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Transcript of **Public Hearing: Appeals Procedure**

**Date:** November 10, 2015

**Case:** Kane County Zoning Board of Appeals

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1 BEFORE THE KANE COUNTY ZONING BOARD OF APPEALS

2 KANE COUNTY, ILLINOIS

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6 REPORT OF PROCEEDINGS

7 Geneva, Illinois

8 Tuesday, November 10, 2015

9 8:00 p.m.

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22 Job No.: 97238E

23 Pages: 1 - 26

24 Reported By: Paula Quetsch, CSR

Public Hearing: Appeals Procedure  
Conducted on November 10, 2015

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Held at the location of:

KANE COUNTY GOVERNMENT CENTER  
719 South Batavia Avenue  
Building A, 4th Floor Conference Room  
Geneva, Illinois 60134  
(630) 444-1236

Before Paula Quetsch, CSR, and Notary Public in  
and for the State of Illinois.

Public Hearing: Appeals Procedure  
Conducted on November 10, 2015

3

1 PRESENT:

2 JOSEPH WHITE, Chairman

3 HAROLD BOWEN, Member

4 PENNY CAMERON, Member

5 DANIEL HEINRICH, Member

6 ROBERT MOGA, Member

7 GERALD REGAN, Member

8 ROXANNE STOVER, Member

9

10 ALSO PRESENT:

11 MARK D. VAN KERKHOFF, Zoning Enforcing Officer

12 KEITH BERKHOUT, Secretary

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1 P R O C E E D I N G S

2 CHAIRMAN WHITE: The next item of business  
3 is to welcome our State's Attorney representatives and  
4 discuss an appeal that has been made concerning the  
5 petition that's going to come before us next week.

6 MR. VAN KERKHOFF: Well, this is on the  
7 agenda tonight because we have received an appeal  
8 relative to a petition that's been received, and I'll  
9 take this opportunity to give you all a copy of the  
10 appeal.

11 CHAIRMAN WHITE: Was everybody aware  
12 of this?

13 MR. VAN KERKHOFF: No. This is new  
14 information.

15 This was addressed to Joe White and myself  
16 as the zoning enforcement officer, and the zoning  
17 ordinance provides an appeals process for persons who  
18 feel that they have been aggrieved by a decision made  
19 by myself as the zoning enforcement officer. So their  
20 right under our zoning ordinance is to appeal to you  
21 as the Zoning Board as to why my decision was right or  
22 wrong and what action they're requesting for you to  
23 change it.

24 So we're not going to discuss the appeal

Public Hearing: Appeals Procedure  
Conducted on November 10, 2015

5

1 tonight. There's been a hearing set for the appeal,  
2 and the State's Attorney's office is here to help sort  
3 of talk us through what that appeal hearing looks  
4 like. I don't know if any of you have been on the  
5 zoning board when there's been an appeal to you as a  
6 zoning board of appeals regarding a decision made by a  
7 zoning officer. I know this is my first one, so  
8 that's further reason for that.

9 The other reason is that pertaining to the  
10 petition submitted by Maxxam Partners, LLC, for the  
11 Glenwood School property. So that petition had been  
12 scheduled for public hearing next Tuesday night at  
13 7:00 p.m. at the Circuit Court branch court building  
14 on Randall Road with a potential secondary night  
15 Thursday, November 19th.

16 Those hearings for the petition have been  
17 canceled because an appeal per our ordinance stays any  
18 furtherance of the action that's being related to that  
19 being appealed, in this case that particular petition.

20 So instead of next Tuesday evening you  
21 hearing the -- conducting the public hearing for the  
22 petition itself you'll be holding a hearing for the  
23 appeal of one of my decisions, basically, how I  
24 processed the petition relative to that petition.

Public Hearing: Appeals Procedure  
Conducted on November 10, 2015

6

1 Does that make sense?

2 MEMBER BOWEN: Can I ask you a question? In  
3 my time on the Board, we've never had anything that  
4 says like you're doing right now. There may have been  
5 some coming through, but we didn't realize -- know at  
6 that time. Because this came through coming back in.

7 So explain for those who are stupid like  
8 myself.

9 MEMBER STOVER: Well, the question is I  
10 think we -- because it's confusing -- and I've been on  
11 not as long as Hal but the second longest probably --  
12 something that is in your findings of fact that you  
13 turned over to us, is this what I'm understanding  
14 then? Because you really don't approve anything  
15 except the fact that they can come to us; correct?

16 MR. VAN KERKHOFF: Correct. And that's  
17 actually what they're appealing. They don't think I  
18 followed the process correctly.

19 MEMBER STOVER: Okay.

20 MR. VAN KERKHOFF: So that's the crux of it.  
21 And you can read it. I'll be preparing a memo to you  
22 which you'll receive in advance of the hearing so you  
23 hear my side of it. I recognize it's on the agenda  
24 tonight.

Public Hearing: Appeals Procedure  
Conducted on November 10, 2015

7

1 MEMBER REGAN: Next Tuesday night?

2 MR. VAN KERKHOFF: Next Tuesday night.

3 MEMBER BOWEN: What is our decision then?

4 CHAIRMAN WHITE: Whether to approve the  
5 appeal or deny the appeal; correct?

6 MEMBER CAMERON: That night or Thursday  
7 night?

8 CHAIRMAN WHITE: Well, that's the question  
9 I'm going to have for the State's Attorney. We have  
10 30 days to make that decision.

11 MEMBER BOWEN: That's right.

12 CHAIRMAN WHITE: My question was -- and I  
13 read the appeal -- they go into the reason why they're  
14 submitting the appeal not only because of the  
15 condition -- I forget the ordinance where it is  
16 exactly, but they're bringing up the case that the  
17 special use doesn't apply to any of the language  
18 that's currently in the ordinance, any of the  
19 definitions.

20 Can they submit that during the appeal, or  
21 can they only appeal the procedure that you used in  
22 making your decision to go on to the hearing, public  
23 hearing?

24 MR. KINNALLY: I can answer that. My name



Public Hearing: Appeals Procedure  
Conducted on November 10, 2015

8

1 is Pat Kinnally and I'm here for the County Board.

2 I think the answer to that is both. I  
3 think what you want to do here is to give people the  
4 opportunity to say whatever it is they want to say  
5 and give whatever interpretations they think are  
6 erroneous -- this may cut a little bit against  
7 timewise the way things are done here, I'm not sure,  
8 but whatever they want to say, I think we should let  
9 them say that.

10 CHAIRMAN WHITE: You say "whatever they want  
11 to say." Who are you referring to?

12 MR. KINNALLY: The objectors. There's one  
13 objector. There may be more people that come. And  
14 one of the considerations you folks are going to have  
15 to determine is do you want other people to speak.

