COMMONWEALTH OF MASSACHUSETTS

CITY OF CAMBRIDGE

IN RE: LICENSE COMMISSION DECISION HEARING

LICENSE COMMISSION BOARD MEMBERS:

Michael P. Gardner, Chairman Robert Haas, Police Commissioner

STAFF: ELIZABETH LINT, EXECUTIVE DIRECTOR

AT: Michael J. Lombardi Building
Basement Conference Room
831 Massachusetts Avenue
Cambridge, Massachusetts 02139

DATE: Thursday, July 11, 2013

TIME: 10:13 a.m. to 11:17 a.m.

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PROCEEDINGS

EXECUTIVE DIRECTOR ELIZABETH LINT:

Before we get started, if anybody has a phone on,

please turn it off.

This is License Commission Decision

Making Hearing, Thursday, July 11th at 10:13 a.m.

We're in the Michael J. Lombardi
Building, 831 Mass Ave Basement Conference Room.

Before you're Commissioners: Michael
Gardner and Police Commissioner Robert Haas.

We have matters left over from the June 11th hearing and the June 26th hearing.

Superintendent Burke and Captain Cahill are unavailable.

So the first matter that was heard continued from June 11th was Moska.

CHAIRMAN MICHAEL GARDNER: So, Mr. Hope, why don't you just identify yourself for the record?

ATTY. SEAN HOPE: Good morning,

Mr. Chairman and members of the Commission. For

the record, Attorney Sean Hope, Hope Legal Law

Offices in Cambridge.

CHAIRMAN MICHAEL GARDNER: That's H-O-P-E.

ATTY. SEAN HOPE: H-O-P-E.

CHAIRMAN MICHAEL GARDNER: Unfortunately, we were not able to put together a majority of the Board who actually heard the matter on June 11th.

And we've actually intended to put out a notice to say we wouldn't make a decision on it today. So my apologies for any inconvenience and expense that caused.

But seeing that you're here and seeing that on that evening essentially we were asking for the applicant to -- I'm sorry, the licensed premise to consider what kinds of additional

issues related to the kinds of events that were a matter of concern for us. I thought, well, lets -- if you've got anything to update the Commission on in terms of activities or developments, we'd love to hear it and put it in the record, although we won't be making any decisions today.

ATTY. SEAN HOPE: Sure. Only that I think this is significant that we have decided not to have a promoter.

There was a promoter on those two

Thursday nights that is the subject of the last

disciplinary hearing.

We have just decided internally that they were no longer going to have that promoter. We feel like that is going to lessen maybe even some of the incidents that happened.

I just do want to create for the record

at the last hearing, I know we're not making a decision tonight, but even there was no evidence or allegations that there was any wrongdoing by the operators, we still felt like the situation that happened on Mass Ave was enough that we felt to take the action to be able to remove the promoter.

This is in response to the incident that happened at the last hearing to remove the promoter.

I was told right before the hearing that they were going to continue. So I think the operator didn't bring some of the other people.

If we were going to have a decision tonight, we may have had more of a presentation this morning.

So that's all we have as a statement.

CHAIRMAN MICHAEL GARDNER: My memory is that at least the Commission was suggesting to you that exploration of some sort of joint or

cooperative action among the number of the different licensed premises in the immediate area. Do you have any report about that?

ATTY. SEAN HOPE: I know that conversation is ongoing. And I would hope by the next rescheduled hearing that we would have some more information on what that plan might be, and what other operators would be involved in the collective effort to handle the crowds that are happening now on Mass Ave on the Thursday through Sunday.

EXECUTIVE DIRECTOR ELIZABETH LINT: In fact, I think we're looking at next Thursday for meeting. Robin will be facilitating that.

CHAIRMAN MICHAEL GARDNER: Just identify for the record, Robin.

EXECUTIVE DIRECTOR ELIZABETH LINT: Robin Lapidus, L-A-P-I-D-U-S, the executive director of the Central Square Business Association. And

she's contacted many of the restaurants in Central Square, and they're all amenable to getting together for a meeting.

CHAIRMAN MICHAEL GARDNER: This is on the 18th?

EXECUTIVE DIRECTOR ELIZABETH LINT: We're hoping for the 18th.

CHAIRMAN MICHAEL GARDNER: Commissioner, any questions? I know you didn't participate in the hearing, but I know you're also familiar with the incident.

know, I think we have some concerns about the fact that there's this notion that if something happens outside of the premises, it's all the operators' responsibilities. We're not tolerant of that kind of behavior. We've experienced that with other venues and that's not acceptable.

There has to be some commitment or responsibility

in terms of patrons, the type of patrons that come to an establishment, and the kind of environment that's created that may spill out on the establishment.

So some of the things that I would be interested in hearing about is: What are some of the mitigating steps that the operators going to take?

I'm encouraged that the operators are going to have a joint meeting because I think now with the number of venues that are in a close proximity of one another have very large, perhaps the potential for large amount of patrons coming and going that there has to be some kind of collaboration that takes place. I'm encouraged by that.

But simply just saying a certain promoter won't come back, I think there's enough experience with the operator to know what types

of entertainment draws what types of crowds, and there's some contribution or volatility in some crowds based on the kind of entertainment being brought in. I think the operators have to be mindful of that given the proximity, location in Central Square, and the fact that there are other operations that going to be impacted by this as well.

I mean, everybody has an economic interest in this. And if we have enough bad incidents taking place, it will have an impact on all the vendors. So I think that is something that has to be taken into consideration.

I think -- I'm not going to be very tolerant. I know, again, Superintendent Burke and I spoke about this, and somebody saying "Well, geez, it's is not our problem"; it's all our problems. You need to work on that collaboratively.

it's a work in progress. This is new location even though this is an experienced operator.

This is on Mass Ave, there's the volume of the other operators, so we're going to work with the different operators, and we definitely understand what you're expressing and we take that to heart.

CHAIRMAN MICHAEL GARDNER: Thank you.

Since we don't have a quorum to deal with the issue, I won't even offer a motion to defer again.

But tell me, Ms. Lint, when you think it's most appropriate for us to hear this matter with three people who were there, if you know now?

EXECUTIVE DIRECTOR ELIZABETH LINT:
July 31st.

POLICE COMMISSIONER ROBERT HAAS: I'll just verify that Superintendent Burke will be

here.

information of anybody in the audience who may have an interest this, we'll be sending out a notice that August 1st decision hearing will be -- which was scheduled and published as 10:00 will be moved to 1:00 on the 31st of July for scheduling purposes, so that notice will be out within the time period.

EXECUTIVE DIRECTOR ELIZABETH LINT: Today.

CHAIRMAN MICHAEL GARDNER: Mr. Hope, thank you very much. Appreciate it. And my apologies again for any inconvenience this caused.

EXECUTIVE DIRECTOR ELIZABETH LINT: The other matter from that date was Alga Mekonen for a livery license.

CHAIRMAN MICHAEL GARDNER: Good morning.

Please be so kind as to state and spell your name for the record again.

ALGA MEKONEN: My first name is A-L-G-A, my last name is M-E-K-O-N-E-N.

apologies to you for the same reasons as stated in the last party who was here. We don't have a majority of the Board available to make a decision in your case today. I understand that is not your fault. That is entirely our fault for not being able to -- or failing to get you notice, and I apologize for that.

We're creating a record, however, this morning, so I would ask you if there's any additional information you can tell us about any steps you've taken to put your business plan in place or to familiarize yourself with the requirements and regulations of this Commission with respect to a livery service? Anything you

want to add to -- anything that's developed in the last month since you were here.

ALGA MEKONEN: Just there's -- I have to be now licensed first to see any progress. So, according that, I cannot have any addition. I have to hold the licence to do any progress.

CHAIRMAN MICHAEL GARDNER: All right. I think if I understood you're saying you really haven't got any more to report to us because you're waiting to find out about that license before you take any more action?

ALGA MEKONEN: Yes.

CHAIRMAN MICHAEL GARDNER: All right.

Commissioner, anything you wish to inquire about or ask about?

POLICE COMMISSIONER ROBERT HAAS: No.

CHAIRMAN MICHAEL GARDNER: Ms. Lint, your advice about this matter?

EXECUTIVE DIRECTOR ELIZABETH LINT: Same.

I would say July 31st.

CHAIRMAN MICHAEL GARDNER: We're going to consider this again on July 31 at 1:00 p.m.

ALGA MEKONEN: July.

CHAIRMAN MICHAEL GARDNER: July 31st at 1:00 p.m., that's almost three weeks from now.

I'm so sorry to have inconvenienced you with this delay this morning.

ALGA MEKONEN: Thank you. I appreciate it.

CHAIRMAN MICHAEL GARDNER: Good luck.

EXECUTIVE DIRECTOR ELIZABETH LINT: Shake Shack.

CHAIRMAN MICHAEL GARDNER: Good morning,
Mr. Rafferty. I'll ask you to spell your name,
although I could spell "Hope," I'm not sure I
could just rattle your name off in the same
manner.

Just identify yourself for the record.

ATTY. JAMES RAFFERTY: Happy to do so. Thank you, Mr. Chairman and Commissioner.

James Rafferty, R-A-F-E-R-T-Y. To my left is Daniel Tavan, T-A-V-A-N. You may recall Mr. Tavan's the proposed manager of this location.

CHAIRMAN MICHAEL GARDNER: Just briefly summarize for us, if you would, the nature of the application here. I have a good sense of it, but I would like to have it in the record.

ATTY. JAMES RAFFERTY: Certainly. This is an application to transfer the license formerly held by Bourbon Coffee at the former marina's location in North Cambridge.

CHAIRMAN MICHAEL GARDNER: No, no. Is this Om?

EXECUTIVE DIRECTOR ELIZABETH LINT: Om.

ATTY. JAMES RAFFERTY: All right. Can I start over?

This is an application for a location which fronts on Winthrop Street, but carries a JFK address. It's a transfer through the bankruptcy court of a license formerly held by Om. I forget what the corporate entity is called.

EXECUTIVE DIRECTOR ELIZABETH LINT: Everest Crossing.

ATTY. JAMES RAFFERTY: Everest Crossing.

The application seeks a transfer of that license.

Shake Shack, potentially, the premises remains

the same. We're building a slight vestibule,

it's a two-story space.

In addition to the transfer, there's also a request to pledge the license, the pledge holder would be the landlord, the landlord is present this morning with his counsel. I know there had been some inquiry about Shake Shack's decision to finance and create this financing

structure.

They're using a loan from the landlord to pay the acquisition of the license.

CHAIRMAN MICHAEL GARDNER: Thank you.

And, Ms. Lint, I believe the number of our inquires focused on the legality of such a pledge, and I think Mr. Rafferty gave us some information with respect to how to distinguish some of the provisions of the statute, which he felt were different from the arrangements in this pledge document that we have seen. And he also made some representations that there have been a number of landlord pledges that had been approved by the Commission in recent years. I think we asked you to do some research.

EXECUTIVE DIRECTOR ELIZABETH LINT: I think we came up with three or four.

CHAIRMAN MICHAEL GARDNER: I think we're fully prepared to act on this matter today.

I just would ask you Mr. Rafferty in terms of your representation of this client, in the unlikely event that there were a default on the loan for the pledge, what is your understanding of the legal proceedings that your client would face in terms of essentially both the potential loss of the license and sort've where the license goes?

It may be that the bankruptcy proceeding with Om is a reasonable model for us to understand. But I think what we're struggling with is trying to understanding what happens to the license on a pledge should the current license holder default.

ATTY. JAMES RAFFERTY: Well, I can cite several examples. I recall the location now where the former Worst House (phonetic) location was for many years is now called Russell House Tavern and the Cambridge Savings Bank was the

landlord there and they also had a pledge, and there was a prior licensee there that operated Z Square and Z Square defaulted under their loan.

Just as a matter of law, a default would entitle the holder of the loan to make demand for payment. And if the payment wasn't provided, then they seek a remedy for a judgment on the note.

Once one had such a judgment, they could then come before the License Commission and ask to be recognized as the holder of the license, but they couldn't operate the premises.

So the pledge holder would have rights and could ultimately seek an involuntary transfer of the license to a successor.

But it's not a case where the pledge holder can act unilaterally. The pledge holder would first have to have the pledge recognized at the Commission and then a determination would be

made by the Commission as to the status of the license.

In the case of both Z Square and the predecessor in this location, there was a bankruptcy proceeding. It's not always the case, but often the case if one is paying the debt that there are other debts associated with the business.

But as was noted by the chair, the entity is well capitalized. Operates locations
literally all over the world, several in this country, and if there's anyone that has an expectation that they wouldn't be able to satisfy their obligation, I think there is financial evidence to suggest that this operator is unlikely to be able to meet the financial obligations associated with this note.

CHAIRMAN MICHAEL GARDNER: Okay. We do have 2008 as an experience which is like who

knows what happens where.

wouldn't want to make any fiduciary obligations of my own. But I would say that there are a series of procedural steps involving the Commission and other forums and judicial venues that would have to take place before the pledge holder, but at the end the day, it's not as though the pledge holder can simply step in one night and say "Okay. Now I'm in charge of this place."

CHAIRMAN MICHAEL GARDNER: Thank you. Miss Lint, do you have anything else to add?

EXECUTIVE DIRECTOR ELIZABETH LINT: I think that sums it up very nicely.

CHAIRMAN MICHAEL GARDNER: Commissioner, any questions or comments?

POLICE COMMISSIONER ROBERT HAAS: I want to make sure I understand this.

Mr. Rafferty, what you're just saying is that should there be a default on the loan, and I understand that there could be the domino effect, there be would some legal proceedings to go through. The pledge holder couldn't just simply say "Well, geez, I'm going to take the license now," and as part of the sales -- hold that as part of the sale, it becomes automatic that person's legal tender.

ATTY. JAMES RAFFERTY: That's correct.

The governing documents here both of which is required by the statute before the Commission and will be reviewed by the ABCC as well, involve a note and the security instrument itself.

So the security instrument is in effect a mortgage, if you will, on the license, a default under note, a demand for payment if payment isn't made, then there's a procedure to foreclose, a judicial -- a judgment is needed for the rights

in the assignment to take place. And then a recognition or acknowledgment by the local entity that the pledge holder now has rights, but those rights are highly limited and they don not extend to the right to operate the premises, just to control the disposition of the license.

CHAIRMAN MICHAEL GARDNER: Which in the end requires our approval anyway.

ATTY. JAMES RAFFERTY: True. I think sometimes there's a misnomer that, oh, a pledge holder can simply step in the shoes of the operator and begin operating the business unilaterally. That is far from the case.

CHAIRMAN MICHAEL GARDNER: Thank you for helping to clarify the record.

Can I have the original agenda for that, please?

So, I will make the motion to approve the transfer of the license, which in our records is

held by Everest Crossing, LLC to Shake Shack
Harvard Square, Boston, LLC doing business as
Shake Shack and to allow the operation of 110
seats inside and 24 patio seats on the public
sidewalk. All assuming other permitting has been
approved for that seating with the operating
hours 11:00 a.m. to 1:00 p.m., seven days per
week, including the entertainment license as
described in the original agenda with the
notation that the license has been pledged to
Crimson Galleria Limited Partnership.

And are we also approving the manager as part of this?

EXECUTIVE DIRECTOR ELIZABETH LINT: Yes.

CHAIRMAN MICHAEL GARDNER: And approving

Daniel Tavan as the manager subject to 21 Proof

training, and any other administrative

requirements on the Commission -- background

check having been completed?

EXECUTIVE DIRECTOR ELIZABETH LINT: Yes.

POLICE COMMISSIONER ROBERT HAAS: I second that motion.

CHAIRMAN MICHAEL GARDNER: The motion have had been made and seconded, all those in favor, signify by saying "aye."

POLICE COMMISSIONER ROBERT HAAS: Aye.

COMMISSIONER MICHAEL GARDNER: Aye.

None opposed.

So, welcome to Cambridge. I know there were extensive capital renovations, but I don't remember when you expected to be open.

ATTY. JAMES RAFFERTY: I think

Mr. Deanglis indicated it was late November and

December, in that range.

MR. TAVAN: Good luck, Mr. Chairman.

ATTY. JAMES RAFFERTY: Thank you.

EXECUTIVE DIRECTOR ELIZABETH LINT: All

Asia.

ATTY. JAMES RAFFERTY: James Rafferty, same spelling. Mark Shulman, S-H-U-L-M-A-N.

CHAIRMAN MICHAEL GARDNER: Why don't you give us a summary of what the application is about?

ATTY. JAMES RAFFERTY: If you recall, the Commission approved a change of corporate name and the change of location several months ago, but at the time the advertising didn't indicate that the licensee proposed a 2:00 a.m. closing.

So we were back before Commission last month for just that singular aspect, an increase in hours to 2:00 a.m.

There had been some discussion by

Commission members about the overall concerns

about night live in Central Square at that hour.

Mr. Shulman, as a result of a suggestion made by the Chairman, reached out to Ms. Boyer because, as you know, he currently operates in

Central Square and has been operating, so he has familiarity with both the environment and the staff and expressed a willingness to participate in and even help organize a meeting of the Central Square licensees. And she reported to him that such a meeting was in the works and she would inform him of that.

So we understand the importance of that issue. You might recall, Mr. Shulman spoke at length about what he believes distinguishes his operation from these others, particularly the use of promoters, entities not directly related to the operation of the business and he will not be involved in that. They're going to be handling their own promotions, they're going to have a restaurant and kitchen focus, but it's very much a case of the public demand is there at those hours and there's an environment in Central Square where other licenses in relative proximity

also are closing at that hour. And so, he's hoping the Commission would be willing to give him an opportunity to demonstrate that he's capable of holding the license, understanding the Commission, as it often does, may choose to do a review after a few months to demonstrate it.

It struck me very similar to the situation with Sinclair. I recently ran into

Ms. Gifford, who has a long history of activism in Harvard Square, and she wanted to compliment me and the operators of the Sinclair because she was quite convinced it was going to pose tremendous risk and threat to Harvard Square, and it's been nothing fine she reports to me.

I think that's evidence of the Commission having adequate safeguards within its purview to ensure that licensees should be given an opportunity to demonstrate that they can execute on the representations that they make before the

Commission. I hope the Commission would find Mr. Shulman in a similar light.

CHAIRMAN MICHAEL GARDNER: So Ms. Gifford didn't compliment the Commission with respect to the gravity of the manner in which it addressed that issue?

ATTY. JAMES RAFFERTY: No, but I did that as I often do, private and public settings.

CHAIRMAN MICHAEL GARDNER: Well, I
think -- are you aware, sir, of the July 18th
meeting and do you intend to participate in that?

MARC SHULMAN: Absolutely, yes.

CHAIRMAN MICHAEL GARDNER: Anything else you wish to add about planning discussions since the last time we were together with you?

MARC SHULMAN: Just referencing the choice of programming is essential to set the stage for the ambience and crowd, and that's our first and foremost Commission statement when we

talk to our internal staff is to set that stage for success and for peace, because it's a longevity question as well.

CHAIRMAN MICHAEL GARDNER: Thank you. Any questions?

POLICE COMMISSIONER ROBERT HAAS: No questions.

I just want to add, I want to compliment you in terms of being a new vendor and things

like that, but being part of that conversation, I think it's extremely important. I think there has got to be some kind of mutual understanding of how everybody is going to kind've will work collaboratively together in that process.

CHAIRMAN MICHAEL GARDNER: I think the Commission is concerned that something was happening and been happening in Central Square that we don't want to be happening.

There was some very negative developments

and we have relatively limited powers with

respect to try to effect those things. But we're

encouraged and pleased that the license holders

are -- appear to be taking the issue seriously

and trying to work together to come to some

common solutions. Discipline and effecting

closing hours are such blunt instruments that we

really need the license holders to step up and we

appreciate your efforts in that regard.

So is the issue before us the change in closing time?

EXECUTIVE DIRECTOR ELIZABETH LINT: Yes.

CHAIRMAN MICHAEL GARDNER: From 1:00 to 2:00?

EXECUTIVE DIRECTOR ELIZABETH LINT: Yes.

CHAIRMAN MICHAEL GARDNER: Is it 1:00

Sunday through Wednesday and 2:00 Thursday

through Saturday?

EXECUTIVE DIRECTOR ELIZABETH LINT: Yes.

CHAIRMAN MICHAEL GARDNER: I make a motion to approve the change in the closing hours to allow a 2:00 closing Thursday through Saturday evenings.

