 5:14, 8:4, 8:5, 13:5, 18:2, 19:10, 35:7, 36:4, 43:18, 52:2, 54:8, 78:8, 101:6, 103:15, 108:11</p> <p>Hearing [4] - 3:4, 4:18, 103:1, 116:5</p> <p>hearings [1] - 5:18</p> <p>heated [2] - 58:2, 58:3</p> <p>heavily [1] - 79:17</p> <p>held [1] - 3:17</p> <p>Held [1] - 1:10</p> <p>help [3] - 55:21, 66:9, 67:10</p> <p>helpful [3] - 29:12, 111:8, 111:12</p> <p>helping [1] - 68:9</p> <p>hereinbefore [1] - 117:10</p> <p>hereunto [1] - 117:12</p> <p>hick [1] - 89:2</p> <p>high [3] - 24:8, 53:12, 71:12</p> <p>higher [2] - 92:6, 111:1</p> <p>highly [3] - 8:13, 8:14, 38:4</p> <p>Hilliard [1] - 10:19</p> <p>hip [3] - 27:20, 28:8, 89:3</p> <p>hip-hop [2] - 27:20, 28:8</p> <p>historic [2] - 24:4</p> <p>historically [1] - 78:15</p> <p>history [4] - 4:15, 26:11, 53:21, 76:14</p> <p>hit [1] - 93:13</p> <p>hold [2] - 27:18, 32:10</p> <p>holder [1] - 3:15</p> <p>holiday [2] - 4:6, 102:10</p> <p>holidays [1] - 115:9</p> <p>home [6] - 29:15, 30:6, 32:12, 106:16, 106:18</p> <p>homes [2] - 24:4, 25:13</p> <p>hop [2] - 27:20, 28:8</p> <p>hope [5] - 46:1, 54:1, 81:2, 107:18, 115:10</p> <p>hopefully [3] - 79:16, 80:6, 110:6</p> <p>hotel [1] - 114:2</p> <p>hour [15] - 7:11, 34:17, 35:3, 35:11, 44:5, 54:11, 54:12, 66:8, 66:15, 70:4, 94:6, 95:21, 106:4, 107:6</p> <p>hour-and-a-half [2] - 54:12, 106:4</p> <p>huge [1] - 9:2</p> <p>hundred [1] - 46:20</p> <p>hundreds [2] - 21:10, 40:18</p>	<p style="text-align: center;">I</p> <p>Ice [6] - 63:19, 64:12, 64:17, 65:15, 68:18, 75:3</p> <p>idea [10] - 28:12, 28:13, 81:11, 90:10, 91:12, 91:16, 91:17, 92:1, 96:5, 109:20</p> <p>Idenex [1] - 115:5</p> <p>identified [1] - 100:7</p> <p>identify [5] - 10:17, 22:11, 31:17, 33:7, 118:6</p> <p>idling [2] - 30:3, 30:8</p> <p>imagination [1] - 49:9</p> <p>imagine [4] - 21:13, 27:12, 46:14, 104:21</p> <p>impact [8] - 29:18, 30:11, 30:16, 38:15, 41:14, 58:20, 61:8, 85:17</p> <p>impacts [1] - 97:2</p> <p>importance [1] - 5:1</p> <p>important [9] - 34:4, 50:6, 52:17, 91:1, 91:14, 95:6, 95:10, 104:15, 110:17</p> <p>importantly [1] - 91:2</p> <p>IN [2] - 1:4, 117:12</p> <p>inactive [1] - 10:1</p> <p>inaudible [1] - 109:10</p> <p>INC [1] - 1:19</p> <p>incentive [5] - 32:6, 32:13, 85:4, 85:11, 110:4</p> <p>include [2] - 4:8, 41:21</p> <p>includes [3] - 39:21, 46:21, 47:1</p> <p>inclusive [1] - 103:8</p> <p>increase [2] - 28:10, 41:3</p> <p>increasing [1] - 104:4</p> <p>incredibly [3] - 30:9, 30:18, 104:15</p> <p>indicated [1] - 32:21</p> <p>indicating [1] - 55:21</p> <p>indicating [1] - 24:3</p> <p>industry [3] - 15:15, 47:2, 47:4</p> <p>inebriated [1] - 27:13</p> <p>influx [2] - 79:17, 83:7</p> <p>information [5] - 12:15, 14:2, 107:17, 108:8, 111:6</p> <p>informed [3] - 11:16, 13:13, 14:16</p> <p>infrastructure [1] - 37:10</p> <p>infrastructure [1] - 109:5</p> <p>ingress [2] - 9:16, 104:15</p>	<p>inning [1] - 99:13</p> <p>inquire [1] - 112:12</p> <p>inside [2] - 4:1, 91:4</p> <p>inspection [1] - 113:7</p> <p>instructions [1] - 118:10</p> <p>instruments [3] - 4:9, 15:19, 38:3</p> <p>insure [1] - 7:16</p> <p>intensive [1] - 37:9</p> <p>intention [1] - 71:3</p> <p>interest [6] - 8:16, 23:10, 23:11, 40:10, 55:5</p> <p>interested [2] - 29:6, 117:8</p> <p>interesting [1] - 90:16</p> <p>interests [1] - 15:9</p> <p>interfere [1] - 58:16</p> <p>interferes [1] - 20:17</p> <p>interrupted [1] - 51:6</p> <p>investigative [1] - 22:16</p> <p>investment [6] - 51:19, 84:6, 84:13, 86:2, 86:7, 90:9</p> <p>invitation [1] - 34:1</p> <p>invite [1] - 6:3</p> <p>involuntarily [1] - 3:18</p> <p>involvement [1] - 36:14</p> <p>involves [3] - 51:12, 77:20, 102:6</p> <p>ironic [1] - 36:20</p> <p>issues [12] - 11:7, 11:8, 29:7, 52:16, 54:15, 61:2, 63:17, 64:12, 64:19, 68:6, 95:2, 100:14</p> <p>itself [2] - 56:3, 75:11</p> <p style="text-align: center;">J</p> <p>jam [1] - 30:18</p> <p>JAMES [34] - 33:9, 47:10, 47:18, 48:12, 48:17, 51:9, 55:1, 56:2, 62:2, 62:16, 63:6, 73:11, 76:12, 76:19, 77:16, 79:2, 79:6, 79:9, 80:7, 81:16, 84:15, 87:6, 89:8, 92:4, 93:6, 96:8, 97:8, 97:17, 98:12, 99:3, 99:18, 100:3, 101:14, 102:3</p> <p>JAMES [2] - 45:14, 50:15</p> <p>James [3] - 33:11, 108:21, 114:20</p> <p>January [7] - 101:6, 101:10, 103:1, 111:18, 113:16, 113:21, 114:11</p> <p>JFK [1] - 80:18</p>	<p>Jillson [1] - 22:17</p> <p>Jillson's [1] - 16:7</p> <p>JOHN [12] - 55:13, 56:13, 60:3, 61:4, 61:15, 63:11, 75:5, 75:9, 80:17, 86:4, 90:5, 93:9</p> <p>John [3] - 55:13, 65:14, 68:18</p> <p>Josh [2] - 59:6, 63:1</p> <p>JOSHUA [16] - 63:5, 64:9, 65:14, 65:20, 69:4, 70:15, 71:1, 71:9, 73:7, 75:14, 82:1, 88:6, 94:3, 97:15, 98:18, 99:20</p> <p>Joshua [3] - 3:20, 33:13, 65:20</p> <p>JOSHUA [1] - 71:4</p> <p>JULIA [2] - 109:14, 109:15</p> <p>Julia [1] - 109:14</p> <p style="text-align: center;">K</p> <p>keep [6] - 6:20, 35:7, 64:5, 68:1, 76:1, 111:2</p> <p>keeping [2] - 65:10, 69:20</p> <p>Ken's [1] - 38:20</p> <p>kept [1] - 27:12</p> <p>kid [3] - 25:7, 25:17, 25:20</p> <p>kids [5] - 24:16, 25:3, 25:4, 53:12</p> <p>kind [15] - 7:20, 26:12, 27:11, 27:12, 29:18, 48:14, 56:21, 64:5, 64:13, 64:17, 67:12, 81:18, 99:7, 99:12, 100:16</p> <p>kinds [1] - 30:10</p> <p>kitchen [1] - 43:9</p> <p>knowing [2] - 76:2, 95:9</p> <p>knowledge [3] - 8:8, 