16 CHAIRMAN WHITE: In my eyes, no, I wouldn't  
17 because they're the ones that filed the appeal, so it  
18 only applies to them, their attorneys, and the  
19 individual that submitted the appeal. Am I correct  
20 in that?

21 MR. KINNALLY: The objector is the person  
22 that brought the appeal. It's my view -- having gone  
23 through one of these in Wayne recently; I'm involved  
24 in one -- that the objectors are the ones that get

Public Hearing: Appeals Procedure  
Conducted on November 10, 2015

9

1 to talk.

2 I don't know if you permit public comment at  
3 your meetings. If you do, I would recommend that you  
4 do that. And the reason for this is because, in my  
5 view, whatever you decide is going to court.

6 So I know you all believe in transparency  
7 and trying to be inclusive. Erin I think agrees with  
8 me on this, and I believe Mark does, as well. As long  
9 as it doesn't get repetitive and immaterial, if you  
10 believe that it's in the best interests of the Zoning  
11 Board to let people make a three-minute comment or  
12 whatever, then I suggest you do that.

13 But you are correct, the people that have  
14 the burden here are the objectors, and they may call  
15 him as a witness, and I expect that they will. If he  
16 does, then I'll defend that. I'm not worried about  
17 that. That's fine. We don't have anything to hide.

18 We just want to provide a forum so that  
19 people can, as they say in 4.5, make their grievance  
20 because that's what they want to do and that's fine.  
21 And then you have 30 days thereafter to make your  
22 decision.

23 There could be a lot of people at this.

24 CHAIRMAN WHITE: Well, that comes back to my

Public Hearing: Appeals Procedure  
Conducted on November 10, 2015

10

1 question.

2 MR. KINNALLY: Sure.

3 CHAIRMAN WHITE: The public, are they going  
4 to be there to debate the merits of the petition that's  
5 not even been presented? All they can speak on --

6 MR. KINNALLY: That's out of order.

7 CHAIRMAN WHITE: All they can speak on is  
8 the appeal of the decision that he made to go with the  
9 public hearing for that petition.

10 MR. KINNALLY: Right. And there's going to  
11 be two issues there, Mr. Chairman, that is the  
12 procedural one and what I call the substantive one.  
13 If you read the petition, you can see that they're  
14 debating the similar uses provision.

15 In any event, I'll be happy to answer any  
16 questions you have.

17 MEMBER STOVER: The procedural one that  
18 they're talking about -- and, obviously, I'm a little  
19 behind the eight ball because I never read this.

20 MR. KINNALLY: 5.15.

21 MEMBER STOVER: 5.15?

22 MR. KINNALLY: Right.

23 MR. VAN KERKHOFF: In terms of people who  
24 may be present at the hearing who may want to speak to

Public Hearing: Appeals Procedure  
Conducted on November 10, 2015

11

1 the appeal, I believe the petitioners themselves might  
2 want to --

3 CHAIRMAN WHITE: Maxxam Group?

4 MR. KINNALLY: Oh, yeah. And I think you've  
5 got to give them the opportunity to talk. I can only  
6 tell you my experience in the one I'm involved in  
7 right now where I am an objector they are letting the  
8 petitioner speak.

9 CHAIRMAN WHITE: I can understand that. But  
10 they would want to debate the similar use question  
11 that the appeal brings up, but outside of that,  
12 anything else would be out of order.

13 MR. KINNALLY: I agree.

14 MEMBER STOVER: Including the procedural.

15 MR. KINNALLY: Absolutely. They can bring  
16 up -- the way I look at this -- and, Erin, you can  
17 talk on this, as well -- they've kind of dressed this  
18 up as a procedural issue, and embedded in that is the  
19 similar uses consideration, which I think is -- I  
20 don't want to speak for them, but I think that's the  
21 crux of their --

22 MEMBER STOVER: Can I ask you on the similar  
23 uses -- because I'm not used to seeing that, either.  
24 So, in your experience both in this county or other

Public Hearing: Appeals Procedure  
Conducted on November 10, 2015

12

1 counties -- either of you this question is for -- the  
2 similar uses can be argued on either side whether  
3 those are really similar uses?

4 MR. KINNALLY: Right. We have specific  
5 provisions in our ordinance with respect to uses that  
6 may or may not be similar, and I think that the report  
7 that you will receive from staff will tell you their  
8 view not only with respect to the uses listed but also  
9 the definitions that are in our ordinance, if that  
10 answers your question, ma'am.

11 MEMBER STOVER: Say that again. I'm confused.

12 MR. KINNALLY: Well, we have specific terms  
13 in our ordinance. Like a lot is a defined term; a  
14 convalescent home is a defined term; obscenity is a  
15 defined term.

16 MEMBER STOVER: Hospital is defined.

17 MR. KINNALLY: That's true. But there are  
18 also permitted uses that are within either F-1 or R-1  
19 which is incorporated into F-1, and those are  
20 specifically stated.

21 MEMBER STOVER: We don't have -- we do not  
22 have language in here that I can remember that talks  
23 about -- specifically talks about similar uses. Is  
24 there any language like that within our zoning

1 ordinance?

2 MR. VAN KERKHOFF: Well, there is in the  
3 petition for the property actually.

4 MEMBER STOVER: Right. But what I'm saying  
5 to you is we don't know -- what we are taught in here  
6 as to what our criteria is for deciding, is there any  
7 language within this ordinance -- because I can't  
8 remember any -- that talks about "and similar uses"?

9 MR. VAN KERKHOFF: You mean like a  
10 definition?

11 MEMBER STOVER: A definition of what our  
12 criteria is for adopting something as a special use,  
13 or a zoning change, or whatever, is that language ever  
14 used in there?

15 MR. KINNALLY: No. What is said in 5.15 is  
16 "deemed to be similar in nature." But that, again, is  
17 not a defined term, ma'am.

18 MEMBER STOVER: Okay.

19 MR. KINNALLY: So I think probably why you  
20 haven't had many of these appeals is because no one  
21 has ever challenged the zoning enforcement officer's  
22 determination of that particular issue. That's the  
23 only reason I can tell you.

24 MR. VAN KERKHOFF: So this is about process.

Public Hearing: Appeals Procedure  
Conducted on November 10, 2015

14

1 So you're getting the notice of appeal for the first  
2 time. That's the first half.

3 Under the ordinance it's my duty to forward  
4 it to the Zoning Board to set an appeals hearing,  
5 which we've done. You'll get my side of the story, so  
6 to speak, with my memo to you shortly, hopefully by  
7 the end of the week, but in advance of the meeting,  
8 and then you'll hear testimony, including mine,  
9 including whatever else might be presented.

10 And at the end of the day if you decide that  
11 I did something wrong, I mean, I don't take that  
12 personally. We've got to be factual. So you listen  
13 to the evidence and hear it out.