POLICE COMMISSIONER ROBERT HAAS: I second the motion.

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

POLICE COMMISSIONER ROBERT HAAS: Aye.

CHAIRMAN MICHAEL GARDNER: Aye.

None opposed.

That will take effect when, Ms. Lint?

EXECUTIVE DIRECTOR ELIZABETH LINT: As soon as the --

ATTY. JAMES RAFFERTY: They're under construction now and the corporate change is still pending at the ABCC, so we're probably a few months away.

CHAIRMAN MICHAEL GARDNER: Good luck and thank you very much.

EXECUTIVE DIRECTOR ELIZABETH LINT: The open air license for 65 Bishop Allen.

CHAIRMAN MICHAEL GARDNER: Good evening.

If you would again be so kind as to state and spell your last name for the record?

ATTY. LARRY ROWE: Attorney Larry Rowe, $R\text{-}O\text{-}W\text{-}E \,.$

I represent the applicant, TPM CSQ A, LLC.

CHAIRMAN MICHAEL GARDNER: My memory,

Ms. Lint, there were a number of applications for

a transfer of parking lot licenses up on that

evening. We approved all of them but one based

on some public safety concerns represented by

some neighbors and asked for cooperative work

between the transferee and the Police Department

with respect to how to address some of the safety

concerns that had been cited by neighbors.

EXECUTIVE DIRECTOR ELIZABETH LINT: That's absolutely correct.

CHAIRMAN MICHAEL GARDNER: So I don't know Commissioner, if you want to speak, or if you'd like to --

ATTY. LARRY ROWE: I can update you on what we're done in the interim.

First we, right after that hearing last time, I did go over to the site which I'm familiar with, but wanted to take another look and noted that everything was secure. The only thing I noted and spoke directly to the owner was that there are 11 -- eight light stanchions for 11 lights -- they're about 25, 30 feet high -- illuminating the entire parking lot. Three of the bulbs had been out. They have been notified, they've now changed. It's fully illuminated and that has been taken care of.

I have spoken at least four times with Sergeant Murphy. She -- it's my understanding she has been out to the site four times on her own, and sent another officer whom I only understood his name to be Buck -- sorry -- who I understand is not available to test there, so but even last night about 9:00 p.m., I had a site visit with Officer Murphy, primarily because although she had been satisfied with her own diligence internally, records checking, there have been, as I understand it, no records of complaints from anyone notwithstanding the representation that was made here the last time.

She had photographs that she took and that Buck had taken and forwarded them and circulated them, I understand, and that she -- I don't want to speak for her -- but it's my impression that she feels that this parking lot is as secure and safe as any in the neighborhood,

both with its time, access and security of a gate that opens and closes and automatically closing behind when people leave for only allowing, I believe, time for one car to come in and out.

She did not, nor did I when we visited last night see any evidence on the ground of any of the allegations of public safety issues that have been raised.

And that she really -- my impression -- felt that everything was in good order there.

I think is fine to do, I'll just suggest, there are two trees on the sidewalk that have overhanging branches over the front from Bishop Allen Drive, and she suggested maybe a little trimming so that some of site lines were just a little bit more open there. And she may have mentioned that to you also.

But beyond that, she felt everything was

in good order and that we should come here today and hopefully conclude.

CHAIRMAN MICHAEL GARDNER: Thank you.

Commissioner, is there anything you wish to add?

POLICE COMMISSIONER ROBERT HAAS: I just want to reaffirm your reporting with Sergeant Murphy and I also want to compliment you being as aggressive in terms of dealing with that made it a lot of easier to resolve the issues. And not knowing what the history was of the parking lot since we had a chance to go back and look at the record and things like that, you're correct, there's hasn't by any ongoing complaints.

So I do appreciate the fact that you have taken measures to clean up the area, improved the lighting, make sure the fencing is in place and again for the protection of people using that parking lot, but also making sure we don't

attract nuisances as a result of the operation of that parking lot. My compliments to you and your client for taking those steps.

ATTY. LARRY ROWE: Thank you.

CHAIRMAN MICHAEL GARDNER: So sometimes buzz words come about in public discourse, and for, I don't know the last decade or so, the buzz word in policing has been community policing have been really a buzz word in the past.

But I just want to say on the record that it did seem to me that this was an example of what, in fact, people in the business mean by community policing as a positive force for good using substantial resources of the Police

Department to try to effect public safety and security in ways which are not just a quick answer to a 911 call.

And the community policing includes the active engagement of the community and I think,

your client's represented that in an very exemplary way. So, thank you for that.

Make a motion to approve the transfer of the parking lot license at the location that we didn't approve which you could just give us in the record, Ms. Lint?

EXECUTIVE DIRECTOR ELIZABETH LINT: 65
Bishop Allen Drive.

POLICE COMMISSIONER ROBERT HAAS: I'll second the motion.

CHAIRMAN MICHAEL GARDNER: The motion having been made and seconded, all those in favor, signify by saying "aye."

POLICE COMMISSIONER ROBERT HAAS: Aye.

CHAIRMAN MICHAEL GARDNER: Aye.

None opposed.

Thank you again for your efforts.

ATTY. LARRY ROWE: Thank you very much.

EXECUTIVE DIRECTOR ELIZABETH LINT: And

the last remaining matter is Elias Livery.

I should address the Polish American
Citizens Association, we did notify them not to
appear today and I would suggest that also go on
for July 31st.

CHAIRMAN MICHAEL GARDNER: That is, again, because we didn't have a quorum for that because of my having recused myself from that.

EXECUTIVE DIRECTOR ELIZABETH LINT: That's correct.

ELIAS OMICHAEL: Hello.

CHAIRMAN MICHAEL GARDNER: Hello. I ask you to just state and spell your name for the record again.

ELIAS OMICHAEL: First name is Elias, E-L-I-A-S, last name is Omichael, O-M-I-C-H-A-E-L.

CHAIRMAN MICHAEL GARDNER: You applied for a livery license?

ELIAS OMICHAEL: Yes.

CHAIRMAN MICHAEL GARDNER: My memory is that you did not yet have a vehicle, that you were going to be parking the vehicle in the residence that I believe you rent now, or you have residential space for, and did you confirm that, in fact, you're able to park there?

ELIAS OMICHAEL: Yeah. Because I park my private car there, so I put my car on the street and put the limo in the parking spot.

POLICE COMMISSIONER ROBERT HAAS: So I think the concern we have is sometimes landlords don't want to have commercial vehicles parked even though you have the authority to park a private vehicle there.

I think the question from the Commission was: Did you get permission from your landlord, him knowing that now you're going to be parking a commercial vehicle, a livery vehicle there?

ELIAS OMICHAEL: I don't see any difference parking my private car than my limo.

no, no. I think what you need to do so you don't find yourself running into more difficulties is check with your landlord to let him know that you plan on getting a livery license and that you want to park your vehicle in the spot, right?

I think that's going to be an important step for you because that's going to inform you as to whether or not you want to go forward with this or find some other parking arrangements if he says "No, you can't do that." See what I'm saying?

ELIAS OMICHAEL: Yeah, I understand. I will ask him, no problem. But in case what about the alternative, can I park it on the street, a limo, is that possible?

CHAIRMAN MICHAEL GARDNER: My memory

about that is -- we inquired on this issue a number of months ago and that the Traffic

Department found no prohibition against parking on the street by a resident, or in a vehicle registered in Cambridge, is that right?

EXECUTIVE DIRECTOR ELIZABETH LINT: That's my recollection.

ELIAS OMICHAEL: The last one is I could park it in the Alewife parking lot nighttime.

They charging us money. I live close to that.

POLICE COMMISSIONER ROBERT HAAS: Yeah, but I think the easiest thing for you to do is go back to your landlord and see if he's going to allow you to do that.

ELIAS OMICHAEL: Yeah, but I'm saying in the alternative, I can park in the parking lot at Alewife.

POLICE COMMISSIONER ROBERT HAAS: If he says it's okay, that eliminates all this other

stuff you have to do. See what I'm saying?

I think that's got to be a key point for us to inform us whether or not you can legally park the vehicle before, in my view, take any action with respect to your application.

I think when we addressed this matter recently,
we asked for a little bit of research from the
Commission about the number of livery licenses
there are in Cambridge now, and how recently any
have been issued, and I know you reported on that
to us by email. You got any memory of that?

EXECUTIVE DIRECTOR ELIZABETH LINT: Let me see if I can find it. I'm not going to be able to do it.

CHAIRMAN MICHAEL GARDNER: Our sense it was a relatively small number.

EXECUTIVE DIRECTOR ELIZABETH LINT:

Around 14. There was -- the Commission did

approve a larger livery company. They have not picked up their licenses yet. We also just received a report Monday from the City Clerk's Office that tells us all the business that have registered with them during the month, the proceeding month, and we found several liveries that have taken out business certificates that have not applied to the Commission as of yet, so we're researching that as we speak and I think there were five of them.

CHAIRMAN MICHAEL GARDNER: Okay. So,

Commissioner, do you have any thoughts on

appropriate steps to take here? We're in the

context of at least getting some complaints from

the hackney industry that liveries are not

following our rules or encroaching on business

without the required eight-hour prearrangements,

and we're also satisfied that to the extent

there's a problem there, by volume, some of it

may, in fact, be from liveries that are not licensed in Cambridge, but --

EXECUTIVE DIRECTOR ELIZABETH LINT: That would be correct.

CHAIRMAN MICHAEL GARDNER: -- are operating here with our having limited capacity to effect or influence their positions.

EXECUTIVE DIRECTOR ELIZABETH LINT:
That's correct.

I know part of the problem is a lot of the livery vehicles will congregate in certain areas, say, in Central Square around the larger establishments in the hopes of picking up groups of people, but that's still a violation of our rules and regulations.

CHAIRMAN MICHAEL GARDNER: In terms of the prearrangement?

EXECUTIVE DIRECTOR ELIZABETH LINT: The prearrangement. And I think it's generally

understood that livery does not operate as a hail, but, in fact, that's what they're starting to do.

understand, sir, that our rules require eight hours of notice, that is, prearranged appointment, a contract, an understanding, I'll pick you up, you get a call at noon, I'll pick you up at 8:00 p.m. and that's okay. But calling at noon and saying I'll pick you up at 3:00 p.m. is not okay. And driving around and picking up people without any prearrangement is not all right.

ELIAS OMICHAEL: It's not allowed, right?

CHAIRMAN MICHAEL GARDNER: Not allowed.

EXECUTIVE DIRECTOR ELIZABETH LINT: Or hanging out at the hotels, can't do it.

CHAIRMAN MICHAEL GARDNER: My memory is that you had said you thought you could get some

your business by working with the hotels on prearranged trips, is that --

ELIAS OMICHAEL: Yeah, I arrange myself, plus some companies they offer jobs through the computer, you know.

CHAIRMAN MICHAEL GARDNER: Through the computer?

ELIAS OMICHAEL: Yeah. Like three or four companies, they offer a job.

CHAIRMAN MICHAEL GARDNER: Are you talking about like smart phone services?

ELIAS OMICHAEL: Yes, smart phone.

CHAIRMAN MICHAEL GARDNER: But on the smart cell phone services remember the eight hours limitation still applies.

I mean, somebody could go into a smart phone application maybe and try to arrange for a livery service, but it still needs an eight-hour window.

ELIAS OMICHAEL: Well, I understand the point is from what I saw, I'm getting oriented myself through some friends and companies. They give the least the person what time to pick up so there's a difference of time.

CHAIRMAN MICHAEL GARDNER: Are you saying that the companies give you a time range for the pickup?

ELIAS OMICHAEL: Yes. A printout on the smart phone.

CHAIRMAN MICHAEL GARDNER: Ms. Lint, do you have any information about that?

EXECUTIVE DIRECTOR ELIZABETH LINT: My understanding is the way they operate, the person requesting the service puts it into the phone, they tell them when they want to be picked up.

Generally it's right away.

POLICE COMMISSIONER ROBERT HAAS: That's proximity.

EXECUTIVE DIRECTOR ELIZABETH LINT: So you get whoever is closest.

CHAIRMAN MICHAEL GARDNER: Commissioner, any questions or comments or thoughts?

POLICE COMMISSIONER ROBERT HAAS: So I quess my biggest dilemma is we have a longstanding moratorium, meaning that the Commission a long time decided it was going to stop issuing these kinds of licenses until, I think, we had an opportunity to revisit the regulations, because Ms. Lint indicates a lot of the regulations are unenforceable. We can't enforce a lot of the complaints that we're now getting. And I think we need a much more viable way of if we're going to issue these licenses to make sure people in this industry are adhering to the regulations and I think the regulations were adopted a long, long time ago, probably outdated, and you have technology that's changing.

I have some reluctance aside from the fact I don't think you're ready yet for us to take an action on this, to move forward until we have an opportunity to kind've review the regulations for the liveries, and kind've vet them and make sure we have a viable way to issue licenses that we can make sure that there's adherence to the conditions that are set forth in the licensing that we can't do right now.

CHAIRMAN MICHAEL GARDNER: So what is your recommendation, Commissioner?

POLICE COMMISSIONER ROBERT HAAS: With respect to this application, I would defer from my perspective any decision at this point in time.

I would also recommend that the License

Commission at some point needs to sit down and

think about -- again, look at the rules and

regulations of liveries and use this opportunity

to either revamp them or decide that they're okay, and then make a decision whether or not the moratorium is gonna be lifted or remain in place.

EXECUTIVE DIRECTOR ELIZABETH LINT: We actually already started doing that, and we know they have to be rewritten, they're very outdated.

CHAIRMAN MICHAEL GARDNER: So I guess my general view about it is that there's an appropriate place in the transportation infrastructure of the city for livery operations and I think as there is an appropriate place for the city to be aware of and responsive to changes in technology that can help service the traveling public, both within the city and from the city to other destinations.

But myself, I presently don't feel confident that we know enough about the steps we need to take to justify acting one way or another on this application.

That doesn't help you, I understand, but the Police Commissioner's view that we should defer any action on the application for the time being while this matter is reviewed, I think is the appropriate one.

Again, I think with -- in terms of a perspective for the Commission and the Commission staff to take in reviewing the regulations to ensure that there's flexible response within the city and a variety of components for higher traffic infrastructure in the city to be responsive to the needs of the traveling public.

So, on that basis, I'll make the motion that this matter be deferred generally and to be taken up at at some point in the future as part of a more comprehensive review of the transportation of infrastructure needs within the city.

POLICE COMMISSIONER ROBERT HAAS: I

second that motion.

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

POLICE COMMISSIONER ROBERT HAAS: Aye.

CHAIRMAN MICHAEL GARDNER: Aye.

So none opposed.

So we are not approving your application, and I will say to you, although we got some concerns as to how ready you are to, in fact, run a business and to run a business according to our rules, the primary reason we are not taking action on your application is because we feel that we need to do a more comprehensive review of how the livery service fits within the structure of how people are able to get around in the city.

So I regret that we can't be more responsive to your clear desire to strike out as an entrepreneur and create a new business for

yourself here. At this point we just don't think we're ready to do that.

Thank you very much.

ELIAS OMICHAEL: You're welcome.

CHAIRMAN MICHAEL GARDNER: Any other

business before the Commission?

EXECUTIVE DIRECTOR ELIZABETH LINT:

There's not.

CHAIRMAN MICHAEL GARDNER: Are there minutes that we can approve?

just going to suggest in that, June 6th, that was
just decisions. The only -- that was the
Beantown Taqueria.

CHAIRMAN MICHAEL GARDNER: I'll make the motion to approve the June 6th decision hearing minutes.

POLICE COMMISSIONER ROBERT HAAS: Second.

CHAIRMAN MICHAEL GARDNER: Motion having

made and seconded, all those in favor, signify by
saying "aye."

POLICE COMMISSIONER ROBERT HAAS: Aye
CHAIRMAN MICHAEL GARDNER: Aye.

I'll just raise to the Commissioner who is here and to the staff, my understanding is that typically in decision hearings in the past, we didn't take any additional testimony, and more frequently than not, there were no inquires made by the Commission to any of the applicants, but we simply discussed it amongst ourselves. I think that's right. You can tell me if I'm wrong about that.

But my own comment today is I found it actually quite useful to have the applicant back and to hear from the applicant or give us a chance to talk to the applicant about both our concerns and also sort've positively reinforce the kind of behavior that we thought was useful.

I'm just wondering for a general reaction from both Ms. Lint and Commissioner Haas about that.

POLICE COMMISSIONER ROBERT HAAS: I know from time to time we've actually had applicants come back in and clarify --

EXECUTIVE DIRECTOR ELIZABETH LINT: That's good.

POLICE COMMISSIONER ROBERT HAAS: -- some issues, but I think we probably do want to reserve the ability to make that discretionary as opposed to just having them back in the regular forum because I think sometimes we've taken all the testimony we need to have, and I think what we need to do is either go back to do more research or kind've like was testified before us, and I think the Commission needs to have the ability to decide in these meetings whether or not it wants to because I think the other thing

you would have to get is a whole new renewal of testimony that was never obtained before, and I think we found ourselves sometimes with difficulty being able to allow some people to speak and not others to speak.

So, I think, my view would be to preserve the Commission's discretionary ability to decide whether or not it needs clarification, update, and also be able to talk to the applicants again. When we think those things are appropriate, we should make that known to the applicant at the time we're deferring the decision, and that we may look for more further clarification. I think there's a lot of times we'll know that time, and as you indicated, Mr. Chair, there are times when the applicant will come anyway. And it's been helpful for them to just update us in terms of what they have done relative to the last hearing with some of our recommendations, which I think

is another key a lot of times; for example, like the parking lot. We had a situation where, in our view, there was outstanding issues, we gave him the opportunity to come back and tell us what they have done in response to our concerns, which better informs us how we want to move on that particular application.

So, i guess the bottom line, in my view, is to maintain a discretionary posture with respect to decision meetings and not have it become a policy matter where we will take follow-up testimony. I think it should really be up to the Chair whether or not that changes.

CHAIRMAN MICHAEL GARDNER: Thank you for that. That's very helpful to my thinking.

As part of it is when generally at least in recent experience when we've held something over for a decision hearing, it's because, in fact, we wanted more information and there were

more developments that needed to be reported to us whether it was by staff or otherwise.

EXECUTIVE DIRECTOR ELIZABETH LINT: I would just add to what the Commissioner said.

Traditionally, it was that testimony would not be taken really from the general public.

So if there had been a hearing where 20 people came to oppose an application or support an application, that the Commission really didn't need to hear more of that at a decision making hearing.

And then if there was any information for clarification, that either for questions that the Board had, or things that an applicant could add that that certainly is what you wanted to hear and also within the Chair's discretion.

CHAIRMAN MICHAEL GARDNER: Thank you. What is your sense about the livery review which is really part of a much bigger picture?

EXECUTIVE DIRECTOR ELIZABETH LINT: It

CHAIRMAN MICHAEL GARDNER: Apps and all.

EXECUTIVE DIRECTOR ELIZABETH LINT: It

is. It's becoming increasingly difficult to regulate. Very few cities and towns actually do license liveries. We're one of the very few that does and with the introduction of these apps, I don't -- I just -- how do you --

CHAIRMAN MICHAEL GARDNER: So, I mean in terms of thinking about regulations, I thought well, one of the first things you always do is go look at what other communities have done.

Does Boston regulate liveries.

EXECUTIVE DIRECTOR ELIZABETH LINT: They do not.

CHAIRMAN MICHAEL GARDNER: So they have this hackney industry with all of its various layers of complication of regulation and,

tradition and yet, there are no barriers to somebody setting up a livery company?

really isn't. You just -- you know, Boston you decide you're going to be a livery and you purchase your vehicle, you get a commercial plate, you start advertising and off you go.

CHAIRMAN MICHAEL GARDNER: So, they don't let you in the taxi stands or hackney stands, but other than that, you're free to drive around and pick people up?

EXECUTIVE DIRECTOR ELIZABETH LINT: You have to be permitted through, if you want to do the airport, Massport. It's just one of those businesses, that's kind've...

CHAIRMAN MICHAEL GARDNER: So, is there any possibility that, in fact, we shouldn't be licensing liveries?

EXECUTIVE DIRECTOR ELIZABETH LINT: I

think that would be part of our review.

think we'd set ourselves up for failure if we try to regulate it and then there's some notion that we can actually take action when somebody violates some of the regulations associated with it.

So, I don't know if -- I don't know if it's just being irresponsible saying it's just an unregulated industry and they can go out and do that when it's going to be hard to regulate liveries.