38:10, 117:11</p> <p style="text-align: center;">L</p> <p>lack [1] - 41:7</p> <p>lady [1] - 103:10</p> <p>Lakeview [1] - 7:2</p> <p>landlord [6] - 32:13, 40:8, 40:9, 40:11, 55:3, 85:4</p> <p>landlords [2] - 40:19, 41:1</p> <p>lane [3] - 9:13, 15:3, 15:5</p> <p>Lansdowne [1] - 109:4</p> <p>large [3] - 50:9, 64:1,</p>	<p>104:5</p> <p>largely [1] - 46:2</p> <p>larger [7] - 56:18, 60:18, 61:12, 69:16, 75:16, 99:6, 100:8</p> <p>late [5] - 43:9, 45:8, 49:10, 94:4, 109:5</p> <p>late-arriving [1] - 49:10</p> <p>latest [7] - 44:12, 47:17, 66:17, 88:5, 88:8, 88:11, 88:12</p> <p>law [4] - 38:8, 114:8, 114:9, 115:7</p> <p>laws [1] - 90:20</p> <p>lay [1] - 78:15</p> <p>learned [3] - 36:14, 49:4, 107:14</p> <p>lease [5] - 32:4, 39:21, 40:14, 90:19, 91:13</p> <p>leases [1] - 40:18</p> <p>leasing [1] - 41:9</p> <p>least [4] - 53:15, 62:12, 76:7, 76:10</p> <p>leave [1] - 81:15</p> <p>leaves [3] - 45:4, 45:5, 97:11</p> <p>leaving [2] - 42:15, 93:10</p> <p>left [5] - 3:12, 33:13, 52:8, 98:20, 100:4</p> <p>legal [2] - 4:6, 77:4</p> <p>lengths [1] - 59:7</p> <p>lengthy [1] - 4:16</p> <p>less [5] - 57:9, 58:20, 60:13, 61:10</p> <p>letters [1] - 51:15</p> <p>letting [4] - 30:1, 68:15, 81:3, 93:15</p> <p>levels [1] - 78:5</p> <p>licencee [1] - 52:20</p> <p>LICENSE [1] - 1:4</p> <p>licensed [1] - 87:3</p> <p>licensee [1] - 74:3</p> <p>licenses [5] - 46:10, 46:11, 78:9, 84:20, 84:21</p> <p>licensing [1] - 95:15</p> <p>life [2] - 18:12, 29:6</p> <p>lights [3] - 42:13, 90:13, 97:11</p> <p>likely [3] - 21:9, 46:5, 93:20</p> <p>limited [4] - 5:18, 7:10, 38:11, 108:7</p> <p>Line [2] - 80:13, 118:11</p> <p>line [2] - 32:2, 118:6</p> <p>lines [5] - 21:3, 21:5, 21:9, 56:4, 96:2</p> <p>lining [1] - 79:20</p> <p>LINT [7] - 3:2, 12:5, 98:9, 100:21, 113:9, 114:12, 115:14</p> <p>liquor [2] - 97:5, 97:18</p>
---	---	--	---	---

<p>listening [2] - 29:10, 41:13</p> <p>live [17] - 4:9, 4:12, 7:1, 18:5, 22:2, 22:14, 29:2, 30:11, 31:4, 34:19, 43:2, 43:4, 74:8, 94:14, 97:13, 99:12, 103:13</p> <p>lived [5] - 14:13, 18:9, 18:10, 39:4, 110:15</p> <p>lives [2] - 10:19, 17:15</p> <p>living [1] - 46:20</p> <p>LLC [1] - 3:19</p> <p>load [3] - 8:21, 21:19, 22:1</p> <p>loading [5] - 15:18, 36:21, 37:10, 60:5, 61:16</p> <p>lobby [1] - 61:20</p> <p>located [1] - 69:2</p> <p>location [5] - 19:14, 36:19, 53:8, 81:3, 90:17</p> <p>locations [3] - 40:4, 53:16, 99:19</p> <p>Lombardi [2] - 1:12, 3:6</p> <p>looking [5] - 82:6, 85:21, 86:2, 87:4, 105:4</p> <p>looks [3] - 42:2, 60:10, 83:18</p> <p>lose [1] - 86:16</p> <p>loss [1] - 87:4</p> <p>loud [3] - 23:17, 29:17, 52:6</p> <p>louder [1] - 67:13</p> <p>lounge [1] - 100:4</p> <p>love [2] - 95:3, 110:12</p> <p>loved [1] - 110:16</p> <p>low [2] - 27:11, 30:9</p> <p>low-tone [1] - 30:9</p> <p>LUCY [3] - 103:12, 103:13, 104:11</p> <p>Lucy [1] - 103:12</p>	<p>manageable [1] - 38:4</p> <p>managed [1] - 62:1</p> <p>management [4] - 36:18, 38:11, 52:16, 70:18</p> <p>manages [1] - 58:1</p> <p>Manhattan [1] - 69:8</p> <p>Manhattan [1] - 110:20</p> <p>map [1] - 9:10</p> <p>MARILEE [2] - 29:1, 29:2</p> <p>Marilee [1] - 29:1</p> <p>Marine [2] - 24:19, 26:1</p> <p>MARK [1] - 118:7</p> <p>market [4] - 72:2, 76:5, 81:20</p> <p>marketplace [1] - 45:14</p> <p>marriage [1] - 117:7</p> <p>mass [1] - 79:16</p> <p>MASSACHUSETTS [2] - 1:1, 117:2</p> <p>Massachusetts [3] - 1:12, 1:13, 3:7</p> <p>material [2] - 43:17, 100:17</p> <p>Matt [1] - 27:9</p> <p>matter [15] - 3:12, 5:8, 6:11, 6:14, 8:20, 9:8, 11:21, 12:2, 91:10, 101:20, 102:21, 113:16, 115:5, 117:7, 117:8</p> <p>max'd [1] - 104:16</p> <p>maximizes [1] - 32:16</p> <p>maximum [1] - 10:6</p> <p>MBTA [6] - 67:11, 79:14, 80:1, 81:6, 93:18, 95:12</p> <p>McMillen [1] - 34:14</p> <p>meaning [2] - 70:16, 102:15</p> <p>means [1] - 93:10</p> <p>MEANS [1] - 117:20</p> <p>meet [1] - 34:3</p> <p>meeting [9] - 4:20, 5:9, 54:7, 72:14, 102:6, 102:17, 103:6, 114:1, 114:7</p> <p>MEMBER [4] - 6:16, 17:3, 22:9, 31:12</p> <p>members [13] - 5:19, 6:3, 6:13, 8:10, 9:6, 22:7, 28:17, 33:10, 68:8, 101:19, 103:4, 105:10, 107:1</p> <p>memories [1] - 39:5</p> <p>memory [1] - 92:7</p> <p>mention [1] - 27:2</p> <p>menu [1] - 100:1</p> <p>merchandise [1] - 70:4</p> <p>met [2] - 41:19, 55:17</p>	<p>Mexico [1] - 72:5</p> <p>MEYER [2] - 29:1, 29:2</p> <p>Meyer [1] - 29:2</p> <p>mezzanine [2] - 99:2, 100:10</p> <p>Michael [4] - 1:5, 1:12, 3:6, 3:10</p> <p>microphones [1] - 37:21</p> <p>mid [1] - 61:18</p> <p>middle [1] - 99:7</p> <p>midnight [8] - 42:8, 46:6, 48:6, 49:2, 49:14, 82:10, 89:1, 92:16</p> <p>million [2] - 16:8, 86:3</p> <p>mind [2] - 65:11, 111:2</p> <p>mindful [1] - 41:14</p> <p>minds [1] - 96:5</p> <p>minute [3] - 12:15, 94:21, 95:1</p> <p>minutes [6] - 43:17, 44:2, 44:6, 44:7, 44:9, 70:3</p> <p>misplaced [1] - 38:5</p> <p>misrepresent [1] - 82:8</p> <p>mitigate [2] - 26:18, 97:1</p> <p>mitigated [1] - 26:19</p> <p>mode [1] - 101:13</p> <p>model [1] - 36:8</p> <p>moderate [1] - 36:9</p> <p>modes [1] - 74:12</p> <p>modification [2] - 41:16, 78:13</p> <p>modify [1] - 92:17</p> <p>modifying [1] - 79:3</p> <p>moment [1] - 27:16</p> <p>Monday [1] - 102:9</p> <p>money [6] - 27:14, 27:21, 32:14, 71:14, 86:16, 93:2</p> <p>monitored [1] - 52:17</p> <p>monitoring [1] - 68:5</p> <p>months [4] - 84:9, 87:1, 87:5</p> <p>Moon [2] - 57:2, 61:7</p> <p>morning [20] - 18:16, 25:13, 30:3, 33:10, 34:11, 35:1, 36:5, 36:16, 41:15, 50:2, 55:8, 59:8, 60:18, 65:5, 80:19, 89:4, 89:7, 89:16, 101:10, 115:3</p> <p>most [4] - 46:6, 56:15, 68:20, 91:2</p> <p>Mount [1] - 103:14</p> <p>move [1] - 83:12</p> <p>moving [1] - 65:8</p> <p>Multiple [1] - 109:9</p> <p>multiple [1] - 62:3</p>	<p>Municipal [2] - 1:12, 3:6</p> <p>music [18] - 4:11, 15:15, 22:2, 52:4, 57:12, 66:20, 69:4, 72:17, 73:12, 74:4, 81:9, 81:13, 93:13, 94:14, 109:20, 110:12, 110:16</p> <p>musical [5] - 4:9, 45:17, 49:7, 66:14, 74:8</p> <p>musician [1] - 48:10</p> <p>musicians [2] - 29:21, 38:2</p> <p>must [2] - 40:11, 92:7</p> <p style="text-align: center;">N</p> <p>narrow [3] - 16:10, 21:12, 83:8</p> <p>natural [2] - 32:20, 32:21</p> <p>nature [8] - 47:4, 51:17, 65:2, 78:3, 79:15, 83:10, 104:3, 104:7</p> <p>near [1] - 69:2</p> <p>nearly [2] - 34:16, 77:20</p> <p>necessarily [5] - 11:9, 54:17, 81:8, 94:19, 115:6</p> <p>necessary [2] - 103:6, 118:5</p> <p>need [5] - 40:21, 45:7, 83:13, 87:11, 93:19</p> <p>negatively [1] - 84:11</p> <p>neighborhood [13] - 29:15, 38:15, 45:11, 50:12, 63:7, 66:5, 67:15, 67:17, 67:19, 68:21, 69:6, 96:4, 108:4</p> <p>neighbors [3] - 9:19, 41:19, 96:4</p> <p>next [5] - 33:21, 55:4, 101:5, 101:10, 108:11</p> <p>nice [3] - 30:14, 106:13, 106:14</p> <p>night [15] - 4:6, 7:21, 15:12, 15:20, 15:21, 35:12, 41:5, 44:16, 44:19, 68:8, 70:2, 92:14, 92:21, 96:17, 109:6</p> <p>nightclub [8] - 25:11, 28:13, 35:20, 36:1, 37:19, 46:13, 47:15, 106:13</p> <p>nightmare [1] - 104:18</p> <p>nights [1] - 80:20</p> <p>nine [1] - 84:9</p> <p>nobody [1] - 108:3</p>	<p>nocturnal [2] - 47:4, 80:11</p> <p>noisy [1] - 20:13</p> <p>non [1] - 89:11</p> <p>non-weekend [1] - 89:11</p> <p>none [3] - 113:15, 115:14, 116:3</p> <p>noon [2] - 115:4, 115:20</p> <p>norm [13] - 44:12, 46:3, 47:17, 47:21, 48:4, 48:6, 62:13, 88:6, 88:11, 88:12, 91:17, 93:20, 96:17</p> <p>normally [2] - 94:21, 98:8</p> <p>norms [1] - 45:15</p> <p>north [1] - 86:2</p> <p>NOT [2] - 117:20, 118:7</p> <p>Notary [2] - 117:5, 117:15</p> <p>note [1] - 112:20</p> <p>noted [1] - 43:4</p> <p>notes [1] - 117:10</p> <p>notice [6] - 5:14, 17:21, 18:7, 19:12, 108:6, 108:9</p> <p>notification [1] - 29:5</p> <p>notify [1] - 18:3</p> <p>noting [2] - 73:20, 80:10</p> <p>notion [3] - 35:10, 41:1, 52:5</p> <p>notorious [1] - 38:21</p> <p>November [13] - 3:13, 4:17, 4:18, 5:14, 5:20, 8:4, 13:5, 19:9, 32:9, 43:17, 52:2, 54:6, 54:7</p> <p>number [19] - 5:11, 9:15, 18:20, 20:3, 29:20, 34:5, 35:7, 35:8, 35:12, 36:10, 50:9, 52:9, 64:1, 66:21, 81:9, 82:6, 95:5, 104:4, 118:6</p> <p>Number [1] - 30:12</p> <p>numbers [3] - 10:5, 35:3, 72:7</p> <p>nursing [1] - 30:6</p>
M				
<p>ma'am [2] - 109:11, 113:4</p> <p>machines [1] - 4:11</p> <p>magnitude [2] - 5:1, 8:12</p> <p>mail [5] - 19:9, 54:14, 55:16, 105:17, 111:11</p> <p>mailed [1] - 18:4</p> <p>main [2] - 106:3</p> <p>maintain [1] - 60:8</p> <p>majority [2] - 60:16, 82:8</p> <p>makeup [1] - 87:7</p> <p>male [1] - 25:19</p> <p>man [2] - 14:13, 52:4</p> <p>manage [1] - 65:8</p>				O
				<p>oasis [1] - 60:10</p> <p>objectionable [1] - 53:2</p> <p>obstruction [2] - 24:5, 25:12</p> <p>obviously [8] - 6:6, 74:12, 74:16, 75:12, 86:8, 86:12, 86:17, 106:9</p> <p>occasion [1] - 103:16</p>

<p>occasional [1] - 46:8 occasions [1] - 48:4 occupant [1] - 50:11 occupied [1] - 23:2 occur [2] - 34:20, 45:18 occurred [1] - 33:19 occurring [2] - 48:5, 80:11 occurs [1] - 99:13 OF [6] - 1:1, 1:2, 117:2, 117:19, 117:20, 117:21 off-loading [1] - 15:18 offensive [1] - 53:1 offer [2] - 81:17, 105:12 offered [2] - 96:1, 97:1 office [1] - 61:20 Officer [1] - 1:9 OFFICIAL [1] - 1:20 often [4] - 22:19, 30:7, 37:19, 104:20 oftentimes [1] - 78:5 old [1] - 14:13 older [1] - 27:4 Once [1] - 64:16 once [4] - 28:9, 63:18, 64:7, 97:11 one's [1] - 73:14 ongoing [2] - 50:20, 97:12 open [12] - 20:1, 24:6, 43:9, 44:3, 44:11, 63:10, 68:4, 80:19, 88:9, 105:15, 106:7, 114:7 opening [2] - 44:5, 44:6 operate [5] - 59:16, 67:18, 79:10, 85:14, 86:11 operated [2] - 26:17, 86:14 operates [2] - 35:16, 74:15 operating [8] - 4:3, 9:2, 36:19, 67:3, 68:3, 80:12, 82:3, 95:7 operator [11] - 36:6, 37:14, 51:13, 51:16, 51:20, 77:6, 77:21, 78:2, 85:4, 85:12, 95:4 operators [5] - 34:4, 46:17, 56:17, 78:4, 82:13 opportunity [13] - 5:20, 13:4, 33:17, 43:11, 54:9, 80:1, 101:20, 102:5, 105:11, 107:19, 108:10, 108:13, 111:17</p>	<p>opposed [5] - 17:20, 50:10, 98:7, 113:15, 116:3 opposing [1] - 105:21 opposite [1] - 98:17 opposition [4] - 5:12, 17:13, 17:18, 19:5 option [2] - 51:3, 72:21 order [1] - 115:16 orients [1] - 56:3 original [1] - 5:14 originally [2] - 23:1, 114:18 origins [1] - 78:10 otherwise [3] - 46:17, 50:2, 90:17 ought [1] - 84:17 ourselves [2] - 71:18, 82:8 outcome [1] - 117:8 outdoor [2] - 4:2, 34:19 outflow [1] - 50:4 outlined [1] - 11:12 outside [5] - 27:5, 30:8, 31:3, 70:19, 91:5 overflowing [1] - 69:12 overly [1] - 70:10 overwhelming [1] - 20:14 owl [1] - 92:21 own [6] - 22:14, 37:20, 37:21, 83:10, 111:21 owner [3] - 17:14, 17:19, 64:17 owners [3] - 7:5, 7:6, 16:10 owns [5] - 10:20, 23:6, 55:4, 55:5 Oxford [11] - 18:11, 18:19, 20:14, 23:15, 23:18, 26:10, 30:12, 38:6, 38:7, 53:13, 68:2</p>	<p>27:11 panel [1] - 75:8 paper [1] - 36:13 parallel [1] - 19:19 park [2] - 60:7, 80:18 Park [1] - 99:14 parking [10] - 9:1, 20:1, 24:6, 56:5, 56:9, 60:6, 104:17, 104:19, 104:20, 105:4 particular [6] - 5:3, 15:1, 32:17, 36:19, 57:7, 73:14 particularly [2] - 59:18, 63:21 parties [2] - 11:17, 117:7 party [1] - 114:5 pass [1] - 91:6 passersby [1] - 27:6 Passim [1] - 27:3 past [4] - 66:21, 70:9, 71:10, 77:7 patience [1] - 113:19 patio [2] - 4:2, 34:19 patron [1] - 36:9 patrons [18] - 4:9, 27:13, 29:14, 35:11, 36:11, 42:12, 42:15, 43:6, 46:21, 50:9, 50:19, 51:2, 66:9, 66:17, 67:10, 67:13, 71:11, 104:4 Patty's [1] - 10:21 pause [2] - 41:11, 84:17 pavement [1] - 58:10 pay [2] - 32:17, 71:11 paying [1] - 94:17 payments [1] - 32:6 peace [1] - 20:18 peak [1] - 89:20 Pebble [2] - 10:19, 18:1 PEBBLE [6] - 12:21, 107:5, 107:16, 112:4, 112:14, 113:2 peculiarity [1] - 73:9 pedestrian [2] - 27:7, 62:5 people's [2] - 73:18, 103:17 per [1] - 39:17 percent [1] - 82:16 percentage [5] - 39:20, 40:1, 40:5, 40:9, 40:15 perform [1] - 91:13 performance [21] - 8:5, 31:7, 35:5, 35:9, 35:13, 37:1, 37:15, 39:11, 42:8, 42:10, 42:13, 43:21, 47:15, 50:4, 73:16, 85:8,</p>	<p>90:3, 96:13, 96:19, 99:12, 100:8 performances [5] - 45:17, 47:1, 50:14, 52:15, 74:8 performers [2] - 29:21, 30:4 perhaps [3] - 10:10, 78:1, 109:4 period [1] - 76:11 permits [1] - 8:1 permitted [3] - 37:6, 52:21, 82:11 Perry [1] - 22:20 person [6] - 21:8, 39:18, 59:11, 108:7, 109:16, 110:1 personal [1] - 38:7 personally [2] - 12:14, 14:1 perspective [5] - 5:3, 81:18, 81:19, 107:20, 114:10 perspectives [1] - 107:14 petition [1] - 78:12 petitioning [1] - 3:18 Phatt [1] - 10:2 phone [1] - 25:18 photo [3] - 55:20, 56:1, 56:3 photo) [1] - 55:21 physical [1] - 34:8 pick [1] - 71:15 picking [2] - 30:3, 67:2 picture [1] - 62:9 piece [1] - 29:3 pieces [1] - 75:7 placed [1] - 88:4 places [9] - 38:13, 42:19, 53:14, 60:21, 74:5, 87:18, 88:15, 88:18, 109:4 planned [1] - 114:18 planning [1] - 36:18 plans [2] - 8:10, 113:6 play [3] - 44:7, 49:6, 94:21 playing [5] - 4:11, 71:20, 73:18, 89:2, 94:20 plays [2] - 44:5, 44:9 pleasant [1] - 33:2 PLEASE [1] - 118:7 pleased [2] - 34:10, 51:18 pleasure [2] - 33:5, 100:12 pledge [1] - 3:15 plenty [1] - 52:11 Plow [1] - 29:13 plug [1] - 49:2 plummet [1] - 26:8 plus [3] - 35:7, 37:6,</p>	<p>38:18 pointing [1] - 54:14 points [4] - 62:3, 63:2, 105:19, 110:1 Police [1] - 1:6 police [3] - 21:3, 63:7, 66:4 policy [5] - 36:12, 76:8, 78:15, 96:10, 99:12 poor [1] - 68:5 popular [1] - 53:12 portion [6] - 30:21, 66:15, 92:17, 96:14, 96:20, 98:2 portions [1] - 8:1 position [4] - 36:12, 78:14, 97:9, 98:5 positive [1] - 81:10 possible [3] - 6:2, 32:15, 103:8 post [1] - 50:21 posted [1] - 25:15 potential [5] - 30:17, 56:17, 65:1, 68:6, 86:1 potentially [1] - 65:12 pouring [3] - 24:14, 25:10 POWELL [1] - 109:14 Powell [1] - 109:14 practice [5] - 68:11, 76:21, 77:17, 78:17, 94:14 practices [1] - 77:19 precedent [1] - 5:17 predecessors [1] - 22:20 predicated [1] - 86:9 predominantly [1] - 39:10 preference [1] - 48:11 prejudices [1] - 111:18 premises [11] - 9:14, 19:15, 19:21, 34:2, 34:17, 43:10, 55:18, 56:4, 62:8, 67:10, 98:2 premium [1] - 72:4 prepared [1] - 41:15 presence [3] - 52:7, 67:20, 69:20 present [2] - 6:6, 34:15 presentation [1] - 51:7 presentations [1] - 15:12 presumably [3] - 21:10, 37:4, 102:6 previous [3] - 57:2, 61:7, 90:6 previously [5] - 6:15, 9:8, 19:9, 37:5, 58:5</p>
P		<p>P-A-G-E [1] - 7:4 P-O-W-E-L-L [1] - 109:15 p.m [5] - 46:13, 47:6, 82:9, 92:15, 116:6 packed [1] - 30:18 PAGE [16] - 2:1, 6:21, 10:18, 11:14, 12:6, 12:11, 12:19, 13:9, 14:3, 14:9, 15:4, 16:16, 16:20, 31:19, 111:13, 111:16 Page's [1] - 36:14 page's [1] - 12:4 Palmer [2] - 27:3,</p>	<p>27:11 panel [1] - 75:8 paper [1] - 36:13 parallel [1] - 19:19 park [2] - 60:7, 80:18 Park [1] - 99:14 parking [10] - 9:1, 20:1, 24:6, 56:5, 56:9, 60:6, 104:17, 104:19, 104:20, 105:4 particular [6] - 5:3, 15:1, 32:17, 36:19, 57:7, 73:14 particularly [2] - 59:18, 63:21 parties [2] - 11:17, 117:7 party [1] - 114:5 pass [1] - 91:6 passersby [1] - 27:6 Passim [1] - 27:3 past [4] - 66:21, 70:9, 71:10, 77:7 patience [1] - 113:19 patio [2] - 4:2, 34:19 patron [1] - 36:9 patrons [18] - 4:9, 27:13, 29:14, 35:11, 36:11, 42:12, 42:15, 43:6, 46:21, 50:9, 50:19, 51:2, 66:9, 66:17, 67:10, 67:13, 71:11, 104:4 Patty's [1] - 10:21 pause [2] - 41:11, 84:17 pavement [1] - 58:10 pay [2] - 32:17, 71:11 paying [1] - 94:17 payments [1] - 32:6 peace [1] - 20:18 peak [1] - 89:20 Pebble [2] - 10:19, 18:1 PEBBLE [6] - 12:21, 107:5, 107:16, 112:4, 112:14, 113:2 peculiarity [1] - 73:9 pedestrian [2] - 27:7, 62:5 people's [2] - 73:18, 103:17 per [1] - 39:17 percent [1] - 82:16 percentage [5] - 39:20, 40:1, 40:5, 40:9, 40:15 perform [1] - 91:13 performance [21] - 8:5, 31:7, 35:5, 35:9, 35:13, 37:1, 37:15, 39:11, 42:8, 42:10, 42:13, 43:21, 47:15, 50:4, 73:16, 85:8,</p>	<p>38:18 pointing [1] - 54:14 points [4] - 62:3, 63:2, 105:19, 110:1 Police [1] - 1:6 police [3] - 21:3, 63:7, 66:4 policy [5] - 36:12, 76:8, 78:15, 96:10, 99:12 