14 MEMBER BOWEN: I have a question. I haven't  
15 read this, so I'm not sure what it is. So explain to  
16 me, if you would, what would happen on either -- what  
17 are they trying to accomplish by coming back and  
18 objecting? What are they trying to accomplish? Then  
19 they don't have to go before the Zoning Board? What's  
20 the purpose of this? What's their purpose in their  
21 going back -- what do they expect to --

22 CHAIRMAN WHITE: Stay the action is my  
23 thought, to slow things down is what I'm thinking.

24 MEMBER STOVER: Or make it go away. Now, if

Public Hearing: Appeals Procedure  
Conducted on November 10, 2015

15

1 we decided as a zoning board that we thought he was  
2 incorrect in saying this was a similar use and he had  
3 no right to tell them that they might have that  
4 capability, wouldn't that completely make it go away?

5 MEMBER BOWEN: That's what I guess I'm  
6 looking for.

7 MEMBER STOVER: Well, I think that either  
8 way we're going to be in court.

9 MR. KINNALLY: That's my opinion. I could  
10 be wrong. I think it's probably -- that's just based  
11 on my experience, ma'am.

12 CHAIRMAN WHITE: The other side of that is  
13 so if their appeal is successful, if you read the  
14 ordinance, the reason they're appealing is because  
15 there's not a use listed under F or R-1 that  
16 specifically identifies what they are doing. We could  
17 amend the ordinance to include language that would  
18 allow that type of use in F or R-1, which this  
19 applies to.

20 So that could be done. We could -- depending  
21 on how this goes, we could amend the ordinance to  
22 include rehabilitation facilities are a use allowed in  
23 the F and R-1 zoning. That's the point they're trying  
24 to make is even though we're interpreting it as a



Public Hearing: Appeals Procedure  
Conducted on November 10, 2015

16

1 similar use, they are not.

2 MEMBER STOVER: Okay.

3 MEMBER MOGA: Mr. Chairman, aren't we going  
4 to get into this on the 17th?

5 CHAIRMAN WHITE: The only thing we're --  
6 well, that was my first question is, how far into this  
7 do we get?

8 MEMBER MOGA: I'm saying I don't think we  
9 should really discuss this too much until we get to  
10 the hearing.

11 CHAIRMAN WHITE: I'm just trying to give you  
12 some thought.

13 MEMBER BOWEN: I'm trying to find out what  
14 we're doing and what the purpose behind it is.

15 CHAIRMAN WHITE: What the procedure is going  
16 forward, he's going to give us a staff report -- it  
17 would have been nice to have it tonight but we don't  
18 have it -- and it will outline his side of the  
19 question. You need to read the appeal, get your  
20 ordinance out, look up the statute, the different  
21 sections that it applies to.

22 I've looked at definitions; I've looked at  
23 the ordinance to bring the comparisons out. It's all  
24 in there; it's just we have to decide whether or not

Public Hearing: Appeals Procedure  
Conducted on November 10, 2015

17

1 he followed the proper procedure.

2 MR. KINNALLY: The burden is on them. They  
3 go. It's their burden. They're the objectors, so  
4 they're the ones who must show that the decision that  
5 was made was incorrect in your opinion as a board, and  
6 you have 30 days after the close of the meeting to  
7 make that decision.

8 It's not his burden. In other words, they  
9 have to carry the ball.

10 MR. VAN KERKHOFF: So the way this is going  
11 to look differently -- that's the other reason we  
12 wanted to discuss it tonight is because you're going  
13 to be in a different venue. How many people have been  
14 in the branch court room?

15 MEMBER CAMERON: Not recently but I have.

16 MR. VAN KERKHOFF: Traffic Court. It's a  
17 much larger room because we wanted to be able to  
18 accommodate whoever might all show up. When we  
19 switched it -- canceled the zoning hearing for the  
20 petition, we kept the same venue and time so that if  
21 we do get a large crowd, that works out fine.

22 My other thought is that eventually we will  
23 have the hearing for the petition at that location.  
24 It will give us all an opportunity to use the room

Public Hearing: Appeals Procedure  
Conducted on November 10, 2015

18

1 once before we have a really large crowd. So that  
2 will give us an ability to kind of get used to the  
3 room setup and whatnot.

4 So anyway, you'll come like you always do,  
5 call the hearing to order, take testimony. There's an  
6 ability to cross-examine by the person, attorney who  
7 is representing the person doing the appeal.

8 As Pat suggested, giving people an  
9 opportunity to make comments on it would probably be  
10 encouraged so that, you know, there's not a perception  
11 of being shut out. And then listen to the evidence.  
12 You don't have to make a decision that night. If the  
13 testimony and everything goes long, and you want to  
14 stop it and start it back up on Thursday evening, you  
15 know, you can do that.

16 So I wanted to make sure you understood what  
17 was going to happen and what your role is.

18 MR. KINNALLY: There will be a court  
19 reporter like Paula there.

20 CHAIRMAN WHITE: Who's been notified that  
21 the public hearing has been postponed?

22 MR. VAN KERKHOFF: Canceled. We've notified  
23 the petitioner; we've notified the person who made the  
24 appeal; we've notified everyone that we notified of

Public Hearing: Appeals Procedure  
Conducted on November 10, 2015

19

1 the hearing originally. So all units of local  
2 government, adjacent property owners. The Village of  
3 Campton Hills, too, has done some extra publicity of  
4 the original petition.

5 So we may get some people there thinking  
6 they're coming to the hearing. We'll have staff there  
7 to explain to them right away when they are coming in  
8 that the hearing had been canceled and this is a  
9 hearing for an appeal so that we try to -- we're  
10 transparent, we're open in our communication to folks  
11 who are interested in what's happening on this piece  
12 of property.

13 MEMBER STOVER: So if I understood you  
14 correctly, we should keep conversation from the  
15 audience down to the appeal, not to the petition  
16 itself.

17 MR. KINNALLY: That's exactly right.

18 MEMBER STOVER: Okay. That's where it could  
19 really get long.

20 MR. KINNALLY: Then you're going to have to  
21 just say nicely that it's out of order.

22 MEMBER HEINRICH: It would be confusing.

23 MR. KINNALLY: We can handle that.

24 MR. VAN KERKHOFF: We can help assist

Public Hearing: Appeals Procedure  
Conducted on November 10, 2015

20

1 with that.

2 MEMBER STOVER: Can you remember ever or  
3 you -- because I can't and maybe you can, Hal -- that  
4 we ever had petitions that came before us for similar  
5 uses? Have you looked back at that?