I mean, I think in the meantime, I think what we should do anytime somebody does make application for a livery license is put them on notice that we're not going to entertain it until we have completely new regulations.

I mean, I feel bad people for coming in here and then us deferring our decisions on them

and not setting up some form expectation. They come in to get a license when we're not prepared to move on it.

me say this, though. When people come in to apply for a livery license, we tell them that there's a moratorium, that you're taking a risk that there will be either a denial or no action for -- we tell them why, and they choose to apply anyway and we cannot accept an application.

POLICE COMMISSIONER ROBERT HAAS: I want to make sure we put them on notice --

EXECUTIVE DIRECTOR ELIZABETH LINT: Oh, we do.

POLICE COMMISSIONER ROBERT HAAS: We're not prepared to move forward on these things.

CHAIRMAN MICHAEL GARDNER: Since my

memory is that since I've been here we've approved at least two. Do we have any information about how they're doing? Are these businesses that, in fact, have been successful or are they operating within the regulations? Is there any way to --

EXECUTIVE DIRECTOR ELIZABETH LINT:

There's no way to know. If we get complaints

from drivers, taxi drivers, but all we hear is

there's so many livery vehicles out there, you

know, they're hanging out at the hotels, they're

picking up on the street. You need to do

something.

What do you do? Because if a police officer approaches them, they're gonna say that this was a prearranged ride.

POLICE COMMISSIONER ROBERT HAAS: There's some suspicion that a number of livery business have actually made arrangements with some of the

concierges in the hotels. So there's some -there's been some indication there's been an
exchange or payment in order to get those
privileges and things like that.

Again, we have tried a couple times to try to regulate it. It's virtually impossible to actually identify those types of practices taking place.

To Ms. Lint's point, we've got the complaints from the hackney industry and we've kinda put ourself in that position because we're licensing them, and saying to them, we're going to regulate that business, I'm not sure how we do that.

I've had the recent experience of doing airport to hotel and hotel back to airport arrangements using potentially a van, which I suppose that made multiple pickups at different hotels and

multiple dropoffs which I suppose --

EXECUTIVE DIRECTOR ELIZABETH LINT: That's actually.

CHAIRMAN MICHAEL GARDNER: -- it's in form of -- I mean, it's a form of a livery service.

EXECUTIVE DIRECTOR ELIZABETH LINT: We don't consider that a livery. The shuttles or jitneys are on a fixed route for a fee. So, we do license those.

And the problem with those are we get,

again, tremendous pushback from the hackney

industry. So the jitneys actually -- the Board

does not approve. They recommend approval to the

City Council and the City Council can approve it

or deny it.

If it's denied, the jitneys have a right to appeal to the DPW, and they generally overturn us all the time and then they license liveries

through the state and we don't get the revenue from that.

CHAIRMAN MICHAEL GARDNER: Well, I guess in terms of the hackney industry complaints about it, it seems -- if we defer this, we do. But, in fact, the traveling public is entitled to options.

EXECUTIVE DIRECTOR ELIZABETH LINT: Of course.

CHAIRMAN MICHAEL GARDNER: Thank you.

Any other business before us or any other

ruminations anybody would like to make?

I'll make -- seeing none, I'll make the motion to adjourn at approximately 11:15 on the morning of July 11th.

POLICE COMMISSIONER ROBERT HAAS: Seconded.

EXECUTIVE DIRECTOR ELIZABETH LINT: For anyone who cares, today is 7/11, so 7-Eleven

gives out free slurpees.

CHAIRMAN MICHAEL GARDNER: With that last order of business, all those in favor, signify by saying "aye."

POLICE COMMISSIONER ROBERT HAAS: Aye.

CHAIRMAN MICHAEL GARDNER: Aye.

We're adjourned.

(Whereupon, the decision hearing was

concluded at 11:17 a.m.)

ERRATA SHEET.

INSTRUCTIONS: After reading the transcript of this hearing, note any change or correction to and the reason therefor on this sheet. DO NOT make any marks or notations on the transcript volume itself. Sign and date this errata sheet (before a Notary Public, if required).

PAGE	LINE		
		CHANGE:	
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I have read the foregoing transcript of the hearing, and except for any corrections or changes noted above, I hereby subscribe the transcript as an accurate record by me.

CERTIFICATE

Commonwealth of Massachusetts

Norfolk, ss.

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of July 2013.

Jill Kourafas
Certified Shorthand Reporter
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February 2, 2017

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<u>02139</u> [1] -	1:71:15	1:26:10, 13;	1:13:11;	adjourned [1] -
1:1:12	<u>21</u> [1] -	1:69:9	1:44:5;	1:69:7
<u>10:00</u> [1] -	1:24:16	<u>ABCC</u> [2] -	1:51:3;	<u>administrative</u>
1:11:6	24 [1] - 1:24:4	1:22:13;	1:53:3;	[1] - 1:24:17
<u>10:13</u> [2] -	<u>25</u> [1] -	1:32:18	1:54:13;	<u>adopted</u> [1] -
1:1:14; 1:2:6	1:34:15	ability [3] -	1:63:5;	1:50:18
11 [3] - 1:1:13;	<u>26th</u> [1] -	1:57:11, 18;	1:64:8	advertising [2]
1:34:14	1:2:12	1:58:7	<u>active</u> [1] -	- 1:26:9;
<u>110</u> [1] -	<u>2:00</u> [5] -	<u>able</u> [10] -	1:38:19	1:62:7
1:24:3	1:26:10, 13;	1:3:9; 1:5:6;	activism [1] -	<u>advice</u> [1] -
<u>11:00</u> [1] -	1:31:14, 17;	1:12:11;	1:28:9	1:13:18
1:24:7	1:32:3	1:20:13, 16;	activities [1] -	<u>agenda</u> [2] -
<u>11:15</u> [1] -	<u>30</u> [1] -	1:41:7;	1:4:5	1:23:16;
1:68:14	1:34:15	1:44:15;	<u>add</u> [8] -	1:24:9
<u>11:17</u> [2] -	31 [1] - 1:14:3	1:54:16;	1:10:1;	aggressive [1]
1:1:14;	<u>31st</u> [5] -	1:58:4, 9	1:13:1;	- 1:37:9
1:69:9	1:10:17;	absolutely [2] -	1:21:13;	<u>ago</u> [3] -
<u>11th</u> [5] -	1:11:7;	1:29:12;	1:29:14;	1:26:8;
1:2:6, 12, 16;	1:14:1, 5;	1:34:3	1:30:8;	1:43:2;
1:3:11;	1:40:5	<u>accept</u> [1] -	1:37:5;	1:50:18
1:68:15	<u>3:00</u> [1] -	1:64:10	1:60:4, 14	<u>air</u> [1] - 1:33:4
<u>14</u> [1] -	1:47:10	acceptable [1]	addition [2] -	airport [3] -
1:44:19	<u>617.786.7783</u>	- 1:7:18	1:13:5;	1:62:14;
<u>14903</u> [1] -	[1] - 1:1:19	<u>access</u> [1] -	1:16:14	1:66:16
1:71:13	65 [2] - 1:33:4;	1:36:1	<u>additional</u> [3] -	<u>Alewife</u> [2] -
<u>18th</u> [4] -	1:39:7	according [2] -	1:3:19;	1:43:9, 17
1:7:5, 7;	<u>6th</u> [2] -	1:13:5;	1:12:15;	<u>Alga</u> [1] -
1:29:10;	1:55:12, 16	1:54:11	1:56:8	1:11:17
1:71:10	<u>7-Eleven</u> [1] -	accurate [2] -	<u>address</u> [3] -	<u>ALGA</u> [6] -
<u>1:00</u> [6] -	1:68:19	1:70:15;	1:16:3;	1:12:3;
1:11:7;	<u>7/11</u> [1] -	1:71:8	1:33:19;	1:13:3, 12;
1:14:3, 6;	1:68:19	<u>acknowledgm</u>	1:40:2	1:14:4, 9
1:24:7;	<u>831</u> [2] -	<u>ent</u> [1] -	<u>addressed</u> [2] -	allegations [2]
1:31:13, 16	1:1:12; 1:2:8	1:23:2	1:29:5;	- 1:5:3;
<u>1st</u> [1] - 1:11:5	<u>8:00</u> [1] -	acquisition [1]	1:44:7	1:36:7
<u>2</u> [1] - 1:71:15	1:47:9	- 1:17:3	adequate [1] -	<u>Allen</u> [3] -
<u>20</u> [1] - 1:60:7	<u>911</u> [1] -	<u>act</u> [2] -	1:28:16	1:33:4;
<u>2008</u> [1] -	1:38:17	1:17:19;	adherence [1] -	1:36:15;
1:20:19	<u>9:00</u> [1] -	1:19:17	1:51:8	1:39:8
<u>2013</u> [2] -	1:35:7	<u>acting</u> [1] -	adhering [1] -	<u>allow</u> [4] -
1:1:13;	<u>a.m</u> [7] -	1:52:18	1:50:16	1:24:3;
1:71:10	1:1:14; 1:2:6;	<u>action</u> [9] -	<u>adjourn</u> [1] -	1:32:3;
<u>2017</u> [1] -	1:24:7;	1:5:6; 1:6:1;	1:68:14	1:43:14;

1:58:4	1:33:10;	- 1:10:13;	1:26:12	1:22:8
<u>allowed</u> [2] -	1:56:15-17;	1:45:13;	assignment [1]	<u>automatically</u>
1:47:14	1:58:11, 16;	1:52:9, 11;	- 1:23:1	[1] - 1:36:2
<u>allowing</u> [1] -	1:60:14	1:53:5;	associated [3]	<u>available</u> [2] -
1:36:3	applicants [3] -	1:58:10	- 1:20:7, 17;	1:12:8;
<u>almost</u> [1] -	1:56:10;	approval [2] -	1:63:6	1:35:6
1:14:6	1:57:5;	1:23:8;	Association [2]	Ave [4] - 1:2:8;
alternative [2] -	1:58:9	1:67:14	- 1:6:19;	1:5:5; 1:6:10;
1:42:17;	application [17]	approve [9] -	1:40:3	1:10:4
1:43:16	- 1:15:9, 12;	1:23:18;	assuming [1] -	<u>Avenue</u> [1] -
ambience [1] -	1:16:1, 10;	1:32:2;	1:24:5	1:1:12
1:29:18	1:26:4;	1:39:3, 5;	<u>AT</u> [1] - 1:1:11	<u>aware</u> [2] -
amenable [1] -	1:44:5;	1:45:1;	Attorney [1] -	1:29:10;
1:7:2	1:48:17;	1:55:10, 16;	1:3:3	1:52:12
American [1] -	1:51:13;	1:67:14	attorney [1] -	<u>aye</u> [18] -
1:40:2	1:52:19;	approved [5] -	1:33:8	1:25:6-8;
<u>amount</u> [1] -	1:53:3;	1:17:14;	attract [1] -	1:32:9-11;
1:8:13	1:54:8, 13;	1:24:6;	1:38:1	1:39:13-15;
AND/OR [1] -	1:59:7;	1:26:7;	<u>ATTY</u> [23] -	1:54:4-6;
1:71:17	1:60:8;	1:33:15;	1:3:1, 7;	1:56:2-4;
answer [1] -	1:63:15;	1:65:2	1:4:9; 1:6:4;	1:69:4
1:38:17	1:64:10	approving [3] -	1:10:1;	background [1]
ANY [2] -	applications	1:24:12, 15;	1:15:1, 11,	- 1:24:18
1:71:16	[1] - 1:33:13	1:54:8	18; 1:16:9;	<u>bad</u> [2] -
anytime [1] -	applied [2] -	<u>apps</u> [2] -	1:18:15;	1:9:10;
1:63:14	1:40:18;	1:61:3, 8	1:21:2;	1:63:18
<u>anyway</u> [3] -	1:45:8	<u>area</u> [2] -	1:22:10;	Bank [1] -
1:23:8;	applies [1] -	1:6:3;	1:23:9;	1:18:19
1:58:16;	1:48:15	1:37:16	1:25:13, 17;	bankruptcy [3]
1:64:10	<u>APPLY</u> [1] -	<u>areas</u> [1] -	1:26:1, 6;	- 1:16:4;
apologies [3] -	1:71:16	1:46:12	1:29:7;	1:18:9;
1:3:14;	<u>apply</u> [2] -	arrange [2] -	1:32:16;	1:20:5
1:11:14;	1:64:6, 9	1:48:3, 17	1:33:8;	barriers [1] -
1:12:6	<u>appointment</u>	<u>arrangements</u>	1:34:7;	1:62:1
apologize [1] -	[1] - 1:47:7	[4] - 1:17:10;	1:38:4;	<u>based</u> [2] -
1:12:12	appreciate [4] -	1:42:12;	1:39:18	1:9:3;
<u>appeal</u> [1] -	1:11:13;	1:65:19;	audience [1] -	1:33:15
1:67:18	1:14:9;	1:66:17	1:11:3	Basement [2] -
appear [2] -	1:31:9;	<u>Asia</u> [1] -	<u>August</u> [1] -	1:1:11; 1:2:8
1:31:4;	1:37:15	1:25:19	1:11:5	<u>basis</u> [1] -
1:40:4	approaches [1]	<u>aside</u> [1] -	authority [1] -	1:53:13
applicant [8] -	- 1:65:15	1:51:1	1:41:14	Beantown [1] -
1:3:18;	appropriate [6]	<u>aspect</u> [1] -	automatic [1] -	1:55:14

		I		I
<u>become</u> [1] -	1:61:14;	1:68:11;	<u>carries</u> [1] -	1:20:9;
1:59:11	1:62:4	1:69:3	1:16:2	1:58:15
becomes [1] -	<u>bottom</u> [1] -	<u>businesses</u> [2]	<u>case</u> [8] -	<u>Chair's</u> [1] -
1:22:8	1:59:8	- 1:62:15;	1:12:9;	1:60:16
becoming [1] -	<u>Bourbon</u> [1] -	1:65:4	1:19:16;	<u>Chairman</u> [5] -
1:61:5	1:15:13	<u>buzz</u> [3] -	1:20:3, 5-6;	1:1:7; 1:3:2;
<u>begin</u> [1] -	Boyer [1] -	1:38:6, 9	1:23:13;	1:15:2;
1:23:12	1:26:18	<u>Cahill</u> [1] -	1:27:17;	1:25:16;
behavior [2] -	<u>branches</u> [1] -	1:2:13	1:42:16	1:26:18
1:7:17;	1:36:14	CAMBRIDGE	<u>caused</u> [2] -	<u>CHAIRMAN</u>
1:56:19	<u>briefly</u> [1] -	[1] - 1:1:2	1:3:15;	[91] - 1:2:17;
<u>behind</u> [1] -	1:15:7	Cambridge [8]	1:11:15	1:3:5, 8;
1:36:3	<u>bring</u> [1] -	- 1:1:12;	<u>cell</u> [1] -	1:5:17;
<u>believes</u> [1] -	1:5:13	1:3:4;	1:48:14	1:6:15; 1:7:4,
1:27:10	brought [1] -	1:15:14;	<u>Central</u> [9] -	8; 1:10:8;
better [1] -	1:9:4	1:18:19;	1:6:19; 1:7:2;	1:11:2, 12,
1:59:6	Buck [2] -	1:25:10;	1:9:6;	19; 1:12:5;
between [1] -	1:35:5, 15	1:43:5;	1:26:16;	1:13:7, 13,
1:33:18	Building [2] -	1:44:10;	1:27:1, 5, 18;	17; 1:14:2, 5,
beyond [1] -	1:1:11; 1:2:8	1:46:2	1:30:17;	11, 14;
1:36:19	building [1] -	cannot [2] -	1:46:12	1:15:7, 15;
bigger [1] -	1:16:12	1:13:5;	certain [2] -	1:17:4, 18;
1:60:19	<u>bulbs</u> [1] -	1:64:10	1:8:17;	1:20:18;
biggest [1] -	1:34:17	capable [1] -	1:46:11	1:21:12, 16;
1:50:6	Burke [3] -	1:28:4	certainly [2] -	1:23:7, 14;
Bishop [3] -	1:2:13;	capacity [1] -	1:15:11;	1:24:15;
1:33:4;	1:9:15;	1:46:6	1:60:15	1:25:4;
1:36:14;	1:10:19	capital [1] -	CERTIFICATE	1:26:3;
1:39:8	Business [1] -	1:25:11	[1] - 1:71:1	1:29:3, 9, 13;
<u>bit</u> [2] -	1:6:19	capitalized [1]	certificates [1]	1:30:4, 15;
1:36:17;	<u>business</u> [18] -	- 1:20:10	- 1:45:7	1:31:13, 16;
1:44:8	1:12:16;	Captain [1] -	CERTIFICATIO	1:32:1, 7, 11;
<u>blunt</u> [1] -	1:20:8;	1:2:13	<u>N</u> [1] -	1:33:1, 5, 12;
1:31:7	1:23:12;	CAPTURING	1:71:16	1:34:4;
Board [4] -	1:24:2;	[1] - 1:1:18	Certified [1] -	1:37:3;
1:3:10;	1:27:13;	<u>car</u> [4] -	1:71:13	1:38:5;
1:12:8;	1:38:12;	1:36:4;	certify [1] -	1:39:11, 15;
1:60:14;	1:45:4, 7, 16;	1:41:9;	1:71:6	1:40:6, 12,
1:67:13	1:48:1;	1:42:2	CERTIFYING	18; 1:41:2;
BOARD [1] -	1:54:11, 19;	<u>care</u> [1] -	[1] - 1:71:17	1:42:19;
1:1:6	1:55:6;	1:34:19	Chair [1] -	1:44:6, 16;
Boston [3] -	1:65:18;	<u>cares</u> [1] -	1:59:13	1:45:11;
1:24:2;	1:66:13;	1:68:19	<u>chair</u> [2] -	1:46:5, 16;
,	1.00.10,		L	

	•			
1:47:4, 15,	1:42:6	1:39:1	1:20:1;	1:25:2, 7-8;
18; 1:48:6,	checking [1] -	<u>close</u> [2] -	1:21:6;	1:30:6;
10, 13;	1:35:10	1:8:11;	1:22:12;	1:32:5, 10;
1:49:6, 11;	<u>choice</u> [1] -	1:43:10	1:24:18;	1:37:6;
1:50:3;	1:29:17	<u>closes</u> [1] -	1:26:7, 11,	1:39:9, 14;
1:51:10;	<u>choose</u> [2] -	1:36:2	15; 1:28:2, 5,	1:41:11;
1:52:7;	1:28:5;	closest [1] -	15; 1:29:1, 4,	1:42:3;
1:54:2, 6;	1:64:9	1:50:2	19; 1:30:16;	1:43:11, 18;
1:55:5, 9, 15,	circulated [1] -	closing [7] -	1:41:16;	1:49:18;
19; 1:56:4;	1:35:16	1:26:10;	1:44:9, 19;	1:50:5;
1:59:14;	<u>cite</u> [1] -	1:28:1;	1:45:8;	1:51:12;
1:60:17;	1:18:15	1:31:7, 11;	1:50:8;	1:53:19;
1:61:3, 10,	<u>cited</u> [1] -	1:32:2;	1:51:17;	1:54:5;
17; 1:62:8,	1:34:1	1:36:2	1:53:7;	1:55:18;
16; 1:64:19;	cities [1] -	Coffee [1] -	1:55:6;	1:56:3;
1:66:15;	1:61:6	1:15:13	1:56:10;	1:57:4, 9;
1:67:4;	Citizens [1] -	collaboration	1:57:17;	1:63:2;
1:68:3, 10;	1:40:3	[1] - 1:8:15	1:60:9;	1:64:11, 15;
1:69:2, 6	<u>CITY</u> [1] -	collaboratively	1:71:14	1:65:17;
chance [2] -	1:1:2	[2] - 1:9:19;	Commission's	1:68:16;
1:37:12;	<u>city</u> [8] -	1:30:14	[1] - 1:58:7	1:69:5
1:56:17	1:52:10, 12,	collective [1] -	commissioner	Commissioner
change [6] -	14; 1:53:10,	1:6:9	[4] - 1:7:8;	<u>'s</u> [1] - 1:53:2
1:26:7;	18; 1:54:16	coming [2] -	1:13:14;	Commissioner
1:31:10;	City [3] -	1:8:13;	1:21:16;	s [1] - 1:2:9
1:32:2, 17;	1:45:3;	1:63:18	1:50:3	commitment
1:70:3	1:67:15	comment [1] -	Commissioner	[1] - 1:7:19
CHANGE [6] -	clarification [3]	1:56:14	[10] - 1:1:7;	<u>common</u> [1] -
1:70:7	- 1:58:8, 13;	comments [2] -	1:2:10;	1:31:6
changed [1] -	1:60:13	1:21:17;	1:15:2;	Commonwealt
1:34:18	clarify [2] -	1:50:4	1:34:5;	<u>h</u> [2] - 1:71:2,
changes [3] -	1:23:15;	commercial [3]	1:37:4;	5
1:52:12;	1:57:6	- 1:41:13,	1:45:12;	COMMONWEA
1:59:13;	<u>clean</u> [1] -	19; 1:62:6	1:51:11;	LTH [1] -
1:70:14	1:37:16	COMMISSION	1:56:5;	1:1:1
changing [1] -	<u>clear</u> [1] -	[2] - 1:1:4, 6	1:57:2;	communities
1:50:19	1:54:18	Commission	1:60:4	[1] - 1:61:13
charge [1] -	Clerk's [1] -	[36] - 1:2:5;	COMMISSION	community [4]
1:21:10	1:45:3	1:3:2; 1:4:5;	ER [32] -	- 1:38:8, 13,
charging [1] -	<u>client</u> [3] -	1:5:18;	1:7:12;	18
1:43:10	1:18:2, 6;	1:12:18;	1:10:18;	companies [4]
<u>check</u> [2] -	1:38:3	1:17:14;	1:13:16;	- 1:48:4, 9;
1:24:19;	client's [1] -	1:19:10, 19;	1:21:18;	1:49:3, 7
				company [2] -