poor [1] - 68:5 popular [1] - 53:12 portion [6] - 30:21, 66:15, 92:17, 96:14, 96:20, 98:2 portions [1] - 8:1 position [4] - 36:12, 78:14, 97:9, 98:5 positive [1] - 81:10 possible [3] - 6:2, 32:15, 103:8 post [1] - 50:21 posted [1] - 25:15 potential [5] - 30:17, 56:17, 65:1, 68:6, 86:1 potentially [1] - 65:12 pouring [3] - 24:14, 25:10 POWELL [1] - 109:14 Powell [1] - 109:14 practice [5] - 68:11, 76:21, 77:17, 78:17, 94:14 practices [1] - 77:19 precedent [1] - 5:17 predecessors [1] - 22:20 predicated [1] - 86:9 predominantly [1] - 39:10 preference [1] - 48:11 prejudices [1] - 111:18 premises [11] - 9:14, 19:15, 19:21, 34:2, 34:17, 43:10, 55:18, 56:4, 62:8, 67:10, 98:2 premium [1] - 72:4 prepared [1] - 41:15 presence [3] - 52:7, 67:20, 69:20 present [2] - 6:6, 34:15 presentation [1] - 51:7 presentations [1] - 15:12 presumably [3] - 21:10, 37:4, 102:6 previous [3] - 57:2, 61:7, 90:6 previously [5] - 6:15, 9:8, 19:9, 37:5, 58:5</p>

<p>price [5] - 27:16, 71:18, 71:21, 72:4, 76:1</p> <p>prices [4] - 71:7, 71:9, 71:15, 72:8</p> <p>pricing [2] - 71:12, 75:11</p> <p>primarily [1] - 72:16</p> <p>prime [1] - 90:2</p> <p>principal [2] - 8:3, 77:8</p> <p>private [1] - 4:2</p> <p>privilege [1] - 86:18</p> <p>problematic [2] - 49:19, 53:15</p> <p>problems [2] - 18:21, 20:10</p> <p>procedural [1] - 4:15</p> <p>procedure [3] - 6:9, 118:2, 118:8</p> <p>proceeding [1] - 6:2</p> <p>process [4] - 7:15, 40:12, 82:20, 114:10</p> <p>Professional [1] - 117:5</p> <p>program [1] - 90:12</p> <p>project [1] - 112:16</p> <p>projected [1] - 15:14</p> <p>promises [1] - 8:13</p> <p>promoter [1] - 70:21</p> <p>promoters [1] - 16:2</p> <p>properly [1] - 86:14</p> <p>properties [1] - 69:3</p> <p>Properties [2] - 15:6, 55:15</p> <p>proponent [1] - 10:12</p> <p>proposal [2] - 8:11, 9:5</p> <p>propose [2] - 40:15, 41:20</p> <p>proposed [9] - 9:10, 18:17, 31:1, 33:15, 35:19, 37:11, 74:2, 96:21, 99:8</p> <p>proprietor [1] - 65:15</p> <p>protected [1] - 9:21</p> <p>proven [1] - 67:19</p> <p>provide [3] - 7:20, 68:17, 107:13</p> <p>provided [2] - 36:12, 36:15</p> <p>provides [3] - 48:6, 73:4, 85:3</p> <p>province [1] - 11:10</p> <p>proximity [1] - 80:3</p> <p>Pub [1] - 38:20</p> <p>publicized [1] - 5:15</p> <p>pull [1] - 49:2</p> <p>purposes [3] - 6:19, 40:8, 76:19</p> <p>pursuant [1] - 16:7</p> <p>push [2] - 41:5, 114:20</p> <p>pushing [1] - 39:14</p> <p>pushy [1] - 102:4</p>	<p>puts [3] - 82:11, 88:18, 95:16</p> <p>putting [3] - 60:11, 82:20, 95:10</p> <p style="text-align: center;">Q</p> <p>quality [2] - 18:12, 30:11</p> <p>quick [2] - 105:13, 105:19</p> <p>quickly [2] - 13:11, 105:9</p> <p>quiet [4] - 24:15, 25:15, 26:21, 27:4</p> <p>quite [17] - 23:18, 30:7, 36:2, 41:6, 48:9, 56:16, 56:21, 57:4, 57:9, 57:17, 58:19, 59:2, 73:11, 81:2, 82:20, 106:16</p> <p>quote [1] - 109:16</p> <p>quoted [1] - 22:18</p> <p style="text-align: center;">R</p> <p>rack [1] - 69:16</p> <p>Rafferty [8] - 10:12, 33:6, 33:11, 54:13, 57:12, 67:21, 108:21, 114:20</p> <p>RAFFERTY [37] - 33:9, 33:12, 45:14, 47:10, 47:18, 48:12, 48:17, 50:15, 51:9, 55:1, 56:2, 62:2, 62:16, 63:6, 73:11, 76:12, 76:19, 77:16, 79:2, 79:6, 79:9, 80:7, 81:16, 84:15, 87:6, 89:8, 92:4, 93:6, 96:8, 97:8, 97:17, 98:12, 99:3, 99:18, 100:3, 101:14, 102:3</p> <p>raised [3] - 61:2, 103:4, 109:15</p> <p>ramp [3] - 59:5, 62:4, 62:5</p> <p>range [5] - 40:3, 52:1, 56:20, 72:10, 75:19</p> <p>rarely [1] - 32:11</p> <p>rather [2] - 40:13, 82:20</p> <p>rationale [2] - 77:9, 78:15</p> <p>RE [1] - 1:4</p> <p>re [1] - 95:15</p> <p>re-licensing [1] - 95:15</p> <p>read [5] - 8:3, 24:11, 89:15, 118:3, 118:3</p> <p>readily [1] - 111:10</p> <p>real [3] - 11:21, 92:2, 104:6</p>	<p>reality [1] - 48:3</p> <p>realize [1] - 110:7</p> <p>Realty [2] - 2:2, 3:14</p> <p>rear [4] - 9:14, 15:3, 16:12, 24:9</p> <p>REARDON [18] - 12:16, 13:20, 14:4, 74:11, 75:6, 75:10, 78:20, 79:4, 79:8, 85:20, 86:6, 99:15, 99:21, 101:4, 102:11, 102:18, 113:14, 116:2</p> <p>Reardon [3] - 1:6, 3:11, 4:21</p> <p>reason [7] - 23:4, 36:3, 38:14, 48:8, 53:19, 103:21, 118:7</p> <p>Reason [1] - 118:11</p> <p>reasonable [1] - 6:8</p> <p>reasonably [1] - 24:21</p> <p>reasons [4] - 31:3, 39:8, 61:11, 94:4</p> <p>reassurances [1] - 24:12</p> <p>rebuttal [1] - 105:12</p> <p>recast [1] - 52:5</p> <p>received [4] - 5:10, 11:13, 55:16, 114:2</p> <p>receiving [1] - 40:9</p> <p>recent [2] - 34:21, 76:7</p> <p>recently [1] - 93:1</p> <p>recitation [1] - 92:18</p> <p>recognition [1] - 92:5</p> <p>recognize [1] - 47:21</p> <p>reconcile [2] - 64:4, 79:19</p> <p>reconsidered [1] - 31:8</p> <p>RECORD [1] - 1:20</p> <p>records [2] - 74:6, 82:15</p> <p>recyclables [1] - 37:8</p> <p>Red [1] - 80:13</p> <p>reducing [1] - 97:3</p> <p>refer [2] - 36:1, 111:9</p> <p>reference [2] - 15:2, 92:9</p> <p>referring [3] - 21:17, 40:6, 89:11</p> <p>reflect [2] - 48:3, 92:8</p> <p>refuse [1] - 110:8</p> <p>regard [1] - 114:5</p> <p>regarded [1] - 54:15</p> <p>regardless [1] - 87:7</p> <p>Registered [1] - 117:5</p> <p>regular [1] - 18:15</p> <p>regularly [2] - 20:7, 87:6</p> <p>regulated [1] - 9:18</p> <p>regulations [1] - 87:15</p> <p>relate [2] - 29:11, 30:5</p> <p>related [3] - 37:15, 40:1, 117:7</p>	