6 MR. VAN KERKHOFF: For a similar use?

7 MEMBER STOVER: I'd just love to know.

8 CHAIRMAN WHITE: Probably a little late to  
9 be bringing it up.

10 MR. VAN KERKHOFF: Yeah. Not that I can  
11 recall.

12 MR. KINNALLY: Probably the reason you  
13 haven't is because it's never been challenged before.

14 CHAIRMAN WHITE: She's just saying for a  
15 facility like this.

16 MEMBER STOVER: And I just can't -- I can't  
17 think of any myself. I mean, it would be great to say  
18 don't you remember when we --

19 MR. KINNALLY: Remember there's listed and  
20 nonlisted uses. So you'll have the ordinance. You  
21 can look at that and talk about that after the hearing  
22 is over.

23 MEMBER BOWEN: I have the figures on my  
24 computer from 1980 on, you know, showing my notes from

Public Hearing: Appeals Procedure  
Conducted on November 10, 2015

21

1 where we were. And what we're looking for is any type  
2 of a zoning meeting similar to this for what their  
3 request is; is that correct?

4 MEMBER STOVER: For a similar use.

5 CHAIRMAN WHITE: Maxxam Properties is what  
6 she's referring to, a rehabilitation facility that the  
7 County has ever had --

8 MEMBER STOVER: No, I'm not saying that at  
9 all. I want to know if we gave -- you're the only  
10 historian we have -- that someone that came before us  
11 and we gave them -- you know, we passed that petition  
12 and it really wasn't outlined specifically as that in  
13 a -- what's the word I'm looking for? -- an accepted  
14 use or special use, and it wasn't outlined specifically  
15 in there but it was similar.

16 MR. VAN KERKHOFF: Do you mean as like -- I  
17 mean, their request is specifically uses similar to  
18 others herein listed.

19 MEMBER STOVER: Right.

20 MR. VAN KERKHOFF: That's your question?

21 MEMBER STOVER: Yes.

22 CHAIRMAN WHITE: So could be anything.

23 MEMBER STOVER: Could be anything.

24 MEMBER BOWEN: So the question is anything

Public Hearing: Appeals Procedure  
Conducted on November 10, 2015

22

1 we had in the past which would come through in a  
2 special use is what I would be looking for?

3 CHAIRMAN WHITE: Would be under special uses  
4 but similar and not listed.

5 MEMBER STOVER: Not listed but they were  
6 similar enough that we said yes.

7 MEMBER BOWEN: So it would be under  
8 special use?

9 MEMBER STOVER: Yes.

10 MR. VAN KERKHOFF: It's only in the  
11 F District.

12 MEMBER BOWEN: Right. Makes it very simple  
13 because I have a special use whatever it is, then who  
14 it is, and what it is.

15 MEMBER STOVER: Since 1980.

16 MEMBER BOWEN: So prior to 1980, I can't  
17 help you.

18 MR. VAN KERKHOFF: Okay. Any other questions?

19 MEMBER CAMERON: Well, how many dates are we  
20 going to have to save?

21 MEMBER STOVER: I've got a question. Are we  
22 paid for that meeting, too?

23 MEMBER CAMERON: How many dates are we going  
24 to have to save out into the future?

Public Hearing: Appeals Procedure  
Conducted on November 10, 2015

23

1 MR. KINNALLY: I assume, Penny, what will  
2 happen is that once we get to the point where we're  
3 going to have the hearings on the special use, Erin  
4 and I, and Mark, or Keith, or whoever will sit down  
5 and say, okay, "What do we have for time here? What  
6 can we stipulate on? What evidence can go in  
7 without" -- good lawyers should be able to get this  
8 done in two meetings because you're going to stipulate  
9 on most of the evidence. Now, there's some people  
10 that the Board might want to hear from.

11 But to answer your question, my view -- and  
12 Pat can tell you this, too -- is after about 2 1/2 hours  
13 everybody kind of goes to sleep; the court reporter is  
14 tired. So if you start at 7:00 and you go to 9:30 or  
15 10:00, that's kind of the lifeline here in me doing  
16 these.

17 So to answer your question directly, I would  
18 think two of those meetings ought to be enough. I  
19 don't want to speak for the petitioner or the  
20 objectors, but I would say that most good lawyers are  
21 going to stipulate to a lot of exhibits, they're going  
22 to put that into the -- that's why you've got 30 days  
23 to decide after that.

24 I think two, Penny.



Public Hearing: Appeals Procedure  
Conducted on November 10, 2015

24

1 MR. VAN KERKHOFF: And on this particular  
2 petition it's already started with this appeal. You  
3 know, a lot of your petitions are pretty quick; you  
4 guys are pretty efficient. This is not going to be an  
5 efficient petition.

6 The process is very important. That's why  
7 they're here to help guide me and to guide you in the  
8 process, and it's what we've got to follow. It's just  
9 going to take more time.

10 MEMBER STOVER: Can I -- this is what we  
11 would consider under new business. So do I have the  
12 right to ask a question about something that I read on  
13 that petition tonight?

14 MR. KINNALLY: No, I wouldn't do that. I'd  
15 wait, with all due respect, ma'am.

16 MEMBER STOVER: Yes. That's fine.

17 MR. VAN KERKHOFF: Our contact is best within  
18 the meetings and the process that we have. I mean,  
19 you won't read anything we say in the paper.

20 MR. KINNALLY: Nor me.

21 MEMBER HEINRICH: I'd move we adjourn.

22 MEMBER STOVER: Second.

23 CHAIRMAN WHITE: Any more business to come  
24 before us?

Public Hearing: Appeals Procedure  
Conducted on November 10, 2015

25

1 MEMBER BOWEN: Move we adjourn, Mr. Chairman.

2 CHAIRMAN WHITE: It's been moved and  
3 seconded. All in favor say aye.

4 (Ayes heard.)

5 CHAIRMAN WHITE: Opposed, same sign.

6 (No response.)

7 CHAIRMAN WHITE: As I said, I would  
8 encourage all of you to read this appeal, have your  
9 zoning ordinance next to you, and refer to it often.

10 (Off the record at 8:26 p.m.)

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CERTIFICATE OF SHORTHAND REPORTER

I, Paula M. Quetsch, Certified Shorthand Reporter No. 084-003733, CSR, and a Notary Public in and for the County of Kane, State of Illinois, the officer before whom the foregoing proceedings were taken, do certify that the foregoing transcript is a true and correct record of the proceedings, that said proceedings were taken by me stenographically and thereafter reduced to typewriting under my supervision, and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 15th day of November, 2015.