1:45:1;	1:59:5	[2] - 1:6:5;	Crossing [3] -	1:50:8
1:62:2	concierges [1]	1:30:10	1:16:8;	<u>decision</u> [15] -
complaints [7]	- 1:66:1	convinced [1] -	1:24:1	1:3:13; 1:5:2,
- 1:35:12;	conclude [1] -	1:28:12	<u>crowd</u> [1] -	14; 1:11:5;
1:37:14;	1:37:2	cooperative [2]	1:29:18	1:12:9;
1:45:14;	concluded [1] -	- 1:6:1;	<u>crowds</u> [3] -	1:16:19;
1:50:13;	1:69:9	1:33:17	1:6:9; 1:9:1,	1:51:14;
1:65:8;	conditions [1] -	corporate [3] -	3	1:52:2;
1:66:10;	1:51:8	1:16:5;	<u>CSQ</u> [1] -	1:55:16;
1:68:4	Conference [2]	1:26:7;	1:33:10	1:56:7;
completed [1] -	- 1:1:11;	1:32:17	current [1] -	1:58:12;
1:24:19	1:2:8	correct [6] -	1:18:13	1:59:10, 18;
completely [1]	confident [1] -	1:22:10;	<u>Daniel</u> [2] -	1:60:10;
- 1:63:17	1:52:17	1:34:3;	1:15:4;	1:69:8
complication	confirm [1] -	1:37:13;	1:24:16	DECISION [1] -
[1] - 1:61:19	1:41:6	1:40:10;	<u>DATE</u> [1] -	1:1:4
compliment [4]	congregate [1]	1:46:4, 9	1:1:13	Decision [1] -
- 1:28:10;	- 1:46:11	correction [1] -	<u>date</u> [2] -	1:2:5
1:29:4;	consider [3] -	1:70:3	1:11:17;	decisions [3] -
1:30:8;	1:3:19;	corrections [1]	1:70:4	1:4:8;
1:37:8	1:14:3;	- 1:70:14	<u>days</u> [1] -	1:55:13;
compliments	1:67:8	<u>Council</u> [2] -	1:24:7	1:63:19
[1] - 1:38:2	consideration	1:67:15	<u>deal</u> [1] -	default [5] -
components	[1] - 1:9:13	<u>counsel</u> [1] -	1:10:9	1:18:3, 14;
[1] - 1:53:10	construction	1:16:17	dealing [1] -	1:19:4;
comprehensiv	[1] - 1:32:17	country [1] -	1:37:9	1:22:2, 16
<u>e</u> [2] -	contacted [1] -	1:20:12	<u>Deanglis</u> [1] -	defaulted [1] -
1:53:16;	1:7:1	<u>couple</u> [1] -	1:25:14	1:19:3
1:54:14	<u>context</u> [1] -	1:66:5	<u>debt</u> [1] -	<u>defer</u> [4] -
computer [2] -	1:45:14	<u>course</u> [1] -	1:20:6	1:10:10;
1:48:5, 7	continue [1] -	1:68:9	<u>debts</u> [1] -	1:51:13;
concern [2] -	1:5:12	<u>court</u> [1] -	1:20:7	1:53:3;
1:4:3;	continued [1] -	1:16:4	<u>decade</u> [1] -	1:68:5
1:41:12	1:2:16	<u>create</u> [3] -	1:38:7	deferred [1] -
concerned [1] -	contract [1] -	1:4:19;	December [1] -	1:53:14
1:30:16	1:47:7	1:16:19;	1:25:15	deferring [2] -
concerns [7] -	<u>contribution</u>	1:54:19	<u>decide</u> [4] -	1:58:12;
1:7:13;	[1] - 1:9:2	created [1] -	1:52:1;	1:63:19
1:26:15;	control [1] -	1:8:3	1:57:18;	definitely [1] -
1:33:16;	1:23:6	creating [1] -	1:58:7;	1:10:6
1:34:1;	CONTROL [1] -	1:12:13	1:62:5	<u>delay</u> [1] -
1:54:10;	1:71:17	Crimson [1] -	decided [3] -	1:14:8
1:56:18;	<u>conversation</u>	1:24:11	1:4:10, 15;	<u>demand</u> [3] -

	T	1	1	1
1:19:5;	dilemma [1] -	1:61:1, 4, 15;	1:34:8;	1:34:14;
1:22:17;	1:50:6	1:62:3, 12,	1:58:18;	1:45:17;
1:27:17	diligence [1] -	19; 1:64:4,	1:59:5;	1:47:5;
<u>demonstrate</u>	1:35:10	13, 17;	1:61:13	1:48:14, 18
[3] - 1:28:3,	<u>DIRECT</u> [1] -	1:65:7;	<u>down</u> [1] -	eight-hour [2] -
6, 18	1:71:17	1:67:2, 7;	1:51:17	1:45:17;
<u>denial</u> [1] -	DIRECTION [1]	1:68:8, 18	<u>DPW</u> [1] -	1:48:18
1:64:8	- 1:71:17	disciplinary [1]	1:67:18	<u>either</u> [4] -
<u>denied</u> [1] -	directly [2] -	- 1:4:14	<u>draws</u> [1] -	1:52:1;
1:67:17	1:27:12;	discipline [1] -	1:9:1	1:57:15;
<u>deny</u> [1] -	1:34:13	1:31:6	<u>Drive</u> [2] -	1:60:13;
1:67:16	director [1] -	<u>discourse</u> [1] -	1:36:15;	1:64:8
Department [3]	1:6:18	1:38:6	1:39:8	<u>Elias</u> [2] -
- 1:33:18;	DIRECTOR [54]	discretion [1] -	<u>drive</u> [1] -	1:40:1, 15
1:38:15;	- 1:1:9;	1:60:16	1:62:10	<u>ELIAS</u> [16] -
1:43:3	1:2:2; 1:6:12,	discretionary	drivers [2] -	1:40:11,
described [1] -	17; 1:7:6;	[3] - 1:57:11;	1:65:9	15-16;
1:24:9	1:10:16;	1:58:7;	driving [1] -	1:41:1, 8;
desire [1] -	1:11:10, 16;	1:59:9	1:47:11	1:42:1, 15;
1:54:18	1:13:19;	discussed [1] -	dropoffs [1] -	1:43:8, 15;
destinations	1:14:12;	1:56:11	1:67:1	1:47:14;
[1] - 1:52:15	1:15:17;	discussion [1]	<u>during</u> [1] -	1:48:3, 8, 12;
determination	1:16:7;	- 1:26:14	1:45:5	1:49:1, 9;
[1] - 1:19:19	1:17:16;	discussions [1]	easier [1] -	1:55:4
developed [1] -	1:21:14;	- 1:29:14	1:37:10	eliminates [1] -
1:13:1	1:24:14;	disposition [1]	easiest [1] -	1:43:19
developments	1:25:1, 18;	- 1:23:6	1:43:12	<u>ELIZABETH</u>
[3] - 1:4:6;	1:31:12, 15,	distinguish [1]	economic [1] -	[54] - 1:1:9;
1:30:19;	19; 1:32:14;	- 1:17:8	1:9:9	1:2:2; 1:6:12,
1:60:1	1:33:3;	distinguishes	effect [6] -	17; 1:7:6;
difference [2] -	1:34:2;	[1] - 1:27:10	1:22:3, 15;	1:10:16;
1:42:2;	1:39:7, 19;	DO [1] - 1:70:3	1:31:2;	1:11:10, 16;
1:49:5	1:40:9;	document [1] -	1:32:13;	1:13:19;
different [4] -	1:43:6;	1:17:11	1:38:15;	1:14:12;
1:6:2; 1:10:6;	1:44:13, 18;	documents [1]	1:46:7	1:15:17;
1:17:10;	1:46:3, 8, 18;	- 1:22:11	effecting [1] -	1:16:7;
1:66:19	1:47:16;	<u>DOES</u> [1] -	1:31:6	1:17:16;
difficult [1] -	1:49:13;	1:71:16	<u>effort</u> [1] -	1:21:14;
1:61:5	1:50:1;	<u>domino</u> [1] -	1:6:9	1:24:14;
difficulties [1] -	1:52:4;	1:22:3	efforts [2] -	1:25:1, 18;
1:42:5	1:55:7, 11;	<u>don</u> [1] -	1:31:9;	1:31:12, 15,
difficulty [1] -	1:57:7;	1:23:4	1:39:17	19; 1:32:14;
1:58:4	1:60:3;	<u>done</u> [4] -	<u>eight</u> [5] -	1:33:3;

1:34:2;	1:34:16	1:24:1	1:52:4;	1:45:18
1:39:7, 19;	entirely [1] -	<u>evidence</u> [4] -	1:55:7, 11;	extremely [1] -
1:40:9;	1:12:10	1:5:2;	1:57:7;	1:30:11
1:43:6;	entities [1] -	1:20:15;	1:60:3;	<u>face</u> [1] -
1:44:13, 18;	1:27:12	1:28:15;	1:61:1, 4, 15;	1:18:6
1:46:3, 8, 18;	entitle [1] -	1:36:6	1:62:3, 12,	facilitating [1] -
1:47:16;	1:19:4	<u>example</u> [2] -	19; 1:64:4,	1:6:14
1:49:13;	entitled [1] -	1:38:11;	13, 17;	<u>fact</u> [14] -
1:50:1;	1:68:6	1:59:1	1:65:7;	1:6:13;
1:52:4;	<u>entity</u> [3] -	<u>examples</u> [1] -	1:67:2, 7;	1:7:14; 1:9:6;
1:55:7, 11;	1:16:5;	1:18:16	1:68:8, 18	1:37:15;
1:57:7;	1:20:9;	<u>except</u> [1] -	executive [1] -	1:38:12;
1:60:3;	1:23:2	1:70:14	1:6:18	1:41:7;
1:61:1, 4, 15;	entrepreneur	exchange [1] -	exemplary [1] -	1:46:1;
1:62:3, 12,	[1] - 1:54:19	1:66:3	1:39:2	1:47:2;
19; 1:64:4,	environment	execute [1] -	expectation [2]	1:51:2;
13, 17;	[3] - 1:8:3;	1:28:18	- 1:20:13;	1:54:10;
1:65:7;	1:27:2, 18	EXECUTIVE	1:64:1	1:59:19;
1:67:2, 7;	ERRATA [1] -	[54] - 1:1:9;	expected [1] -	1:62:17;
1:68:8, 18	1:70:1	1:2:2; 1:6:12,	1:25:12	1:65:4;
<u>email</u> [1] -	errata [1] -	17; 1:7:6;	expense [1] -	1:68:6
1:44:12	1:70:4	1:10:16;	1:3:15	failing [1] -
encouraged [3]	essential [1] -	1:11:10, 16;	experience [4]	1:12:11
- 1:8:9, 15;	1:29:17	1:13:19;	- 1:8:19;	failure [1] -
1:31:3	essentially [2] -	1:14:12;	1:20:19;	1:63:3
encroaching	1:3:17;	1:15:17;	1:59:17;	familiar [2] -
[1] - 1:45:16	1:18:6	1:16:7;	1:66:16	1:7:10;
end [2] -	establishment	1:17:16;	experienced	1:34:11
1:21:8;	[2] - 1:8:2, 4	1:21:14;	[2] - 1:7:17;	familiarity [1] -
1:23:8	establishment	1:24:14;	1:10:3	1:27:2
enforce [1] -	<u>s</u> [1] -	1:25:1, 18;	expires [1] -	familiarize [1] -
1:50:13	1:46:13	1:31:12, 15,	1:71:14	1:12:17
<u>engagement</u>	evening [3] -	19; 1:32:14;	exploration [1]	<u>far</u> [1] -
[1] - 1:38:19	1:3:17;	1:33:3;	- 1:5:19	1:23:13
ensure [2] -	1:33:5, 15	1:34:2;	expressed [1] -	fault [2] -
1:28:17;	evenings [1] -	1:39:7, 19;	1:27:3	1:12:10
1:53:9	1:32:4	1:40:9;	expressing [1]	<u>favor</u> [6] -
entertain [1] -	<u>event</u> [1] -	1:43:6;	- 1:10:7	1:25:6;
1:63:16	1:18:3	1:44:13, 18;	extend [1] -	1:32:8;
entertainment	events [1] -	1:46:3, 8, 18;	1:23:4	1:39:13;
[3] - 1:9:1, 3;	1:4:2	1:47:16;	extensive [1] -	1:54:3;
1:24:8	Everest [3] -	1:49:13;	1:25:11	1:56:1;
<u>entire</u> [1] -	1:16:8;	1:50:1;	<u>extent</u> [1] -	1:69:3
2	,	1.00.1,	<u> </u>	1.05.0

February [1] -	1:27:16	<u>four</u> [4] -	1:29:3, 9, 13;	generally [5] -
1:71:15	<u>focused</u> [1] -	1:17:17;	1:30:4, 15;	1:46:19;
fee [1] - 1:67:9	1:17:6	1:35:1, 3;	1:31:13, 16;	1:49:17;
<u>feet</u> [1] -	<u>follow</u> [1] -	1:48:9	1:32:1, 7, 11;	1:53:14;
1:34:15	1:59:12	<u>free</u> [2] -	1:33:1, 5, 12;	1:59:16;
felt [5] - 1:5:4;	<u>follow-up</u> [1] -	1:62:10;	1:34:4;	1:67:18
1:17:10;	1:59:12	1:69:1	1:37:3;	Gifford [2] -
1:36:10, 19	following [1] -	frequently [1] -	1:38:5;	1:28:9;
fencing [1] -	1:45:16	1:56:9	1:39:11, 15;	1:29:3
1:37:17	<u>force</u> [1] -	<u>friends</u> [1] -	1:40:6, 12,	<u>given</u> [2] -
<u>few</u> [4] -	1:38:13	1:49:3	18; 1:41:2;	1:9:5;
1:28:6;	foreclose [1] -	<u>front</u> [1] -	1:42:19;	1:28:17
1:32:19;	1:22:18	1:36:14	1:44:6, 16;	<u>gonna</u> [2] -
1:61:6	foregoing [1] -	<u>fronts</u> [1] -	1:45:11;	1:52:3;
fiduciary [1] -	1:70:14	1:16:2	1:46:5, 16;	1:65:15
1:21:3	FOREGOING	<u>fully</u> [2] -	1:47:4, 15,	governing [1] -
finance [1] -	[1] - 1:71:16	1:17:19;	18; 1:48:6,	1:22:11
1:16:19	foremost [1] -	1:34:18	10, 13;	gravity [1] -
financial [2] -	1:29:19	<u>future</u> [1] -	1:49:6, 11;	1:29:5
1:20:14, 16	<u>forget</u> [1] -	1:53:15	1:50:3;	<u>ground</u> [1] -
financing [1] -	1:16:5	Galleria [1] -	1:51:10;	1:36:6
1:16:19	<u>form</u> [3] -	1:24:11	1:52:7;	<u>groups</u> [1] -
<u>fine</u> [2] -	1:64:1;	Gardner [2] -	1:54:2, 6;	1:46:13
1:28:14;	1:67:5	1:1:7; 1:2:10	1:55:5, 9, 15,	<u>guess</u> [4] -
1:36:12	<u>former</u> [2] -	GARDNER [92]	19; 1:56:4;	1:50:6;
<u>first</u> [8] -	1:15:13;	- 1:2:17;	1:59:14;	1:52:7;
1:2:15;	1:18:17	1:3:5, 8;	1:60:17;	1:59:8;
1:12:3;	formerly [2] -	1:5:17;	1:61:3, 10,	1:68:3
1:13:4;	1:15:13;	1:6:15; 1:7:4,	17; 1:62:8,	H-O-P-E [2] -
1:19:18;	1:16:4	8; 1:10:8;	16; 1:64:19;	1:3:6
1:29:19;	<u>forth</u> [2] -	1:11:2, 12,	1:66:15;	<u>HAAS</u> [31] -
1:34:9;	1:51:8;	19; 1:12:5;	1:67:4;	1:7:12;
1:40:15;	1:71:7	1:13:7, 13,	1:68:3, 10;	1:10:18;
1:61:12	<u>forum</u> [1] -	17; 1:14:2, 5,	1:69:2, 6	1:13:16;
<u>fits</u> [1] -	1:57:13	11, 14;	gate [1] -	1:21:18;
1:54:15	<u>forums</u> [1] -	1:15:7, 15;	1:36:1	1:25:2, 7;
<u>five</u> [1] -	1:21:6	1:17:4, 18;	<u>geez</u> [2] -	1:30:6;
1:45:10	forward [3] -	1:20:18;	1:9:17;	1:32:5, 10;
<u>fixed</u> [1] -	1:42:11;	1:21:12, 16;	1:22:6	1:37:6;
1:67:9	1:51:3;	1:23:7, 14;	general [3] -	1:39:9, 14;
flexible [1] -	1:64:16	1:24:15;	1:52:8;	1:41:11;
1:53:9	forwarded [1] -	1:25:4, 8;	1:57:1;	1:42:3;
<u>focus</u> [1] -	1:35:15	1:26:3;	1:60:6	1:43:11, 18;
		,		
				j