<p>relates [2] - 50:13, 90:6</p> <p>relating [1] - 8:2</p> <p>relationship [3] - 34:18, 70:14, 70:16</p> <p>relevance [5] - 39:1, 50:17, 50:18, 79:14, 82:1</p> <p>relevant [8] - 7:16, 8:1, 51:4, 54:21, 55:2, 80:10, 80:15, 81:17</p> <p>remain [2] - 43:10, 105:15</p> <p>remaining [1] - 54:20</p> <p>remarks [2] - 10:7, 13:19</p> <p>remind [2] - 51:21, 67:16</p> <p>rent [6] - 32:16, 39:20, 40:1, 40:5, 40:9, 40:15</p> <p>rental [1] - 32:6</p> <p>repair [1] - 28:10</p> <p>repeat [3] - 24:1, 47:20, 54:5</p> <p>report [1] - 103:11</p> <p>REPORTER [2] - 109:7, 117:21</p> <p>Reporter [3] - 117:5, 117:5, 117:16</p> <p>reporter [2] - 17:6, 22:16</p> <p>REPORTERS [1] - 1:19</p> <p>reporting [1] - 86:10</p> <p>repose [1] - 106:16</p> <p>represent [6] - 7:5, 12:17, 14:17, 17:17, 33:12, 51:19</p> <p>representation [1] - 38:12</p> <p>represented [2] - 19:2, 19:4</p> <p>representing [2] - 14:8, 17:11</p> <p>represents [2] - 12:13, 35:8</p> <p>REPRODUCTION [1] - 117:20</p> <p>reputation [2] - 90:15, 95:6</p> <p>request [5] - 9:9, 41:17, 46:2, 78:21, 92:17</p> <p>requested [1] - 68:16</p> <p>required [1] - 68:16</p> <p>requirement [1] - 96:10</p> <p>requires [2] - 69:18, 90:20</p> <p>research [1] - 38:8</p> <p>residences [2] - 24:3, 69:6</p> <p>resident [1] - 17:9</p>	<p>residential [3] - 20:18, 69:3, 69:9</p> <p>residents [6] - 7:6, 7:17, 11:1, 17:19, 18:4, 29:19</p> <p>resolved [1] - 61:3</p> <p>respectful [1] - 67:17</p> <p>respective [1] - 108:9</p> <p>respond [2] - 84:2, 105:12</p> <p>responding [2] - 62:17, 92:16</p> <p>response [3] - 42:21, 48:2, 80:8</p> <p>rest [2] - 8:21, 15:19</p> <p>restaurants [3] - 23:3, 57:3, 66:11</p> <p>restricted [1] - 49:6</p> <p>restrictions [1] - 85:5</p> <p>result [1] - 26:8</p> <p>retail [1] - 40:3</p> <p>retained [1] - 13:10</p> <p>rethinking [1] - 62:21</p> <p>return [3] - 39:3, 53:9, 118:9</p> <p>revenue [4] - 23:7, 28:5, 39:18, 40:1</p> <p>review [2] - 9:9, 100:16</p> <p>reviewed [2] - 7:21, 86:19</p> <p>reviewing [3] - 12:2, 32:1, 107:9</p> <p>Richard [1] - 10:21</p> <p>Richmond [1] - 24:18</p> <p>rights [5] - 15:8, 57:20, 58:15, 59:19, 59:20</p> <p>risk [2] - 90:12, 102:3</p> <p>ROBERT [22] - 6:10, 60:1, 61:2, 63:15, 64:11, 69:1, 70:13, 70:20, 71:2, 71:5, 79:13, 83:1, 98:4, 100:13, 101:3, 102:12, 102:16, 103:2, 113:13, 114:21, 115:17, 116:1</p> <p>Robert [2] - 1:6, 3:11</p> <p>rock [2] - 72:16, 79:19</p> <p>rollbacks [1] - 84:20</p> <p>rolling [1] - 96:5</p> <p>Rolling [1] - 75:17</p> <p>Room [2] - 1:13, 3:8</p> <p>room [3] - 34:19, 42:11, 97:13</p> <p>roughly [2] - 10:4, 64:15</p> <p>route [1] - 20:7</p> <p>rowdy [6] - 23:19, 25:2, 25:6, 25:7, 38:12</p> <p>rule [1] - 42:7</p> <p>rules [1] - 118:2</p>
--	---	---	---	---

<p>run [3] - 48:21, 82:16, 95:14</p> <p>runs [2] - 43:21, 90:3</p>	<p>42:20</p> <p>seldom [1] - 108:14</p> <p>self [3] - 23:10, 23:11</p> <p>selling [1] - 57:11</p> <p>sensitive [3] - 22:21, 23:7, 93:19</p> <p>sent [1] - 108:9</p> <p>sentence [1] - 88:13</p> <p>separate [1] - 63:19</p> <p>separated [1] - 64:17</p> <p>separating [1] - 74:17</p> <p>separation [3] - 64:5, 64:9, 83:19</p> <p>September [1] - 114:5</p> <p>seriously [1] - 18:12</p> <p>serve [2] - 97:4, 98:11</p> <p>service [11] - 15:5, 16:10, 39:14, 57:18, 92:21, 96:18, 97:12, 98:1, 98:19, 99:1, 99:11</p> <p>session [1] - 114:8</p> <p>Session [1] - 115:4</p> <p>set [7] - 4:15, 48:20, 94:21, 95:1, 111:20, 117:10, 117:12</p> <p>setting [5] - 37:19, 66:20, 67:17, 72:18, 94:1</p> <p>settings [1] - 67:19</p> <p>share [4] - 103:17, 107:19, 111:7, 114:9</p> <p>shared [3] - 15:9, 41:18, 100:1</p> <p>shares [1] - 13:14</p> <p>Shaw [2] - 65:14, 68:18</p> <p>sheet [1] - 118:4</p> <p>sheets [1] - 118:5</p> <p>SHIPPEN [1] - 12:11</p> <p>SHIPPEN [15] - 6:21, 7:3, 10:18, 11:14, 12:6, 12:19, 13:9, 14:3, 14:9, 15:4, 16:16, 16:20, 31:19, 111:13, 111:16</p> <p>Shippen [6] - 6:21, 7:3, 17:11, 19:3, 31:19, 109:18</p> <p>shop [1] - 60:20</p> <p>short [3] - 9:20, 19:19, 20:5</p> <p>Shorthand [2] - 117:5, 117:16</p> <p>shortly [1] - 33:21</p> <p>show [13] - 43:8, 43:21, 48:16, 48:19, 71:13, 88:10, 88:21, 90:3, 94:11, 95:13, 96:17, 99:17, 105:1</p> <p>shows [10] - 4:13, 44:11, 82:7, 82:9, 82:16, 88:15, 89:19, 90:1, 95:5</p> <p>sidewalks [2] - 21:12,</p>	<p>30:17</p> <p>sign [1] - 118:8</p> <p>Signature [1] - 118:21</p> <p>significant [5] - 51:19, 56:15, 84:6, 84:13, 91:20</p> <p>significantly [1] - 61:10</p> <p>signify [2] - 113:11, 115:21</p> <p>similar [5] - 40:18, 57:1, 66:1, 82:4, 94:8</p> <p>similarly [1] - 42:3</p> <p>simply [4] - 17:12, 52:9, 87:17, 99:16</p> <p>Sinclair [1] - 3:20</p> <p>Singanayagam [1] - 10:9</p> <p>single [1] - 71:21</p> <p>site [2] - 54:9, 54:12</p> <p>sitting [2] - 73:17, 103:21</p> <p>six [1] - 84:8</p> <p>skiing [1] - 13:16</p> <p>skills [1] - 117:11</p> <p>sleep [4] - 18:16, 23:12, 24:8, 26:7</p> <p>Slicius [2] - 117:4, 117:15</p> <p>sliding [1] - 75:12</p> <p>slightly [1] - 44:18</p> <p>slow [1] - 90:1</p> <p>small [5] - 30:21, 60:19, 98:19, 99:1, 100:9</p> <p>smaller [4] - 57:18, 60:21, 61:9, 100:8</p> <p>Smith [1] - 27:9</p> <p>snows [1] - 58:8</p> <p>sold [3] - 32:3, 35:13, 70:2</p> <p>sold-out [1] - 70:2</p> <p>solving [1] - 26:15</p> <p>someone [5] - 12:17, 23:6, 23:10, 77:14, 78:8</p> <p>sometimes [3] - 44:6, 69:19, 87:19</p> <p>somewhat [4] - 27:4, 27:7, 36:20, 38:21</p> <p>somewhere [1] - 72:10</p> <p>son [2] - 24:19, 25:20</p> <p>songs [1] - 73:18</p> <p>soon [3] - 10:3, 19:11, 42:15</p> <p>sooner [1] - 93:10</p> <p>sorry [1] - 12:11</p> <p>sort [8] - 19:16, 26:14, 48:10, 48:13, 60:10, 84:3, 98:14, 98:16</p> <p>sorts [1] - 81:5</p> <p>sources [1] - 52:2</p> <p>south [1] - 103:14</p>	<p>spaces [1] - 56:9</p> <p>speaker [3] - 27:5, 27:10, 27:11</p> <p>speakers [1] - 37:20</p> <p>speaking [5] - 38:9, 43:19, 43:21, 44:1, 90:4</p> <p>special [1] - 95:13</p> <p>specific [1] - 11:12</p> <p>specifically [1] - 29:8</p> <p>speed [2] - 13:12, 29:8</p> <p>spell [9] - 6:18, 17:5, 22:11, 28:20, 55:11, 65:19, 103:11, 108:17, 109:12</p> <p>spent [4] - 34:16, 36:3, 54:11, 72:13</p> <p>spinning [1] - 74:6</p> <p>spoken [13] - 6:15, 11:15, 13:7, 13:16, 14:17, 17:2, 17:16, 17:18, 28:19, 31:11, 61:5, 65:15, 65:21</p> <p>spring [1] - 89:21</p> <p>sprinkler [1] - 74:21</p> <p>SS [1] - 117:2</p> <p>STAFF [1] - 1:8</p> <p>staff [11] - 24:13, 25:14, 59:11, 67:8, 68:8, 69:11, 70:10, 70:11, 70:17, 107:1</p> <p>staffing [1] - 68:7</p> <p>stage [2] - 4:15, 98:17</p> <p>stairway [1] - 56:11</p> <p>stand [3] - 46:4, 47:20, 49:16</p> <p>standard [4] - 40:13, 45:20, 78:7, 110:21</p> <p>standees [1] - 8:19</p> <p>standing [2] - 4:2, 39:12</p> <p>stands [1] - 67:11</p> <p>Stars [1] - 29:13</p> <p>start [2] - 94:6, 106:2</p> <p>started [1] - 92:11</p> <p>starts [2] - 48:20, 105:1</p> <p>state [15] - 6:18, 17:5, 22:10, 28:20, 55:11, 58:1, 65:19, 90:21, 94:13, 103:9, 103:10, 108:17, 109:12, 110:1, 118:7</p> <p>stating [2] - 10:9, 82:7</p> <p>stay [8] - 28:3, 28:5, 43:9, 81:12, 81:13, 83:14, 89:6, 106:7</p> <p>stayed [2] - 49:11, 78:11</p> <p>stenographer [1] - 6:19</p> <p>stenographic [1] - 117:10</p> <p>step [2] - 99:5, 99:6</p> <p>stipulate [1] - 99:16</p>	<p>stipulation [3] - 94:18, 95:11, 97:16</p> <p>Stones [1] - 75:17</p> <p>stop [4] - 49:1, 90:10, 91:16, 99:17</p> <p>stop-watch [1] - 49:1</p> <p>stopping [2] - 70:5, 98:1</p> <p>story [1] - 35:4</p> <p>straightforward [1] - 59:19</p> <p>strict [1] - 40:13</p> <p>strike [1] - 83:2</p> <p>striped [1] - 56:4</p> <p>strong [2] - 52:7, 87:14</p> <p>strongly [1] - 52:8</p> <p>strut [1] - 25:20</p> <p>stuff [1] - 25:20</p> <p>stumbling [1] - 70:7</p> <p>subject [1] - 102:1</p> <p>submit [2] - 10:8, 19:8</p> <p>substance [1] - 118:4</p> <p>substantial [1] - 86:6</p> <p>substantially [1] - 84:8</p> <p>subway [2] - 80:13, 81:6</p> <p>success [1] - 26:14</p> <p>successful [4] - 8:13, 8:17, 24:21, 92:1</p> <p>succession [1] - 23:3</p> <p>SUFFOLK [1] - 117:2</p> <p>suggest [11] - 6:1, 35:16, 37:2, 39:7, 40:4, 45:20, 46:17, 53:9, 85:2, 85:12, 96:11</p> <p>suggesting [2] - 50:1, 90:14</p> <p>summer [2] - 29:13, 89:21</p> <p>Sunday [6] - 4:4, 42:1, 44:16, 45:8, 79:10, 93:4</p> <p>sunday [1] - 79:4</p> <p>super [1] - 20:5</p> <p>supplied [1] - 16:12</p> <p>supply [1] - 75:14</p> <p>supporting [1] - 44:4</p> <p>suppose [1] - 46:11</p> <p>surely [1] - 61:17</p> <p>surprise [1] - 40:20</p> <p>surrounding [1] - 69:9</p> <p>suspension [2] - 84:20, 86:15</p> <p>suspicious [2] - 105:20, 106:8</p> <p>swaying [1] - 73:12</p> <p>system [2] - 74:21, 75:2</p>
--	---	---	--	--

<p style="text-align: center;">T</p> <p>T's [3] - 50:5, 50:13, 93:2</p> <p>T-E-A-G-U-E [1] - 108:20</p> <p>tape [1] - 4:10</p> <p>taxi [3] - 20:5, 67:11, 83:14</p> <p>TEAGUE [1] - 108:19</p> <p>Teague [1] - 108:19</p> <p>temptation [1] - 35:21</p> <p>tend [1] - 78:4</p> <p>tentative [1] - 100:19</p> <p>test [1] - 91:6</p> <p>testified [1] - 34:11</p> <p>testimony [21] - 16:8, 29:10, 32:8, 34:21, 35:15, 37:12, 38:1, 39:13, 39:15, 42:5, 42:9, 42:14, 46:5, 47:21, 49:17, 51:15, 52:1, 97:10, 101:16, 108:15, 117:9</p> <p>THE [7] - 1:20, 109:7, 117:19, 117:20, 117:20, 117:21, 118:7</p> <p>themselves [3] - 49:13, 72:20, 87:11</p> <p>therefore [3] - 40:11, 109:17, 118:7</p> <p>they've [1] - 87:2</p> <p>thinking [4] - 60:11, 91:8, 95:19, 96:2</p> <p>third [3] - 11:17, 110:13, 114:5</p> <p>third-parties [1] - 11:17</p> <p>third-party [1] - 114:5</p> <p>Thirty [1] - 107:4</p> <p>THIS [1] - 117:19</p> <p>Thomas [1] - 10:20</p> <p>thoughts [1] - 85:21</p> <p>thousand [1] - 83:19</p> <p>throughout [1] - 74:21</p> <p>throwing [1] - 70:7</p> <p>thrown [2] - 18:14, 23:20</p> <p>Thursday [5] - 4:5, 42:3, 79:6, 79:11, 101:12</p> <p>ticket [13] - 27:15, 28:9, 71:6, 71:9, 71:12, 71:15, 71:18, 71:21, 72:8, 75:11, 76:1, 76:2, 76:5</p> <p>ticketed [2] - 35:6, 35:18</p> <p>tie [1] - 68:1</p> <p>tied [2] - 85:7, 85:9</p> <p>ties [1] - 75:2</p> <p>tight [1] - 92:2</p> <p>tightly [2] - 49:5,</p>	<p>52:14</p> <p>timing [1] - 50:1</p> <p>TITTMANN [3] - 103:12, 103:13, 104:11</p> <p>Tittmann [1] - 103:13</p> <p>TO [1] - 117:20</p> <p>today [7] - 3:4, 5:9, 52:20, 87:21, 107:14, 107:17, 108:13</p> <p>today's [1] - 88:1</p> <p>together [3] - 65:16, 65:17, 66:2</p> <p>tone [1] - 30:9</p> <p>tools [1] - 84:19</p> <p>tour [5] - 30:1, 30:2, 34:2, 34:13, 54:9</p> <p>towards [3] - 67:11, 112:10</p> <p>track [5] - 39:18, 52:18, 72:18, 82:6, 82:15</p> <p>tradition [1] - 76:20</p> <p>traditional [1] - 35:20</p> <p>traffic [9] - 18:21, 20:7, 20:10, 20:17, 21:1, 21:4, 21:15, 31:5, 50:4</p> <p>train [2] - 45:4, 45:5</p> <p>transcript [5] - 8:4, 15:14, 16:3, 89:10, 89:16</p> <p>TRANSCRIPT [2] - 117:19, 118:7</p> <p>transcription [1] - 117:10</p> <p>transcripts [1] - 111:10</p> <p>transfer [12] - 3:18, 7:13, 51:12, 53:8, 53:17, 76:14, 76:16, 77:20, 78:3, 78:8, 104:2, 104:6</p> <p>transferred [1] - 3:21</p> <p>transformed [1] - 84:11</p> <p>transit [1] - 79:16</p> <p>transportation [1] - 51:3</p> <p>trash [4] - 9:1, 37:7, 57:9, 60:4</p> <p>traveling [1] - 93:11</p> <p>treating [1] - 77:13</p> <p>tremendous [4] - 85:3, 86:16, 87:4, 109:5</p> <p>tried [1] - 47:19</p> <p>Trinity [2] - 15:6, 55:14</p> <p>trouble [2] - 25:4, 27:17</p> <p>troubling [1] - 84:1</p> <p>truck [2] - 21:14, 30:8</p> <p>trucks [8] - 20:21,</p>	<p>21:13, 21:16, 21:17, 22:1, 30:6, 30:10, 60:19</p> <p>true [3] - 62:14, 62:16, 117:10</p> <p>trust [2] - 12:13, 12:14</p> <p>Trust [2] - 2:2, 3:14</p> <p>try [1] - 41:5</p> <p>Tuesday [2] - 1:15, 3:4</p> <p>turn [3] - 27:10, 51:7, 90:13</p> <p>turns [1] - 86:13</p> <p>TV [1] - 4:12</p> <p>twice [1] - 112:17</p> <p>type [9] - 52:21, 57:10, 61:1, 72:17, 74:4, 74:7, 74:13, 87:18, 98:7</p> <p>types [4] - 71:7, 72:12, 72:14, 72:19</p> <p>typical [5] - 5:16, 39:21, 43:19, 43:21, 90:3</p> <p>typically [3] - 37:18, 45:18, 76:7</p> <p style="text-align: center;">U</p> <p>UNDER [1] - 117:20</p> <p>undergraduate [1] - 52:7</p> <p>underlines [1] - 41:7</p> <p>underneath [1] - 98:21</p> <p>undersigned [1] - 117:5</p> <p>understandable [1] - 39:4</p> <p>unfavorably [1] - 53:20</p> <p>unfortunately [2] - 4:19, 24:10</p> <p>unified [2] - 74:21, 75:2</p> <p>Union [2] - 69:8, 110:19</p> <p>University [2] - 24:18, 80:21</p> <p>UNLESS [1] - 117:20</p> <p>unusual [1] - 41:6</p> <p>unusually [1] - 94:7</p> <p>unwarranted [1] - 54:1</p> <p>unwilling [1] - 77:9</p> <p>update [2] - 11:11, 33:17</p> <p>updates [1] - 68:13</p> <p>uses [1] - 53:21</p> <p style="text-align: center;">V</p> <p>valid [1] - 31:2</p> <p>values [1] - 26:7</p> <p>vans [4] - 9:2, 15:17,</p>	<p>60:19, 61:1</p> <p>variances [1] - 8:2</p> <p>variety [1] - 94:4</p> <p>various [4] - 12:1, 15:9, 64:13, 93:12</p> <p>varying [1] - 78:5</p> <p>vehicle [1] - 81:7</p> <p>vehicles [5] - 15:18, 16:9, 50:11, 58:5, 60:7</p> <p>venture [3] - 8:14, 8:16, 40:15</p> <p>Ventures [1] - 3:17</p> <p>venue [34] - 26:12, 35:6, 36:19, 37:17, 46:21, 47:16, 51:17, 52:10, 52:13, 61:6, 61:9, 62:3, 63:21, 64:2, 64:21, 66:10, 66:14, 67:9, 68:3, 69:16, 70:2, 70:8, 70:19, 70:21, 72:10, 75:18, 78:2, 79:15, 79:21, 86:9, 87:3, 89:18, 98:7, 98:19</p> <p>venues [15] - 36:7, 42:18, 53:5, 64:13, 67:18, 69:2, 69:15, 71:7, 73:1, 75:3, 81:19, 82:2, 82:4, 94:8, 111:3</p> <p>versus [4] - 23:10, 31:7, 110:10, 110:20</p> <p>vetted [1] - 40:12</p> <p>vicinity [1] - 68:21</p> <p>view [4] - 23:9, 40:7, 74:19, 84:16</p> <p>viewing [1] - 54:12</p> <p>views [2] - 17:17, 102:1</p> <p>virtually [1] - 11:1</p> <p>vis [2] - 94:8</p> <p>vis-a-vis [1] - 94:8</p> <p>visualize [2] - 15:5, 16:6</p> <p>vivid [1] - 39:5</p> <p>vocalist [1] - 4:10</p> <p>voices [1] - 109:9</p> <p>voluntarily [4] - 66:7, 96:1, 96:7, 97:3</p> <p style="text-align: center;">W</p> <p>wait [1] - 39:14</p> <p>waiting [4] - 21:5, 30:15, 30:20, 83:14</p> <p>walk [4] - 30:19, 52:10, 100:1, 104:17</p> <p>walked [4] - 29:8, 34:13, 36:6, 55:17</p> <p>walking [3] - 49:18, 80:3, 104:19</p> <p>walkway [1] - 27:7</p> <p>wall [4] - 18:14, 24:7, 24:10, 98:21</p>	<p>wants [1] - 44:14</p> <p>warm [1] - 92:12</p> <p>warm-up [1] - 92:12</p> <p>watch [1] - 49:1</p> <p>ways [3] - 19:16, 35:17, 96:15</p> <p>Webster [1] - 69:7</p> <p>Wednesday [5] - 4:4, 42:1, 45:9, 79:5, 79:11</p> <p>venture [1] - 93:4</p> <p>weekend [5] - 29:16, 89:11, 92:7, 92:19, 93:7</p> <p>weekends [3] - 30:14, 89:14, 92:10</p> <p>weekly [1] - 68:13</p> <p>weeknight [1] - 97:20</p> <p>weight [1] - 13:18</p> <p>welcome [1] - 107:12</p> <p>whatsoever [1] - 25:12</p> <p>WHEREOF [1] - 117:12</p> <p>whole [3] - 74:21, 89:15, 92:13</p> <p>wide [4] - 7:13, 58:12, 95:4, 99:8</p> <p>Williamsburg [3] - 69:5, 110:19</p> <p>windows [1] - 60:12</p> <p>winter [1] - 89:21</p> <p>wish [2] - 107:13, 108:16</p> <p>wishes [1] - 13:15</p> <p>WITNESS [1] - 117:12</p> <p>wonder [1] - 50:12</p> <p>words [1] - 45:19</p> <p>workers [1] - 106:14</p> <p>works [2] - 74:17, 101:2</p> <p>world [1] - 92:13</p> <p>worried [2] - 20:20, 27:15</p> <p>worry [1] - 84:3</p> <p>worthy [1] - 96:9</p> <p>write [1] - 112:7</p> <p>writing [2] - 107:20, 111:7</p> <p>written [4] - 5:11, 105:17, 107:12, 111:8</p> <p>wrote [1] - 89:17</p> <p>www.reportersinc.com [1] - 1:21</p> <p style="text-align: center;">Y</p> <p>yell [1] - 25:17</p> <p>yesterday [3] - 10:8, 18:5, 29:6</p> <p>York [4] - 24:19, 72:3, 110:14, 111:1</p> <p>young [8] - 24:14,</p>
--	--	--	---	---

24:17, 27:17, 52:6,
52:11, 106:19,
109:16, 109:21
younger [1] - 72:18
yourselves [1] - 9:12

Z

Z-Square [1] - 28:6
zero [3] - 9:21, 71:4,
77:15
zone [1] - 61:16
zoning [4] - 8:2, 8:18,
23:9, 31:6