My commission expires: October 16, 2017

  
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Notary Public in and for the  
State of Illinois

<b>A</b>			
<p><b>ability</b> 18:2,6</p> <p><b>able</b> 17:17 23:7</p> <p><b>Absolutely</b> 11:15</p> <p><b>accepted</b> 21:13</p> <p><b>accommodate</b> 17:18</p> <p><b>accomplish</b> 14:17,18</p> <p><b>action</b> 4:22 5:18 14:22</p> <p><b>addressed</b> 4:15</p> <p><b>adjacent</b> 19:2</p> <p><b>adjourn</b> 24:21 25:1</p> <p><b>adopting</b> 13:12</p> <p><b>advance</b> 6:22 14:7</p> <p><b>affixed</b> 26:17</p> <p><b>agenda</b> 4:7 6:23</p> <p><b>aggrieved</b> 4:18</p> <p><b>agree</b> 11:13</p> <p><b>agrees</b> 9:7</p> <p><b>allow</b> 15:18</p> <p><b>allowed</b> 15:22</p> <p><b>amend</b> 15:17,21</p> <p><b>answer</b> 7:24 8:2 10:15 23:11 23:17</p> <p><b>answers</b> 12:10</p> <p><b>anyway</b></p>	<p>18:4</p> <p><b>appeal</b> 4:4,7,10,20,24 5:1,3,5 5:17,23 7:5,5,13,14 7:20,21 8:17,19,22 10:8 11:1,11 14:1 15:13 16:19 18:7,24 19:9,15 24:2 25:8</p> <p><b>appealed</b> 5:19</p> <p><b>appealing</b> 6:17 15:14</p> <p><b>appeals</b> 1:1 4:17 5:6 13:20 14:4</p> <p><b>applies</b> 8:18 15:19 16:21</p> <p><b>apply</b> 7:17</p> <p><b>approve</b> 6:14 7:4</p> <p><b>argued</b> 12:2</p> <p><b>assist</b> 19:24</p> <p><b>assume</b> 23:1</p> <p><b>attorney</b> 4:3 7:9 18:6</p> <p><b>attorneys</b> 8:18</p> <p><b>Attorney's</b> 5:2</p> <p><b>audience</b> 19:15</p> <p><b>Avenue</b> 2:6</p> <p><b>aware</b> 4:11</p> <p><b>aye</b> 25:3</p> <p><b>Ayes</b> 25:4</p> <hr/> <p style="text-align: center;"><b>B</b></p> <hr/> <p><b>back</b> 6:6 9:24 14:17,21 18:14 20:5</p> <p><b>ball</b></p>	<p>10:19 17:9</p> <p><b>based</b> 15:10</p> <p><b>basically</b> 5:23</p> <p><b>Batavia</b> 2:6</p> <p><b>believe</b> 9:6,8,10 11:1</p> <p><b>BERKHOUT</b> 3:12</p> <p><b>best</b> 9:10 24:17</p> <p><b>bit</b> 8:6</p> <p><b>board</b> 1:1 4:21 5:5,6 6:3 8:1 9:11 14:4,19 15:1 17:5 23:10</p> <p><b>BOWEN</b> 3:3 6:2 7:3,11 14:14 15:5 16:13 20:23 21:24 22:7,12,16 25:1</p> <p><b>branch</b> 5:13 17:14</p> <p><b>bring</b> 11:15 16:23</p> <p><b>bringing</b> 7:16 20:9</p> <p><b>brings</b> 11:11</p> <p><b>brought</b> 8:22</p> <p><b>building</b> 2:7 5:13</p> <p><b>burden</b> 9:14 17:2,3,8</p> <p><b>business</b> 4:2 24:11,23</p> <hr/> <p style="text-align: center;"><b>C</b></p> <hr/> <p><b>C</b> 4:1</p> <p><b>call</b> 9:14 10:12 18:5</p> <p><b>CAMERON</b> 3:4 7:6 17:15 22:19,23</p> <p><b>Campton</b></p>	<p>19:3</p> <p><b>canceled</b> 5:17 17:19 18:22 19:8</p> <p><b>capability</b> 15:4</p> <p><b>carry</b> 17:9</p> <p><b>case</b> 5:19 7:16 26:13</p> <p><b>CENTER</b> 2:5</p> <p><b>CERTIFICATE</b> 26:1</p> <p><b>Certified</b> 26:3</p> <p><b>certify</b> 26:7</p> <p><b>Chairman</b> 3:2 4:2,11 7:4,8,12 8:10,16 9:24 10:3,7 10:11 11:3,9 14:22 15:12 16:3,5,11,15 18:20 20:8,14 21:5,22 22:3 24:23 25:1,2,5,7</p> <p><b>challenged</b> 13:21 20:13</p> <p><b>change</b> 4:23 13:13</p> <p><b>Circuit</b> 5:13</p> <p><b>close</b> 17:6</p> <p><b>come</b> 4:5 6:15 8:13 18:4 22:1 24:23</p> <p><b>comes</b> 9:24</p> <p><b>coming</b> 6:5,6 14:17 19:6,7</p> <p><b>comment</b> 9:2,11</p> <p><b>comments</b> 18:9</p> <p><b>commission</b> 26:20</p> <p><b>communication</b> 19:10</p>