	ı	1	I	I
1:49:18;	1:10:13;	helping [1] -	1:14:16	1:9:7
1:50:5;	1:56:16;	1:23:15	hopefully [1] -	importance [1]
1:51:12;	1:60:10, 15;	<u>hereby</u> [2] -	1:37:2	- 1:27:8
1:53:19;	1:65:9	1:70:15;	<u>hopes</u> [1] -	important [2] -
1:54:5;	<u>heard</u> [2] -	1:71:5	1:46:13	1:30:11;
1:55:18;	1:2:15;	<u>herein</u> [1] -	<u>hoping</u> [2] -	1:42:9
1:56:3;	1:3:10	1:71:7	1:7:7; 1:28:2	impossible [1]
1:57:4, 9;	<u>HEARING</u> [1] -	<u>hereunto</u> [1] -	<u>hotel</u> [2] -	- 1:66:6
1:63:2;	1:1:4	1:71:9	1:66:17	impression [2]
1:64:11, 15;	<u>hearing</u> [20] -	<u>high</u> [1] -	<u>hotels</u> [5] -	- 1:35:18;
1:65:17;	1:2:12;	1:34:15	1:47:17;	1:36:9
1:68:16;	1:4:14; 1:5:1,	<u>higher</u> [1] -	1:48:1;	improve [1] -
1:69:5	9, 11; 1:6:6;	1:53:10	1:65:11;	1:4:1
<u>Haas</u> [3] -	1:7:10; 1:8:6;	<u>highly</u> [1] -	1:66:1, 19	improved [1] -
1:1:7; 1:2:10;	1:11:5;	1:23:4	<u>hour</u> [4] -	1:37:16
1:57:2	1:34:9;	history [2] -	1:26:16;	<u>IN</u> [3] - 1:1:4;
<u>hackney</u> [6] -	1:55:16;	1:28:9;	1:28:1;	1:71:9, 16
1:45:15;	1:58:18;	1:37:11	1:45:17;	<u>INC</u> [1] -
1:61:18;	1:59:18;	<u>hold</u> [2] -	1:48:18	1:1:17
1:62:9;	1:60:7, 11;	1:13:6;	<u>hours</u> [7] -	incident [2] -
1:66:10;	1:69:8;	1:22:7	1:24:7;	1:5:8; 1:7:11
1:67:12;	1:70:3, 14;	<u>holder</u> [12] -	1:26:13;	incidents [2] -
1:68:4	1:71:7	1:16:16;	1:27:18;	1:4:18;
<u>hail</u> [1] -	<u>Hearing</u> [1] -	1:18:14;	1:31:7;	1:9:11
1:47:2	1:2:6	1:19:5, 11,	1:32:2;	includes [1] -
<u>hand</u> [1] -	<u>hearings</u> [1] -	13, 17;	1:47:6;	1:38:18
1:71:10	1:56:7	1:21:8;	1:48:15	including [1] -
<u>handle</u> [1] -	<u>heart</u> [1] -	1:22:5;	House [2] -	1:24:8
1:6:9	1:10:7	1:23:3, 11	1:18:17	<u>inconvenience</u>
<u>handling</u> [1] -	<u>held</u> [4] -	<u>holders</u> [2] -	identify [4] -	[2] - 1:3:14;
1:27:14	1:15:13;	1:31:3, 8	1:2:18;	1:11:14
<u>hanging</u> [2] -	1:16:4;	<u>holding</u> [1] -	1:6:15;	<u>inconvenience</u>
1:47:17;	1:24:1;	1:28:4	1:14:19;	<u>d</u> [1] - 1:14:7
1:65:11	1:59:17	<u>hope</u> [4] -	1:66:7	increase [1] -
<u>happy</u> [1] -	<u>hello</u> [2] -	1:2:17; 1:6:5;	illuminated [1]	1:26:12
1:15:1	1:40:11	1:11:12;	- 1:34:18	increasingly [1]
<u>hard</u> [1] -	<u>help</u> [3] -	1:29:1	illuminating [1]	- 1:61:5
1:63:11	1:27:4;	<u>HOPE</u> [5] -	- 1:34:16	indicate [1] -
Harvard [3] -	1:52:13;	1:3:1, 7;	immediate [1] -	1:26:9
1:24:2;	1:53:1	1:4:9; 1:6:4;	1:6:2	indicated [2] -
1:28:10, 13	<u>helpful</u> [2] -	1:10:1	<u>impact</u> [1] -	1:25:14;
<u>hear</u> [6] -	1:58:17;	<u>Hope</u> [3] -	1:9:11	1:58:15
1:4:6;	1:59:15	1:3:3;	impacted [1] -	indicates [1] -
		1		

1:50:11	S [1] - 1:70:2	1:44:11	1:22:19	1:58:11
indication [1] -	instrument [2]	<u>issues</u> [5] -	<u>July</u> [12] -	<u>knows</u> [1] -
1:66:2	- 1:22:14	1:4:2; 1:36:7;	1:1:13; 1:2:6;	1:21:1
industry [7] -	instruments [1]	1:37:10;	1:10:17;	Kourafas [2] -
1:45:15;	- 1:31:7	1:57:10;	1:11:7;	1:71:4, 12
1:50:16;	<u>intend</u> [1] -	1:59:3	1:14:1, 3-5;	<u>landlord</u> [8] -
1:61:18;	1:29:11	<u>issuing</u> [1] -	1:29:10;	1:16:16;
1:63:10;	intended [1] -	1:50:9	1:40:5;	1:17:2, 13;
1:66:10;	1:3:12	<u>itself</u> [2] -	1:68:15;	1:19:1;
1:67:13;	interest [2] -	1:22:14;	1:71:10	1:41:17;
1:68:4	1:9:10;	1:70:4	<u>June</u> [6] -	1:42:6;
influence [1] -	1:11:4	<u>JAMES</u> [14] -	1:2:12, 16;	1:43:13
1:46:7	interested [1] -	1:15:1, 11,	1:3:11;	landlords [1] -
<u>inform</u> [3] -	1:8:6	18; 1:16:9;	1:55:12, 16	1:41:12
1:27:7;	interim [1] -	1:18:15;	<u>iustify</u> [1] -	<u>Lapidus</u> [1] -
1:42:10;	1:34:8	1:21:2;	1:52:18	1:6:18
1:44:3	internal [1] -	1:22:10;	<u>key</u> [2] -	LAPIDUS [1] -
information [8]	1:30:1	1:23:9;	1:44:2;	1:6:18
- 1:6:7;	internally [2] -	1:25:13, 17;	1:59:1	<u>large</u> [2] -
1:11:3;	1:4:15;	1:26:1, 6;	<u>kind</u> [8] -	1:8:12
1:12:15;	1:35:10	1:29:7;	1:7:17; 1:8:2,	larger [2] -
1:17:8;	introduction	1:32:16	14; 1:9:3;	1:45:1;
1:49:12;	[1] - 1:61:8	<u>James</u> [2] -	1:12:1;	1:46:12
1:59:19;	involuntary [1]	1:15:3;	1:30:12;	<u>LARRY</u> [4] -
1:60:12;	- 1:19:14	1:26:1	1:33:6;	1:33:8;
1:65:3	involve [1] -	<u>JFK</u> [1] -	1:56:19	1:34:7;
<u>informs</u> [1] -	1:22:13	1:16:3	<u>kind've</u> [4] -	1:38:4;
1:59:6	involved [2] -	<u>Jill</u> [2] -	1:30:13;	1:39:18
<u>infrastructure</u>	1:6:8;	1:71:4, 12	1:51:4;	<u>Larry</u> [1] -
[3] - 1:52:10;	1:27:14	<u>jitneys</u> [3] -	1:57:16	1:33:8
1:53:11, 17	involving [1] -	1:67:9, 13,	<u>kind've</u> [1] -	<u>last</u> [19] -
inquire [1] -	1:21:5	17	1:62:15	1:4:13; 1:5:1,
1:13:15	<u>irresponsible</u>	job [1] - 1:48:9	<u>kinda</u> [1] -	9; 1:12:4, 7;
inquired [1] -	[1] - 1:63:9	<u>jobs</u> [1] -	1:66:11	1:13:2;
1:43:1	<u>issue</u> [8] -	1:48:4	<u>kinds</u> [3] -	1:26:11;
inquires [2] -	1:10:10;	<u>joint</u> [2] -	1:3:19; 1:4:2;	1:29:15;
1:17:6;	1:27:9;	1:5:19;	1:50:9	1:33:7;
1:56:9	1:29:6;	1:8:10	kitchen [1] -	1:34:9;
inquiry [1] -	1:31:4, 10;	judgment [3] -	1:27:16	1:35:7, 13;
1:16:18	1:43:1;	1:19:7, 9;	knowing [2] -	1:36:6;
<u>inside</u> [1] -	1:50:15;	1:22:19	1:37:11;	1:38:7;
1:24:4	1:51:6	judicial [2] -	1:41:18	1:40:1, 16;
INSTRUCTION	<u>issued</u> [1] -	1:21:6;	<u>known</u> [1] -	1:43:8;
			l	

	1	1	I	1
1:58:18;	15; 1:17:3;	1:66:12	1:33:3;	1:51:5, 19;
1:69:2	1:18:7,	<u>lifted</u> [1] -	1:34:2;	1:61:7, 14;
<u>late</u> [1] -	13-14;	1:52:3	1:39:7, 19;	1:62:18;
1:25:14	1:19:11, 15;	<u>light</u> [2] -	1:40:9;	1:63:12;
<u>law</u> [1] -	1:20:2;	1:29:2;	1:43:6;	1:67:19
1:19:4	1:22:6, 16;	1:34:14	1:44:13, 18;	<u>livery</u> [21] -
Law [1] - 1:3:3	1:23:6, 19;	<u>lighting</u> [1] -	1:46:3, 8, 18;	1:11:18;
layers [1] -	1:24:8, 10;	1:37:17	1:47:16;	1:12:19;
1:61:19	1:28:4;	<u>lights</u> [1] -	1:49:13;	1:40:19;
<u>least</u> [6] -	1:31:3, 8;	1:34:15	1:50:1;	1:41:19;
1:5:18;	1:33:4;	limitation [1] -	1:52:4;	1:42:7;
1:35:1;	1:39:4;	1:48:15	1:55:7, 11;	1:44:9;
1:45:14;	1:40:19;	Limited [1] -	1:57:7;	1:45:1;
1:49:4;	1:42:7;	1:24:11	1:60:3;	1:46:11;
1:59:16;	1:61:7;	limited [3] -	1:61:1, 4, 15;	1:47:1;
1:65:2	1:63:15;	1:23:4;	1:62:3, 12,	1:48:18;
<u>leave</u> [1] -	1:64:2, 6;	1:31:1;	19; 1:64:4,	1:52:10;
1:36:3	1:67:10, 19	1:46:6	13, 17;	1:54:15;
<u>left</u> [2] -	License [4] -	<u>limo</u> [3] -	1:65:7;	1:60:18;
1:2:11;	1:2:5;	1:41:10;	1:67:2, 7;	1:62:2, 5;
1:15:4	1:19:10;	1:42:2, 18	1:68:8, 18	1:63:15;
<u>legal</u> [3] -	1:51:16;	<u>LINE</u> [1] -	<u>Lint</u> [11] -	1:64:6;
1:18:5;	1:71:13	1:70:6	1:10:12;	1:65:10, 18;
1:22:4, 9	licensed [4] -	<u>line</u> [1] -	1:13:17;	1:67:5, 8
<u>Legal</u> [1] -	1:3:18; 1:6:2;	1:59:8	1:17:5;	<u>Livery</u> [1] -
1:3:3	1:13:4;	<u>lines</u> [1] -	1:21:13;	1:40:1
<u>legality</u> [1] -	1:46:2	1:36:16	1:32:13;	<u>LLC</u> [3] -
1:17:6	licensee [2] -	<u>LINT</u> [54] -	1:33:13;	1:24:1;
<u>legally</u> [1] -	1:19:2;	1:1:9; 1:2:2;	1:39:6;	1:33:11
1:44:3	1:26:10	1:6:12, 17;	1:44:6;	<u>loan</u> [5] -
<u>length</u> [1] -	licensees [2] -	1:7:6;	1:49:11;	1:17:2;
1:27:10	1:27:5;	1:10:16;	1:50:11;	1:18:4;
<u>lessen</u> [1] -	1:28:17	1:11:10, 16;	1:57:2	1:19:3, 5;
1:4:17	licenses [7] -	1:13:19;	<u>Lint's</u> [1] -	1:22:2
licence [1] -	1:27:19;	1:14:12;	1:66:9	<u>local</u> [1] -
1:13:6	1:33:14;	1:15:17;	<u>literally</u> [1] -	1:23:2
LICENSE [2] -	1:44:9;	1:16:7;	1:20:11	location [10] -
1:1:4, 6	1:45:2;	1:17:16;	<u>live</u> [2] -	1:9:5; 1:10:2;
<u>license</u> [33] -	1:50:9, 15;	1:21:14;	1:26:16;	1:15:6, 14;
1:11:18;	1:51:7	1:24:14;	1:43:10	1:16:1;
1:13:10;	licensing [3] -	1:25:1, 18;	<u>liveries</u> [10] -	1:18:16;
1:15:12;	1:51:9;	1:31:12, 15,	1:45:6, 15;	1:20:4;
1:16:4, 10,	1:62:18;	19; 1:32:14;	1:46:1;	1:26:8;
	1	1		

	I	Ī	Ι	T
1:39:4	1:70:4	meeting [6] -	1:17:4, 18;	mindful [1] -
locations [1] -	<u>Mass</u> [4] -	1:6:14; 1:7:3;	1:20:18;	1:9:5
1:20:10	1:2:8; 1:5:5;	1:8:10;	1:21:12, 16;	minutes [2] -
Lombardi [2] -	1:6:10;	1:27:4, 6;	1:23:7, 14;	1:55:10, 17
1:1:11; 1:2:7	1:10:4	1:29:11	1:24:15;	misnomer [1] -
longevity [1] -	<u>MASSACHUSE</u>	meetings [2] -	1:25:4, 8;	1:23:10
1:30:3	<u>TTS</u> [1] -	1:57:18;	1:26:3;	<u>miss</u> [1] -
longstanding	1:1:1	1:59:10	1:29:3, 9, 13;	1:21:13
[1] - 1:50:7	<u>Massachusetts</u>	MEKONEN [5]	1:30:4, 15;	mitigating [1] -
<u>look</u> [5] -	[4] - 1:1:12;	- 1:12:3;	1:31:13, 16;	1:8:7
1:34:11;	1:71:2, 5	1:13:3, 12;	1:32:1, 7, 11;	<u>model</u> [1] -
1:37:12;	Massport [1] -	1:14:4, 9	1:33:1, 5, 12;	1:18:10
1:51:18;	1:62:14	Mekonen [1] -	1:34:4;	<u>Monday</u> [1] -
1:58:13;	<u>matter</u> [13] -	1:11:17	1:37:3;	1:45:3
1:61:13	1:2:15;	members [2] -	1:38:5;	<u>money</u> [1] -
<u>looking</u> [1] -	1:3:10; 1:4:3;	1:3:2;	1:39:11, 15;	1:43:10
1:6:13	1:10:13;	1:26:15	1:40:6, 12,	<u>month</u> [4] -
<u>loss</u> [1] -	1:11:17;	MEMBERS [1]	18; 1:41:2;	1:13:2;
1:18:7	1:13:18;	- 1:1:6	1:42:19;	1:26:12;
<u>love</u> [1] - 1:4:6	1:17:19;	<u>memory</u> [7] -	1:44:6, 16;	1:45:5
<u>luck</u> [3] -	1:19:4;	1:5:17;	1:45:11;	<u>months</u> [4] -
1:14:11;	1:40:1;	1:33:12;	1:46:5, 16;	1:26:8;
1:25:16;	1:44:7;	1:41:2;	1:47:4, 15,	1:28:6;
1:33:1	1:53:4, 14;	1:42:19;	18; 1:48:6,	1:32:19;
<u>M-E-K-O-N-E-N</u>	1:59:11	1:44:12;	10, 13;	1:43:2
[1] - 1:12:4	matters [1] -	1:47:18;	1:49:6, 11;	moratorium [3]
maintain [1] -	1:2:11	1:65:1	1:50:3;	- 1:50:7;
1:59:9	<u>mean</u> [8] -	mentioned [1] -	1:51:10;	1:52:3;
majority [2] -	1:9:9;	1:36:18	1:52:7;	1:64:7
1:3:9; 1:12:8	1:38:12;	Michael [4] -	1:54:2, 6;	morning [8] -
manager [3] -	1:48:16;	1:1:7, 11;	1:55:5, 9, 15,	1:3:1; 1:5:15;
1:15:5;	1:61:10;	1:2:7, 9	19; 1:56:4;	1:11:19;
1:24:12, 16	1:63:13, 18;	MICHAEL [92] -	1:59:14;	1:12:14;
<u>manner</u> [2] -	1:66:15;	1:2:17; 1:3:5,	1:60:17;	1:14:8, 14;
1:14:18;	1:67:5	8; 1:5:17;	1:61:3, 10,	1:16:17;
1:29:5	meaning [1] -	1:6:15; 1:7:4,	17; 1:62:8,	1:68:15
MARC [2] -	1:50:7	8; 1:10:8;	16; 1:64:19;	mortgage [1] -
1:29:12, 16	meantime [1] -	1:11:2, 12,	1:66:15;	1:22:16
<u>marina's</u> [1] -	1:63:13	19; 1:12:5;	1:67:4;	Moska [1] -
1:15:14	measures [1] -	1:13:7, 13,	1:68:3, 10;	1:2:16
<u>mark</u> [1] -	1:37:16	17; 1:14:2, 5,	1:69:2, 6	most [1] -
1:26:2	meet [1] -	11, 14;	might [2] -	1:10:13
<u>marks</u> [1] -	1:20:16	1:15:7, 15;	1:6:7; 1:27:9	<u>motion</u> [16] -
		, -,	,	

1:10:10;		T	T	T	T
1:25:3;	1:10:10;	1:60:10;	1:54:7;	<u>notwithstandin</u>	1:29:8
1:32:2, 6-7; 1:22:19; 1:47:8, 10 November [1] - 1:16:5; 1:39:3, 1:60:1 Norfolk [1] - 1:25:14 1:18:10 nuisances [1] - OMICHAEL [15] 1:53:13; 1:48:18; North [1] - 1:38:1 -1:40:11, number [9] - 15; 1:41:1, 8; 1:55:16, 19; 1:53:12, 17; NOT [2] - 1:6:1; 1:8:11; 1:42:1, 15; 1:68:14 number [9] - 15; 1:41:1, 8; 1:55:16, 19; 1:58:8 1:71:16 1:33:13; 1:47:14; 1:51:3; negative [1] - Notary [3] - 1:43:2; 1:48:3, 8, 12; 1:59:6; 1:30:19 1:70:5; 1:44:9, 17; 1:49:1, 9; 1:64:3, 16 neighborhood neighborhood 1:70:5; 1:44:9, 17; 1:49:1, 9; 1:55:4 notation [1] - 1:11:7 neighbors [2] - 1:24:10 1:40:17 notations [1] - 1:40:17 once [1] - 1:66:19; 1:58:2 1:19:8; obligations [2] 1:31:2; 1:33:12; 1:58:1; 1:20:17; 1:20:17; 1:19:9; 1:33:2, 8; 1:30:9; 1:70:3 obtained [1] - 1:20:16 1:58:1; 1:20:17; 1:20:17; 1:20:16; 1:33:17 1:34:12; 1:70:16 1:33:15; notation [1] - 1:25:18; 1:33:15; notice [7] - notice [7] -	1:23:18;	1:65:12	1:68:13	<u>g</u> [1] -	<u>Om</u> [4] -
1:39:3,	1:25:3;	<u>needed</u> [2] -	<u>noon</u> [2] -	1:35:12	1:15:16;
10-11;	1:32:2, 6-7;	1:22:19;	1:47:8, 10	November [1] -	1:16:5;
1:53:13;	1:39:3,	1:60:1	Norfolk [1] -	1:25:14	1:18:10
1:54:1;	10-11;	<u>needs</u> [6] -	1:71:3	nuisances [1] -	OMICHAEL [15]
1:55:16, 19;	1:53:13;	1:48:18;	North [1] -	1:38:1	- 1:40:11,
1:68:14 1:57:17; 1:70:3; 1:17:5, 13; 1:43:8, 15; move [4] - 1:58:8 1:71:16 1:33:13; 1:47:14; 1:59:6; 1:30:19 1:70:5; 1:43:2; 1:48:3, 8, 12; 1:64:3, 16 neighborhood 1:71:4, 14 1:65:18 1:55:4 moved [1] - [1] - 1:35:19 notation [1] - 0-M-I-C-H-A-E- Omichael [1] - MR [1] - 1:33:17; notations [1] - 1:40:17 once [1] - 1:25:16 1:34:1 1:70:4 obligation [1] - 1:40:16 multiple [2] - never [1] - note [5] - 1:20:14 once [1] - 1:66:19; 1:58:2 1:19:8; obligations [2] 1:8:12; 1:67:1 new [5] - 1:20:17; 1:20:17 1:19:9; Murphy [3] - 1:10:2; 1:22:14, 17; 1:21:3 1:20:6; 1:33:18 1:54:19; noted [4] - 1:58:2 1:33:15; mutual [1] - 1:58:1; 1:20:9; OF [5] - 1:1:1; 1:36:4; 1:30:12	1:54:1;	1:51:17;	1:15:14	<u>number</u> [9] -	15; 1:41:1, 8;
move [4] - 1:58:8 1:71:16 1:33:13; 1:47:14; 1:51:3; negative [1] - 1:30:19 1:70:5; 1:44:9, 17; 1:48:3, 8, 12; 1:59:6; 1:30:19 1:70:5; 1:44:9, 17; 1:49:1, 9; 1:64:3, 16 neighborhood 1:71:4, 14 1:65:18 1:55:4 moved [1] - 1:35:19 notation [1] - 1:40:17 Omichael [1] - 1:40:16 1:40:16 MR [1] - 1:33:17; notations [1] - 1:40:17 once [1] - 1:40:16 once [1] - 1:40:16 multiple [2] - 1:58:2 1:19:8; obligation [1] - 1:19:9 1:19:9 multiple [2] - 1:58:2 1:19:8; obligations [2] - 1:8:12; 1:8:12; 1:66:19; 1:58:2 1:19:8; obligations [2] - 1:8:12; 1:8:12; 1:67:1 new [5] - 1:20:17; 1:20:17; 1:19:9; Murphy [3] - 1:10:2; 1:20:17; 1:20:17; 1:19:9; Murphy [3] - 1:58:1; 1:20:17; 1:21:13 1:20:6; 1:33:2, 8; 1:30:9; 0F [5] - 1:1:1; 1:36:4; 1:30:12 1:63:17 1:34:12; 1:71:16 <td< td=""><td>1:55:16, 19;</td><td>1:53:12, 17;</td><td><u>NOT</u> [2] -</td><td>1:6:1; 1:8:11;</td><td>1:42:1, 15;</td></td<>	1:55:16, 19;	1:53:12, 17;	<u>NOT</u> [2] -	1:6:1; 1:8:11;	1:42:1, 15;
1:51:3;	1:68:14	1:57:17;	1:70:3;	1:17:5, 13;	1:43:8, 15;
1:59:6; 1:30:19 1:70:5; 1:44:9, 17; 1:49:1, 9; 1:64:3, 16 neighborhood 1:71:4, 14 1:65:18 1:55:4 moved [1] - [1] - 1:35:19 notation [1] - 0-M-I-C-H-A-E- 0michael [1] - 1:11:7 neighbors [2] - 1:24:10 L [1] - 1:40:16 0mce [1] - 1:25:16 1:34:1 1:70:4 obligation [1] - 1:19:9 0mce [1] - multiple [2] - never [1] - note [5] - 1:20:14 0nc [1] - 1:19:9 multiple [2] - new [5] - 1:20:17; -1:20:17; 1:19:9 1:66:19; 1:58:2 1:19:8; obligations [2] 1:8:12; 1:8:12; 1:67:1 new [5] - 1:20:17; -1:20:17; 1:19:9; Murphy [3] - 1:10:2; 1:22:14, 17; 1:21:3 1:20:6; 1:37:8 1:54:19; noted [4] - 1:58:2 1:33:15; mutual [1] - 1:58:1; 1:20:9; OF [5] - 1:1:1; 1:36:4; 1:30:12 1:66:17 1:70:15 offer	<u>move</u> [4] -	1:58:8	1:71:16	1:33:13;	1:47:14;
1:64:3, 16	1:51:3;	negative [1] -	<u>Notary</u> [3] -	1:43:2;	1:48:3, 8, 12;
moved [1] - [1] - 1:35:19 notation [1] - Q-M-I-C-H-A-E- Omichael [1] - I:11:7 neighbors [2] - 1:24:10 L [1] - 1:40:16 MR [1] - 1:33:17; notations [1] - 1:40:17 once [1] - 1:25:16 1:34:1 1:70:4 obligation [1] - 1:19:9 multiple [2] - never [1] - note [5] - 1:20:14 one [12] - 1:66:19; 1:58:2 1:19:8; obligations [2] 1:8:12; 1:67:1 new [5] - 1:20:17; -1:20:17; 1:19:9; Murphy [3] - 1:10:2; 1:22:14, 17; 1:21:19; 1:20:6; 1:35:2, 8; 1:30:9; 1:70:3 obtained [1] - 1:21:9; 1:37:8 1:54:19; noted [4] - 1:58:2 1:33:15; mutual [1] - 1:63:17 1:34:12; 1:71:16 1:43:8; name [11] - next [2] - 1:70:15 offer [3] - 1:52:18; nial [1] - 1:21:10; 1:28:14 1:48:4, 9 1:61:7, 12; 1:26:7;	1:59:6;	1:30:19	1:70:5;	1:44:9, 17;	1:49:1, 9;
1:11:7 neighbors [2] - 1:24:10 L [1] - 1:40:16 MR [1] - 1:33:17; notations [1] - 1:40:17 1:40:16 multiple [2] - 1:55:16 1:34:1 1:70:4 obligation [1] - 1:19:9 multiple [2] - 1:66:19; 1:58:2 1:19:8; obligations [2] 1:8:12; 1:67:1 new [5] - 1:20:17; -1:20:17; 1:19:9; Murphy [3] - 1:10:2; 1:20:17; -1:20:17; 1:19:9; Murphy [3] - 1:30:9; 1:70:3 obtained [1] - 1:21:9; 1:20:6; 1:37:8 1:54:19; noted [4] - 1:58:2 1:33:15; mutual [1] - 1:58:1; 1:20:9; OF [5] - 1:1:1; 1:36:4; 1:30:12 1:63:17 1:34:12; 1:71:16 1:43:8; name [11] - 1:66:13 nothing [1] - 1:10:10; 1:53:5; 1:12:1, 3-4; 1:66, 13 nothing [1] - 1:10:10; 1:53:5; 1:14:15, 17; nicely [1] - 1:28:14 1:48:4, 9 1:61:7, 12; 1:26:7; 1:21:15 notice [7] - Office [1] - 1:62:14 0noing [2] - 1:65:1 1:35:5; 1:21:10; 1:11:5, 8; off	1:64:3, 16	neighborhood	1:71:4, 14	1:65:18	1:55:4
MR [1] - 1:33:17; notations [1] - 1:40:17 once [1] - multiple [2] - never [1] - note [5] - 1:20:14 one [12] - 1:66:19; 1:58:2 1:19:8; obligations [2] 1:8:12; 1:67:1 new [5] - 1:20:17; 1:20:17; 1:19:9; Murphy [3] - 1:10:2; 1:22:14, 17; 1:21:3 1:20:6; 1:35:2, 8; 1:30:9; 1:70:3 obtained [1] - 1:21:9; 1:37:8 1:54:19; noted [4] - 1:58:2 1:33:15; mutual [1] - 1:58:1; 1:20:9; OF [5] - 1:1:1; 1:36:4; 1:30:12 1:63:17 1:34:12; 1:71:16 1:43:8; name [11] - next [2] - 1:70:15 offer [3] - 1:52:18; 1:12:1, 3-4; 1:6:6, 13 nothing [1] - 1:10:10; 1:53:5; 1:14:15, 17; nicely [1] - 1:28:14 1:48:4, 9 1:61:7, 12; 1:26:7; 1:21:15 notice [7] - Office [1] - 1:62:14 1:33:7; <	<u>moved</u> [1] -	[1] - 1:35:19	notation [1] -	O-M-I-C-H-A-E-	Omichael [1] -
1:25:16 1:34:1 1:70:4 obligation [1] - 1:19:9 1:19:9 multiple [2] - 1:66:19; 1:58:2 1:19:8; obligations [2] 1:8:12; 1:67:1 new [5] - 1:20:17; 1:20:17; 1:20:17; 1:19:9; Murphy [3] - 1:10:2; 1:22:14, 17; 1:21:3 1:20:6; 1:35:2, 8; 1:30:9; 1:70:3 obtained [1] - 1:21:9; 1:37:8 1:54:19; noted [4] - 1:58:2 1:33:15; mutual [1] - 1:58:1; 1:20:9; OF [5] - 1:1:1; 1:36:4; 1:30:12 1:63:17 1:34:12; 1:71:16 1:43:8; name [11] - 1:66:, 13 nothing [1] - 1:10:10; 1:52:18; 1:12:1, 3-4; 1:6:6, 13 nothing [1] - 1:10:10; 1:53:5; 1:14:15, 17; nicely [1] - 1:28:14 1:48:4, 9 1:61:7, 12; 1:26:7; 1:21:15 notice [7] - Office [1] - 1:62:14 1:33:7; night [4] - 1:3:13; 1:45:4 ongoing [2] - 1:6:5; 1:40:13, 15 1:26:16; 1:12:12; 1:35:4; 1:37:14 nature [1] - 1:35:7;	1:11:7	neighbors [2] -	1:24:10	<u>L</u> [1] -	1:40:16
multiple [2] - never [1] - note [5] - 1:20:14 one [12] - 1:66:19; 1:58:2 1:19:8; obligations [2] 1:8:12; 1:67:1 new [5] - 1:20:17; -1:20:17; 1:19:9; Murphy [3] - 1:10:2; 1:22:14, 17; 1:21:3 1:20:6; 1:35:2, 8; 1:30:9; 1:70:3 obtained [1] - 1:21:9; 1:37:8 1:54:19; noted [4] - 1:58:2 1:33:15; mutual [1] - 1:58:1; 1:20:9; OF [5] - 1:1:1; 1:36:4; 1:30:12 1:63:17 1:34:12; 1:71:16 1:43:8; name [11] - next [2] - 1:70:15 offer [3] - 1:52:18; 1:12:1, 3-4; 1:6:6, 13 nothing [1] - 1:10:10; 1:53:5; 1:14:15, 17; nicely [1] - 1:28:14 1:48:4, 9 1:61:7, 12; 1:26:7; 1:21:15 notice [7] - Office [1] - 1:62:14 1:33:7; 1:41:10; 1:11:5, 8; officer [2] - 1:6:5; 1:40:13, 15	<u>MR</u> [1] -	1:33:17;	notations [1] -	1:40:17	<u>once</u> [1] -
1:66:19; 1:58:2 1:19:8; obligations [2] 1:8:12; 1:67:1 new [5] - 1:20:17; -1:20:17; 1:19:9; Murphy [3] - 1:10:2; 1:22:14, 17; 1:21:3 1:20:6; 1:35:2, 8; 1:30:9; 1:70:3 obtained [1] - 1:21:9; 1:37:8 1:54:19; noted [4] - 1:58:2 1:33:15; mutual [1] - 1:58:1; 1:20:9; OF [5] - 1:1:1; 1:36:4; 1:30:12 1:63:17 1:34:12; 1:71:16 1:43:8; name [11] - next [2] - 1:70:15 offer [3] - 1:52:18; 1:12:1, 3-4; 1:6:6, 13 nothing [1] - 1:10:10; 1:53:5; 1:14:15, 17; nicely [1] - 1:28:14 1:48:4, 9 1:61:7, 12; 1:26:7; 1:21:15 notice [7] - Office [1] - 1:62:14 1:33:7; night [4] - 1:3:13; 1:45:4 ongoing [2] - 1:40:13, 15 1:26:16; 1:12:12; 1:35:4; 1:37:14 nature [1] - 1:35:7; 1:47:6; 1:35:8 1:33:4; 1:9:18; <	1:25:16	1:34:1	1:70:4	obligation [1] -	1:19:9
1:67:1 new [5] - 1:20:17; - 1:20:17; 1:19:9; Murphy [3] - 1:10:2; 1:22:14, 17; 1:21:3 1:20:6; 1:35:2, 8; 1:30:9; 1:70:3 obtained [1] - 1:21:9; 1:37:8 1:54:19; noted [4] - 1:58:2 1:33:15; mutual [1] - 1:58:1; 1:20:9; OF [5] - 1:1:1; 1:36:4; 1:30:12 1:63:17 1:34:12; 1:71:16 1:43:8; name [11] - next [2] - 1:70:15 offer [3] - 1:52:18; 1:12:1, 3-4; 1:66, 13 nothing [1] - 1:10:10; 1:53:5; 1:14:15, 17; nicely [1] - 1:28:14 1:48:4, 9 1:61:7, 12; 1:26:7; 1:21:15 notice [7] - Office [1] - 1:62:14 1:33:7; night [4] - 1:3:13; 1:45:4 ongoing [2] - 1:40:13, 15 1:26:16; 1:12:12; 1:35:4; 1:37:14 nature [1] - 1:36:6 1:63:16; Officer [1] - 1:25:12; need [10] - nig	multiple [2] -	<u>never</u> [1] -	<u>note</u> [5] -	1:20:14	<u>one</u> [12] -
Murphy [3] - 1:10:2; 1:22:14, 17; 1:21:3 1:20:6; 1:35:2, 8; 1:30:9; 1:70:3 obtained [1] - 1:21:9; 1:37:8 1:54:19; noted [4] - 1:58:2 1:33:15; mutual [1] - 1:58:1; 1:20:9; OF [5] - 1:1:1; 1:36:4; 1:30:12 1:63:17 1:34:12; 1:71:16 1:43:8; name [11] - next [2] - 1:70:15 offer [3] - 1:52:18; 1:12:1, 3-4; 1:6:6, 13 nothing [1] - 1:10:10; 1:53:5; 1:14:15, 17; nicely [1] - 1:28:14 1:48:4, 9 1:61:7, 12; 1:26:7; 1:21:15 notice [7] - Office [1] - 1:62:14 1:33:7; night [4] - 1:3:13; 1:45:4 ongoing [2] - 1:35:5; 1:21:10; 1:11:5,8; officer [2] - 1:6:5; 1:40:13, 15 1:26:16; 1:12:12; 1:35:4; 1:37:14 nature [1] - 1:35:7; 1:47:6; 1:65:15 open [3] - 1:51:8; 1:41:13	1:66:19;	1:58:2	1:19:8;	obligations [2]	1:8:12;
1:35:2, 8; 1:30:9; 1:70:3 obtained [1] - 1:21:9; 1:37:8 1:54:19; noted [4] - 1:58:2 1:33:15; mutual [1] - 1:58:1; 1:20:9; OF [5] - 1:1:1; 1:36:4; 1:30:12 1:63:17 1:34:12; 1:71:16 1:43:8; name [11] - next [2] - 1:70:15 offer [3] - 1:52:18; 1:12:1, 3-4; 1:6:6, 13 nothing [1] - 1:10:10; 1:53:5; 1:14:15, 17; nicely [1] - 1:28:14 1:48:4, 9 1:61:7, 12; 1:26:7; 1:21:15 notice [7] - Office [1] - 1:62:14 1:33:7; night [4] - 1:3:13; 1:45:4 ongoing [2] - 1:35:5; 1:21:10; 1:11:5, 8; officer [2] - 1:6:5; 1:40:13, 15 1:26:16; 1:12:12; 1:35:4; 1:37:14 nature [1] - 1:35:7; 1:47:6; 1:65:15 open [3] - 1:15:8 1:36:6 1:63:16; Officer [1] - 1:25:12; need [10] - nights [1] - 1:34:17 1:36:2 1:42:4; 1:43:9	1:67:1	<u>new</u> [5] -	1:20:17;	- 1:20:17;	1:19:9;
1:37:8 1:54:19; noted [4] - 1:58:2 1:33:15; mutual [1] - 1:58:1; 1:20:9; OF [5] - 1:1:1; 1:36:4; 1:30:12 1:63:17 1:34:12; 1:71:16 1:43:8; name [11] - next [2] - 1:70:15 offer [3] - 1:52:18; 1:12:1, 3-4; 1:6:6, 13 nothing [1] - 1:10:10; 1:53:5; 1:14:15, 17; nicely [1] - 1:28:14 1:48:4, 9 1:61:7, 12; 1:26:7; 1:21:15 notice [7] - Office [1] - 1:62:14 1:33:7; night [4] - 1:3:13; 1:45:4 ongoing [2] - 1:35:5; 1:21:10; 1:11:5, 8; officer [2] - 1:6:5; 1:40:13, 15 1:26:16; 1:12:12; 1:35:4; 1:37:14 nature [1] - 1:35:7; 1:47:6; 1:65:15 open [3] - 1:15:8 1:36:6 1:63:16; Officer [1] - 1:25:12; need [10] - nights [1] - 1:64:12 1:35:8 1:33:4; 1:9:18; 1:4:13 notified [1] - Offices [1] - 1:36:17 1:42:4; <td><u>Murphy</u> [3] -</td> <td>1:10:2;</td> <td>1:22:14, 17;</td> <td>1:21:3</td> <td>1:20:6;</td>	<u>Murphy</u> [3] -	1:10:2;	1:22:14, 17;	1:21:3	1:20:6;
mutual [1] - 1:58:1; 1:20:9; OF [5] - 1:1:1; 1:36:4; 1:30:12 1:63:17 1:34:12; 1:71:16 1:43:8; name [11] - next [2] - 1:70:15 offer [3] - 1:52:18; 1:12:1, 3-4; 1:6:6, 13 nothing [1] - 1:10:10; 1:53:5; 1:14:15, 17; nicely [1] - 1:28:14 1:48:4, 9 1:61:7, 12; 1:26:7; 1:21:15 notice [7] - Office [1] - 1:62:14 1:33:7; night [4] - 1:3:13; 1:45:4 ongoing [2] - 1:35:5; 1:21:10; 1:11:5, 8; officer [2] - 1:6:5; 1:40:13, 15 1:26:16; 1:12:12; 1:35:4; 1:37:14 nature [1] - 1:35:7; 1:47:6; 1:65:15 open [3] - 1:15:8 1:36:6 1:63:16; Officer [1] - 1:25:12; need [10] - nights [1] - 1:34:17 1:36:17 1:42:4; 1:43:9 notified [1] - OFFICIAL [1] - 1:36:2 1:50:14; none [5] - <	1:35:2, 8;	1:30:9;	1:70:3	obtained [1] -	1:21:9;
1:30:12 1:63:17 1:34:12; 1:71:16 1:43:8; name [11] - next [2] - 1:70:15 offer [3] - 1:52:18; 1:12:1, 3-4; 1:6:6, 13 nothing [1] - 1:10:10; 1:53:5; 1:14:15, 17; nicely [1] - 1:28:14 1:48:4, 9 1:61:7, 12; 1:26:7; 1:21:15 notice [7] - Office [1] - 1:62:14 1:33:7; night [4] - 1:3:13; 1:45:4 ongoing [2] - 1:35:5; 1:21:10; 1:11:5, 8; officer [2] - 1:6:5; 1:40:13, 15 1:26:16; 1:12:12; 1:35:4; 1:37:14 nature [1] - 1:35:7; 1:47:6; 1:65:15 open [3] - 1:15:8 1:36:6 1:63:16; Officer [1] - 1:25:12; need [10] - nights [1] - 1:64:12 1:35:8 1:33:4; 1:9:18; 1:4:13 notified [1] - Offices [1] - 1:36:17 1:42:4; 1:43:9 notify [1] - OFFICIAL [1] - 1:36:2 1:50:14; none [5] - 1:40:3 1:1:18 operate [4] - 1:52:18; </td <td>1:37:8</td> <td>1:54:19;</td> <td><u>noted</u> [4] -</td> <td>1:58:2</td> <td>1:33:15;</td>	1:37:8	1:54:19;	<u>noted</u> [4] -	1:58:2	1:33:15;
name [11] - next [2] - 1:70:15 offer [3] - 1:52:18; 1:12:1, 3-4; 1:6:6, 13 nothing [1] - 1:10:10; 1:53:5; 1:14:15, 17; nicely [1] - 1:28:14 1:48:4, 9 1:61:7, 12; 1:26:7; 1:21:15 notice [7] - Office [1] - 1:62:14 1:33:7; night [4] - 1:3:13; 1:45:4 ongoing [2] - 1:35:5; 1:21:10; 1:11:5, 8; officer [2] - 1:6:5; 1:40:13, 15 1:26:16; 1:12:12; 1:35:4; 1:37:14 nature [1] - 1:35:7; 1:47:6; 1:65:15 open [3] - 1:15:8 1:36:6 1:63:16; Officer [1] - 1:25:12; need [10] - nights [1] - 1:64:12 1:35:8 1:33:4; 1:9:18; 1:4:13 notified [1] - Offices [1] - 1:36:17 1:42:4; 1:43:9 notify [1] - OFFICIAL [1] - 1:36:2 1:50:14; none [5] - 1:40:3 1:1:1:18 operate [4] - 1:52:18;	<u>mutual</u> [1] -	1:58:1;	1:20:9;	OF [5] - 1:1:1;	1:36:4;
1:12:1, 3-4; 1:6:6, 13 nothing [1] - 1:10:10; 1:53:5; 1:14:15, 17; nicely [1] - 1:28:14 1:48:4, 9 1:61:7, 12; 1:26:7; 1:21:15 notice [7] - Office [1] - 1:62:14 1:33:7; night [4] - 1:3:13; 1:45:4 ongoing [2] - 1:35:5; 1:21:10; 1:11:5, 8; officer [2] - 1:6:5; 1:40:13, 15 1:26:16; 1:12:12; 1:35:4; 1:37:14 nature [1] - 1:35:7; 1:47:6; 1:65:15 open [3] - 1:15:8 1:36:6 1:63:16; Officer [1] - 1:25:12; need [10] - nights [1] - 1:64:12 1:35:8 1:33:4; 1:9:18; 1:4:13 notified [1] - 0ffices [1] - 1:36:17 1:31:8; nighttime [1] - 1:34:17 1:3:4 opens [1] - 1:50:14; none [5] - 1:40:3 1:1:18 operate [4] - 1:52:18; 1:25:9; notion [2] - often [3] - 1:19:12;	1:30:12	1:63:17	1:34:12;	1:71:16	1:43:8;
1:14:15, 17; nicely [1] - 1:28:14 1:48:4, 9 1:61:7, 12; 1:26:7; 1:21:15 notice [7] - Office [1] - 1:62:14 1:33:7; night [4] - 1:3:13; 1:45:4 ongoing [2] - 1:35:5; 1:21:10; 1:11:5, 8; officer [2] - 1:6:5; 1:40:13, 15 1:26:16; 1:12:12; 1:35:4; 1:37:14 nature [1] - 1:35:7; 1:47:6; 1:65:15 open [3] - 1:15:8 1:36:6 1:63:16; Officer [1] - 1:25:12; need [10] - nights [1] - 1:64:12 1:35:8 1:33:4; 1:9:18; 1:4:13 notified [1] - Offices [1] - 1:36:17 1:31:8; nighttime [1] - 1:34:17 1:3:4 opens [1] - 1:42:4; 1:43:9 notify [1] - OFFICIAL [1] - 1:36:2 1:50:14; none [5] - 1:40:3 1:1:18 operate [4] - 1:52:18; 1:25:9; notion [2] - often [3] - 1:19:12;	<u>name</u> [11] -	<u>next</u> [2] -	1:70:15	<u>offer</u> [3] -	1:52:18;
1:26:7; 1:21:15 notice [7] - Office [1] - 1:62:14 1:33:7; night [4] - 1:3:13; 1:45:4 ongoing [2] - 1:35:5; 1:21:10; 1:11:5, 8; officer [2] - 1:6:5; 1:40:13, 15 1:26:16; 1:12:12; 1:35:4; 1:37:14 nature [1] - 1:35:7; 1:47:6; 1:65:15 open [3] - 1:15:8 1:36:6 1:63:16; Officer [1] - 1:25:12; need [10] - nights [1] - 1:64:12 1:35:8 1:33:4; 1:9:18; 1:4:13 notified [1] - Offices [1] - 1:36:17 1:31:8; nighttime [1] - 1:34:17 1:3:4 opens [1] - 1:42:4; 1:43:9 notify [1] - OFFICIAL [1] - 1:36:2 1:50:14; none [5] - 1:40:3 1:1:18 operate [4] - 1:52:18; 1:25:9; notion [2] - often [3] - 1:19:12;	·	1:6:6, 13	nothing [1] -	1:10:10;	1:53:5;
1:26:7; 1:21:15 notice [7] - Office [1] - 1:62:14 1:33:7; night [4] - 1:3:13; 1:45:4 ongoing [2] - 1:35:5; 1:21:10; 1:11:5, 8; officer [2] - 1:6:5; 1:40:13, 15 1:26:16; 1:12:12; 1:35:4; 1:37:14 nature [1] - 1:35:7; 1:47:6; 1:65:15 open [3] - 1:15:8 1:36:6 1:63:16; Officer [1] - 1:25:12; need [10] - nights [1] - 1:64:12 1:35:8 1:33:4; 1:9:18; 1:4:13 notified [1] - Offices [1] - 1:36:17 1:31:8; nighttime [1] - 1:34:17 1:3:4 opens [1] - 1:42:4; 1:43:9 notify [1] - OFFICIAL [1] - 1:36:2 1:50:14; none [5] - 1:40:3 1:1:18 operate [4] - 1:52:18; 1:25:9; notion [2] - often [3] - 1:19:12;	1:14:15, 17;	<u>nicely</u> [1] -	1:28:14	1:48:4, 9	1:61:7, 12;
1:35:5; 1:21:10; 1:11:5, 8; officer [2] - 1:6:5; 1:40:13, 15 1:26:16; 1:12:12; 1:35:4; 1:37:14 nature [1] - 1:35:7; 1:47:6; 1:65:15 open [3] - 1:15:8 1:36:6 1:63:16; Officer [1] - 1:25:12; need [10] - nights [1] - 1:64:12 1:35:8 1:33:4; 1:9:18; 1:4:13 notified [1] - Offices [1] - 1:36:17 1:31:8; nighttime [1] - 1:34:17 1:3:4 opens [1] - 1:42:4; 1:43:9 notify [1] - OFFICIAL [1] - 1:36:2 1:50:14; none [5] - 1:40:3 1:1:18 operate [4] - 1:52:18; 1:25:9; notion [2] - often [3] - 1:19:12;	1:26:7;		notice [7] -	Office [1] -	1:62:14
1:40:13, 15 1:26:16; 1:12:12; 1:35:4; 1:37:14 nature [1] - 1:35:7; 1:47:6; 1:65:15 open [3] - 1:15:8 1:36:6 1:63:16; Officer [1] - 1:25:12; need [10] - nights [1] - 1:64:12 1:35:8 1:33:4; 1:9:18; 1:4:13 notified [1] - Offices [1] - 1:36:17 1:31:8; nighttime [1] - 1:34:17 1:3:4 opens [1] - 1:42:4; 1:43:9 notify [1] - OFFICIAL [1] - 1:36:2 1:50:14; none [5] - 1:40:3 1:1:18 operate [4] - 1:52:18; 1:25:9; notion [2] - often [3] - 1:19:12;	1:33:7;	<u>night</u> [4] -		1:45:4	ongoing [2] -
nature [1] - 1:35:7; 1:47:6; 1:65:15 open [3] - 1:15:8 1:36:6 1:63:16; Officer [1] - 1:25:12; need [10] - nights [1] - 1:64:12 1:35:8 1:33:4; 1:9:18; 1:4:13 notified [1] - Offices [1] - 1:36:17 1:31:8; nighttime [1] - 1:34:17 1:3:4 opens [1] - 1:42:4; 1:43:9 notify [1] - OFFICIAL [1] - 1:36:2 1:50:14; none [5] - 1:40:3 1:1:18 operate [4] - 1:52:18; 1:25:9; notion [2] - often [3] - 1:19:12;	1:35:5;	1:21:10;	1:11:5, 8;	officer [2] -	1:6:5;
1:15:8 1:36:6 1:63:16; Officer [1] - 1:25:12; need [10] - nights [1] - 1:64:12 1:35:8 1:33:4; 1:9:18; 1:4:13 notified [1] - 1:36:17 1:31:8; nighttime [1] - 1:34:17 1:3:4 opens [1] - 1:36:2 1:42:4; 1:43:9 notify [1] - 1:40:3 0FFICIAL [1] - 1:36:2 operate [4] - 1:52:18; 1:52:18; 1:25:9; notion [2] - 0ften [3] - 1:19:12;	1:40:13, 15	1:26:16;	1:12:12;	1:35:4;	1:37:14
need [10] - nights [1] - 1:64:12 1:35:8 1:33:4; 1:9:18; 1:4:13 notified [1] - Offices [1] - 1:36:17 1:31:8; nighttime [1] - 1:34:17 1:3:4 opens [1] - 1:42:4; 1:43:9 notify [1] - OFFICIAL [1] - 1:36:2 1:50:14; none [5] - 1:40:3 1:1:18 operate [4] - 1:52:18; 1:25:9; notion [2] - often [3] - 1:19:12;	nature [1] -	1:35:7;	1:47:6;	1:65:15	<u>open</u> [3] -
1:9:18; 1:4:13 notified [1] - Offices [1] - 1:36:17 1:31:8; nighttime [1] - 1:34:17 1:3:4 opens [1] - 1:42:4; 1:43:9 notify [1] - OFFICIAL [1] - 1:36:2 1:50:14; none [5] - 1:40:3 1:1:18 operate [4] - 1:52:18; 1:25:9; notion [2] - often [3] - 1:19:12;	1:15:8	1:36:6	1:63:16;	Officer [1] -	1:25:12;
1:9:18; 1:4:13 notified [1] - Offices [1] - 1:36:17 1:31:8; nighttime [1] - 1:34:17 1:3:4 opens [1] - 1:42:4; 1:43:9 notify [1] - OFFICIAL [1] - 1:36:2 1:50:14; none [5] - 1:40:3 1:1:18 operate [4] - 1:52:18; 1:25:9; notion [2] - often [3] - 1:19:12;	<u>need</u> [10] -	nights [1] -	1:64:12	1:35:8	1:33:4;
1:42:4; 1:43:9 notify [1] - OFFICIAL [1] - 1:36:2 1:50:14; none [5] - 1:40:3 1:1:18 operate [4] - 1:52:18; 1:25:9; notion [2] - often [3] - 1:19:12;	1:9:18;		notified [1] -	Offices [1] -	1:36:17
1:42:4; 1:43:9 notify [1] - OFFICIAL [1] - 1:36:2 1:50:14; none [5] - 1:40:3 1:1:18 operate [4] - 1:52:18; 1:25:9; notion [2] - often [3] - 1:19:12;	•	nighttime [1] -			<u>opens</u> [1] -
1:50:14; none [5] - 1:40:3 1:1:18 operate [4] - 1:52:18; 1:25:9; notion [2] - often [3] - 1:19:12;	· · · · · · · · · · · · · · · · · · ·	<u> </u>		OFFICIAL [1] -	
1:52:18; 1:25:9; <u>notion [2]</u> - <u>often [3]</u> - 1:19:12;	· ·	<u>none</u> [5] -			operate [4] -
· - · · - · · · - · · · - · · · ·	•	I —— -		<u>often</u> [3] -	
1:54:14; 1:32:12; 1:7:14; 1:20:6; 1:23:5;	1:54:14;	1:32:12;	1:7:14;	1:20:6;	1:23:5;
1:57:14; 1:39:16; 1:63:4 1:28:5; 1:47:1;	· · · · · · · · · · · · · · · · · · ·	*	*	*	· ·
				,	