<p><b>comparisons</b> 16:23</p> <p><b>completely</b> 15:4</p> <p><b>computer</b> 20:24</p> <p><b>concerning</b> 4:4</p> <p><b>condition</b> 7:15</p> <p><b>conducting</b> 5:21</p> <p><b>Conference</b> 2:7</p> <p><b>confused</b> 12:11</p> <p><b>confusing</b> 6:10 19:22</p> <p><b>consider</b> 24:11</p> <p><b>consideration</b> 11:19</p> <p><b>considerations</b> 8:14</p> <p><b>contact</b> 24:17</p> <p><b>convalescent</b> 12:14</p> <p><b>conversation</b> 19:14</p> <p><b>copy</b> 4:9</p> <p><b>correct</b> 6:15,16 7:5 8:19 9:13 21:3 26:8</p> <p><b>correctly</b> 6:18 19:14</p> <p><b>counsel</b> 26:11</p> <p><b>counties</b> 12:1</p> <p><b>county</b> 1:1,2 2:5 8:1 11:24 21:7 26:5</p> <p><b>court</b> 5:13,13 9:5 15:8 17:14 17:16 18:18 23:13</p>	<p><b>criteria</b> 13:6,12</p> <p><b>cross-examine</b> 18:6</p> <p><b>crowd</b> 17:21 18:1</p> <p><b>crux</b> 6:20 11:21</p> <p><b>CSR</b> 1:24 2:14 26:4</p> <p><b>currently</b> 7:18</p> <p><b>cut</b> 8:6</p> <hr/> <p style="text-align: center;"><b>D</b></p> <hr/> <p><b>D</b> 3:11 4:1</p> <p><b>DANIEL</b> 3:5</p> <p><b>dates</b> 22:19,23</p> <p><b>day</b> 14:10 26:17</p> <p><b>days</b> 7:10 9:21 17:6 23:22</p> <p><b>debate</b> 10:4 11:10</p> <p><b>debating</b> 10:14</p> <p><b>decide</b> 9:5 14:10 16:24 23:23</p> <p><b>decided</b> 15:1</p> <p><b>deciding</b> 13:6</p> <p><b>decision</b> 4:18,21 5:6 7:3,10,22 9:22 10:8 17:4,7 18:12</p> <p><b>decisions</b> 5:23</p> <p><b>deemed</b> 13:16</p> <p><b>defend</b> 9:16</p> <p><b>defined</b> 12:13,14,15,16 13:17</p>	<p><b>definition</b> 13:10,11</p> <p><b>definitions</b> 7:19 12:9 16:22</p> <p><b>deny</b> 7:5</p> <p><b>depending</b> 15:20</p> <p><b>determination</b> 13:22</p> <p><b>determine</b> 8:15</p> <p><b>different</b> 16:20 17:13</p> <p><b>differently</b> 17:11</p> <p><b>directly</b> 23:17</p> <p><b>discuss</b> 4:4,24 16:9 17:12</p> <p><b>District</b> 22:11</p> <p><b>doing</b> 6:4 15:16 16:14 18:7 23:15</p> <p><b>dressed</b> 11:17</p> <p><b>due</b> 24:15</p> <p><b>duty</b> 14:3</p> <hr/> <p style="text-align: center;"><b>E</b></p> <hr/> <p><b>E</b> 4:1,1</p> <p><b>efficient</b> 24:4,5</p> <p><b>eight</b> 10:19</p> <p><b>either</b> 11:23 12:1,2,18 14:16 15:7</p> <p><b>embedded</b> 11:18</p> <p><b>employed</b> 26:12</p> <p><b>encourage</b> 25:8</p>	<p><b>encouraged</b> 18:10</p> <p><b>enforcement</b> 4:16,19 13:21</p> <p><b>Enforcing</b> 3:11</p> <p><b>Erin</b> 9:7 11:16 23:3</p> <p><b>erroneous</b> 8:6</p> <p><b>evening</b> 5:20 18:14</p> <p><b>event</b> 10:15</p> <p><b>eventually</b> 17:22</p> <p><b>everybody</b> 4:11 23:13</p> <p><b>evidence</b> 14:13 18:11 23:6,9</p> <p><b>exactly</b> 7:16 19:17</p> <p><b>exhibits</b> 23:21</p> <p><b>expect</b> 9:15 14:21</p> <p><b>experience</b> 11:6,24 15:11</p> <p><b>expires</b> 26:20</p> <p><b>explain</b> 6:7 14:15 19:7</p> <p><b>extra</b> 19:3</p> <p><b>eyes</b> 8:16</p> <hr/> <p style="text-align: center;"><b>F</b></p> <hr/> <p><b>F</b> 15:15,18,23 22:11</p> <p><b>facilities</b> 15:22</p> <p><b>facility</b> 20:15 21:6</p> <p><b>fact</b> 6:12,15</p> <p><b>factual</b> 14:12</p>
--	---	--	---

<b>far</b> 16:6	<b>Geneva</b> 1:7 2:8	<b>handle</b> 19:23	<b>identifies</b> 15:16
<b>favor</b> 25:3	<b>GERALD</b> 3:7	<b>happen</b> 14:16 18:17 23:2	<b>Illinois</b> 1:2,7 2:8,15 26:5,24
<b>feel</b> 4:18	<b>getting</b> 14:1	<b>happening</b> 19:11	<b>immaterial</b> 9:9
<b>figures</b> 20:23	<b>give</b> 4:9 8:3,5 11:5 16:11,16 17:24 18:2	<b>happy</b> 10:15	<b>important</b> 24:6
<b>filed</b> 8:17	<b>giving</b> 18:8	<b>HAROLD</b> 3:3	<b>include</b> 15:17,22
<b>financial</b> 26:13	<b>Glenwood</b> 5:11	<b>hear</b> 6:23 14:8,13 23:10	<b>including</b> 11:14 14:8,9
<b>find</b> 16:13	<b>go</b> 7:13,22 10:8 14:19,24 15:4 17:3 23:6,14	<b>heard</b> 25:4	<b>inclusive</b> 9:7
<b>findings</b> 6:12	<b>goes</b> 15:21 18:13 23:13	<b>hearing</b> 5:1,3,12,21,21,22 6:22 7:22,23 10:9,24 14:4 16:10 17:19,23 18:5 18:21 19:1,6,8,9 20:21	<b>incorporated</b> 12:19
<b>fine</b> 9:17,20 17:21 24:16	<b>going</b> 4:5,24 7:9 8:14 9:5 10:3,10 14:21 15:8 16:3,15,16 17:10,12 18:17 19:20 22:20,23 23:3,8,21,21 24:4,9	<b>hearings</b> 5:16 23:3	<b>incorrect</b> 15:2 17:5
<b>first</b> 5:7 14:1,2 16:6	<b>good</b> 23:7,20	<b>HEINRICH</b> 3:5 19:22 24:21	<b>individual</b> 8:19
<b>Floor</b> 2:7	<b>government</b> 2:5 19:2	<b>Held</b> 2:1	<b>information</b> 4:14
<b>folks</b> 8:14 19:10	<b>great</b> 20:17	<b>help</b> 5:2 19:24 22:17 24:7	<b>interest</b> 26:13
<b>follow</b> 24:8	<b>grievance</b> 9:19	<b>hereunto</b> 26:16	<b>interested</b> 19:11
<b>followed</b> 6:18 17:1	<b>Group</b> 11:3	<b>hide</b> 9:17	<b>interests</b> 9:10
<b>foregoing</b> 26:6,7	<b>guess</b> 15:5	<b>Hills</b> 19:3	<b>interpretations</b> 8:5
<b>forget</b> 7:15	<b>guide</b> 24:7,7	<b>historian</b> 21:10	<b>interpreting</b> 15:24
<b>forum</b> 9:18	<b>guys</b> 24:4	<b>holding</b> 5:22	<b>involved</b> 8:23 11:6
<b>forward</b> 14:3 16:16		<b>home</b> 12:14	<b>issue</b> 11:18 13:22
<b>further</b> 5:8	<b>H</b>	<b>hopefully</b> 14:6	<b>issues</b> 10:11
<b>furtherance</b> 5:18	<b>Hal</b> 6:11 20:3	<b>hours</b> 23:12	<b>item</b> 4:2
<b>future</b> 22:24	<b>half</b> 14:2	<b>I</b>	<b>J</b>
<b>F-1</b> 12:18,19	<b>hand</b> 26:17	<b>Hospital</b> 12:16	<b>Job</b> 1:22
<b>G</b>		<b>JOSEPH</b> 3:2	<b>Joe</b> 4:15
<b>G</b> 4:1			



15:9 17:5	<b>Paula</b>	<b>pretty</b>	21:20,24 22:21 23:11
<b>opportunity</b>	1:24 2:14 18:19 26:3	24:3,4	23:17 24:12
4:9 8:4 11:5 17:24 18:9	<b>Penny</b>	<b>prior</b>	<b>questions</b>
<b>Opposed</b>	3:4 23:1,24	22:16	10:16 22:18
25:5	<b>people</b>	<b>probably</b>	<b>Quetsch</b>
<b>order</b>	8:3,13,15 9:11,13,19	6:11 13:19 15:10 18:9	1:24 2:14 26:3
10:6 11:12 18:5 19:21	9:23 10:23 17:13	20:8,12	<b>quick</b>
<b>ordinance</b>	18:8 19:5 23:9	<b>procedural</b>	24:3
4:17,20 5:17 7:15,18	<b>perception</b>	10:12,17 11:14,18	
12:5,9,13 13:1,7 14:3	18:10	<b>procedure</b>	<b>R</b>
15:14,17,21 16:20,23	<b>permit</b>	7:21 16:15 17:1	<b>R</b>
20:20 25:9	9:2	<b>proceedings</b>	4:1
<b>original</b>	<b>permitted</b>	1:6 26:6,8,9	<b>Randall</b>
19:4	12:18	<b>process</b>	5:14
<b>originally</b>	<b>person</b>	4:17 6:18 13:24 24:6,8	<b>read</b>
19:1	8:21 18:6,7,23	24:18	6:21 7:13 10:13,19
<b>ought</b>	<b>personally</b>	<b>processed</b>	14:15 15:13 16:19
23:18	14:12	5:24	24:12,19 25:8
<b>outcome</b>	<b>persons</b>	<b>proper</b>	<b>realize</b>
26:14	4:17	17:1	6:5
<b>outline</b>	<b>pertaining</b>	<b>Properties</b>	<b>really</b>
16:18	5:9	21:5	6:14 12:3 16:9 18:1
<b>outlined</b>	<b>petition</b>	<b>property</b>	19:19 21:12
21:12,14	4:5,8 5:10,11,16,19,22	5:11 13:3 19:2,12	<b>reason</b>
<b>outside</b>	5:24,24 10:4,9,13	<b>provide</b>	5:8,9 7:13 9:4 13:23
11:11	13:3 17:20,23 19:4,15	9:18	15:14 17:11 20:12
<b>owners</b>	21:11 24:2,5,13	<b>provides</b>	<b>recall</b>
19:2	<b>petitioner</b>	4:17	20:11
	11:8 18:23 23:19	<b>provision</b>	<b>receive</b>
<b>P</b>	<b>petitioners</b>	10:14	6:22 12:7
<b>P</b>	11:1	<b>provisions</b>	<b>received</b>
4:1	<b>petitions</b>	12:5	4:7,8
<b>Pages</b>	20:4 24:3	<b>public</b>	<b>recognize</b>
1:23	<b>piece</b>	2:14 5:12,21 7:22 9:2	6:23
<b>paid</b>	19:11	10:3,9 18:21 26:4,23	<b>recommend</b>
22:22	<b>point</b>	<b>publicity</b>	9:3
<b>paper</b>	15:23 23:2	19:3	<b>record</b>
24:19	<b>postponed</b>	<b>purpose</b>	25:10 26:8
<b>particular</b>	18:21	14:20,20 16:14	<b>reduced</b>
5:19 13:22 24:1	<b>potential</b>	<b>put</b>	26:10
<b>parties</b>	5:14	23:22	<b>refer</b>
26:12	<b>preparing</b>	<b>p.m</b>	25:9
<b>Partners</b>	6:21	1:9 5:13 25:10	<b>referring</b>
5:10	<b>present</b>		8:11 21:6
<b>passed</b>	3:1,10 10:24	<b>Q</b>	<b>REGAN</b>
21:11	<b>presented</b>	<b>question</b>	3:7 7:1
<b>Pat</b>	10:5 14:9	6:2,9 7:8,12 10:1 11:10	<b>regarding</b>
8:1 18:8 23:12		12:1,10 14:14 16:6,19	5:6



<p>5:6  <b>rehabilitation</b>                      15:22 21:6  <b>related</b>                      5:18 26:12  <b>relative</b>                      4:8 5:24  <b>remember</b>                      12:22 13:8 20:2,18,19  <b>repetitive</b>                      9:9  <b>report</b>                      1:6 12:6 16:16  <b>Reported</b>                      1:24  <b>reporter</b>                      18:19 23:13 26:1,4  <b>representatives</b>                      4:3  <b>representing</b>                      18:7  <b>request</b>                      21:3,17  <b>requesting</b>                      4:22  <b>respect</b>                      12:5,8 24:15  <b>response</b>                      25:6  <b>right</b>                      4:20,21 6:4 7:11 10:10                      10:22 11:7 12:4 13:4                      15:3 19:7,17 21:19                      22:12 24:12  <b>Road</b>                      5:14  <b>ROBERT</b>                      3:6  <b>role</b>                      18:17  <b>room</b>                      2:7 17:14,17,24 18:3  <b>ROXANNE</b>                      3:8  <b>R-1</b>                      12:18 15:15,18,23</p> <hr/> <p style="text-align: center;"><b>S</b></p>	<p><b>S</b>                      4:1  <b>save</b>                      22:20,24  <b>saying</b>                      13:4 15:2 16:8 20:14                      21:8  <b>says</b>                      6:4  <b>scheduled</b>                      5:12  <b>School</b>                      5:11  <b>seal</b>                      26:17  <b>second</b>                      6:11 24:22  <b>secondary</b>                      5:14  <b>seconded</b>                      25:3  <b>Secretary</b>                      3:12  <b>sections</b>                      16:21  <b>see</b>                      10:13  <b>seeing</b>                      11:23  <b>sense</b>                      6:1  <b>set</b>                      5:1 14:4 26:16  <b>setup</b>                      18:3  <b>Shorthand</b>                      26:1,3  <b>shortly</b>                      14:6  <b>show</b>                      17:4,18  <b>showing</b>                      20:24  <b>shut</b>                      18:11  <b>side</b>                      6:23 12:2 14:5 15:12</p>	<p>16:18  <b>sign</b>                      25:5  <b>similar</b>                      10:14 11:10,19,22 12:2                      12:3,6,23 13:8,16                      15:2 16:1 20:4,6 21:2                      21:4,15,17 22:4,6  <b>simple</b>                      22:12  <b>sit</b>                      23:4  <b>sleep</b>                      23:13  <b>slow</b>                      14:23  <b>sort</b>                      5:2  <b>South</b>                      2:6  <b>speak</b>                      8:15 10:5,7,24 11:8,20                      14:6 23:19  <b>special</b>                      7:17 13:12 21:14 22:2                      22:3,8,13 23:3  <b>specific</b>                      12:4,12  <b>specifically</b>                      12:20,23 15:16 21:12                      21:14,17  <b>staff</b>                      12:7 16:16 19:6  <b>start</b>                      18:14 23:14  <b>started</b>                      24:2  <b>State</b>                      2:15 26:5,24  <b>stated</b>                      12:20  <b>State's</b>                      4:3 5:2 7:9  <b>statute</b>                      16:20  <b>Stay</b>                      14:22</p>	<p><b>stays</b>                      5:17  <b>stenographically</b>                      26:9  <b>stipulate</b>                      23:6,8,21  <b>stop</b>                      18:14  <b>story</b>                      14:5  <b>STOVER</b>                      3:8 6:9,19 10:17,21                      11:14,22 12:11,16,21                      13:4,11,18 14:24 15:7                      16:2 19:13,18 20:2,7                      20:16 21:4,8,19,21,23                      22:5,9,15,21 24:10,16                      24:22  <b>stupid</b>                      6:7  <b>submit</b>                      7:20  <b>submitted</b>                      5:10 8:19  <b>submitting</b>                      7:14  <b>substantive</b>                      10:12  <b>successful</b>                      15:13  <b>suggest</b>                      9:12  <b>suggested</b>                      18:8  <b>supervision</b>                      26:11  <b>sure</b>                      8:7 10:2 14:15 18:16  <b>switched</b>                      17:19</p> <hr/> <p style="text-align: center;"><b>T</b></p> <p><b>take</b>                      4:9 14:11 18:5 24:9  <b>taken</b>                      26:7,9  <b>talk</b>                      5:3 9:1 11:5,17 20:21</p>
---	---	--	---