				I
1:49:14	1:54:7;	1:34:13	- 1:24:11	- 1:41:17
operated [1] -	1:57:12	<u>p.m</u> [6] -	<u>party</u> [1] -	permitted [1] -
1:19:2	<u>options</u> [1] -	1:14:3, 6;	1:12:7	1:62:13
operates [2] -	1:68:7	1:24:7;	<u>past</u> [2] -	permitting [1] -
1:20:10;	<u>order</u> [4] -	1:35:7;	1:38:9;	1:24:5
1:26:19	1:36:10;	1:47:9	1:56:7	<u>person</u> [2] -
operating [5] -	1:37:1;	PAGE [1] -	<u>patio</u> [1] -	1:49:4, 14
1:23:12;	1:66:3;	1:70:6	1:24:4	<u>person's</u> [1] -
1:24:6;	1:69:3	<u>park</u> [8] -	patrons [3] -	1:22:9
1:27:1;	organize [1] -	1:41:7, 14;	1:8:1, 13	perspective [2]
1:46:6;	1:27:4	1:42:8, 17;	<u>pay</u> [1] -	- 1:51:14;
1:65:5	oriented [1] -	1:43:9, 16;	1:17:3	1:53:7
operation [4] -	1:49:2	1:44:4	<u>paying</u> [1] -	<u>phone</u> [7] -
1:24:3;	original [2] -	<u>parked</u> [1] -	1:20:6	1:2:3;
1:27:11, 13;	1:23:16;	1:41:13	payment [5] -	1:48:11, 14,
1:38:1	1:24:9	<u>parking</u> [16] -	1:19:6;	17; 1:49:10,
operations [2]	otherwise [1] -	1:33:14;	1:22:17;	15
- 1:9:7;	1:60:2	1:34:16;	1:66:3	phonetic [1] -
1:52:10	ourself [1] -	1:35:18;	<u>peace</u> [1] -	1:18:17
operator [5] -	1:66:11	1:37:11, 19;	1:30:2	photographs
1:5:13;	ourselves [3] -	1:38:2;	pending [1] -	[1] - 1:35:14
1:8:19;	1:56:11;	1:39:4;	1:32:18	<u>pick</u> [5] -
1:10:3;	1:58:3;	1:41:4, 10,	<u>people</u> [14] -	1:47:8, 10;
1:20:15;	1:63:3	18; 1:42:2,	1:5:13;	1:49:4;
1:23:12	outdated [2] -	12; 1:43:3, 9,	1:10:14;	1:62:11
operators [8] -	1:50:18;	16; 1:59:2	1:36:3;	<u>picked</u> [2] -
1:5:4; 1:6:8;	1:52:6	<u>part</u> [9] -	1:37:18;	1:45:2;
1:8:7, 9;	outside [1] -	1:22:7;	1:38:12;	1:49:16
1:9:4; 1:10:5;	1:7:15	1:24:13;	1:46:14;	picking [3] -
1:28:11	outstanding [1]	1:30:10;	1:47:12;	1:46:13;
operators' [1] -	- 1:59:3	1:46:10;	1:50:16;	1:47:11;
1:7:16	overall [1] -	1:53:15;	1:54:16;	1:65:12
opportunity [6]	1:26:15	1:59:16;	1:58:4;	<u>pickup</u> [1] -
- 1:28:3, 18;	<u>overhanging</u>	1:60:19;	1:60:8;	1:49:8
1:50:10;	[1] - 1:36:14	1:63:1	1:62:11;	<u>pickups</u> [1] -
1:51:4, 19;	overturn [1] -	participate [3] -	1:63:18;	1:66:19
1:59:4	1:67:18	1:7:9; 1:27:3;	1:64:5	picture [1] -
<u>oppose</u> [1] -	<u>own</u> [5] -	1:29:11	<u>per</u> [1] - 1:24:7	1:60:19
1:60:8	1:21:4;	particular [1] -	perhaps [1] -	<u>place</u> [11] -
opposed [5] -	1:27:15;	1:59:7	1:8:12	1:8:15;
1:25:9;	1:35:4, 9;	particularly [1]	period [1] -	1:9:11;
1:32:12;	1:56:14	- 1:27:11	1:11:9	1:12:17;
1:39:16;	<u>owner</u> [1] -	Partnership [1]	permission [1]	1:21:7, 11;

	I	I		1
1:23:1;	1:32:5, 10;	possibility [1] -	presently [1] -	prohibition [1]
1:37:17;	1:37:6;	1:62:17	1:52:16	- 1:43:3
1:52:3, 9, 11;	1:39:9, 14;	possible [1] -	preserve [1] -	promoter [6] -
1:66:8	1:41:11;	1:42:18	1:58:6	1:4:11, 16;
<u>plan</u> [3] -	1:42:3;	posture [1] -	<u>primarily</u> [1] -	1:5:7, 10;
1:6:7;	1:43:11, 18;	1:59:9	1:35:8	1:8:17
1:12:16;	1:49:18;	potential [2] -	<u>primary</u> [1] -	promoters [1] -
1:42:7	1:50:5;	1:8:13;	1:54:12	1:27:12
<u>planning</u> [1] -	1:51:12;	1:18:7	<u>printout</u> [1] -	promotions [1]
1:29:14	1:53:19;	potentially [2] -	1:49:9	- 1:27:15
<u>plate</u> [1] -	1:54:5;	1:16:11;	<u>private</u> [4] -	<u>Proof</u> [1] -
1:62:7	1:55:18;	1:66:18	1:29:8;	1:24:16
<u>pleased</u> [1] -	1:56:3;	<u>powers</u> [1] -	1:41:9, 15;	proposed [2] -
1:31:3	1:57:4, 9;	1:31:1	1:42:2	1:15:5;
<u>pledge</u> [16] -	1:63:2;	practices [1] -	<u>privileges</u> [1] -	1:26:10
1:16:15;	1:64:11, 15;	1:66:7	1:66:4	protection [1] -
1:17:7, 11;	1:65:17;	prearranged	<u>problem</u> [5] -	1:37:18
1:18:4, 13;	1:68:16;	[3] - 1:47:6;	1:9:17;	provided [1] -
1:19:1, 13,	1:69:5	1:48:2;	1:42:16;	1:19:6
16-18;	<u>Police</u> [5] -	1:65:16	1:45:19;	provisions [1] -
1:21:7, 9;	1:1:7; 1:2:10;	<u>prearrangeme</u>	1:46:10;	1:17:9
1:22:5;	1:33:18;	<u>nt</u> [3] -	1:67:11	proximity [4] -
1:23:3, 10	1:38:14;	1:46:17, 19;	problems [1] -	1:8:12; 1:9:5;
pledged [1] -	1:53:2	1:47:12	1:9:18	1:27:19;
1:24:10	<u>police</u> [1] -	<u>prearrangeme</u>	procedural [1]	1:49:19
pledges [1] -	1:65:14	<u>nts</u> [1] -	- 1:21:5	<u>public</u> [12] -
1:17:13	policing [4] -	1:45:17	procedure [1] -	1:4:1; 1:24:4;
<u>plus</u> [1] -	1:38:8, 13,	predecessor	1:22:18	1:27:17;
1:48:4	18	[1] - 1:20:4	proceeding [3]	1:29:8;
<u>point</u> [7] -	<u>policy</u> [1] -	<u>premise</u> [1] -	- 1:18:9;	1:33:16;
1:44:2;	1:59:11	1:3:19	1:20:5;	1:36:7;
1:49:2;	<u>Polish</u> [1] -	<u>premises</u> [5] -	1:45:6	1:38:6, 15;
1:51:14, 17;	1:40:2	1:6:2; 1:7:15;	proceedings	1:52:14;
1:53:15;	<u>pose</u> [1] -	1:16:11;	[3] - 1:18:5;	1:53:12;
1:55:1;	1:28:12	1:19:12;	1:22:4;	1:60:6;
1:66:9	position [1] -	1:23:5	1:71:8	1:68:6
POLICE [31] -	1:66:11	prepared [3] -	process [1] -	<u>Public</u> [3] -
1:7:12;	positions [1] -	1:17:19;	1:30:14	1:70:5;
1:10:18;	1:46:7	1:64:2, 16	programming	1:71:4, 14
1:13:16;	positive [1] -	present [1] -	[1] - 1:29:17	published [1] -
1:21:18;	1:38:13	1:16:17	progress [3] -	1:11:6
1:25:2, 7;	positively [1] -	<u>presentation</u>	1:10:2;	purchase [1] -
1:30:6;	1:56:18	[1] - 1:5:15	1:13:4, 6	1:62:6

purposes [1] -	1:18:15;	1:70:3	1:38:10;	1:27:19;
1:11:8	1:21:2;	REASON [6] -	1:39:6;	1:58:18
<u>purview</u> [1] -	1:22:10;	1:70:7	1:40:14;	<u>relatively</u> [2] -
1:28:16	1:23:9;	<u>reasonable</u> [1]	1:70:15;	1:31:1;
pushback [1] -	1:25:13, 17;	- 1:18:10	1:71:8	1:44:17
1:67:12	1:26:1, 6;	<u>reasons</u> [1] -	<u>records</u> [3] -	reluctance [1] -
<u>put</u> [9] - 1:3:9,	1:29:7;	1:12:6	1:23:19;	1:51:1
12; 1:4:6;	1:32:16	received [1] -	1:35:10	<u>remain</u> [1] -
1:12:16;	<u>raise</u> [1] -	1:45:3	<u>recused</u> [1] -	1:52:3
1:41:9;	1:56:5	<u>recent</u> [3] -	1:40:8	remaining [1] -
1:63:15;	<u>raised</u> [1] -	1:17:14;	referencing [1]	1:40:1
1:64:12;	1:36:8	1:59:17;	- 1:29:16	<u>remains</u> [1] -
1:66:11	<u>ran</u> [1] - 1:28:8	1:66:16	<u>regard</u> [1] -	1:16:11
<u>puts</u> [1] -	<u>range</u> [2] -	recently [3] -	1:31:9	<u>remedy</u> [1] -
1:49:15	1:25:15;	1:28:8;	registered [2] -	1:19:7
questions [6] -	1:49:7	1:44:7, 10	1:43:5;	remember [2] -
1:7:9;	<u>rattle</u> [1] -	recognition [1]	1:45:5	1:25:12;
1:21:17;	1:14:17	- 1:23:2	<u>regret</u> [1] -	1:48:14
1:30:5, 7;	RE [1] - 1:1:4	recognized [2]	1:54:17	<u>remove</u> [2] -
1:50:4;	reached [1] -	- 1:19:11, 18	<u>regular</u> [1] -	1:5:6, 9
1:60:13	1:26:18	recollection [1]	1:57:12	renewal [1] -
<u>quick</u> [1] -	reaction [1] -	- 1:43:7	regulate [6] -	1:58:1
1:38:16	1:57:1	recommend [2]	1:61:6, 14;	renovations [1]
<u>quite</u> [2] -	<u>read</u> [1] -	- 1:51:16;	1:63:4, 11;	- 1:25:11
1:28:12;	1:70:14	1:67:14	1:66:6, 13	<u>rent</u> [1] -
1:56:15	reading [1] -	<u>recommendati</u>	regulation [1] -	1:41:5
<u>quorum</u> [2] -	1:70:2	<u>on</u> [1] -	1:61:19	<u>report</u> [3] -
1:10:9;	<u>ready</u> [3] -	1:51:11	<u>regulations</u>	1:6:3; 1:13:9;
1:40:7	1:51:2;	<u>recommendati</u>	[13] -	1:45:3
R-A-F-F-E-R-T-	1:54:10;	<u>ons</u> [1] -	1:12:18;	reported [3] -
<u>Y</u> [1] - 1:15:3	1:55:2	1:58:19	1:46:15;	1:27:5;
R-O-W-E [1] -	<u>reaffirm</u> [1] -	<u>RECORD</u> [1] -	1:50:11, 17;	1:44:11;
1:33:9	1:37:7	1:1:18	1:51:5, 19;	1:60:1
Rafferty [6] -	really [9] -	<u>record</u> [17] -	1:53:8;	Reporter [1] -
1:14:15;	1:13:8;	1:2:19; 1:3:3;	1:61:11;	1:71:13
1:15:3;	1:31:8;	1:4:7, 19;	1:63:6, 17;	REPORTER [1]
1:17:7;	1:36:9;	1:6:16;	1:65:5	- 1:71:17
1:18:1;	1:38:9;	1:12:2, 13;	reinforce [1] -	REPORTERS
1:22:1;	1:59:12;	1:14:19;	1:56:18	[1] - 1:1:17
1:26:1	1:60:6, 9, 19;	1:15:10;	related [2] -	reporting [1] -
RAFFERTY [14]	1:62:4	1:23:15;	1:4:2;	1:37:7
- 1:15:1, 11,	<u>reason</u> [2] -	1:33:7;	1:27:12	reports [1] -
18; 1:16:9;	1:54:12;	1:37:13;	relative [2] -	1:28:14
	, ·			