<b>talking</b> 10:18	9:6	17:13,20	<b>words</b> 17:8
<b>talks</b> 12:22,23 13:8	<b>transparent</b> 19:10	<b>view</b> 8:22 9:5 12:8 23:11	<b>works</b> 17:21
<b>taught</b> 13:5	<b>true</b> 12:17 26:8	<b>Village</b> 19:2	<b>worried</b> 9:16
<b>tell</b> 11:6 12:7 13:23 15:3 23:12	<b>try</b> 19:9	<hr/> <b>W</b> <hr/>	<b>wouldn't</b> 8:16 15:4 24:14
<b>term</b> 12:13,14,15 13:17	<b>trying</b> 9:7 14:17,18 15:23 16:11,13	<b>wait</b> 24:15	<b>wrong</b> 4:22 14:11 15:10
<b>terms</b> 10:23 12:12	<b>Tuesday</b> 1:8 5:12,20 7:1,2	<b>want</b> 8:3,4,8,10,15 9:18,20 10:24 11:2,10,20 18:13 21:9 23:10,19	<hr/> <b>Y</b> <hr/>
<b>testimony</b> 14:8 18:5,13	<b>turned</b> 6:13	<b>wanted</b> 17:12,17 18:16	<b>yeah</b> 11:4 20:10
<b>thing</b> 16:5	<b>two</b> 10:11 23:8,18,24	<b>wasn't</b> 21:12,14	<hr/> <b>Z</b> <hr/>
<b>things</b> 8:7 14:23	<b>type</b> 15:18 21:1	<b>way</b> 8:7 11:16 15:8 17:10	<b>zoning</b> 1:1 3:11 4:16,16,19,20 4:21 5:5,6,7 9:10 12:24 13:13,21 14:4 14:19 15:1,23 17:19 21:2 25:9
<b>think</b> 6:10,17 8:2,3,5,8 9:7 11:4,19,20 12:6 13:19 15:7,10 16:8 20:17 23:18,24	<b>typewriting</b> 26:10	<b>Wayne</b> 8:23	<hr/> <b>0</b> <hr/>
<b>thinking</b> 14:23 19:5	<hr/> <b>U</b> <hr/>	<b>week</b> 4:5 14:7	<b>084-003733</b> 26:4
<b>thought</b> 14:23 15:1 16:12 17:22	<b>understand</b> 11:9	<b>welcome</b> 4:3	<hr/> <b>1</b> <hr/>
<b>three-minute</b> 9:11	<b>understanding</b> 6:13	<b>We'll</b> 19:6	<b>1</b> 1:23
<b>Thursday</b> 5:15 7:6 18:14	<b>understood</b> 18:16 19:13	<b>we're</b> 4:24 15:8,24 16:5,14 19:9,10 21:1 23:2	<b>1/2</b> 23:12
<b>time</b> 6:3,6 14:2 17:20 23:5 24:9	<b>units</b> 19:1	<b>we've</b> 6:3 14:5,12 18:22,23 18:24 24:8	<b>10</b> 1:8
<b>timewise</b> 8:7	<b>use</b> 7:17 11:10 13:12 15:2 15:15,18,22 16:1 17:24 20:6 21:4,14,14 22:2,8,13 23:3	<b>whatnot</b> 18:3	<b>10:00</b> 23:15
<b>tired</b> 23:14	<b>uses</b> 10:14 11:19,23 12:2,3 12:5,8,18,23 13:8 20:5,20 21:17 22:3	<b>WHEREOF</b> 26:16	<b>15th</b> 26:17
<b>tonight</b> 4:7 5:1 6:24 16:17 17:12 24:13	<hr/> <b>V</b> <hr/>	<b>White</b> 3:2 4:2,11,15 7:4,8,12 8:10,16 9:24 10:3,7 11:3,9 14:22 15:12 16:5,11,15 18:20 20:8 20:14 21:5,22 22:3 24:23 25:2,5,7	<b>16</b> 26:20
<b>Traffic</b> 17:16	<b>VAN</b> 3:11 4:6,13 6:16,20 7:2 10:23 13:2,9,24 17:10 17:16 18:22 19:24 20:6,10 21:16,20 22:10,18 24:1,17	<b>witness</b> 9:15 26:16	<b>17th</b> 16:4
<b>transcript</b> 26:7	<b>venue</b>	<b>word</b> 21:13	<b>19th</b> 5:15
<b>transparency</b>			<b>1980</b> 20:24 22:15,16
			<hr/> <b>2</b> <hr/>

<b>2</b> 23:12 <b>2015</b> 1:8 26:18 <b>2017</b> 26:20 <b>26</b> 1:23			
<hr/> <b>3</b> <hr/>			
<b>30</b> 7:10 9:21 17:6 23:22			
<hr/> <b>4</b> <hr/>			
<b>4th</b> 2:7 <b>4.5</b> 9:19 <b>444-1236</b> 2:9			
<hr/> <b>5</b> <hr/>			
<b>5.15</b> 10:20,21 13:15			
<hr/> <b>6</b> <hr/>			
<b>60134</b> 2:8 <b>630</b> 2:9			
<hr/> <b>7</b> <hr/>			
<b>7:00</b> 5:13 23:14 <b>719</b> 2:6			
<hr/> <b>8</b> <hr/>			
<b>8:00</b> 1:9 <b>8:26</b> 25:10			
<hr/> <b>9</b> <hr/>			
<b>9:30</b> 23:14 <b>97238E</b> 1:22			