4		1 51 4	1 57 4 0	1 00 16 10
represent [1] -	<u>resident</u> [1] -	1:51:4;	1:57:4, 9;	1:33:16, 19;
1:33:10	1:43:4	1:53:16;	1:63:2;	1:36:7;
representation	residential [1] -	1:54:14;	1:64:11, 15;	1:38:15
[2] - 1:18:2;	1:41:6	1:60:18;	1:65:17;	<u>sale</u> [1] -
1:35:13	resolve [1] -	1:63:1	1:68:16;	1:22:8
<u>representation</u>	1:37:10	reviewed [2] -	1:69:5	<u>sales</u> [1] -
<u>s</u> [2] -	resources [1] -	1:22:13;	Robert [2] -	1:22:7
1:17:12;	1:38:14	1:53:4	1:1:7; 1:2:10	<u>SAME</u> [1] -
1:28:19	<u>respect</u> [8] -	<u>reviewing</u> [1] -	<u>Robin</u> [3] -	1:71:16
represented [2]	1:12:19;	1:53:8	1:6:14, 16	satisfied [2] -
- 1:33:16;	1:17:8;	<u>revisit</u> [1] -	Room [2] -	1:35:9;
1:39:1	1:29:4;	1:50:10	1:1:11; 1:2:8	1:45:18
REPRODUCTI	1:31:2;	<u>rewritten</u> [1] -	<u>route</u> [1] -	satisfy [1] -
<u>ON</u> [1] -	1:33:19;	1:52:6	1:67:9	1:20:13
1:71:16	1:44:5;	<u>ride</u> [1] -	<u>ROWE</u> [4] -	Saturday [2] -
<u>request</u> [1] -	1:51:13;	1:65:16	1:33:8;	1:31:18;
1:16:15	1:59:10	<u>rights</u> [4] -	1:34:7;	1:32:3
requesting [1]	RESPECT [1] -	1:19:13;	1:38:4;	<u>Savings</u> [1] -
- 1:49:15	1:71:17	1:22:19;	1:39:18	1:18:19
require [1] -	<u>response</u> [3] -	1:23:3	Rowe [1] -	<u>saw</u> [1] -
1:47:5	1:5:8; 1:53:9;	<u>risk</u> [2] -	1:33:8	1:49:2
required [2] -	1:59:5	1:28:13;	<u>rules</u> [5] -	scheduled [1] -
1:22:12;	<u>responsibilitie</u>	1:64:7	1:45:16;	1:11:6
1:45:17	<u>s</u> [1] - 1:7:16	<u>ROBERT</u> [31] -	1:46:15;	scheduling [1]
<u>required)</u> [1] -	responsibility	1:7:12;	1:47:5;	- 1:11:8
1:70:5	[1] - 1:7:19	1:10:18;	1:51:18;	<u>SEAN</u> [5] -
<u>requirements</u>	responsive [3]	1:13:16;	1:54:12	1:3:1, 7;
[2] - 1:12:18;	- 1:52:12;	1:21:18;	ruminations [1]	1:4:9; 1:6:4;
1:24:18	1:53:12;	1:25:2, 7;	- 1:68:12	1:10:1
requires [1] -	1:54:18	1:30:6;	<u>run</u> [2] -	<u>Sean</u> [1] -
1:23:8	<u>restaurant</u> [1] -	1:32:5, 10;	1:54:10	1:3:3
<u>rescheduled</u>	1:27:16	1:37:6;	<u>running</u> [1] -	seating [1] -
[1] - 1:6:6	<u>restaurants</u> [1]	1:39:9, 14;	1:42:5	1:24:6
research [3] -	- 1:7:1	1:41:11;	Russell [1] -	<u>seats</u> [2] -
1:17:15;	<u>result</u> [2] -	1:42:3;	1:18:18	1:24:4
1:44:8;	1:26:17;	1:43:11, 18;	S-H-U-L-M-A-N	<u>second</u> [5] -
1:57:16	1:38:1	1:49:18;	[1] - 1:26:2	1:25:3;
researching [1]	<u>revamp</u> [1] -	1:50:5;	<u>safe</u> [1] -	1:32:6;
- 1:45:9	1:52:1	1:51:12;	1:35:19	1:39:10;
<u>reserve</u> [1] -	<u>revenue</u> [1] -	1:53:19;	safeguards [1]	1:54:1;
1:57:11	1:68:1	1:54:5;	- 1:28:16	1:55:18
residence [1] -	<u>review</u> [6] -	1:55:18;	<u>safety</u> [5] -	seconded [6] -
1:41:5	1:28:6;	1:56:3;	1:4:1;	1:25:5;

	I	I	I	
1:32:8;	1:12:19;	1:71:13	situation [3] -	1:35:1
1:39:12;	1:48:18;	<u>SHULMAN</u> [2] -	1:5:4; 1:28:8;	<u>spot</u> [2] -
1:54:3;	1:49:15;	1:29:12, 16	1:59:2	1:41:10;
1:56:1;	1:52:13;	<u>Shulman</u> [4] -	<u>slight</u> [1] -	1:42:8
1:68:17	1:54:15;	1:26:2, 17;	1:16:12	<u>Square</u> [15] -
<u>secure</u> [2] -	1:67:6	1:27:9;	<u>slurpees</u> [1] -	1:6:19; 1:7:2;
1:34:12;	services [2] -	1:29:2	1:69:1	1:9:6; 1:19:3;
1:35:19	1:48:11, 14	shuttles [1] -	<u>small</u> [1] -	1:20:3;
security [4] -	<u>set</u> [6] -	1:67:8	1:44:17	1:24:2;
1:22:14;	1:29:17;	sidewalk [2] -	<u>smart</u> [5] -	1:26:16;
1:36:1;	1:30:1;	1:24:5;	1:48:11, 14,	1:27:1, 5, 19;
1:38:16	1:51:8;	1:36:13	16; 1:49:10	1:28:10, 13;
<u>see</u> [7] -	1:63:3;	<u>Sign</u> [1] -	solutions [1] -	1:30:17;
1:13:4;	1:71:7, 9	1:70:4	1:31:6	1:46:12
1:36:6;	setting [2] -	significant [1] -	sometimes [5]	<u>ss</u> [1] - 1:71:3
1:42:1, 13;	1:62:2;	1:4:10	- 1:23:10;	<u>STAFF</u> [1] -
1:43:13;	1:64:1	signify [6] -	1:38:5;	1:1:9
1:44:1, 14	settings [1] -	1:25:6;	1:41:12;	<u>staff</u> [5] -
<u>seeing</u> [3] -	1:29:8	1:32:8;	1:57:13;	1:27:3;
1:3:16;	<u>seven</u> [1] -	1:39:13;	1:58:3	1:30:1;
1:68:13	1:24:7	1:54:3;	<u>soon</u> [1] -	1:53:8;
<u>seek</u> [2] -	several [4] -	1:56:1;	1:32:15	1:56:6;
1:19:7, 14	1:18:16;	1:69:3	<u>sorry</u> [3] -	1:60:2
<u>seeks</u> [1] -	1:20:11;	similar [2] -	1:3:18;	<u>stage</u> [2] -
1:16:10	1:26:8;	1:28:7;	1:14:7;	1:29:18;
<u>seem</u> [1] -	1:45:6	1:29:2	1:35:5	1:30:1
1:38:11	<u>Shack</u> [4] -	<u>simply</u> [6] -	<u>sort</u> [1] -	stanchions [1]
sending [1] -	1:14:13;	1:8:17;	1:5:19	- 1:34:14
1:11:4	1:16:11;	1:10:1;	<u>sort've</u> [2] -	<u>stands</u> [2] -
<u>sense</u> [3] -	1:24:1, 3	1:21:9;	1:18:7;	1:62:9
1:15:9;	Shack's [1] -	1:22:5;	1:56:18	<u>start</u> [2] -
1:44:16;	1:16:18	1:23:11;	<u>space</u> [2] -	1:15:19;
1:60:18	<u>Shake</u> [5] -	1:56:11	1:16:13;	1:62:7
<u>sent</u> [1] -	1:14:12;	Sinclair [2] -	1:41:6	started [2] -
1:35:4	1:16:11, 18;	1:28:8, 11	<u>spell</u> [5] -	1:2:3; 1:52:5
Sergeant [2] -	1:24:1, 3	singular [1] -	1:12:1;	starting [1] -
1:35:2;	<u>SHEET</u> [1] -	1:26:12	1:14:15;	1:47:2
1:37:7	1:70:1	<u>sit</u> [1] -	1:33:7;	<u>state</u> [4] -
<u>series</u> [1] -	<u>sheet</u> [2] -	1:51:17	1:40:13	1:12:1;
1:21:5	1:70:3	<u>site</u> [4] -	spelling [1] -	1:33:6;
seriously [1] -	<u>shoes</u> [1] -	1:34:10;	1:26:2	1:40:13;
1:31:4	1:23:11	1:35:3, 7;	spill [1] - 1:8:3	1:68:1
service [6] -	Shorthand [1] -	1:36:16	<u>spoken</u> [1] -	statement [2] -

1:5:16;	<u>stuff</u> [1] -	<u>suppose</u> [2] -	1:58:2;	1:40:4;
1:29:19	1:44:1	1:66:18;	1:59:12;	1:56:14;
<u>status</u> [1] -	<u>subject</u> [2] -	1:67:1	1:60:5	1:68:19
1:20:1	1:4:13;	suspicion [1] -	<u>THE</u> [5] -	together [5] -
statute [2] -	1:24:16	1:65:18	1:1:18;	1:3:9; 1:7:3;
1:17:9;	subscribe [1] -	<u>T-A-V-A-N</u> [1] -	1:71:16	1:29:15;
1:22:12	1:70:15	1:15:4	therefor [1] -	1:30:14;
<u>step</u> [4] -	substantial [1]	<u>Taqueria</u> [1] -	1:70:3	1:31:5
1:21:9;	- 1:38:14	1:55:14	<u>they've</u> [1] -	tolerant [2] -
1:23:11;	success [1] -	<u>TAVAN</u> [1] -	1:34:18	1:7:16;
1:31:8;	1:30:2	1:25:16	thinking [2] -	1:9:15
1:42:10	<u>successful</u> [1]	<u>Tavan</u> [2] -	1:59:15;	<u>tonight</u> [2] -
<u>steps</u> [7] -	- 1:65:4	1:15:4;	1:61:11	1:5:2, 14
1:4:1; 1:8:7;	successor [1] -	1:24:16	<u>THIS</u> [1] -	<u>took</u> [1] -
1:12:16;	1:19:15	<u>Tavan's</u> [1] -	1:71:16	1:35:14
1:21:5;	suggest [4] -	1:15:5	thoughts [2] -	<u>towns</u> [1] -
1:38:3;	1:20:15;	<u>Tavern</u> [1] -	1:45:12;	1:61:6
1:45:13;	1:36:12;	1:18:19	1:50:4	<u>TPM</u> [1] -
1:52:17	1:40:4;	<u>taxi</u> [2] -	<u>threat</u> [1] -	1:33:10
<u>still</u> [5] - 1:5:4;	1:55:12	1:62:9;	1:28:13	tradition [1] -
1:32:18;	suggested [1] -	1:65:9	<u>three</u> [5] -	1:62:1
1:46:14;	1:36:15	technology [2]	1:10:14;	traditionally [1]
1:48:15, 18	suggesting [1]	- 1:50:19;	1:14:6;	- 1:60:5
<u>stop</u> [1] -	- 1:5:18	1:52:13	1:17:17;	Traffic [1] -
1:50:9	suggestion [2]	<u>tender</u> [1] -	1:34:16;	1:43:2
<u>story</u> [1] -	- 1:26:17;	1:22:9	1:48:8	traffic [1] -
1:16:13	1:36:11	<u>terms</u> [11] -	thursday [1] -	1:53:11
<u>street</u> [4] -	<u>summarize</u> [1]	1:4:5; 1:8:1;	1:1:13	training [1] -
1:41:9;	- 1:15:8	1:18:2, 6;	Thursday [6] -	1:24:17
1:42:17;	<u>summary</u> [1] -	1:30:9;	1:2:6; 1:4:13;	transcript [4] -
1:43:4;	1:26:4	1:37:9;	1:6:10, 13;	1:70:2, 4, 14
1:65:12	<u>sums</u> [1] -	1:46:16;	1:31:17;	TRANSCRIPT
<u>Street</u> [1] -	1:21:15	1:53:6;	1:32:3	[1] - 1:71:16
1:16:2	<u>Sunday</u> [2] -	1:58:17;	<u>TIME</u> [1] -	transfer [8] -
<u>strike</u> [1] -	1:6:11;	1:61:11;	1:1:14	1:15:12;
1:54:18	1:31:17	1:68:4	<u>TO</u> [1] -	1:16:3, 10,
<u>struck</u> [1] -	<u>superintenden</u>	<u>test</u> [1] -	1:71:16	14; 1:19:14;
1:28:7	<u>t</u> [1] - 1:2:13	1:35:6	<u>today</u> [9] -	1:23:19;
structure [2] -	<u>Superintenden</u>	testified [1] -	1:3:14; 1:4:8;	1:33:14;
1:17:1;	<u>t</u> [2] - 1:9:15;	1:57:16	1:11:11;	1:39:3
1:54:15	1:10:19	testimony [5] -	1:12:9;	transferee [1] -
struggling [1] -	<u>support</u> [1] -	1:56:8;	1:17:19;	1:33:18
1:18:11	1:60:8	1:57:14;	1:37:1;	<u>transportation</u>

[2] - 1:52:9;	ultimately [1] -	1:65:12	1:59:3, 8	1:16:2
1:53:17	1:19:14	<u>update</u> [4] -	violates [1] -	<u>wish</u> [3] -
traveling [3] -	<u>unavailable</u> [1]	1:4:4; 1:34:7;	1:63:6	1:13:14;
1:52:13;	- 1:2:14	1:58:8, 17	violation [1] -	1:29:14;
1:53:12;	<u>UNDER</u> [1] -	<u>useful</u> [2] -	1:46:14	1:37:4
1:68:6	1:71:17	1:56:15, 19	<u>virtually</u> [1] -	WITNESS [1] -
<u>trees</u> [1] -	<u>under</u> [3] -	<u>van</u> [1] -	1:66:6	1:71:9
1:36:13	1:19:3;	1:66:18	<u>visit</u> [1] -	wondering [1] -
tremendous [2]	1:22:17;	variety [1] -	1:35:8	1:57:1
- 1:28:13;	1:32:16	1:53:10	<u>visited</u> [1] -	<u>word</u> [2] -
1:67:12	understood [3]	various [1] -	1:36:5	1:38:8
<u>tried</u> [1] -	- 1:13:8;	1:61:18	volatility [1] -	<u>words</u> [1] -
1:66:5	1:35:5;	vehicle [9] -	1:9:2	1:38:6
<u>trimming</u> [1] -	1:47:1	1:41:3, 15,	<u>volume</u> [3] -	<u>works</u> [1] -
1:36:16	<u>unenforceable</u>	19; 1:42:8;	1:10:4;	1:27:6
<u>trips</u> [1] -	[1] - 1:50:12	1:43:4;	1:45:19;	<u>world</u> [1] -
1:48:2	<u>unfortunately</u>	1:44:4;	1:70:4	1:20:11
<u>true</u> [3] -	[1] - 1:3:8	1:62:6	waiting [1] -	<u>Worst</u> [1] -
1:21:2;	unilaterally [2]	vehicles [3] -	1:13:10	1:18:17
1:23:9;	- 1:19:17;	1:41:13;	<u>wants</u> [1] -	wrongdoing [1]
1:71:8	1:23:13	1:46:11;	1:57:19	- 1:5:3
<u>try</u> [5] - 1:31:2;	<u>UNLESS</u> [1] -	1:65:10	<u>ways</u> [1] -	www.
1:38:15;	1:71:17	<u>vendor</u> [1] -	1:38:16	reportersinc.
1:48:17;	unlikely [2] -	1:30:9	Wednesday [1]	<u>com</u> [1] -
1:63:3;	1:18:3;	vendors [1] -	- 1:31:17	1:1:19
1:66:6	1:20:16	1:9:12	<u>week</u> [1] -	<u>years</u> [2] -
<u>trying</u> [2] -	unregulated [1]	<u>venues</u> [3] -	1:24:8	1:17:14;
1:18:12;	- 1:63:10	1:7:18;	<u>weeks</u> [1] -	1:18:18
1:31:5	<u>up</u> [21] -	1:8:11;	1:14:6	<u>yourself</u> [5] -
<u>turn</u> [1] - 1:2:4	1:17:17;	1:21:6	welcome [2] -	1:2:18;
<u>two</u> [4] -	1:21:15;	<u>verify</u> [1] -	1:25:10;	1:12:17;
1:4:12;	1:31:8;	1:10:19	1:55:4	1:14:19;
1:16:13;	1:33:14;	vestibule [1] -	WHEREOF [1]	1:42:5;
1:36:13;	1:37:16;	1:16:12	- 1:71:9	1:55:1
1:65:2	1:45:2;	<u>vet</u> [1] - 1:51:5	<u>whole</u> [1] -	
<u>two-story</u> [1] -	1:46:13;	<u>viable</u> [2] -	1:58:1	
1:16:13	1:47:8-11;	1:50:14;	<u>willing</u> [1] -	
<u>type</u> [1] - 1:8:1	1:49:4, 16;	1:51:6	1:28:2	
<u>types</u> [3] -	1:53:15;	<u>view</u> [6] -	willingness [1]	
1:8:19; 1:9:1;	1:59:12;	1:44:4;	- 1:27:3	
1:66:7	1:62:2, 11;	1:52:8;	<u>window</u> [1] -	
typically [1] -	1:63:3;	1:53:2;	1:48:19	
1:56:7	1:64:1;	1:58:6;	Winthrop [1] -	
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